



**CLARKSVILLE CITY COUNCIL
SPECIAL SESSION
JANUARY 14, 2013, 4:30 P.M.
COUNCIL CHAMBERS
106 PUBLIC SQUARE
CLARKSVILLE, TN**

AGENDA

- 1) CALL TO ORDER
- 2) PRAYER AND PLEDGE OF ALLEGIANCE
- 3) ATTENDANCE
- 4) BOARD APPOINTMENTS
 1. Housing Authority: Bill Harpel (replace Eric Barnett-resigned) - January 2013 through September 2016
- 5) HUMAN RESOURCES
 1. **ORDINANCE 59-2012-13** (First Reading) Amending the Official Code relative to voluntary demotion
 2. **ORDINANCE 60-2012-13** (First Reading) Amending the Official Code relative to human resources, employee due process, and probationary employees, and drug and alcohol disciplinary process
- 6) ADJOURNMENT

ORDINANCE 59-2012-13

AN ORDINANCE AMENDING THE OFFICIAL CODE OF THE CITY OF CLARKSVILLE, TITLE 1.5 (HUMAN RESOURCES), CHAPTER 4 (COMPENSATION), SECTION 1.5-405 (PAY ADJUSTMENTS), SUBSECTION “h.” RELATIVE TO DEMOTIONS OR REASSIGNMENTS FROM A JOB POSITION WITH A HIGHER JOB POSITION CLASSIFICATION RATING TO A JOB POSITION WITH A LOWER JOB POSITION CLASSIFICATION RATING

WHEREAS, the City Council desires to encourage the promotion of its employees within the various City departments to continue professional growth and achievement in order to fulfill the needs of those departments; and

WHEREAS, some of these promotions may entail new job duties, requirements, hours of operation and increased responsibilities; and

WHEREAS, on occasion some promoted employees may decide that the promotion and its attendant job requirements ultimately may not be to their benefit, and may therefore seek a voluntary demotion in order to return to the employee’s previous job position; and

WHEREAS, in many instances voluntary demotions are not the result of any disciplinary actions and are only the result of the desires of the individual employees, and the employee performed in a successful manner at the lower job position and are a valuable human resource for the City; and

WHEREAS, in some instances where the employee’s pay rate or salary is above the midpoint of the pay range of the employee’s previous position, and the employee accepts a promotion, but then at some later point in time decides to take a voluntary demotion, then the employee’s pay or salary could be set below the pay or salary the employee had before taking the promotion; and

WHEREAS, the City Council desires to encourage employee promotion within the departments, and does not desire to disincentive an employee from seeking a promotion with the risk that the employee’s pay could be reduced from a voluntary demotion to a point lower than the employee’s pay rate before taking the promotion.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

(1) That Title 1.5, Chapter 4, Section 1.5-405(h) of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following language:

Sec. 1.5-405(h). *Demotions or reassignment to a lower job position classification.* A demotion occurs when an employee is returned or transferred to a job position with a lower job position classification rating. A demotion can occur either as a result of the employee discipline process or as a voluntary demotion.

- (1) *Demotion as a result of the employee discipline process.* An employee who has been demoted from a job position pursuant to the employee discipline process or for other just cause to a job position with a lower job position classification rating shall have his pay reduced to a level between the minimum of the midpoint of the salary range for the lower level job position as determined by the director of the department of human resources in consultation with the department head of the affected employee.
- (2) *Voluntary Demotion.* When an employee chooses a voluntary demotion from a job position with a higher classification rating to another job position with a lower classification rating, and the demotion does not result from any employee discipline process or just cause, the rate of pay for the employee shall be reduced to a rate within the range for the lower job position classification, as determined by the director of the department of human resources in consultation with the department head of the affected employee, but said rate of pay shall not be lower than the rate of pay of the affected employee on the calendar day immediately prior to the effective date of the employee's former promotion to a job position with a higher job position classification rating.

FIRST READING:

SECOND READING:

EFFECTIVE DATE:

ORDINANCE 60-2012-13

AN ORDINANCE AMENDING THE OFFICIAL CODE OF THE CITY OF CLARKSVILLE, TITLE 1.5 (HUMAN RESOURCES), CHAPTER 5 (HIRING), CHAPTER 10 (DISCIPLINARY ACTION), AND CHAPTER 15 (MISCELLANEOUS).

WHEREAS, the City Council finds it advisable to amend the City Code concerning disciplinary action to remove the language requiring the Director of the Department of Human Resources to ensure that any disciplinary action taken against an employee were “appropriate and generally consistent,” because the Department Head should be the primary adjudicator of the appropriateness of disciplinary action against an employee, and not the Director of the Human Resources Department; and

WHEREAS, a recent Tennessee Court of Appeals opinion has interpreted part of the due process provisions pertaining to disciplinary action in a manner contrary to the intent of City Council; and

WHEREAS, the City Council desires to amend the City Code concerning the probationary period of employees, to more clearly articulate that probationary employees are not entitled to any due process procedures; and

WHEREAS, the City Council desires to amend the City Code to provide for flexibility governing the disciplinary process for employees who test positive for abuse of alcohol and / or drugs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

(1) Title 1.5 (Human Resources), Chapter 5 (Hiring), Section 1.5-502.5 d. of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following:

Section 1.5-502.5

- d. At any time during the probationary period, the department head may terminate the employment of any probationary employee within their department, with or without just cause, and said probationary employee shall not be entitled to the due process procedures afforded non-probationary employees as provided for by Chapter 10 of this Title.

(2) Title 1.5 (Human Resources), Chapter 10 (Disciplinary Action), Section 1.5-1001 c. (Minimum Due Process) of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following language:

Section 1.5-1001

- (c) *Minimum due process.* All regular, non-probationary employees will be afforded the benefit of due process for any disciplinary action in the form of reduction in pay, suspension without pay, demotion, and dismissal, except as may be otherwise provided in Section 1.5-1504 pertaining to employee abuse of alcohol and / or drugs. Due process requires that established rules and procedures for disciplinary action are followed and that employees have an opportunity to respond to charges made against them prior to the decision on the disciplinary action to be taken. Due process consists of the following:
- (1) Employees shall be notified of the charges against them. Such notification will detail times, places, and other pertinent facts.
 - (2) The notification will provide for the employee to have a pre-decision discussion. The employee shall be given a reasonable period of time to prepare to answer charges and present information which might influence the disciplinary decision.
 - (3) The person conducting the pre-decision discussion will be a department head or the senior supervisor in the employee's work unit.
 - (4) The meeting outlined above shall be for the purpose of allowing the employee to present information to the manager regarding the disciplinary action under consideration.
 - (5) The discussion shall be informal. The employee shall have the right to present written statements from witnesses, or his or her own written or oral statement, or any other relevant information with regard to the charges. Attendance and participation by persons other than the department head and the employee shall be at the discretion of the department head.
 - (6) If the employee declines the opportunity to have the discussion or present information, the provisions of this section shall be deemed to have been met.
 - (7) For disciplinary action in the form of a written reprimand, regular non-probationary employees shall be afforded the benefit of due process through an informal counseling session with their supervisor or other management personnel from their department who prepares the written reprimand, and said informal counseling session shall be conducted at the time the written reprimand is provided to the employee, and wherein the employee shall be given an opportunity to explain the circumstances surrounding their conduct giving rise to the written reprimand. The

employee's supervisor or other management personnel from their department who prepares the written reprimand shall take into consideration the explanation of the employee concerning their conduct and determine whether to proceed with issuance of the written reprimand. The decision concerning the issuance of the written reprimand made by the employee's supervisor or other management personnel from their department who prepares the written reprimand shall be final and the employee shall have no right to an appeal therefrom. No other due process shall be required for the issuance of a written reprimand.

(3) That Title 1.5 (Human Resources), Chapter 10 (Disciplinary Action), Section 1.5-1001 f. (1)(b) of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following language:

Section 1.5-1001 (f.)(1)

- (b) Except as provided in subsection f.(1)(c), allegations of employee misconduct which could warrant reduction in pay, suspension without pay, demotion, or termination, will be thoroughly investigated and documented at the department level. Prior to the decision on any discipline by the department head, the employee will be afforded due process as set forth in subsection c. Upon completion of the investigation and application of due process, the department head will decide whether to impose discipline, and what discipline to impose. The department head will then inform the employee in writing of the discipline decision, and will advise the employee of his or her right to appeal. The employee will have ten (10) calendar days to appeal the decision by notifying the human resources department head in writing. If the employee does not appeal the discipline decision, or does not appeal in a timely manner, the discipline shall become final.

(4) That Title 1.5 (Human Resources), Chapter 10 (Disciplinary Action), Section 1.5-1001 f. (1)(c) of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following language:

Section 1.5-1001 (f.)(1)

- (c) All allegations of employee misconduct that involve sexual harassment or hostile work environment, illegal discrimination, workplace violence, and/or wrongful retaliation, will be referred by the department head to the human resources department to conduct the entire investigation. Any such allegations will be thoroughly investigated and documented by the human resources department. Upon completion of the investigation, the human resources department will provide the results of said investigation, with all supporting documentation or materials, to the appropriate department head

of the employee. Prior to the decision on any discipline by the department head, the employee will be afforded due process as set forth in subsection c. Upon completion of the investigation and application of due process, the department head will decide whether to impose discipline, and what discipline to impose. The department head will then inform the employee in writing of the discipline decision, and will advise the employee of his or her right to appeal. The employee will have ten (10) calendar days to appeal the decision by notifying the human resources department head in writing. If the employee does not appeal the discipline decision, or does not appeal in a timely manner, the discipline shall become final.

(5) Title 1.5 (Human Resources), Chapter 15 (Miscellaneous), Section 1.5-1504 (Use of Alcohol or Drugs) of the Official Code of the City of Clarksville, shall be amended to add the following language as new subsection “e.”:

Section 1.5-1504

- e. All employees who test positive for drugs and/or alcohol on any mandatory alcohol and / or drug screen test may be disciplined, to include immediate suspension without pay or termination, without the benefit of due process as provided for in Chapter 10 (Disciplinary Action) of this Title. In such cases, due process shall be as is provided for in the City’s Alcohol and Drug Abuse policy promulgated by the Department of Human Resources, as may be amended from time to time.

FIRST READING:

SECOND READING:

EFFECTIVE DATE: