

## ORDINANCE NO. 2011-17

### An Ordinance Relating to Grievance Procedures

The Common Council of the City of Cedarburg, Wisconsin, hereby ordains as follows:

SECTION 1. Section 2-6-84 of the Municipal Code of the City of Cedarburg is hereby repealed and recreated as follows:

#### SEC. 2-6-84 GRIEVANCE PROCEDURES.

(a) **Definitions.**

- (1) A "Grievance" is a complaint an employee may have about workplace safety, discipline and termination. This policy applies to all employees covered under Section 66.0509, Wis. Stats., other than police employees subject to Section 62.13(5), Wis. Stats. An employee may appeal any level of discipline under this grievance procedure.
- (2) "Workplace Safety": means any alleged violation of any standard established under state law or rule or federal law or regulation relating to workplace safety, including the City of Cedarburg Safety Manual.
- (3) "Discipline": means any employment action that results in disciplinary suspension without pay, disciplinary reduction in pay or other benefits, disciplinary demotions and terminations. The term "discipline" does not include verbal notices or reminders, written reprimands, performance evaluations, documentation of employee acts and/or omissions in an employment file, non-disciplinary job reassignments, non-disciplinary adjustments to compensation or benefits or actions taken to address job performance for non-disciplinary reasons.
- (4) "Termination": means a discharge from employment for rule violations, poor performance, acts detrimental to the employer or other acts of misconduct. The term "termination" does not include: a voluntary quit, completion of seasonal employment, completion of temporary assignment, completion of contract, layoff or failure to be recalled from layoff at the expiration of the recall period; retirement, job abandonment ("no call, no show" or other failure to report to work); or termination of employment due to inability to perform the job, medical condition, lack of qualification or license, or any other cessation of employment not involving involuntary termination.
- (5) "Hearing Officer": means the impartial hearing officer required pursuant to s. 66.0509(1m)(d)2, Wis. Stat. The City will provide a hearing officer who shall not be an employee, official or agent of the City.
- (6) "Employee": does not include employees covered under a collective bargaining agreement, elected officials, statutory political appointees; temporary, seasonal, part-time employees or independent contractors.

(b) **Procedure.** The Parties may mutually agree in writing to waive a step or extend time limits within the procedure.

- (1) Step One. The employee should meet with their direct supervisor in an effort to resolve any questions, problems and misunderstandings that have arisen.

- (2) Step Two. If resolution does not occur at Step One, the employee shall notify his department head in writing within ten (10) working days following the day the employee first became aware of the particular problem or complaint. The employee shall be specific that they want to enter a grievance. If such grievance is not presented within the specified time period, it shall then be deemed waived. Within ten (10) working days after receiving the grievance, the department head shall investigate the complaint and meet with the employee. Within ten (10) working days after the meeting between the employee and the department head, the department head shall provide a written response.
- (3) Step Three. Where an employee does not have an immediate supervisor, or does not agree with the Department Head's decision, the grievance shall be submitted in writing to the City Administrator. Within ten (10) working days after receiving the grievance, the City Administrator shall investigate the complaint and meet with the employee. Within ten (10) working days after the meeting between the employee and the City Administrator, the City Administrator shall provide a written response. Step Three does not apply to Light and Water employees or Library employees.
- (4) Step Four. The employee may request an appeal to a Hearing Officer by filing a written request with the City Clerk within 10 days of receiving the written response. The City Clerk shall notify the Mayor, City Administrator, City Attorney and employee's Department Head about the filing of the request for a hearing as soon as practicable. The City Administrator will work with the hearing officer, department head and grievant to schedule a mutually agreeable hearing date. Any expense incurred by an employee in investigating, preparing, or presenting a grievance shall be the sole responsibility of the employee. Each party (employee and employer) shall bear its own costs for witnesses and all other out-of-pocket expenses, including possible attorney fees. The fees of the impartial hearing officer shall be divided equally between the parties.
- (5) Step Five The decision of the impartial hearing officer shall be made within 30 days and be final unless either party files with the City Clerk a request for the decision to be reviewed by the Final Appeal Board no later than five (5) working days of the date of the decision issued under Step 4 above. For Library Employees the final appeal shall be to the Library Board and for Light and Water Employees the final appeal shall be to the Light and Water Commission. For all other employees the Final Appeal Board is the Common Council. The Final Appeal Board shall review the matter as soon as practicable and in accordance with procedures for public participation. The Final Appeal Board shall examine any records produced at the hearing before the hearing officer and determine whether a rational basis exists for the hearing officer's written decision. The Final Appeal Board shall not conduct a de novo hearing. A simple majority vote of the Final Appeal Board membership shall decide the appeal and shall be final. The Final Appeal Board may sustain, deny or modify the recommendation of the impartial hearing officer. The decision must be made within 45 days and shall be final and binding. A copy of the Decision shall be provided to the employee and filed with the City Clerk.

SECTION 2. This ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 26<sup>th</sup> day of September 2011.

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Gregory P. Myers, Mayor

Countersigned:

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Constance K. McHugh, City Clerk

Approved as to form:

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Kaye K. Vance, City Attorney