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MEMORANDUM

July 28, 2010

TO: Mayor and Town Council
FROM: Tim Wright /TW
SUBJECT: Garvin Disciplinary Appeal
CC: Debra Galbraith, Town Manager

The Town has received its first employee disciplinary appeal under the Town's updated Personnel Manual.¹ The purpose of this memo is to provide the Council with an overview of the appeal process, including the Council's role.

On July 21, 2010, Lt. Donald Garvin was issued a letter of discipline and demoted to sergeant. On July 1, 2010, on behalf of Garvin, attorney Martin Bihn filed an appeal of such discipline pursuant to Section 4.5.2 of the Personnel Manual.

Upon receipt of the appeal, the Town began the process of setting a hearing before the Town Personnel Hearing Officer. Pursuant to Section 4.5.2, the hearing shall be not less than 10 nor more than 30 days following the appeal. Because of issues related to the appointment of a hearing officer,² and the schedules of the attorneys involved, the hearing has been delayed and is scheduled for August 31, 2010. The hearing before the Personnel Hearing Officer is not open to the public.³ At the hearing,

¹ The most recent version of the Personnel Manual was approved November 5, 2009.

² As you will recall, the Council appointed R.O. McDaniel as the Personnel Hearing Officer at its July 15, 2010 Council Meeting.

³ "The hearing shall be closed unless the employee requests in writing that the hearing be conducted in an open, public meeting forum." Section 4.5.3. In this matter, Garvin has not requested a open, public meeting forum.

attorney Carry Kelly⁴ will present evidence for the Town before the Personnel Hearing Officer. Although the formal rules of evidence do not apply, Mr. Bihn will be able to cross examine the Town's witnesses and present evidence on behalf of Garvin. Following the close of the hearing, the Personnel Hearing Officer will forward "Findings and Recommendations" concerning the discipline to the Town Council.

Upon receipt of the Findings and Recommendations, Mr. Garvin's appeal will be placed on a Council Agenda where the Council may affirm, reverse, or modify the Findings and Recommendations. This will occur during a public meeting. We anticipate that the appeal will be placed on the Council agenda for either September 16, 2010 or October 7, 2010.

Because the Council is acting in a quasi-judicial manner in this matter (i.e., the Council will be asked to make the final decision on the appeal), I would request that you not speak with Town Staff, Ms. Kelly, Mr. Garvin, or Mr Garvin's attorney regarding the substance of the appeal. Please direct any procedural questions regarding this appeal to my office.

Attached, please find Section 4.5 of the Town of Payson - Personnel Manual.

⁴ Ms. Kelly is an attorney who handles the Town's conflict prosecution matters.



TOWN OF PAYSON – PERSONNEL MANUAL

Grievance filing date; 3) Nature and date of the grievance; 4) Corrective action requested and reasons therefore; 5) Summary of efforts made to resolve the grievance informally; 6) Additional information pertinent to the grievance.

Employees whose complaint alleges a discriminatory practice should consult the Personnel Officer prior to filing the letter of grievance.

An employee who does not have regular status and is suspended pending termination or who has been terminated does not have a right to file a grievance.

If the employee grievance is based on a suspension or demotion, the Town Manager must, within ten working days, review the grievance and either make a written statement outlining the Town's position or refer the grievance to the Personnel Hearing Officer.

All other grievable matters will be appealable only as far as the Town Manager. The Town Manager or an appointed representative will, within ten working days, review the grievance and appeal, and the Town Manager will issue a written decision on the appeal. This decision shall be final.

4.5 - APPEAL PROCESS

4.5.1 - RIGHTS

Any employee with right of appeal shall have the right to appeal to the Personnel Hearing Officer all timely appeals related solely to any employment action resulting in termination, loss of pay, written reprimand, suspension, demotion, or probation related sanctions of regular employees.

Notwithstanding any other provision or procedure to the contrary, the following shall be afforded any regular full time employee entitled to a hearing under these rules. Seasonal and Temporary employees are not eligible.

- Written notice of the specific grounds for discipline.
- The disclosure of evidence supporting the discipline imposed.
- The opportunity to confront and cross-examine adverse witnesses called by the Town at a scheduled hearing.
- The opportunity to be heard in person and to present evidence at a scheduled hearing.
- The opportunity to be represented by counsel.
- A written statement by the Personnel Hearing Officer or other fact finders as to the evidence relied upon and the reasons for the determination made by it.

4.5.2 – REQUIRED NOTICE

An appeal may be taken by filing a written appeal within ten (10) calendar days after receiving notification of intended discipline. A verbal or oral appeal (not in writing), or a written appeal filed anywhere other than with the Town of Payson shall be invalid and of no force and effect.

Upon receipt of a written appeal, the Personnel Officer shall immediately inform the Town Council, Town Manager, Town Legal Department, the Personnel Hearing Officer and such other persons or officers named or affected by the appeal or the filing of same.

Form and content of appeal:

1. Shall be in writing
2. Shall be executed by the employee in the presence of a notary public, attesting that the appeal is made in good faith and upon the personal knowledge of the employee;
3. Shall be directed to the Personnel Hearing Officer in care of the Personnel Officer and shall be filed with the Town of Payson.
4. Shall clearly explain the matter to be appealed;
5. Shall set forth a statement of the action desired by the employee; and
6. Shall set forth the reasons for the action desired and requested by the employee.



TOWN OF PAYSON – PERSONNEL MANUAL

The appeal may be handwritten or typed and need not be in formal legal pleading form so long as it conforms to the requirements contained herein.

Upon receipt of an appeal, the Personnel Hearing Officer shall notify the Personnel Officer of the date set for a hearing on the appeal not less than ten (10) calendar days, nor more than thirty (30) calendar days from the date of receipt of the appeal.

The Personnel Officer shall provide written notice to all affected parties of the date, time and place of the hearing at such place as the Personnel Hearing Officer shall prescribe. In addition, notice shall be provided to the Town Manager and Town of Payson Legal Department. Proof of notice to all individuals shall be documented in the Town's records.

4.5.3 – HEARING PROCEDURES

The employee shall appear personally, unless physically unable to do so, before the Personnel Hearing Officer at the time and place scheduled for the hearing on appeal.

The employee may be represented by any person (other than the Personnel Hearing Officer) or attorney as the employee may select, and may present relevant oral or documentary evidence. However, in the event that the employee chooses to be represented by an attorney at the hearing, the employee must give notice, at least ten (10) calendar days prior to the hearing, to the Personnel Hearing Officer of his/her intention to be represented by an attorney at such hearing. In that event, the Personnel Hearing Officer shall immediately notify the Town of Payson Legal Department so that arrangements may be made for the Town to be represented by legal counsel at the hearing.

In the event the employee does not intend to be represented by an attorney at the hearing, the Town may be represented by the Personnel Hearing Officer or other employee or counsel chosen by the Town of Payson Legal Department.

The conduct of the hearing shall be directed by the Personnel Hearing Officer with due regard to the rights and privileges of the parties appearing before him/her, but need not be conducted in accordance with judicial rules of evidence. Each party shall be allowed to present evidence and cross-examine witnesses. The hearing shall be closed unless the employee requests in writing that the hearing be conducted in an open, public meeting forum.

The Personnel Hearing Officer shall, within ten (10) days after the conclusion of the hearing, render "Findings and Recommendations" to the Town Council.

Such "Findings and Recommendations" shall be in writing; shall describe the evidence relied upon by the Personnel Hearing Officer; shall state the reasons for the Personnel Hearing Officer's determination; and shall be advisory only to the Town Council.

Copies of such "Findings and Recommendations" shall also be provided to the affected parties, the Town of Payson, the Town Manager, and the Town of Payson Legal Department.

4.5.4 - COUNCIL ACTION

The Council shall review the Personnel Hearing Officer's "Findings and Recommendations" within thirty (30) days from the date of such "Findings and Recommendations" and may affirm, reverse, or modify the "Findings and Recommendations."

4.5.5 - STATUS OF TERMINATED EMPLOYEE PENDING APPEAL

A terminated employee shall not be permitted to occupy his/her position pending the appeal process.