

Introduced by: City Manager Wallace
Date: October 25, 2016
Public Hearing: November 8, 2016
Action: Adopted
Vote: Unanimous

Yes:	No:
Best	
Carrington	
Combs	
DeVries	
Fuller	
Hanson	
LaFrance	

CITY OF PALMER, ALASKA

Ordinance No. 16-018

An Ordinance of the Palmer City Council Amending Palmer Municipal Code Sections 4.50.050 Department Director Procedure for Imposing Adverse Action and 4.50.060 Classified Employee's Right to a Hearing on Department Director's Intent to Impose Adverse Action

THE CITY OF PALMER, ALASKA ORDAINS:

Section 1. Classification. This ordinance shall be permanent in nature and shall be incorporated into the Palmer Municipal Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Section 4.50.050 is hereby amended to read as follows (new language is underlined and deleted language is stricken out):

4.50.050 Department director procedure for imposing adverse action.

- A. Except as provided in PMC 4.50.030, before notifying an employee of intent to impose adverse action, a department director must consult with the personnel officer, city manager, and city attorney. Thereafter, the department director shall:
1. Give written notice to the employee of the charge or charges against the employee;
 2. Explain to the employee the basis, i.e., the evidence, supporting each charge; and
 3. Allow the employee a reasonable opportunity to present ~~his or her~~ their side of the story. If the employee requires time to prepare the presentation, up to three days shall be provided. Such presentation shall not be prepared on city's premises. The employee, ~~at his or her own expense,~~ at their own expense.
- B. After steps in subsections (A)(1) through (3) of this section have occurred, the department director shall consult with the city manager and city attorney and determine in writing:
1. Whether there are reasonable grounds to believe the charges against the employee are true; and
 2. Whether the charges support the adverse action.

- C. Only after the procedures in subsection (A) of this section have been completed may the department director notify the employee of intent to impose adverse action.
- D. The notice of intent to impose adverse action shall notify the employee:
 1. Of the department director's intent to impose a specified adverse action on the employee;
 2. Of the statement of cause for the action including the determination of items in subsection (A) of this section;
 3. That the employee has the right to a hearing before a hearing officer ~~the city manager~~ to contest the imposition of the adverse action; and
 4. That if the employee does not deliver a written request for the hearing to the city manager within two working days after service upon the employee of the notice of intent, the adverse action shall be imposed and the employee shall have waived all right of appeal.
- E. For administrative investigation purposes only, a department director may require written statements from any employee, including the charged employee, describing or explaining the charged employee's conduct or omissions at any time. Failure by any employee to provide a complete and truthful statement may be grounds for expedited discharge.

Section 4. Section 4.50.060 is hereby amended to read as follows (new language is underlined and deleted language is stricken out):

4.50.060 Classified employee's right to a hearing on department director's intent to impose adverse action.

- A. An employee who has received a notice of intent to impose adverse action has the right to a hearing before ~~the city manager~~ a hearing officer in accordance with the provisions of this section.
- B. Hearing officer appointment.
 1. To be appointed as a hearing officer, a person must possess knowledge of this title, personnel regulations, and principles of due process. A person may not act as hearing officer in any case in which there is any direct or indirect financial interest, on a form provided by the city clerk, and must certify to the absence of any such interest before receiving the appeal record. A hearing officer may not be a current city employee or a current member of the council or commission.
 2. A hearing officer shall be impartial in all decisions, both in fact and in appearance. The hearing officer shall not engage in ex-parte contact with any person concerning the appeal either before or after the appeal hearing.
 3. The city clerk shall solicit persons who are willing to serve as hearing officers, and shall maintain a list of interested persons determined to be qualified.
 4. Upon an appeal being filed, the city manager shall appoint the hearing officer and shall report the appointment to the council.
- C. The employee's request for a hearing on a notice for intent to impose adverse action must be in writing, signed by the employee or counsel and delivered to the city manager within two working days of receipt of written notice of the adverse action. Employee's failure to request a hearing within the time and manner provided shall be deemed a waiver of ~~his or her~~ employee's appeal rights and to any appellate review to which ~~he or she~~ the employee might have otherwise been entitled; and the department director's action becomes final.
- D. If the employee duly delivers ~~his or her~~ a request for hearing, the department director's imposition of adverse action is stayed pending decision by the ~~city manager~~ hearing officer.

The ~~city manager~~ hearing officer will hold a hearing within five working days from date of receipt of the request. The ~~city manager~~ hearing officer may extend in writing the hearing date, but no extension of more than 10 working days shall be granted. The ~~city manager~~ hearing officer shall duly notify the employee of the date, time and place of the hearing.

- E. The employee, at ~~his or her~~ employee's own expense, may be represented by counsel.
- F. If the employee wishes to question another employee or employees (~~other than the city manager~~), the city manager will, if practical, provide for the employee's attendance for questioning at no cost to the charged employee. The employee must notify the hearing officer, city manager and the department director of the names of the employee(s) at least three working days before the hearing or this right is waived. The ~~city manager~~ hearing officer may determine the relevancy of evidence.
- G. The hearing shall be closed unless the charged employee has requested otherwise.
- H. ~~The city manager may retain the services of an attorney or other person to assist in conducting the hearing and making the decision.~~
- I. All testimony shall be under oath. The proceedings shall be recorded. Upon written request, the employee is entitled to a recorded copy of the proceedings at no charge. The city manager, department director or representative and the ~~city manager~~ hearing officer ~~or representative~~ may examine and cross examine witnesses.
- J. Exhibits may be introduced. Exhibits to be provided at the hearing by either party must be provided to the other party two working days prior to the hearing. The rules of evidence need not be strictly followed. Irrelevant or unduly repetitious evidence may be excluded. The factual record is closed at the close of the hearing. The ~~city manager~~ hearing officer may continue the hearing for good cause.
- JK. The order of presentation is:
 - 1. Brief opening statement by the department;
 - 2. Brief opening statement by the employee, which is optional;
 - 3. Presentation of evidence by department;
 - 4. Presentation of evidence by employee;
 - 5. Rebuttal as necessary;
 - 6. Argument by department;
 - 7. Argument by employee;
 - 8. Rebuttal argument by department.
- KL. The department director must prove by a preponderance of the evidence the factual basis upon which ~~he or she imposed~~ the adverse action was imposed.
- LM. Within five working days from the conclusion of the hearing, the ~~city manager~~ hearing officer shall render a written decision which shall be effective immediately or according to the terms of the written decision. The ~~city manager~~ hearing officer may not increase the severity of the adverse action, but may approve it or modify any part. A copy of the ~~city manager's hearing officer's~~ decision shall be furnished to the employee. The department director's written determination and statement of cause, all written documents considered by the ~~city manager~~ hearing officer, and ~~his or her~~ the hearing officer's decision shall be filed in the employee's personnel record file.
- MN. The ~~city manager's~~ hearing officer's final decision must notify the employee in writing of the provisions in subsection (~~MN~~) of this section.
- NO. An employee who is dissatisfied with the ~~city manager's~~ hearing officer's decision may appeal it to the superior court in Palmer. The appeal must be filed within 30 days of employee's receipt of the decision. Employee's failure to appeal within this time constitutes

a waiver of his or her the employee's appeal rights and the city manager's hearing officer's decision becomes final.


Section 5. Section 4.50.070 is hereby amended to read as follows (new language is underlined and deleted language is stricken out):

4.50.070 City Manager procedure for imposing adverse action.


- A. Except as provided in PMC 4.50.030, this section applies to the following employees: executive secretary admin assistant to the city manager, airport superintendent and human resources specialist.
- B. The city manager shall follow the procedures set forth in PMC 4.50.060 050.
- C. ~~The city manager's final decision must notify the employee in writing of provisions of PMC 4.50.060(M).~~
- D-C. An employee who is dissatisfied with the city manager's ~~final~~ decision may appeal as provided in PMC 4.50.060. ~~Appeals must be filed within 30 days of employee's receipt of the final decision. Employee's failure to meet the applicable deadline constitutes a waiver of his or her appeal rights and the city manager's final decision becomes final.~~
- E. ~~The appeal shall be before an independent hearing officer appointed by the city council.~~
- F. ~~The hearing officer's decision shall be final.~~

Section 6. Effective Date. Ordinance No. 16-018 shall take effect upon adoption by the City of Palmer City Council.

Passed and approved this 8th day of November, 2016.



Edna B. DeVries, Mayor



Norma I. Alley, MMC, City Clerk