

ORDINANCE NO. 20-19

AN ORDINANCE of the City of Richland amending Chapter 2.28 of the Richland Municipal Code related to the personnel plan.

WHEREAS, the City has need, from time to time, to update the Richland Municipal Code to bring it into compliance with current practices and state law, and to eliminate conflict and ambiguity,

WHEREAS, the City's Personnel Plan has not been comprehensively updated since 1999.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Section 2.28.125 of the Richland Municipal Code, entitled Personnel committee – Composition and organization, as first created by Ordinance No. 50-77, and last amended by Ordinance No. 40-98, is hereby amended as follows:

**2.28.125 Personnel committee – ~~Membership~~ Composition and organization.**

A. There ~~shall be city council shall appoint~~ a personnel committee consisting of three (3) members ~~who shall serve without compensation. All members who~~ shall be citizens of the United States, residents of the city for at least three (3) years immediately preceding such appointment, and registered voters. During the term of office, a member of the personnel committee shall not serve on any other Richland ~~municipal~~ board, commission or committee. ~~Selection of members shall follow established procedures as set forth in RMC 2.04.120.~~

B. The term of office for personnel committee members shall be for three (3) years. ~~Members shall serve for their designated terms and until their successors are appointed.~~ Appointment to the committee is limited to two (2) consecutive terms. ~~In the instance of an appointment to fill a vacancy for an unexpired term, a full term shall be considered a period greater than one year.~~ A period of one (1) year must lapse before an individual may again be considered for appointment.

C. ~~Upon appointment of a new member, the committee shall organize by electing one of its members as chairperson. Two members shall constitute a quorum and the votes of any two members of such committee concurring shall be sufficient for the decision of all matters to be decided by the committee.~~ The committee shall meet as frequently as is necessary ~~hold at least six regular meetings each year and such other additional meetings as may be required~~ for the proper discharge of its duties.

D. Meetings of the Personnel Committee shall comply with the Open Public Meetings Act, Chapter 42.30 RCW; provided, however, that appeal hearings conducted by the Personnel Committee shall occur in closed session unless the employee who brought the appeal demands in writing that the hearing be open to the public. The Committee may

exclude from any such public or private meeting, during the examination of witnesses, any or all other witnesses in the matter being heard. The hearing need not be conducted according to technical rules relating to evidence and witnesses, although all witnesses offering testimony to the Personnel Committee must be sworn or affirmed to truthfulness.

~~D. Any member of the personnel committee may be removed from office by the city council for incompetency, dereliction of duty, malfeasance in office or other good cause. Unexcused absences for three consecutive regular meetings or any absence, excused or unexcused, from at least one-half of the meetings in a 12-month period are grounds for removal. Workshops shall be excluded from the definition of "meetings" for purposes of this section.~~

Section 2. Section 2.28.130 of the Richland Municipal Code, entitled Personnel committee – Powers and duties, as first created by Ordinance No. 50-77, and last amended by Ordinance No. 40-98, is hereby amended as follows:

**2.28.130 Personnel committee – Powers and duties.**

Powers and duties of the personnel committee are as follows:

~~A. Shall review any existing or proposed rules governing personnel and make recommendations thereon to the human resources manager;~~

BA. Monitor the administration and grading of competitive examinations;

~~C. Make investigations concerning and report to the city manager on all matters touching the enforcement and effect of the provisions of this chapter; inspect all departments, offices, places, positions and employments affected by this chapter and ascertain whether this chapter and all other rules and regulations are being obeyed;~~

BD. Shall hHear appeals on the following matters as alleged by any employee in the classified service or uniformed personnel under Chapters 41.08 and 41.12 RCW; provided, however, that any uniformed personnel employee who has elected to appeal through a grievance mechanism provided in a labor agreement shall not be entitled to appeal the same or similar issue to the Personnel Committee:

1. from any disciplinary action resulting in suspension, demotion, reduction in pay or termination; suspending for more than 30 days, reducing in rank or pay, or discharging any employee in the classified service
2. any alleged violation of the established Personnel Plan related specifically to hiring or promotional opportunities;
3. any challenge to the reasonableness of the appointing authority's actions related to a reduction in force.

~~and~~ After the hearing, the Personnel Committee will report its findings and recommendations in writing to the appointing authority. The Committee's findings and ~~decisions~~ recommendations shall be advisory only, except where general law requires ~~that the Committee to render a decision that is they be~~ final and binding upon the appointing authority with respect to firefighters under Chapter 41.08 RCW and police officers under Chapter 41.12 RCW ~~firefighters and police officers~~;

~~E. Hear grievances regarding the application of the provisions of this chapter and other matters relating to employment conditions, practices and policies, and prepare findings of fact and conclusions of law which shall be forwarded to the city manager;~~

~~F. May advise the human resources manager on matters of personnel policy;~~

~~G. Shall keep and preserve records of all committee proceedings including reports made to the committee;~~

~~H.C.~~ Hearings ~~and investigations~~ before the committee shall be governed by RMC 2.28.906 ~~rules of procedures and practice to be adopted by the committee, but Any~~ informality of proceedings or in the manner of taking testimony shall not affect any action of the committee.;

~~I.D.~~ The committee shall have the right of subpoena, the power to examine witnesses under oath, the power to compel the attendance of witnesses, and the power to require ~~power to administer oaths and to request, through an appropriate court, a subpoena to require the attendance of witnesses and~~ the production of records ~~by them of books, papers, documents, and accounts pertaining to the investigation.~~

E. Each member of the Personnel Committee shall have the power to administer an oath consistent with RCW 5.28.020 to any participating witness.

Section 3. Section 2.28.530 of the Richland Municipal Code, entitled Tenure of employment – Classified service, as first created by Ordinance No. 50-77, and last amended by Ordinance No. 40-99, is hereby amended as follows:

**2.28.530 Tenure of employment – Classified service.**

The tenure of any person covered under the provision of this chapter shall be subject to appropriate conduct and the satisfactory performance of the employee's job responsibilities. Any person may be discharged (when authorized by the city manager), or disciplined (including but not limited to suspension without pay, temporary or permanent pay reductions, demotion, and reduction in rank) by the city manager, ~~the deputy city manager~~ and/or director of a department for any of the following reasons:

A. Unsatisfactory record of attendance and/or punctuality.

B. Absent without leave for three consecutive working days.

- C. Incompetent, inefficient or ineffective performance of job responsibilities.
- D. Inattention to job responsibilities or loitering.
- E. Insubordination, which is the refusal to obey lawful and reasonable direction given by the employer ~~accept work, or refusal to perform work in accordance with instructions of supervisor.~~
- F. Dishonest conduct such as theft, fraud or misrepresentation.
- G. Disorderly conduct in the course of employment including fighting, horseplay, threatening or otherwise abusing other employees or the general public.
- H. 1. Reporting for work in an unfit condition which precludes the employee from performing the function and duties of any position in city service.
2. Possession of alcohol, cannabis, or illegal controlled substance(s) while at work.
3. Consumption or use of alcohol, cannabis, or illegal or controlled substance(s) during the course of an employee's scheduled work day; provided, however, that it is not a violation of this section to use prescribed or over-the-counter drugs that may affect the discharge of an employee's job duties if the employee first notifies his/her supervisor or Human Resources of such use.
- ~~4. It is not a violation of this section to use prescribed or over-the-counter drugs, provided the employee reports such use which may affect the discharge of their job responsibilities.~~
- I. Conviction of a felony or misdemeanor which adversely affects the employee's ability to perform the employee's job requirements.
- J. The use of employee's city employment for personal profit, gain or advancement other than the regular and rightful compensation and benefits authorized for the position.
- K. Negligent, careless or willful acts which damage or endanger the city's property, equipment or the personal safety of employees or the general public.
- L. Improper political activity as defined in this chapter.
- M. Willfully or knowingly making a false statement, certificate, mark, rating or report in regard to any test, certificate or appointment held or made under the municipal personnel system, or in any manner commit or attempt to commit any fraud preventing the impartial execution of the personnel rules.
- N. No person seeking appointment to or promotion in the city service shall either directly or indirectly give, render or pay any money, service or other valuable thing to any person

for, or on account of, or in connection with, a test, appointment, proposed appointment, promotion or proposed promotion.

O. Noncompliance with RMC 2.28.515.

P. Possession or display of a firearm, as defined in RCW 9.41.010, or explosive device in a city building or city vehicle. This subsection does not apply to commissioned police officers.

Q. Any other act or failure to act which, in the judgement of the appointing authority, is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

The human resources manager shall promulgate procedures for administering and imposing the discipline required under this section.

Section 4. Section 2.28.905 of the Richland Municipal Code, entitled Grievance and appeal procedure, as first created by Ordinance No. 3-97, and last amended by Ordinance No. 47-99, is hereby amended as follows:

**2.28.905 Pre-Disciplinary Hearing Opportunity Required. ~~Grievance and appeal procedure.~~**

**~~A. Definitions.~~**

~~1. "Appeals" are actions filed by a classified employee concerning any adverse personnel action which results in the employee's suspension for more than 30 days, reduction in pay, or discharge from city employment.~~

~~2. "Grievances" are actions by an employee alleging improper application of the provisions of this chapter and complaints on other matters concerning the employee's working conditions, misapplication of policies and procedures and related conditions. Excluded are matters alleging employment discrimination as defined in RMC 2.28.105 and the substance of performance evaluations and oral reprimands.~~

~~3. Investigations in matters related to conditions of employment, examinations and other sundry matters which may be conducted by the personnel committee at the request of the human resources manager or upon its own motion with the view of making determinations and recommendations as appropriate to the city manager for corrective action or changes in policies and procedures.~~

~~**B. Requirements for Adverse Actions.**~~ No classified employee may be subject to a disciplinary action that results in suspension, demotion, reduction in pay or termination; ~~suspended for more than 30 days, reduced in pay or discharged~~ from city employment except for cause. Prior to imposition of such disciplinary action, ~~In such cases,~~ the city shall advise the employee in writing of the charges and provide an explanation of the evidence upon which the proposed disciplinary action is based. The employee ~~would~~ is

then ~~have~~ provided an opportunity for a pre-disciplinary ~~and/or pre-termination~~ hearing. The city, after consideration of the facts and materials presented at the hearing, shall provide the employee with a written decision of the disciplinary action. ~~If the city's disciplinary decision includes termination, suspension, or demotion, reduction in pay or termination, Within 10 days after receipt of the employer's decision,~~ the employee ~~shall have the right to~~ may appeal the disciplinary decision to the personnel committee as provided in RMC 2.28.130.

### ~~C. Procedure for Processing Grievances.~~

~~1. Step 1. Grievances must be made known to the employee's supervisor in writing within 10 working days after the basis for the complaint is known or should have become known to the employee. All grievances must include the specific policy or provision which the employee feels is being violated, as well as the requested remedy.~~

~~The immediate supervisor shall discuss the grievance with the employee and render a written decision within 10 working days of receipt of the original grievance. If the employee is not satisfied with the supervisor's response, he or she may proceed to Step 2.~~

~~2. Step 2. The employee shall reduce the grievance to writing within 10 working days from the initial discussion and present it to his or her division manager. The division manager shall arrange to discuss the grievance within five working days after so notified. Within 10 working days of such meeting, the division manager will respond in writing. If the matter is not resolved at step 2, the employee may proceed to step 3.~~

~~3. Step 3. Within 10 working days of the division manager's decision, the employee may request in writing that the grievance be reviewed by his or her department director and/or deputy city manager. The department director and/or deputy city manager shall arrange to discuss the grievance within five working days after so notified. Within 10 working days of such meeting, the department director and/or deputy city manager will respond in writing. If the matter is not resolved at step 3, the employee may proceed to step 4.~~

~~4. Step 4. If the grievance is still unresolved, the employee may appeal to the personnel committee within 10 working days after receipt of the department director's/deputy city manager's response.~~

Section 5. Section 2.28.906 of the Richland Municipal Code, entitled Personnel committee hearings, as first created by Ordinance No. 3-97, and last amended by Ordinance No. 47-98, is hereby amended as follows:

#### **2.28.906 Personnel committee appeal hearings.**

A. An appeal to the Personnel Committee as authorized under RMC 2.28.130(B) shall be in writing and shall be signed by the employee. The appeal shall include the mailing and street address where service of process and other papers may be made upon the employee. The appeal shall also include the ruling or decision from which the employee appeals, a brief description of the facts giving rise to the appeal, and a concise statement

of the reason for the appeal. ~~The personnel committee shall arrange a hearing within 15 working days after receipt of a timely employee request.~~

B. A written appeal must be filed within ten (10) calendar days after the decision giving rise to the appeal is made. For purposes of calculating time, the day the decision was made is excluded from the 10-day calculation. ~~Grievances and appeals presented to the committee shall include all pertinent documentation, correspondence and other relevant materials.~~

C. Hearings shall be held at such time and place ~~in such a manner~~ as determined by the committee.

D. All parties to the ~~grievance or~~ appeal shall be notified of the hearing date and time no less than ten (10) calendar days in advance of the hearing, ~~and shall have the right to be heard at the hearing, to be represented by a person of their choosing and call witnesses on their behalf.~~

E. During the appeal hearing, the employee and the appointing authority are entitled to be represented by an attorney; testify under oath; subpoena witnesses to testify; cross-examine witnesses; present affidavits, exhibits or other evidence as the Committee deems relevant; and argue the case, either directly or through an attorney. The Committee reserves the right, at any time throughout the hearing, to ask any question of any witness or request any evidence on any issue it deems relevant to the matter, regardless of whether the issue was first raised by either party. ~~The committee may call as witnesses at the hearing any person(s) whose testimony may contribute to the committee's decision.~~

F. No fewer than five (5) calendar days before the hearing, each party will provide to the other a list of the witnesses it intends to call at the hearing, and complete copies of all documents it intends to offer at the hearing for the Committee's consideration. No other discovery is authorized. The Committee may postpone the hearing at the aggrieved party's request if this disclosure is not timely made. ~~Upon completion of the hearing, the committee shall make its findings of fact and conclusions of law.~~

G. At any hearing on appeal from a suspension, demotion, reduction in pay or termination, the city shall have the burden of proving by a preponderance of the evidence that its disciplinary action was for cause. At any other appeal hearing under RMC 2.28.130(B), the employee shall have the burden of proof by a preponderance of the evidence.

H. Hearings will be recorded by a recording device. The services of a court reporter may be secured to record the hearing at the requesting party's expense.

~~G. If the hearing pertains to a grievance as defined in RMC 2.28.905(A)(2) the committee's findings, conclusions and recommendations shall be forwarded to the city manager. The city manager may accept, reject or modify the recommendations of the committee and shall within five working days notify the employee of the city manager's~~

~~final decision. If the city manager modifies the recommendations of the committee, the city manager may fashion such a remedy as deemed appropriate.~~

~~H]. In cases involving an appeal of an adverse action, as defined in RMC 2.28.905(A)(1), the Within ten (10) business days of the conclusion of the hearing, the committee shall issue written ~~make its~~ findings of fact, and conclusions of law, and a recommendation to the city manager on whether the city's action should be affirmed, rescinded or modified. If the Committee recommends that the city's action be modified, it will also provide a recommendation as to what specific action should be taken. ~~shall specify what, if any, action shall be taken by the city.~~ The city manager may accept, reject or modify the recommendations of the committee in rendering a final determination on the appeal of a classified employee under RMC 2.28.130(B). Such final determination shall be issued to the employee within ten (10) calendar days of receipt of the Committee's findings, conclusions and recommendation. For uniformed personnel under Chapters 41.08 and 41.12 RCW, the Committee's recommendation shall be binding on the city manager and subject to further appeal as provided herein. ~~and shall, within five working days, notify the employee of such decision. Within five days after receipt of the committee's decision, the employee may appeal the decision by filing an appeal with the superior court of Benton County. Within 30 days after the expiration of that period a written notice of appeal stating the grounds thereof and demanding that a certified transcript of the record, if any, and all papers on file with the committee, the human resources manager or the city manager relating to such order shall be filed with the city manager. The city manager, within 10 days after the filing of such notice with the court, shall cause to be certified and filed such transcript and records with the court. The court shall thereupon hear and determine such appeal in a summary manner, but the hearing and determination shall be confined to whether the order of removal, discharge, demotion or suspension was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such grounds.~~~~

J. Within thirty (30) calendar days of the date of the Personnel Committee's determination, firefighters and police officers who are subject to a disciplinary action resulting in suspension, demotion, reduction in pay or termination may appeal the decision of the Personnel Committee to Benton County Superior Court by serving the City Clerk with a written notice of appeal.

1. The written notice of appeal must include the grounds for appeal and a demand that a certified transcript of the hearing and all papers on file with the Committee affecting or relating to its determination be filed with the Court.
2. The appellant shall bear the costs associated with procuring a certified transcript of the hearing and the filing fees associated with commencing the appeal in Benton County Superior Court.
3. Benton County Superior Court shall hear and determine the appeal in a summary manner on the established record. No new evidence is allowed. The Court's review is confined to determining, based on the sufficiency of the evidence, whether the

suspension, demotion, reduction in pay or termination was or was not made in good faith for cause. No other grounds for appeal are allowed.

Section 6. This ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

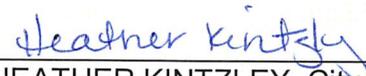
PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 19<sup>th</sup> day of March, 2019.

  
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ROBERT J. THOMPSON  
Mayor

ATTEST:

  
\_\_\_\_\_  
DEBBY BARHAM, Deputy City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
HEATHER KINTZLEY, City Attorney

Date Published: March 24, 2019