

ORDINANCE NO. 875

AN EMERGENCY ORDINANCE AMENDING THE DACONO MUNICIPAL CODE REGARDING EMPLOYEE APPEALS OF CERTAIN DISCIPLINARY ACTIONS

WHEREAS, at the November 6, 2018 regular election, the City's voters approved an amendment to the City's Home Rule Charter that eliminated the Personnel Board; and

WHEREAS, certain amendments to the Dacono Municipal Code are necessary in order to delegate those functions that were previously performed by the Personnel Board, as set forth herein; and

WHEREAS, an emergency exists because the City Council finds and determines that, in light of the foregoing recitals and findings, circumstances warrant the immediate enactment of this ordinance and establishing clear procedures and authority for the handling of employee appeals as provided herein in order to protect the public health, safety, and welfare, and to avoid conflicts between the City's Home Rule Charter and the Dacono Municipal Code regarding employee appeals.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. Chapter 2, Article 6 of the Dacono Municipal Code is hereby repealed and re-enacted to read as follows:

**ARTICLE 6
Employee Appeals**

Sec. 2-100. Applicability.

This Article shall apply to all exempt and nonexempt employees of the City, except as may otherwise be provided in an employment agreement.

Sec. 2-101. Matters subject to appeal.

(a) The only matters for which an appeal may be filed are a suspension without pay, a disciplinary demotion, or a disciplinary termination. All appeals of such actions shall be subject to the appeal procedures set forth herein.

(b) The Department Director responsible for taking a disciplinary action that includes a suspension without pay, a disciplinary demotion, or a disciplinary termination shall provide the employee with a written notice of the proposed disciplinary action. The notice shall state the reasons for which the disciplinary action is proposed and shall provide the employee an opportunity to present any grounds why the discipline should not be imposed. The Department Director shall

render a decision within three (3) working days following the date of the written notice to the employee. The employee may appeal the decision as provided in Section 2-102. If no appeal is filed, the decision of the Department Director is final and shall be considered to be the final decision of the City as of the decision date.

(c) The discharge of employees specified in Subsection 7-6(b) of the City Charter shall be Subject to the provisions of Section 7-6 of the City Charter. Any motion by a City Councilmember for the discharge of such an employee shall not reveal the cause or causes for the discharge, but, if the motion is adopted, the City Council shall direct the Mayor to prepare a written notice of discharge specifying the cause or causes and to provide the employee with a copy of the notice. Such employees may appeal the discharge within five (5) working days after the date of the written notice of discharge pursuant to the procedures set forth in Section 2-102.

Sec. 2-102. Initiating appeal.

(a) An employee aggrieved by a decision rendered pursuant to Subsection 2-101 may file an appeal with the City Manager within five (5) working days of the date of the decision.

(b) The appeal shall be initiated by filing a written request for a hearing as follows:

(1) The written appeal shall include the date of the request, the name of the employee, the general nature of the appeal and the names of any persons who might have pertinent information.

(2) The request shall be addressed to the City Manager and must be received by the City Manager within five (5) working days of the date of the decision being appealed.

(3) The City Manager, or a hearing officer designated by the City Manager, shall schedule the hearing to commence within twenty (20) days of receipt of the appeal, and the employee shall be notified in writing of the time and place where the hearing will be held.

Sec. 2-103. Appeal hearing.

(a) At the request of the employee, the appeal hearing shall be private and confidential to the extent permitted by law. The City Manager or hearing officer may require testimony be given under oath, if desired, and shall have the authority to compel the testimony of other employees.

(b) The City Manager or hearing officer shall be responsible for the conduct of the appeal hearing and shall consider the evidence and determine relevant facts. The City Attorney shall serve as legal counsel to the City Manager in any appeal hearing conducted by him or her.

(c) The parties shall have the right to be present and to be represented at the hearing, to present evidence and witnesses, and to cross-examine the other party's witnesses.

(d) The hearing shall be recorded by appropriate means. The hearing shall not be subject to the rules of evidence governing judicial proceedings, and the City Manager or hearing officer shall consider and pass on all objections and other matters raised concerning the conduct of the hearing and may question witnesses when necessary to gather all the facts.

(e) At the conclusion of the hearing, the City Manager or hearing officer shall render a written decision containing findings of facts and conclusions and making a decision on the appeal. For employees specified in Subsection 7-6(b) of the City Charter, the discharge shall be upheld if the preponderance of the evidence establishes that the discharge was for cause. The findings and decisions of the City Manager or hearing officer shall be binding upon all parties to the appeal, and no further appeal shall be permitted except as may be available pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Section 2. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. The repeal or modification of any provision of any prior ordinance by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance, or any portion hereof, are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effective Date. In accordance with the City Council's findings set forth above in the recitals to this Ordinance, in order to protect the public health, safety, and welfare,

and to avoid conflicts between the City's Home Rule Charter and the Dacono Municipal Code regarding employee appeals, this Ordinance shall take effect on an emergency basis upon adoption by at least five affirmative votes. For any personnel matters that may be pending as of the effective date of this ordinance, the procedures set forth herein shall be followed except that any appeal shall be heard by a hearing officer appointed by the City Manager.

INTRODUCED, READ, ADOPTED BY AT LEAST FIVE AFFIRMATIVE VOTES, AND ORDERED PUBLISHED AND POSTED IN FULL THIS 12th day of August, 2019.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk

Summary of Ordinance No. 875, **“AN ORDINANCE AMENDING THE DACONO MUNICIPAL CODE REGARDING EMPLOYEE APPEALS OF CERTAIN DISCIPLINARY ACTIONS”** Following elimination of the Personnel Board by the voters at the November 2018 election, transfers responsibilities for employee appeals to the City Manager or a hearing officer designated by the City Manager.