

3-1-11  
3-8-11  
1ST READING  
2ND READING  
3RD READING

ORDINANCE NO. 12482

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE,  
PART II, CHAPTER 2, ARTICLE III, SECTION 174,  
RELATIVE TO PERSONNEL APPEAL HEARINGS.

WHEREAS, a majority of citizens and electorate of the City of Chattanooga approved a change to Chattanooga City Charter Title 3, Chapter V, Sections 3.79 and 13.79, to allow personnel hearings to be heard by fair and impartial administrative law judges or hearing officers; and,

WHEREAS, the City Council finds that Chattanooga City Charter Title 3, Chapter V, Sections 3.79 and 13.79, provides that all officers, agents and employees whose employment and employment rights, whether the same be under the administrative and executive branch or under the legislative or judicial branches, shall be subject to dismissal, suspension or demotion by the authority which appointed them but any such officer, agent, or employee so dismissed, suspended or demoted shall have the right of appeal to the extent provided by Ordinance before a hearing body or judge; and,

WHEREAS, the City can enter into an agreement with the Tennessee Secretary of State's Administrative Procedures Division to assign or appoint administrative law judges or hearing officers to conduct fair and impartial personnel hearings for the City of Chattanooga and make final and conclusive written findings of fact; and,

WHEREAS, the City Council finds that a duly licensed attorney authorized to practice law in the State of Tennessee may also conduct fair and impartial personnel hearings.

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 2, Article III,

Section 174, Subsection (t), is amended by deleting said subsection in its entirety and inserting in lieu thereof the following:

- (t) No appeal shall be accepted or heard by the city council from a dismissal, demotion or suspension as provided for herein or otherwise in this code that is filed more than fifteen (15) days after such action has been taken against such employee by the Mayor. Notice of the appeal shall be filed with the Clerk of the City Council (hereafter in this Section the "Clerk").

The Clerk shall notify the Tennessee Secretary of State's Administrative Procedures Division (hereafter the "APD") that an appeal has been filed. The APD is authorized to assign an administrative law judge (hereafter "ALJ") to conduct a fair and impartial hearing and adjudicate the employee's appeal for the City Council as requested by an employee.

If the APD's office is not available to conduct a hearing, the Chairperson of the City Council (hereafter "Chairperson") shall appoint an ALJ to conduct a fair and impartial personnel hearing and adjudicate the employee's appeal. The ALJ appointed by the Chairperson shall be an attorney licensed to practice law in the State of Tennessee. The Chairperson may remove an ALJ if the ALJ fails to adjudicate an employee's appeal, for cause or as allowed by law.

The ALJ to whom a case is assigned may convene the parties for a scheduling conference within fifteen (15) days or as soon as practical and shall set a hearing date within ninety (90) days of the date the employee's written request for a hearing is filed with the Clerk unless the employee and the City agree otherwise or for good cause shown. The hearing date may be re-set by agreement of the parties or for cause.

The ALJ to whom a case is assigned shall provide the Clerk with the hearing date. The Clerk shall issue notice of the hearing date to the employee, Department, ALJ and all other interested parties. The Clerk shall make arrangements for a suitable hearing location.

The ALJ appointed to conduct a personnel hearing shall disclose any possible conflicts of interests and shall not engage in *ex parte* communications except pursuant to law or rules of the City Council. The ALJ shall conduct the hearing in accordance with the rules of procedure established by the City Council. The ALJ shall determine if there is a reasonable basis for the

employment decision. The ALJ shall affirm the employment decision if there is a reasonable basis for the decision or modify or set aside any decision of an Administrator on the basis of the evidence. The ALJ shall prepare a record, including a transcript, list of exhibits admitted into evidence during the hearing and all matters of record for a fair and just adjudication of the employee's appeal.

The ALJ shall file written findings of facts and conclusions in the Clerk's office within twenty (20) days after the hearing is concluded and issue the written findings to the employee and Department Administrator. The written decision shall include a statement of available procedures and time limits for seeking reconsideration or seeking judicial review.

The Department or employee, within ten (10) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested. However, the filing of a request for reconsideration shall not be a prerequisite for seeking judicial review. The other party may respond to the request within ten (10) days. The ALJ shall issue a written decision on the request for reconsideration within thirty (30) days of the request.

Any decision of the ALJ appointed under this Section shall be the final decision of the City Council. Any party aggrieved by the ALJ's decision shall have the right to seek judicial review in the Hamilton County Chancery or Circuit Courts within sixty (60) days of the final decision pursuant to T.C.A. § 27-9-101, *et seq.*

Any time limitation set forth in this Section may be extended in writing by the ALJ for good cause shown except the time to file an appeal for judicial review which shall be controlled by applicable State law.

SECTION 2. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two

(2) weeks from and after its passage.

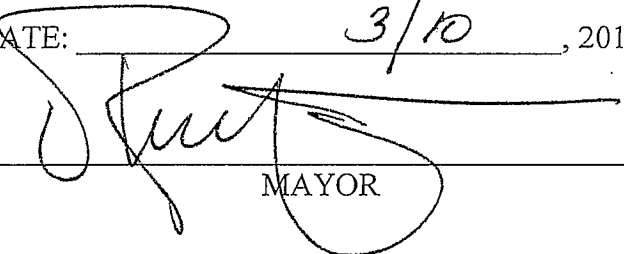
PASSED on Second and Final Reading

March 8, 2011.

  
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CHAIRPERSON

APPROVED:   x   DISAPPROVED: \_\_\_\_\_

DATE:                     3/10                    , 2011.

  
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MAYOR

KOF/MAM/mms/add