

ORDINANCE NO. 2419

AN ORDINANCE OF THE CITY OF ERLANGER IN KENTON COUNTY KENTUCKY PROTECTING THE TENURE AND TERMS OF EMPLOYMENT OF ALL FULL TIME EMPLOYEES AND NONELECTED OFFICERS OF THE CITY OTHER THAN THE MEMBERS OF THE POLICE AND FIRE DEPARTMENTS AND REPEAL OF PRIOR ORDINANCES REGARDING “NON-ELECTED OFFICIALS”

WHEREAS, KRS 83A.130(9) authorizes an ordinance of the Erlanger City Council to protect the tenure and the terms of employment of all of the employees and nonelected officers of the City of Erlanger; and thereby restrict the authority of the Mayor to remove them “at will;” and

WHEREAS, KRS 83A.080 authorizes the Erlanger City Council to establish nonelected city offices; and

WHEREAS, KRS 15.520 and 95.450 already protect the tenure and the terms of the employment of the members of the police and fire departments of the City; and thereby restrict the “at will” authority of the Mayor to discipline them or terminate their employment;

WHEREAS, the Erlanger City Council wants to protect the tenure and terms of employment of other full time employees and nonelected officers of the City; and thereby restrict the “at will” authority of the Mayor to remove them;

WHEREAS, the Mayor is also desirous of insuring employees receive due process and are not solely, “at will” employees;

NOW THEREFORE, be it ordained by the City of Erlanger in Kenton County Kentucky as follows:

Section 1.0 Definitions

As used in this ordinance, the following words and phrases have the meaning indicated for them:

CITY: The word “City” means the City of Erlanger

CITY COUNCIL: The words “City Council” mean the Erlanger City Council

COLLABORATIVE PROGRESSIVE DISCIPLINE: The phrase “collaborative progressive discipline” means progressive discipline that has involved not only the employee and the direct supervisor thereof; but also the head of the department and the City Administrative Officer. Collaborative progressive discipline shall apply solely to job performance and not an egregious act or omission as defined herein.

DUE PROCESS EVIDENTIARY HEARING: The phrase “due process evidentiary hearing” means a hearing that conforms to the due process provisions of the federal and state constitutions, including but not limited to, the right to a hearing, the right to counsel, the right to examine and cross-examine all witnesses and/or evidence presented against the employee and the right to written findings of fact.

EGREGIOUS ACT OR OMISSION The phrase “egregious act or omission” means any act or omission resulting in the death or serious physical injury of another person, or damage to the property of another person causing a pecuniary loss of \$500.00 or more; violaton of a city policy or procedure; being convicted of a felony or misdemeanor involving

fraud/dishonesty; being convicted of an misdemeanor and/or other traffic offense, for which an employee's driver's license is suspended and a valid driver's license is a job requirement.

EMPLOYEE: The word "employee" means a full time non-probationary employee of the City, including, without limitation, nonelected officers of the City; but excluding members of the police or fire departments of the City.

FELONY: The word "felony" has the same meaning provided for that word in KRS 500.080(5).

INADEQUATE JOB PERFORMANCE: The phrase "inadequate job performance" means a failure to adequately and efficiently engage in and perform the specifications, duties, functions and tasks of a position of employment.

MAYOR: The word "Mayor" means the duly elected and qualified Mayor of the City and any subordinate officer or employee to whom the authority of the Mayor has been delegated by executive order pursuant to KRS 83A.139(7).

MISDEMEANOR: The word "misdemeanor" has the same meaning provided for that word in KRS 500.080(10).

PROGRESSIVE DISCIPLINE: The words "progressive discipline" means a process for dealing with inadequate or other job performance issues by an employee that does not meet the standards of the City that have been communicated to the employee. The primary purpose of progressive discipline is to assist the employee to understand that a performance problem exists. The process features increasingly formal efforts to provide feedback to the employee so the employee can correct the problem. The goal of progressive discipline is to improve employee performance. The process of progressive discipline is not intended as a punishment to an employee; but as assistance to the employee to overcome performance problems and satisfy job expectations. Progressive discipline is most successful when it assists an employee to become an effectively performing member of the organization. Failing that, progressive discipline enables the City to fairly and with substantial documentation terminate the employment of employees who are ineffective and unwilling or unable to improve. Without limitation, the progress of progressive discipline may begin with verbal counseling about: (a) the requirements of the job; (b) performance expected by the employer; (c) the employee's understanding of the requirements of the job and the performance expected by the employer; and (d) the failure of the performance of the employee to meet the employer's expectations; and then proceed from verbal counselling to a verbal reprimand that the job performance of the employee has continued to be inadequate; and then proceed from a verbal reprimand to a written verbal warning to the employee that the job performance of the employee has continued to be inadequate and that the continued failure of the performance of the employee to meet the employer's expectations may result in suspensions from work, without pay, and ultimately termination of employment; and then proceed from a verbal written warning to suspension without pay; and, finally, from suspensions without pay to termination of employment.

SUSPENSION WITH OR WITHOUT PAY: An employee may be subject to suspension, with or without pay, in the event of suspension without pay due process shall be afforded.

Section 2.0 – Employee Discipline and Punishment

An employee of the City may only be disciplined, terminated from employment or otherwise punished by the Mayor; for inadequate job performance or an egregious act or omission; and only pursuant to the procedures described herein

2.1 An employee of the City shall not be terminated from employment or otherwise disciplined or punished by the Mayor for inadequate job performance unless the personnel file of that employee includes documentation of collaborative progressive discipline in regard to that inadequate job performance.

2.2 An employee of the City may be terminated or otherwise disciplined or punished by the Mayor for an egregious act or omission, without any documentation in the personnel file of an employee for any collaborative progressive discipline or without any other limitation.

2.3 In the event of reasonable cause to believe that an employee of the City has engaged in any act or omission constituting inadequate job performance or an egregious act or omission, that employee may be subject to either suspension without pay and/or termination by the Mayor; but only after a due process evidentiary hearing in regard to the existence of such reasonable cause; and, when the Mayor is considering the suspension without pay and/or removal of an employee, that consideration shall be reported to the employee. The notice of charge shall include direction to the employee that they may request a due process hearing by providing written notice to the City Clerk within ten (10) days. In the event that the employee does not seek to appeal within ten (10) days, including weekends, the employee shall be deemed to have waived any due process rights and the suspension without pay and/or termination shall be final.

2.3.1 If the employee timely requests a due process appeal, the Hearing Officer shall provide written notice of the time, place and date of the due process evidentiary hearing to the employee, with a copy to the Mayor and City Manager. The due process evidentiary hearing in regard to proposed suspension without pay and/or termination shall be conducted by a designee of the City Attorney, called the "Hearing Officer," who shall be a member of the Local Government Section of the Northern Kentucky Bar Association, or any other attorney at law with experience in municipal law, any retired judge, or any other attorney at law who has experience in conducting due process employment hearings. The hearing shall be conducted to insure due process is provided to the employee. The Hearing Officer shall be compensated on an hourly basis in the amount of \$150 per hour.

2.3.2 Within thirty (30) days after the conclusion of the due process evidentiary hearing, the Hearing Officer shall prepare a written Report and Recommendation, with factual determinations to which the decision of the Mayor shall be limited. The Hearing Officer shall provide the employee and the Mayor and each member of the Erlanger City Council through the City Clerk with the written Report and Recommendations, including all factual determinations in support of the Recommendations and Conclusions resulting from the Due Process Hearing.

2.3.3 The employee may not be terminated from employment by the Mayor without written conclusions by the Hearing Officer that the job performance of the employee was inadequate, or the employee engaged in an egregious act or omission.

Section 3.0 – Provisions Severable

The provisions of this Ordinance are severable; and the invalidity of any provision of this Ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

Section 4.0 – Conflicting Ordinances Repealed

That Erlanger ordinance 2386, amending section 2.0 of Erlanger Ordinance 2265, as well as Section 30.03 of the Erlanger Code of Ordinances are hereby repealed as follows:

~~Section 2.0 Termination of Non-Elected City Officers~~

~~The employment of those officers of the City designated a “non-elected officers” by statute or ordinance may not be terminated by the Mayor without some reasonable cause therefore, including, without limitation, inefficiency, misconduct, insubordination or a violation of law or the rules adopted by the City, or a failure to adequately engage in and perform the specifications, duties, functions and tasks of the employment position thereof, and only after approval thereof by the Erlanger City Council.~~

That Erlanger Ordinance 2265, Section 3.0 is hereby repealed as follows:

~~Section 3.0 Termination of Other Officers and Employees~~

~~The employment of any officer or employee of the City is not a member of the police or fire departments, and who is not designated as a “non-elected officer” by statute or ordinance, may not be terminated by the Mayor without the written recommendation of the Personnel Officer.~~

That all other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 5.0 – Effective Date

This Ordinance shall be effective as soon as possible according to law.

City of Erlanger,
Kenton County, Kentucky

By: Tyson Hermes
Mayor

Attest:
Melissa Andress
City Clerk/Director of Administration