

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JULY 7, 2015

Subject:	Type:	Submitted By:
AMEND CITY PERSONNEL POLICY AND PROCEDURES MANUAL	◆ RESOLUTION ORDINANCE RECEIVE/FILE	KEVIN POKORNY DIRECTOR OF ADMINISTRATIVE SERVICES

SYNOPSIS

A resolution has been prepared to amend Section 9 of the City Personnel Policy and Procedures Manual.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

Section 9 of the Personnel Policy and Procedures Manual addresses Disciplinary Action. Revisions to this section include updating a job title from "Human Resources Assistant" to "Human Resources Manager", deleting obsolete references to members of the former volunteer fire department, revising and restating certain of the disciplinary offenses listed in Section 9.1 and amending Section 9.8 to include in the City's rules and regulations the Nebraska Revised Statute §13-3005 statutory rights of police officers in disciplinary proceedings.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AMENDING SECTION IX OF THE CITY PERSONNEL POLICY AND PROCEDURES MANUAL REGARDING DISCIPLINARY ACTIONS AND PROCEEDINGS.

WHEREAS, the Mayor and Council of the City of La Vista, Nebraska, have determined that a need exists to revise and update Section IX of the City Personnel Policy and Procedures Manual; and

WHEREAS, the needed revisions and updating include updating a job title from "Human Resources Assistant" to "Human Resources Manager," deleting obsolete references to members of the former volunteer fire department, revising and restating certain of the disciplinary offenses listed in section 9.1, and amending Section 9.8 to include in the City's rules and regulations the Nebraska Revised Statute § 13-3005 statutory rights of police officers in disciplinary proceedings; and

WHEREAS, it is the desire of the City Council to amend and so revise and update Section IX of the City Personnel Policy and Procedures Manual.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of La Vista, Nebraska, that the existing La Vista Personnel Policy and Procedures Manual adopted on December 20, 2005, is hereby amended to reflect the proposed changes to Section IX as submitted at the City Council meeting.

PASSED AND APPROVED THIS 7TH DAY OF JULY, 2015.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

PERSONNEL RULES AND REGULATIONS

SECTION IX:	DISCIPLINARY ACTION	
ADOPTED:	RESOLUTION NO. 96-012	READOPTED: RESOLUTION NO. 05-159
DATE:	FEBRUARY 6, 1996	DATE: DECEMBER 20, 2005
AMENDED:	RESOLUTION NO. 00-152	AMENDED: RESOLUTION NO. XX-XXX
DATE:	DECEMBER 19, 2000	DATE:
AMENDED:	RESOLUTION NO. 02-099	
DATE:	OCTOBER 1, 2002	

9.1 **Disciplinary Action:** Employment ~~and Volunteer Fire Department membership~~ with the City shall be in accordance with policies and rules established by the City Council and City Administrator. Employee compliance ~~and compliance by MVFD~~ with such policies and rules is a condition of City employment. ~~and appointment to membership in the Volunteer Fire Department~~. Employees ~~and MVFD~~ shall be oriented to applicable policies and rules by their supervisors or department heads. Failure to comply with the policies and rules and the directives of supervisors or department heads may result in disciplinary action.

The City Administrator may delegate to a Department Head and/or the Human Resources Assistant Manager any of the City Administrator's authorities or responsibilities under the disciplinary procedures or under this Section IX, as the City Administrator may consider appropriate.

Acts or omissions which may result in disciplinary action include, but are not limited to:

- (1) Excessive, unexplained or unexcused absenteeism; Excessive tardiness; Failure to work during scheduled work time.
- (2) Discourteous treatment of the public or work associates, including abusive language.
- (3) Failure to report a work-related accident, injury or illness.
- (4) Receipt of two or more moving violations or involvement as the at fault vehicle, as determined by the City Administrator, in two or more traffic accidents within a twelve month time frame with a City-owned vehicle.
- (5) Falsifying employment or employment application information.
- (6) Releasing confidential information ~~or providing information known to be false~~.
- (7) Criminal behavior, including theft.
- (8) Drunkenness, or possession or use of alcohol or controlled substances (other than prescription medications as directed by a licensed physician) while on duty, or being under the influence thereof while on duty.

- (9) Failure to pass a drug and/or alcohol test or refusal to consent to such test as detailed in the City of La Vista Drug Testing Policy ~~and~~ attached to this Manual or as required for safety sensitive personnel by State and Federal regulations.
- (10) Carelessness or negligence in the performance of duties, including safety rule violations, or inattention to work responsibilities, or failure to perform assigned work or duties satisfactorily.
- (11) Harassing, threatening or seeking to intimidate or bully fellow employees, ~~MVFD~~ or members of the public. Except where legally justified (such as in legally justified cases of self-defense or defense of others), the City will not tolerate any behavior toward fellow employees, ~~MVFD~~ or members of the public that threatens physical or bodily harm or injury, harmful or offensive bodily contact or damage to public or private property.
- (12) Refusal or failure to perform work as assigned, or other insubordination.
- (13) Abuse or unauthorized use, or conversion to personal use, of City property, equipment or facilities.
- (14) Fighting.
- (15) Falsification of information on a time report. Providing information known to be false; knowingly engaging in any other act of falsification, false reporting, dishonesty or misrepresentation while on duty or in connection with any job-related matter or any matter related to City business or City operations.
- (16) Unlawful discrimination on the basis of race, color, religion, sex, age, national origin, disability, ~~or~~ marital status, or other classification protected by federal, state, or local law or regulation.
- (17) Public conduct which materially interferes with the employee's ability to effectively perform assigned duties, or which has a detrimental effect on the City's image or operations.
- (18) Possessing at any time while on City property or within a City building or facility, or possessing at any time while on duty for the City at any location, any firearm or other weapon on the person of an employee ~~or MVFD~~ (or in any package, container or vehicle that is in possession or custody of the employee). "Weapon" shall include but not be limited to any knife with a blade longer than three inches that is not the property of the City. [This prohibition on possession of weapons shall not apply to a City police officer to the extent he or she is required or ordered to carry firearms or other weapons as part of the duties and responsibilities of his or her employment by the City, or to a City employee to the extent he or she is granted permission by his or her Department Head to possess a specific item while on duty. Example: The Department Head may grant a maintenance worker permission to carry in plain view a sheath knife having a blade longer than 3 inches in length for use in performing the maintenance worker's job duties.]
- (19) Violation of or failure to observe any of the requirements or provisions of this Personnel Manual.

(20) Any other act or failure to act which is deemed to show the employee to be an unsuitable or unfit person to be employed in the public service.

Any permanent, regular employee of the City of La Vista may be reprimanded, suspended with or without pay, transferred to another position in the same class, demoted and/or terminated for any of the above reasons, or for any reason which the City Administrator deems to be adequate or proper under the circumstances and sufficient to warrant such action. All other employees are terminable at the discretion of the City Administrator.

~~Any MVFD may be reprimanded, suspended, demoted or terminated for any of the above reasons or for any other reason which the City Administrator deems to be adequate or proper under the circumstances and sufficient to warrant such action.~~

9.2 **Procedures:** Prior to suspending without pay, demoting, or dismissing a permanent, regular employee, or imposing any other disciplinary action involving a reduction or forfeiture of pay or benefits, the City Administrator shall give the employee:

- (1) Written notice of the charges against the employee or of the reason(s) for which the City Administrator is considering disciplinary action;
- (2) A general explanation of the evidence or information the City Administrator has regarding the matter; and
- (3) An opportunity for the employee to meet with the City Administrator to explain the employee's view of the situation and other pertinent information which the employee may wish to present (such as: the employee's version of the facts; information regarding mitigating circumstances or misunderstandings of fact; the employee's view of the appropriateness of disciplinary action or of the sanction(s) being considered by the City Administrator; and/or any other information the employee reasonably wishes to present).

~~Prior to suspending a MVFD for a period greater than 90 days, demoting or dismissing a MVFD, the City Administrator shall give the MVFD:~~

- ~~(1) Written notice of the charges against the MVFD or of the other reason(s) for which the City Administrator is considering disciplinary action;~~
- ~~(2) A general explanation of the evidence or information the City Administrator has regarding the matter; and~~
- ~~(3) An opportunity for the MVFD to meet with the City Administrator to explain the member's view of the situation and other pertinent information which the member may wish to present (such as: the member's version of the facts; information regarding mitigating circumstances or misunderstandings of fact; the member's view of the appropriateness of disciplinary action or of the sanction(s) being considered by the City Administrator; and/or any other information the member reasonably wishes to present).~~

9.3 **Reprimand:** A department head may reprimand any employee ~~or MVFD~~ under his/her supervision for such reason as the department head deems adequate and sufficient to warrant such action. Such reprimand shall be in writing and addressed to the employee ~~or MVFD~~. A signed copy shall be delivered to the City Administrator for inclusion in the employee's ~~or MVFD's~~ personnel file. Reprimands may not be appealed to the Personnel Board. However, the employee ~~or MVFD~~ may file a letter of response to the reprimand which shall be attached to the reprimand in the file. After one (1) year from the date of the reprimand, the department head may, with the approval of the City Administrator, remove the reprimand from the personnel file. In addition, an employee receiving a written reprimand may, after one (1) year from the date of the reprimand, submit a written request to the City Clerk asking the Personnel Board to review the reprimand and/or response and to determine whether the reprimand shall be removed from the personnel file. The Personnel Board, after reviewing the matter, may order that the reprimand be removed from the employee's personnel file if the Personnel Board determines in its discretion that it would no longer be appropriate to retain such reprimand as part of the employee's service record.

9.4 **Suspension:** The City Administrator may suspend an employee with or without pay for such reason as the City Administrator deems adequate and sufficient to warrant such action. In the case of a permanent, regular employee, the procedures in Section 9.2 shall apply. The total of such suspension(s) without pay shall not exceed thirty (30) calendar days in any twelve (12) consecutive month period. No single suspension without pay shall be for more than thirty (30) calendar days. The City Administrator shall notify the employee no later than one (1) day before a suspension without pay is to be effective. Such notice shall include the reasons for the suspension without pay and the duration of the suspension. Within ten (10) calendar days of the notice of suspension without pay, any non-exempt regular permanent employee who is suspended without pay may appeal in writing to the Personnel Board for a hearing.

~~The Fire Chief may suspend a MVFD for a period of less than ninety (90) calendar days for such reason as the Fire Chief deems adequate and sufficient to warrant such action. The City Administrator may suspend a MVFD for a period of ninety (90) or more days for such reason as the City Administrator deems adequate. The total of such suspension(s) shall not exceed one hundred and eighty (180) calendar days in any twelve (12) consecutive month period. No single suspension shall be for more than ninety (90) calendar days.~~

9.5 **Demotion:** The City Administrator may demote an employee ~~or MVFD~~ for such reason as the City Administrator deems adequate. In the case of a permanent, regular employee, the procedures of Section 9.2 shall apply. A written statement of the reasons for any such action shall be furnished to the employee ~~or MVFD~~ and a copy filed in the employee's personnel file. No demotion shall be made as a disciplinary action unless the employee to be demoted is eligible for employment in the lower class. Demotion shall not be made if it would require any regular full-time employee in the lower class to be laid off by reason of the action. Within ten (10) calendar days after receiving written notice of demotion, any non-exempt regular permanent employee may appeal, in writing, to the Personnel Board for a hearing.

9.6 **Dismissal/Discharge:** The City Administrator may dismiss/discharge any employee ~~or MVFD~~ of the City for such cause as the City Administrator deems adequate and sufficient to warrant such action. In the case of a permanent, regular employee ~~or MVFD~~, the procedures of Section 9.2 shall apply. At least fourteen (14) calendar days before the effective date of dismissal/discharge, a written statement of the reason(s) for the dismissal/discharge shall be delivered to the employee ~~or MVFD~~ concerned. If the City Administrator, because of the reason(s) for the dismissal/discharge, desires to make an immediate separation of the employee ~~or MVFD~~, the City Administrator may impose a suspension with or without pay of the employee ~~or a suspension of the MVFD~~, pending the effective date of dismissal/discharge. By so doing, such action shall automatically result in permanent separation at the end of the period of suspension. Suspension pending dismissal/discharge shall not be subject to the limitations provided in Section 9.4 of these rules. Within ten (10) calendar days of the receipt of the notice of dismissal/discharge, any non-exempt regular permanent employee ~~or MVFD~~ so dismissed/discharged shall have the right to appeal in writing to the Personnel Board and shall be granted a hearing.

9.7 **Final Arbiter:** The Personnel Board shall be the final internal arbiter of employee ~~and MVFD~~ appeals.

9.8 **Civil Service:**

(1) Employees covered by the Civil Service Act (Neb. Rev. Stat. sections 19-1825 et seq.) Civil Service employees may be removed, demoted, suspended without pay, reprimanded or otherwise disciplined under the applicable Civil Service Rules.

(2) As specified in Nebraska Revised Statute section 13-3005, in any proceeding involving the potential removal, suspension with or without pay, demotion or discharge of any sworn full-time officer of the City of La Vista Police Department, having the power of arrest and for whom law enforcement is a full-time career, including the Chief of Police (but not including any officer during his or her probationary period and not including clerical, custodial, or maintenance personnel):

(a) The officer shall be given notice and a copy of the written accusation;

(b) The officer shall have the right to have an attorney or representative retained by the officer present with the officer at all hearings or proceedings regarding the written accusation;

(c) The officer shall have the right to be heard and present evidence, or to have the officer's attorney or representative retained by the officer be heard and present evidence;

(d) The officer shall have the right, as shall the individual imposing the disciplinary action, or their respective attorneys or representatives, to record all hearings or proceedings regarding the written accusation; and

(e) If removal, suspension with or without pay, demotion or discharge is imposed on the officer by the City Administrator, the officer shall have the right to an appeal as provided in the Civil Service Act (Nebraska Revised Statute sections 19-1825 et seq.), La Vista

PERSONNEL RULES AND REGULATIONS

Municipal Code section 37.13, and Article V of the Rules and Regulations of the Civil Service Commission of the City of La Vista.

(3) Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the City Administrator, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

Nebraska Revised Statute § 13-3005.

13-3005. City of first class and county sheriff; adopt rules and regulations governing peace officer removal, suspension, or demotion.

(1) Except as otherwise provided in a collective-bargaining agreement, Chapter 19, article 18, or Chapter 23, article 17, any city of the first class and all county sheriffs shall adopt rules and regulations governing the removal, suspension with or without pay, or demotion of any peace officer, including the chief of police. Such rules and regulations shall include: (a) Provisions for giving notice and a copy of the written accusation to the peace officer; (b) the peace officer's right to have an attorney or representative retained by the peace officer present with him or her at all hearings or proceedings regarding the written accusation; (c) the right of the peace officer or his or her attorney or representative retained by the peace officer to be heard and present evidence; (d) the right of the peace officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation; and (e) a procedure for making application for an appeal. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(2) This section does not apply to a peace officer during his or her probationary period.