



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Ordinance

File Number: O-2011-0061

Final Action: 9/6/2011

Sponsor(s): Administration & Finance Committee

An Ordinance to Repeal and Recreate Subsection 2.76(7) of the West Allis Revised Municipal Code Relating to the Discipline and Grievance Procedure, Amend Subsection 2.76(7a) of the West Allis Revised Municipal Code Relating to Removal and Suspension of City Officers and Repeal Section 2.79 of the West Allis Revised Municipal Code Relating to Grievance Procedure.

The Common Council of the City of West Allis do ordain as follows:

PART I. Subsection 2.76(7) of the Revised Municipal Code of the City of West Allis is hereby repealed and recreated to read:

2.76 CIVIL SERVICE.

* * *

(7) Discipline and Grievance Procedure.

(a) Discipline.

1. Department Heads/Appointing Authorities have the authority to discipline their employees. Whenever a Department Head/Appointing Authority believes an employee, except those employees in the Executive Service/City Officers and protective service employees as noted in sub 2 and sub 3 below, has acted in such a manner to have merited discipline, the Department Head/Appointing Authority shall seek procedural advice from the City Attorney's Office and the Human Resources Manager. Disciplinary action may include, but is not limited to, a verbal warning, written warning, suspension, demotion, termination, or a combination of the above if applicable. Upon determining an appropriate discipline, if any, the Department Head/Appointing Authority shall provide the employee with written notification of the disciplinary action being imposed and the reasons therefore and a copy of the same shall be placed in the employee's official personnel file.

2. The discipline, removal and suspension of Executive Service employees/City Officers shall be governed by the provisions of Policy 405 in the City of West Allis Policies and Procedures Manual, Section 2.02 of this Chapter, and Sections 17.12 and 17.16 Wis. Stats.

3. The discipline of protective service employees under the jurisdiction of the Police and Fire

Commission shall be governed by the provisions of §62.13 Wis. Stats.

(b) Grievance Procedure.

This Grievance Procedure, which addresses issues concerning workplace safety, discipline and termination, applies to all City employees except for those protective service employees under the jurisdiction of the Police and Fire Commission (covered by §62.13 Wis. Stats.), Executive Service employees, statutorily appointed employees identified specifically in statute as serving at the pleasure of an appointing authority and elected officials (covered by §§ 17.12 and 17.16 Wis. Stats. and/or Policy 405 in the City of West Allis Policies and Procedures Manual and/or covered by section 2.02 of the Revised Municipal Code), and employees not under regular tenure (e.g. probationary, provisional, temporary, special, part-time less than 0.5 budgeted FTE). This procedure does not create a legally binding contract. The City reserves all rights and this procedure does not create a contract of employment. Employees of the City of West Allis are employed at-will and may resign with or without reason. The City may terminate the employment relationship at any time with or without reason and without violation of applicable law.

1. **Workplace Safety.** Workplace safety means the conditions of employment related to physical health and safety of employees. Only those acts or omissions that involve a violation of state and/or federal regulations or laws on health and safety in the workplace will constitute a workplace safety violation. Any grievance filed alleging a workplace safety violation must be personal to the employee filing the grievance; no class actions or complaints on behalf of another may be filed under this procedure.

2. **Discipline.** Disciplinary action may include a verbal warning, written warning, suspension (with or without pay), demotion or termination, for rule or policy violations, poor performance or other acts of misconduct. The City reserves the management right, in its sole discretion, to impose the disciplinary action it deems appropriate to the particular circumstances. The following actions shall not be considered "discipline" under the terms of this grievance procedure:

- Layoffs or workforce reduction activities;
- Performance evaluations or reviews;
- Actions taken to address work performance, including use of a performance improvement plan or job targets;
- Non-disciplinary demotion due to medical condition, lack of qualification or license, or other inability to perform job duties;
- Documentation of employee acts and/or omissions in an employment file;
- Actions taken pursuant to an ethics ordinance created under section 19.59(1m) Wis. Stats.;
- Non-disciplinary wage, benefit or salary adjustments;
- Transfer, change in assignment or assignment location;
- Placing an employee on paid administrative leave pending an internal investigation;
- Counselings, meetings or other pre-disciplinary actions.

3. **Termination.** Termination is generally defined as a discharge from employment for rule or policy violations, poor performance or other acts of misconduct. The following actions shall not be considered a "termination" under the terms of this grievance procedure:

- Voluntary quit, resignation, retirement or other separation initiated by the employee;

- Workforce reduction activities, layoff or failure to be recalled from layoff at the expiration of the recall period;
- Job abandonment, "no-call, no show", or other failure to report to work;
- Termination of employment due to medical condition, lack of qualification or license, or other inability to perform job duties;
- Job transfer or demotion;
- Action taken pursuant to an ethics ordinance created under section 19.59(1m) Wis. Stats; or
- End of employment and/or completion of assignment of a temporary, seasonal, contract or part-time employee.

4. Steps in Grievance Procedure.

a. Step 1. If an employee has a grievance, he/she shall first present and discuss the grievance orally with his/her immediate supervisor within two (2) workdays of knowledge of the issue/circumstances causing the grievance. The supervisor will reach a decision and communicate it orally to the employee within 2 workdays.

b. Step 2. If the grievance is not settled at Step 1, the employee shall reduce the grievance to writing and present it to the Department Head/Appointing Authority within five (5) workdays after receiving communication of the supervisor's decision. The written grievance shall contain a clear and concise statement of the relevant facts, the date(s) the event occurred, the identities of the persons involved, documentation related to the grievance in possession of the employee, the actions taken to informally resolve the grievance, the reasons why the disciplinary action should be overturned, if applicable, and the remedy requested. A grievance alleging a workplace safety issue shall also identify the regulations or laws allegedly violated, if applicable. Within five (5) workdays, the Department Head shall furnish the employee with a written response to the grievance.

c. Step 3. If the grievance is not settled at Step 2, the employee may submit a written appeal to the Civil Service Commission within five (5) workdays. The Commission shall schedule the matter for a hearing as soon as practicable.

d. The failure of the employee to comply with the time limits prescribed in this Grievance Procedure shall be deemed a waiver of his/her right to proceed with the grievance and shall be a bar to judicial review. The employee may advance a grievance to the next step if a response is not provided within the designated timeframe. Any time limit prescribed herein may be extended by mutual written consent of the parties. The Commission has the sole authority to determine whether a matter should be dismissed on procedural grounds, including failure to comply with a time limit prescribed herein.

5. Civil Service Commission Hearing.

a. The Commission shall appoint a time and place for hearing the appeal and shall notify the Department Head/Appointing Authority and the affected employee of the time and place of such hearing. This time period may be changed by mutual agreement of the parties and the Commission. The Commission may, in its discretion, have the hearing transcribed. A copy shall be made available to the employee at his/her expense. The employee may be represented at the hearing by an

attorney at the employee's own expense.

b. Subject to the Commission's discretion, witnesses may appear at the hearing and present information under oath or affirmation. Written documents may be submitted. The rules of evidence may be used as a guideline but shall not be binding upon the Commission. The appealing party carries the burden of production of evidence and the burden of proof. In disciplinary matters, the sole issue before the Commission shall be: Based on the preponderance of the evidence presented, has the employee proven the disciplinary action was arbitrary and capricious? An action will be deemed arbitrary and capricious if it is unreasonable or without a rational basis (i.e. if any reasonable view of the evidence sustains the action, it may not be disturbed). In making such determination, the Commission shall accord the decision of the Department Head/Appointing Authority a presumption of correctness and validity. In matters involving allegations of workplace safety violations, the sole issue before the Commission shall be: Based on the preponderance of the evidence presented, has the employee proven there was a violation of state and/or federal regulations or laws on health and safety in the workplace?

c. If the Commission determines the discipline or termination was arbitrary and capricious or that there was a workplace safety violation, it shall, in its sole discretion, determine what action shall be taken under the circumstances and as its rules may provide. The decision of the Commission shall be a "final determination" as defined in Section 68.12 Wis. Stats. The decision shall be in writing, mailed to the Department Head/Appointing Authority and the affected employee, and shall contain notice that any appeal to the Circuit Court of Milwaukee County must be commenced within 30 days of receipt thereof.

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PART II. Subsection 2.76(7a) of the Revised Municipal Code of the City of West Allis is hereby amended to read:

2.76 CIVIL SERVICE.

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(7a) Discipline, Removal and Suspension of City Officers.

(a) The discipline, removal and suspension of municipal officers (Executive Service/Department Heads) shall be governed by the provisions of Policy 405 in the City of West Allis Policies and Procedures Manual and Sections 17.12 and 17.16 Wis. Stats.

(b) The discipline, removal and suspension of officers or employees, within the Unclassified Service, who are sworn officers of the Police and Fire Departments, shall be governed by the applicable provisions of Section 62.13 Wis. Stats.

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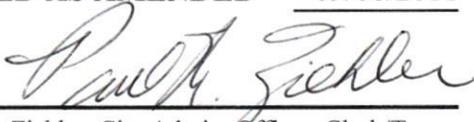
PART III. Section 2.79 of the Revised Municipal Code of the City of West Allis is hereby repealed.

PART IV. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby amended.

PART V. This ordinance shall take effect and be in force from and after its passage and publication.

ATTO-Rep&Recr 2.76(7)-Amend 2.76(7a) & Rep 2.79

PASSED AS AMENDED 09/06/2011



Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED AS AMENDED 9/13/11



Dan Devine, Mayor

NOTICE OF

NEWLY ENACTED ORDINANCE

Please take notice that the City of West Allis enacted Ordinance No. O-2011-0061, An Ordinance to Repeal and Recreate Subsection 2.76(7) of the West Allis Revised Municipal Code Relating to the Discipline and Grievance Procedure, Amend Subsection 2.76(7a) of the West Allis Revised Municipal Code Relating to Removal and Suspension of City Officers and Repeal Section 2.79 of the West Allis Revised Municipal Code Relating to Grievance Procedure, on September 13, 2011. The ordinance brings into compliance with the Grievance Procedure Mandates of 2011 Wisconsin Act 10 by establishing a Grievance System for all employees not covered by a collective bargaining unit. The full text of Ordinance No. O-2011-0061 may be obtained at the City Clerk/Treasurer's Office, 7525 W. Greenfield Ave., West Allis, WI 53214 and through the Legislative Information Center on the City's Website at <http://www.ci.west-allis.wi.us>. Clerk/Treasurer's telephone: (414) 302-8200.

Paul M. Ziehler,
City Administrative Officer,
Clerk/Treasurer

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