

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 1, 2021 AGENDA**

Subject:	Type:	Submitted By:
AMEND MUNICIPAL CODE § 37.13(C) DISCIPLINARY ACTION (CIVIL SERVICE)	◆ RESOLUTIONS ORDINANCE RECEIVE/FILE	BOB LAUSTEN, CHIEF OF POLICE PAM BUETHE, CITY CLERK/ CIVIL SERVICE SECRETARY

SYNOPSIS

An ordinance has been prepared to approve an amendment to the Civil Service Rules & Regulations, Municipal Code Section 37.13(C) Disciplinary Action. This would increase the number of suspension days the City Administrator can impose before City Council approval is required.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval

BACKGROUND

The La Vista Civil Service Commission approved changes to the La Vista Civil Service Rules and Regulations on May 12, 2021. A summary of the changes is listed below and a copy of the Civil Service staff report outlining the recommended changes is attached for your information.

One change the Commission approved that requires subsequent City Council approval pertains to Section 37.13(c) Disciplinary Actions. Specifically, changing the number of days from five (5) to ten (10) that the City Administrator can suspend an employee covered by Civil Service Rules before City Council approval is required. Currently, an action taken by the City Administrator for a suspension of over 40 hours requires City Council approval. Increasing the administrative capacity to address disciplinary issues that don't rise to the level of demotion or termination will make the disciplinary process more efficient and less costly. (No other First Class City in Nebraska has this requirement.

Other changes to the La Vista Civil Service Rules and Regulations approved by the Civil Service Commission include:

- Cleanup language deleting reference to the Fire Chief position throughout the document.
- Establishment of a Lateral Entry Applicant and testing process.
- Changes to the scoring scale for oral interviews.
- Changes to the weighting of elements in the scoring process.
- Changes to the table of point deductions in the Background Investigation Appendix A.

A copy of the Civil Service Rules and Regulations is available for inspection in the office of the City Clerk.

**CITY OF LA VISTA
LA VISTA CIVIL SERVICE COMMISSION REPORT
MAY 12, 2021 AGENDA**

Subject:	Type:	Submitted By:
PROPOSED RULE & REGULATION CHANGES	◆ RESOLUTION RECEIVE/FILE	BOB LAUSTEN POLICE CHIEF

SYNOPSIS

A resolution has been prepared to modify specific La Vista Civil Service Commission Rules & Regulations.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval

BACKGROUND

Below are the Proposed Changes:

- 1. Cleanup language deleting reference to the Fire Chief position throughout the document.**
- 2. Establishment of a Lateral Entry Applicant and testing process:**

Section 1.14 Lateral Entry Applicant.

A Lateral Entry Applicant is someone currently certified as a police/peace officer for a local, county, or state law enforcement agency.

Section 4.4 Preparation of Eligibility Lists.

H. Lateral Entry Appointments

- a. The La Vista Civil Service Commission subscribes to the philosophy that hiring experienced, trained, and previously certified police officers provides an attractive demographic and economic alternative to the city and citizens of La Vista.
- b. Lateral entry testing for certified police officers shall be conducted when requested by the City Administrator and approved by the Commission.
- c. Lateral entry candidates must comply with all minimum appointment requirements for police officer applicants.
- d. The selection process shall, at a minimum, include a standardized written examination, physical dexterity examination, Police Panel Oral Interview, and a Civil Service Commission panel interview. The provisions in Section 4.4 (D) shall also apply to any lateral candidate.

3. Change in scoring from a zero-3 point scoring to a zero-10 point scoring for oral interviews.

Department Interview Questions:

A panel of Police Department officers appointed by the Police Chief, will conduct interviews of the twenty applicants scoring highest in the written testing process who achieve at least the minimum acceptable score established by the City Administrator respecting the background investigation. Present to observe during the questioning will be at least one Commissioner and/or, if requested by the Commission, the Secretary. A series of questions prepared by the Police Chief and approved by the Commission, will be asked of each candidate. Each candidate will be asked the same questions. Each member of the panel will score the responses to the questions on a zero to ten (10) point scale as follows:

ZERO – The candidate failed to answer any part of the question correctly.

ONE POINT – THREE POINTS The candidate partially answered the question correctly, however, the answer was not complete in one or more important respects.

FOUR POINTS – SIX POINTS The candidate's answer was basically correct. However, some portion of the answer was omitted and/or incorrectly stated in one or more minor respects.

SEVEN POINTS – NINE POINTS The candidate correctly answered all portions of the question and possessed a good knowledge of the subject.

TEN POINTS – The candidate answered all portions of the question and possessed a thorough understanding of the subject.

4. Change of weighting of elements in the scoring process. Written test goes from 30% of overall score to 20%. Department interview goes from 30% to 40%. Experience shows us the oral interview is more important and a better assessment of the candidate than the written test.

Weighing of Each Element of the Process.

Elements	
1. Physical Dexterity Examination	Pass/Fail
2. Written Test	30% 20%
3. Background Investigation	Pass/Fail
4. Department Interview Questions	30% 40%
5. Civil Service Commission Interview	40%
Total	100%

5. Change in disciplinary action where City Council approval is needed. Currently, and action taken by the City Administrator for a suspension over 40 hours, demotion or termination requires City Council approval. No other first class city in Nebraska has that requirement.

The City Attorney has advised they do not recall where the 5 working days initially came from but have the impression that 5 working days might not be legally required.

ARTICLE V. DISCIPLINARY ACTIONS

E. Action of City Administrator.

- (3) City Council Review. The decision of the City Administrator, if it is to impose a suspension of more than ~~five (5)~~ **ten (10)** working days, a demotion resulting in a reduction in pay, or a discharge, shall not be implemented until it has been approved by the City Council. The City Council may approve the decision of the City Administrator or modify it as the Council deems appropriate. Such approved or modified decision shall be deemed to be the decision of the Administrator for the purposes of subsequent procedures provided in these Rules and Regulations. If Council approval is required, the

City Administrator shall, within twenty (20) working days after receiving the written recommendation of the Police Chief, file a copy of his or her decision with the City Clerk and request that the matter be reviewed by the City Council.

6. **Change in the table of point deductions in the “Background Investigation Appendix A” which is used for assessing background investigations.**
7. **Change in Appendix B Non-Entry Level appointments/Promotion scoring from a zero-3 point scoring to a zero-10 point scoring for oral interviews in the promotional process.**
8. **Change of weighting of elements in the scoring process. Department interview goes from 30% to 35%. Experience shows us the oral interview is extremely important. Civil Service goes from 40% to 35%.**

Section III. Weighing of Each Element of the Process

Weighing of Each Element of the Process.

1. Background and Promotion Report	10%
2. Written Test	20%
3. Oral Questions	30% 35%
4. Civil Service Commission Interview	40% 35%
Total	100%

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTION 37.13 DISCIPLINARY ACTIONS; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; TO PUBLISH IN PAMPHLET FORM; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Section 37.13 of the La Vista Municipal Code is amended to read as follows:

§ 37.13 DISCIPLINARY ACTIONS.

(A) *Tenure of employment.* The tenure of a person holding a position of employment subject to this chapter shall be only during good behavior.

(B) *Causes for disciplinary action.* Any such person may be removed or discharged, suspended with or without pay, demoted, reduced in rank or deprived of vacation, benefits, compensation, or other privileges, except pension benefits, for any of the following reasons:

(1) Incompetency, inefficiency, or inattention to or dereliction of duty;

(2) Dishonesty, prejudicial conduct, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee or member of the Volunteer Fire Department, any act of omission or commission tending to injure the public service, any willful failure on the part of the employee to properly conduct himself or herself, or any willful violation of the Civil Service Act or the rules and regulations adopted pursuant to such act;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Drunkenness or the use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such an extent that the use interferes with the efficiency or mental or physical fitness of the employee or precludes the employee from properly performing the functions and duties of his or her position;

(5) Conviction of a felony or misdemeanor tending to injure the employee's ability to effectively perform the duties of his or her position; or

(6) Any other act or failure to act which, in the judgment of the Civil Service Commission, is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

(Neb. RS 19-1832)

(C) *Disciplinary action procedure.*

(1) No employee in the civil service who shall have been permanently appointed or inducted into civil service under this chapter shall be removed, suspended, demoted or discharged, except for cause and then only upon the written accusation of the Police Chief, City Administrator or any citizen or taxpayer.

(2) (a) The written accusation shall set forth in general terms the alleged misconduct, charges or grounds for investigation against the employee. The written accusation shall be filed by the complainant or accuser with the Secretary of the Commission who shall cause a copy of such written accusation to be delivered within five working days after the filing:

1. To the Police Chief,

2. To the City Administrator, and

3. To the employee personally or by delivery addressed to the employee and left at the residence address of the employee shown in the personnel records of the city.

(b) The Secretary of the Commission shall cause a return showing such

delivery to be executed and filed in the Secretary's office.

(3) The City Administrator shall have the authority to immediately suspend, with pay, an employee against whom such written accusation has been filed, pending reinstatement, removal, demotion, discharge or further suspension of the employee, with or without pay.

(4) (a) Prior to any decision by the City Administrator regarding a written accusation, the Police Chief shall, within 30 calendar days after receiving the written accusation from the Secretary of the Commission, investigate the alleged misconduct, charges or grounds against the employee. If the Police Chief's investigation reveals other misconduct, charges or grounds, the Police Chief shall supplement the written accusation to include the other misconduct, charges or grounds by filing a supplement to the written accusation with the Secretary of the Commission who shall cause a copy of such supplemental accusation to be delivered within five working days after the filing:

1. To the City Administrator, and
2. To the employee personally or by delivery addressed to the employee and left at the residence address of the employee shown in the personnel records of the city.

(b) The Secretary of the Commission shall cause a return showing such delivery to be executed and filed in the Secretary's office.

(c) Within 30 calendar days after receiving the written accusation from the Secretary of the Commission, the Police Chief shall recommend in writing to the City Administrator that the alleged misconduct, charges or grounds set forth in the written accusation be deemed:

1. To be without merit,
2. To not warrant disciplinary action,
3. To warrant disciplinary action less severe than removal, demotion, discharge or suspension with or without pay, such as an oral or written reprimand, or
4. To warrant removal, demotion, discharge or suspension with or without pay.

(d) In the event that the Police Chief or the Fire Chief is the subject of a written accusation or is being disciplined, the City Administrator shall follow the same procedures as are followed by the Police Chief in disciplining employees under this chapter, except that the City Administrator shall not be required to submit a written recommendation for disciplinary action to himself or herself under the preceding division (C)(4)(c).

(5) (a) The City Administrator shall decide to accept the recommendation of the Police Chief or shall decide that the alleged misconduct, charges or grounds for investigation against the employee set forth in the written accusation be deemed:

1. To be without merit,
2. To not warrant disciplinary action,
3. To warrant disciplinary action less severe than removal, demotion, discharge, or suspension with or without pay such as an oral or written reprimand, or
4. To warrant removal, demotion, discharge or suspension with or without pay.

(b) The City Administrator shall not decide to take any action which may result in a suspension without pay, a demotion resulting in a reduction in pay, or a discharge without first giving the affected employee notice of the charges against him or her, an explanation of the city's evidence and an opportunity to present reasons, either in person or in writing, why the proposed disciplinary action should not be implemented.

(c) The decision of the City Administrator shall, if it results in suspension of more than ~~five-ten~~ working days, a demotion resulting in a reduction in pay or a discharge, not be implemented until it has been approved by the City Council. The City Council may approve the decision of the City Administrator or modify it as the Council deems appropriate. Such approved or modified decision shall be deemed to be the decision of the Administrator

for the purposes of this chapter. If Council approval is required, the City Administrator shall, within 20 working days after receiving the written recommendation of the Police Chief, file a copy of his or her decision with the City Clerk and request that the matter be reviewed by the City Council. Within 20 working days after receipt of the written recommendation of the Police Chief when City Council review is not required, and within 20 working days after the City Council's approval or modification when City Council approval is required, a copy of the City Administrator's decision shall be delivered:

1. To the Secretary of the Commission,
2. To the Police Chief, and
3. To the employee, personally or by delivery addressed to the employee and left at the residence address of the employee shown in the personnel records of the city. The City Administrator shall cause a return showing such delivery or mailing to be executed and filed in the office of the Secretary of the Commission.

(6) Pursuant to Neb. RS 19-1833(3), any employee so removed, suspended, demoted, or discharged may, within ten calendar days after receiving written notice of the City Administrator's decision, as such decision has been approved or modified if subject to City Council approval, file a written demand for an investigation and public hearing by the Civil Service Commission. The employee shall file the request for the hearing with the Secretary of the Commission within ten calendar days after the service of notice of the decision of the City Administrator. The failure to file such request within ten calendar days after the service of the notice of the decision of the City Administrator shall constitute a waiver of the employee's right to review by the Civil Service Commission, and the decision of the City Administrator, as approved or modified if subject to City Council approval, shall become final.

(7) Within three calendar days after receipt of the employee's timely written demand for an investigation and public hearing, the City Administrator shall cause to be delivered to the employee or to the employee's residence and to the Secretary of the Civil Service Commission a notice containing:

- (a) A statement of the charge(s);
- (b) The names of the witnesses who will be called on behalf of the city and a general statement of the nature of their testimony;
- (c) Copies of the documents to be offered by the city in support of the charge(s);

(8) Within six calendar days after the filing of the employee's timely written demand for an investigation and public hearing, or within three days following his/her receipt of the information required by subdivision(C)(7), whichever is later, the employee shall deliver copies of the following to both the City Administrator and the Secretary of the Civil Service Commission:

- (a) A response to the statement of the charge(s);
- (b) The names of witnesses who will be called on behalf of the employee and a general statement of the nature of their testimony; and
- (c) Copies of the documents to be offered by the employee in response to the charge(s).

(9) Within nine calendar days after the employee's timely filing of the written demand for an investigation and public hearing or within two days following his/her receipt of the information required by subdivision(C)(8), whichever is later, the City Administrator shall cause to be delivered to the employee or to the employee's residence and to the Secretary of the Civil Service Commission a list of rebuttal evidence expected to be presented by the city at the hearing, including a list of rebuttal witnesses with a general statement of the substance of their testimony and a list of any documents expected to be introduced to rebut the employee's evidence.

(10) If any of the deadlines provided for in subdivisions (2), (4), (5),(7), (8), or (9) of this division falls on a Saturday, Sunday or legal holiday observed by the city, then such deadline shall be extended to the next working day. Furthermore, such deadlines and time limits are directory and not jurisdictional, and the failure of either party to meet any one of such deadlines and time limits shall not prevent or bar the imposition of appropriate

disciplinary action, or result in the suspension, termination or abatement of any disciplinary proceeding or disciplinary action previously imposed.

(11) Upon receipt of an employee's timely written demand for an investigation and public hearing, the Commission shall conduct an investigation. The Commission shall be represented in such investigation by the City Attorney, if authorized by the City Administrator. If the City Attorney does not represent the Commission, the Commission may be represented by special counsel appointed by the Commission for such investigation. The investigation shall be based upon a review of the materials filed by the City Administrator and by the employee with the Secretary of the Civil Service Commission, and shall be confined to the determination of whether the disciplinary action was made in good faith for cause, which shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons. The Commission and its members may also review the submissions of the City Administrator and of the employee to determine whether any individuals or documents should be subpoenaed by the Commission for the subsequent public hearing before the Commission.

(12) The Commission shall schedule a public hearing to be held after the investigation and no less than ten nor more than 20 calendar days from the date of filing of the employee's written demand for an investigation and public hearing. The Commission shall notify the City Administrator and employee in writing at least three calendar days prior to the date of the hearing of the date, time and place of hearing. The Commission may be represented at such hearing by the City Attorney, if authorized by the City Administrator. If the City Attorney does not represent the Commission, the Commission may be represented by special counsel appointed by the Commission for such hearing.

(13) The City Administrator shall be permitted to appear in person and by counsel and to present the case of the city. The City Administrator may present evidence by testimony, documents, and other exhibits and shall be permitted to cross-examine the employee's witnesses. At the hearing, the employee shall be permitted to appear in person and by counsel and to present his or her defense. The employee may present evidence by testimony, documents, and other exhibits and shall be permitted to cross-examine the witnesses called by the city.

(14) The Commission may affirm the action taken by the City Administrator, if such action is supported by a preponderance of the evidence. If the Commission finds that the removal, suspension, demotion or discharge was made for political or religious reasons or was not made in good faith for cause, it shall order the immediate reinstatement or re-employment of the employee in the position or employment from which the employee was removed, suspended, demoted or discharged, which reinstatement shall, if the Commission in its discretion so provides, be retroactive and entitle such person to compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion or discharge.

(15) Upon the hearing, in lieu of affirming the removal, suspension, demotion or discharge, the Commission may modify the order of removal, suspension, demotion or discharge by directing a suspension, with or without pay, for a given period and the subsequent restoration to duty or demotion in position or pay. No later than ten calendar days after the hearing, the Commission shall certify its findings in writing to the employee and to the City Administrator who shall enforce them.

(16) Appeals from the decision of the Civil Service Commission may be taken to the District Court in the manner provided by law.

(17) A day shall be counted as a working day under subdivisions(C)(2), (4), and (5) only if both the person required to serve a document or thing or to perform an act and the person or persons who are to receive service of the document or thing or to be the recipient or recipients of such action are both actively on duty and working for the city within the corporate limits of the city on such day. For purposes of this division (C), both the City Council and the Civil Service Commission shall be deemed to be actively on duty and working for the city within the corporate limits of the city each day that is not a Saturday, Sunday, or legal holiday observed by the city.

(18) The Acting City Administrator may act for the City Administrator under this division (C) only if the office of City Administrator is vacant or if the City Administrator is and has been incapacitated due to illness, injury, or suspension for in excess of 14 calendar days. The Acting Chief of Police may act for the Chief of Police under this division (C) only if the office of Chief of Police is vacant or if the Chief of Police is and has been incapacitated due to illness, injury, or suspension for in excess of 14 calendar days.

('79 Code, § 14-305) (Ord. 395, passed 11-19-85; Am. Ord. 411, passed 4-16-86; Am. Ord.

1018, passed 1-16-07) *Statutory reference: Authority, see Neb. RS 19-1833*

SECTION 2. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 1ST DAY OF JUNE 2021

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk