

**RESOLUTION NO. 939**

**A RESOLUTION AMENDING SECTION 12, DISCIPLINARY PROCEDURES FOR NON-BARGAINING UNIT EMPLOYEES OF THE STAYTON PERSONNEL MANUAL**

WHEREAS, the City of Stayton does not have an appeal process set forth in the current Personnel Manual;

WHEREAS, the Stayton City Council is committed to protecting the City from unnecessary litigation; and

WHEREAS, the Stayton City Council wishes to provide rules and policies relating to personnel appeals that apply to all City employees in a fair and equitable manner.

NOW THEREFORE BE IT RESOLVED

that the Stayton Personnel Manual, Section 12, Disciplinary Procedures for Non-Bargaining Unit Employees be amended to include new Section 12.5, Appeal Policy (Attachment A).

This Resolution shall become effective upon its adoption by the Stayton City Council.

ADOPTED BY THE STAYTON CITY COUNCIL THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2016.

CITY OF STAYTON

Date: 02/01/2016, 2016

By: Henry A. Porter  
Henry A. Porter, Mayor

Date: 2/1/16, 2016

Attest: Keith D. Campbell  
Keith D. Campbell, City Administrator

APPROVED AS TO FORM:

David A. Rhoten  
David A. Rhoten, City Attorney



## **City of Stayton**

### **Personnel Matters**

### **Appeal Policy and Procedure**

This policy and procedure is intended to implement the “appeal” as referred to in Stayton’s Personnel Manual. It is a guide to “appeals” to 1) City Administrator and 2) Mayor/Council; the overall policy and procedures may be applied to either category of appeal.

#### **City Employee’s Appeal to the City Administrator**

If the employee wishes to file an appeal of the Department Director's decision/action, it must be filed with the City Administrator not later than ten (10) working days after the effective date of the Department Director's decision/action. The City Administrator will endeavor to hear the appeal as timely and responsively as the circumstances permit, as a matter of priority. Timelines may be extended by mutual agreement between the employee and the City Administrator.

The decision in the matter may be reviewed by the Stayton City Council on request of either party.

#### **Hearing Procedure (City Employee’s Appeal to City Administration)**

A hearing may take place as to appeals of personnel matters, including economic, discipline and dismissal. The City Administrator shall set a hearing upon a timely request made under this policy, and may meet informally with any of the parties prior to any formal hearing to gather additional information.

The Department Director shall be given written notification of the time and place of the hearing. Either or both the employee and the Department Director may elect to be represented and assisted during the appeal procedure. If the employee requests the presence of legal counsel, the Department Director will request the presence of the City Attorney or designate. The City Attorney or designate will be present to advise the City Administrator concerning issues and questions that arise during the proceedings. A tape recording will be made of the hearing; either party may bear the expense of transcription if desired by the particular party. If transcribed, the parties may elect to share in the expense of transcription and shall provide a copy of the transcription to the other party and to the City Administrator and the City.

The order of procedure at the hearing will be as follows:

(1) The Department Director or a designee will set forth the reasons for the action and the facts on which it is based, and shall do so in writing and submit the written explanation with all pertinent documents at least ten days prior to the date of the hearing to the City Recorder or designee.

(2) The employee and/or her/his representative shall submit to the City Recorder or designee at least ten days prior to the hearing a statement of the legal and factual basis for the appeal, including a clear statement of rules, policies or rights which the employee contends were violated, or applicable, if any.

(3) The employee may present evidence in support of the appeal, with or without the assistance of legal counsel or other representative. The employee may examine witnesses and conduct cross-examination if appropriate. The City Administrator may require that all witness testimony shall be presented in the form of written, sworn witness statements.

(4) The Department Director may cross-examine and/or submit evidence in rebuttal.

(5) Opening statements, if any, will be brief and confined to the issues. Closing arguments, if any, will be first by the Department Director then by the employee.

(6) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Affidavits and counter-affidavits are acceptable as evidence. If either party intends to rely on an affidavit, that party shall provide the other party with a copy of the affidavit, together with the name, address and telephone number of the person making the affidavit, at least three (3) working days prior to the hearing, or the affidavit shall be inadmissible, unless there is good cause shown.

(7) If, after receiving evidence presented in a hearing on the Department Director's action, the City Administrator finds that sufficient evidence supports the charge and that the complained-of action taken by the supervisor was reasonable and was taken for a proper reason consistent with policy, the City Administrator may affirm the action. If the City Administrator finds that the complained-of action taken by the supervisor was inappropriate, the City Administrator shall fashion an appropriate remedy. The City Administrator, in lieu of affirming the disciplinary action, may modify the discipline as the circumstances warrant, and direct that City records be conformed accordingly.

### **Department Director's Appeal of City Administrator's Action**

If a Department Director wishes to file an appeal to the Stayton Mayor/City Council, of the City Administrator's action, it must be filed with the City Recorder (or Deputy) not later than ten (10) working days after the effective date of the City Administrator's action. The Mayor shall set the time for hearing the appeal following receipt of the Notice of Appeal to include a summary of the basis for the appeal. Subject to mutual agreement of the parties to the contrary, the hearing shall take place before the Mayor/Council within 60 days of the date of Notice.

## **Cases Where an Appeal is from Decision of the City Administrator**

If a Department Director or other subordinate who reports directly to the City Administrator pursues an appeal under this policy, the appeal shall be to the Mayor and Council. The foregoing policy shall apply, and in addition:

1. The Mayor and Council may direct the matter be heard by a Hearing Officer. In such a case, the Mayor and Council will appoint the Hearings Officer and shall receive and consider the Hearing Officer's findings, conclusions and recommendations.
2. The Mayor and Council may require that the record upon which the City Administrator's decision was based be delivered to the employee prior to the Council's consideration and set a time within which this shall occur.
3. The Mayor and Council may require that the City Administrator and the employee submit in writing their arguments and the records on which the arguments are based. The Mayor and Council may require that both submit all witness testimony in the form of a written, sworn witness statements, in order that the Hearings Officer and/or Mayor and Council review occurs based solely on or predominantly on a written record. The Hearings Officer and/or Mayor and Council shall reserve the option to permit the City Administrator and the employee to cross examine witnesses whose sworn testimony is offered by the opposing party.
4. The Deputy City Recorder will schedule the proceedings, and provide this policy and procedure to the employee who initiates an appeal and serve as custodian and Clerk of the Council responsible to insure that documents are provided to the parties, Mayor and the Council at appropriate times as the record of the appeal procedure.

## **Conduct of Hearings**

A hearing before the Mayor/Council or City Administrator is intended solely for the purpose of receiving evidence either to refute or substantiate specific charges. The hearing shall be conducted accordingly. The appeal policy and procedure set forth herein may apply to appeals before the City Administrator and/or the Mayor/Council as deemed appropriate by the presiding party. The Mayor/Council or City Administrator may impose limits on questioning in the interest of fairness and the orderly conduct of the hearing.

## **Counsel or Representative**

In appealing a disciplinary action to the Mayor/Council or City Administrator an employee may, but is not required to, have counsel or other representative present.

## **Hearings Officer**

In the event the Mayor/Council or City Administrator, as Chief Executive Officer of the City, may determine that the responsibilities of that governing body/office or a conflict does not permit immersion in an appeal procedure to the degree necessary to properly develop and

consider a record, the appellate, Mayor/Council or City Administrator shall have the authority and ability, case-by-case to appoint a Hearings Officer and delegate to that person the responsibility of conducting a formal hearing and drafting recommended findings of facts and conclusions. The Hearings Officer will be a person determined by the Mayor/Council or City Administrator to possess the ability to fairly and capably decide the appeal.

If a Hearings Officer is designated, the Mayor/Council or City Administrator shall retain the right to accept, reject and/or modify the findings and conclusions recommended by the Hearings Officer. The Hearings Officer shall set the time and place of hearing based on the availability of the Hearings Officer and those who are expected to participate, and make best efforts to hear and decide the matter within a reasonable time.

### **Labor Contract Effect**

An employee with remedies under a labor agreement may use this appeal procedure, and may do so only if the employee and the Union waive in writing the right to proceed to appeal under any other policy, contract, law or rule.

Adopted by  
The Stayton City Council  
February 1, 2016