

THE TOWN OF FOREST HEIGHTS  
RESOLUTION 06-16

**A RESOLUTION FOR THE ADOPTION OF AMENDMENTS TO THE TOWN'S  
EMPLOYEE HANDBOOK REGARDING EMPLOYEE DISCIPLINARY  
HEARINGS HELD BEFORE THE TOWN COUNCIL**

Introduced by: Mayor J. Goodall

**WHEREAS**, pursuant to *Board of Regents v. Roth*, 408 U.S. 564 (1972), public employees are entitled to pre-disciplinary procedural due process only if they have a constitutionally-recognized property interest in their continued employment, position, and/or compensation, and in order to have a property interest in continued employment or compensation, a public employee must have more than a subjective or unilateral expectation of continued employment, and instead, property interests in continued employment or compensation are based on statute, ordinance, policy, rule or employment agreement that provide that the employee can be disciplined only for cause; and

**WHEREAS**, in the case of *Loudermill v. Cleveland Board of Education*, 470 U.S. 532 (1985), the United States Supreme Court held that non-probationary civil servants had a property right to continued employment and such employment could not be denied to employees unless they were given an opportunity to hear and respond to the charges against them prior to being deprived of continued employment; and

**WHEREAS**, Section 2.4 of the Town Code, provides that no full-time employee of the Town, who has been employed 12 months or longer, shall be reduced in pay, suspended or permanently separated except for cause as stated in writing, and with the affirmative vote of a majority of the Town Council following a hearing; and

**WHEREAS**, the Mayor and Council adopted Resolution 65-12 on October 17, 2012 thereby adopting a comprehensive revision of the Town's Employee Handbook, which has been subsequently amended; and

**WHEREAS**, the Mayor and Council find that it is in the best interest of the Town and for the good and efficient government thereof, that said Employee Handbook shall be revised and amended as stated herein below; and

**NOW THEREFORE BE IT RESOLVED**, that the Town Council hereby adopts, and approves the following amendments to the Employee Handbook initially adopted and approved by Resolution 65-12 on October 17, 2012, as amended:

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CAPITALS : Indicate matter added to existing law or policy  
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*CHAPTER VI*

**DISCIPLINARY ACTION**

**6.10 GROUNDS**

The following shall be grounds for taking disciplinary action against a Town employee, which may range from reprimand to discharge. However, this list is not all inclusive. Other conduct not described herein, may also result in discipline.

- (1) Tardiness, early departure, absence without leave, abandonment of position, or other failure to maintain a satisfactory attendance record;

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**6.60 ~~[SEAT BELT POLICY]~~ DISCIPLINARY HEARINGS; PROCESS**

A. SUBJECT TO ANY APPLICABLE OR SUPERSEDING PROVISIONS OF SECTION 33-93 (CODE OF CONDUCT) OF THE TOWN CHARTER AND EXCEPT AS OTHERWISE STATED IN SAID SECTION 2.4 OF THE TOWN ORDINANCE CODE, NO FULL-TIME EMPLOYEE OF THE TOWN, WHO HAS BEEN EMPLOYED 12 MONTHS OR LONGER, SHALL BE REDUCED IN PAY, SUSPENDED OR PERMANENTLY SEPARATED EXCEPT FOR CAUSE AS STATED IN WRITING, AND WITH THE AFFIRMATIVE VOTE OF A MAJORITY OF THE TOWN COUNCIL FOLLOWING A HEARING.

B. FURTHER PURSUANT TO SAID SECTION 2.4, PRIOR TO ANY DECISION OF THE TOWN COUNCIL TO REDUCE IN PAY OR PERMANENTLY SEPARATE A FULL-TIME EMPLOYEE, THE EMPLOYEE SHALL BE AFFORDED A PRELIMINARY HEARING FOLLOWED BY AN EVIDENTIARY HEARING. SAID EVIDENTIARY HEARING SHALL OCCUR AT LEAST 14 DAYS AFTER THE PRELIMINARY HEARING. AN EMPLOYEE MAY BE REPRESENTED ONLY BY QUALIFIED LEGAL COUNSEL OR PRO SE (I.E., BY SELF) AT THE EVIDENTIARY HEARING, BUT MAY NOT BE REPRESENTED BY A LAYPERSON AT EITHER HEARING.

C. AN EMPLOYEE OR HIS OR HER LEGAL COUNSEL MAY PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES. UNLESS OTHER LAW STATES OTHERWISE, AN EMPLOYEE SHALL HAVE NO RIGHT TO LEGAL COUNSEL AT A PRELIMINARY HEARING. NOTWITHSTANDING ANYTHING IN SAID SECTION 2.4 TO THE CONTRARY, THE COUNCIL MAY IMMEDIATELY SUSPEND WITH OR WITHOUT PAY

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A FULL-TIME EMPLOYEE PURSUANT TO SUBSECTION 2.4.B OF THE ORDINANCE CODE PENDING A SUBSEQUENT EVIDENTIARY HEARING.

D. FURTHER PURSUANT TO SAID SECTION 2.4, THE MAYOR WITHOUT THE PRIOR CONSENT OR APPROVAL OF COUNCIL IS AUTHORIZED TO SUSPEND WITH PAY ANY FULL-TIME EMPLOYEE FOR A PERIOD OF UP TO TEN (10) REGULAR WORK DAYS FOR CAUSE STATED IN WRITING AND PRESENTED TO THE EMPLOYEE. ANY SUSPENSION IMPOSED BY THE MAYOR SHALL BE APPROVED, RATIFIED, EXTENDED, REVERSED, MODIFIED OR CANCELLED BY THE COUNCIL. THE COUNCIL FURTHER RESERVES THE RIGHT, SUBSEQUENT TO AN EVIDENTIARY HEARING, TO IMPOSE A REDUCTION IN PAY FOR A FULL-TIME EMPLOYEE EQUIVALENT TO OR EXCEEDING THE AMOUNT PAID OR PREVIOUSLY PAID TO SAID EMPLOYEE DURING ANY SUSPENSION PERIOD WITH PAY PREVIOUSLY IMPOSED BY THE MAYOR.

E. THE DEPARTMENT HEAD OR THE TOWN ADMINISTRATOR, AS PERSONNEL OFFICER, SHALL NOTIFY THE AFFECTED EMPLOYEE, BOTH ORALLY, IF PRACTICAL, AND IN WRITING, OF HIS RECOMMENDATION TO TERMINATE, REDUCE IN PAY, OR SUSPEND, THE EMPLOYEE FROM TOWN SERVICE, AND HIS REASONS FOR DOING SO. THIS SHALL BE ACCOMPLISHED IN THE FOLLOWING MANNER:

(1) THE DEPARTMENT HEAD OR TOWN ADMINISTRATOR WHO INITIATES SUCH ACTION SHALL COMPLETE A LETTER OR NOTICE OF INTENT TO TERMINATE, REDUCE IN PAY OR SUSPEND FORM.

(2) THE COMPLETED NOTICE LETTER OR FORM SHALL INCLUDE:

I) THE RECOMMENDED EFFECTIVE DATE OF TERMINATION, PAY REDUCTION OR SUSPENSION;

II) THE CHARGES OR REASONS FOR TERMINATING, REDUCING OR SUSPENDING THE EMPLOYEE;

III) ANY RELEVANT AND RELEASABLE DOCUMENTATION INITIALLY OBTAINED TO SUPPORT THE TERMINATION, REDUCTION OR SUSPENSION. SUCH DOCUMENTATION SHALL BE ATTACHED TO THE LETTER OR NOTICE OF INTENT TO TERMINATE, DEMOTE OR SUSPEND FORM. EEO INVESTIGATIVE REPORTS MAY BE DEEMED CONFIDENTIAL UNLESS OTHERWISE DIRECTED BY A COMPETENT

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COURT OF JURISDICTION; THEREFORE, IF AN EEO INVESTIGATION IS THE BASIS OF DISCIPLINARY ACTION, THE AFFECTED EMPLOYEE WILL ONLY BE PROVIDED A SUMMARY OF THE INVESTIGATION;

(IV) THE DATE, TIME, AND LOCATION OF THE EMPLOYEE'S PRELIMINARY AND EVIDENTIARY HEARINGS;

(V) A DESCRIPTION OF THE CONSEQUENCES FOR FAILING TO RESPOND OR ATTEND; AND

(VI) A STATEMENT THE EMPLOYEE MAY BE REPRESENTED BY LEGAL COUNSEL AT THE EVIDENTIARY HEARING.

F. PRIOR TO OR SOON AFTER NOTIFICATION OF THE INTENT TO TERMINATE OR SUSPEND, THE MAYOR SHALL DETERMINE IF THE EMPLOYEE WILL BE ALLOWED TO CONTINUE WORKING OR BE PLACED ON SUSPENSION WITH PAY, PENDING THE INITIAL HEARING OUTCOME. IN THE CASE OF PAY REDUCTION, THE EMPLOYEE MAY MAINTAIN HIS/HER POSITION GRADE OR DESCRIPTION PENDING THE OUTCOME OF THE HEARINGS.

G. THE PRELIMINARY HEARING SHALL BE CONDUCTED BEFORE THE COUNCIL BY THE DEPARTMENT HEAD RECOMMENDING THE DISCIPLINARY ACTION AND/OR THE TOWN ADMINISTRATOR OR OTHER DESIGNEE IN THE FOLLOWING MANNER:

(1) THE CLOSED PRELIMINARY HEARING SHALL BE RECORDED.

(2) THE EMPLOYEE MAY WAIVE HIS OR HER RIGHT TO A PRELIMINARY HEARING AND MAY OTHERWISE PROVIDE A RESPONSE TO THE NOTIFICATION OF CHARGES OR BASIS FOR THE PROCEEDINGS IN WRITING. WITHOUT ADEQUATE PRIOR NOTICE, SHOULD AN EMPLOYEE WAIT UNTIL THE PRELIMINARY HEARING TO WAIVE HIS RIGHT TO SAID HEARING AND REQUEST TO PROCEED DIRECTLY TO AN EVIDENTIARY HEARING, THE COUNCIL MAY ELECT TO IMMEDIATELY HOLD THE FINAL HEARING, CONTINUE THE MATTER TO A LATER DATE OR CONTINUE WITH THE DATE PREVIOUSLY SET FORTH IN THE NOTICE.

(3) THE PRELIMINARY HEARING FUNCTIONS AS AN INITIAL CHECK AGAINST MISTAKEN DECISION AND ESSENTIALLY A DETERMINATION OF WHETHER THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE CHARGES

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AGAINST THE EMPLOYEE ARE TRUE AND SUPPORT THE PROPOSED ACTION.

- (4) THE EMPLOYEE SHALL BE GIVEN AN OPPORTUNITY TO PRESENT REASONS WHY THE PROPOSED ACTIONS SHOULD NOT BE TAKEN, AND THE EMPLOYEE MAY PRESENT HIS/HER SIDE OF THE STORY AND BE GIVEN THE OPPORTUNITY TO CLEAR UP ANY MISUNDERSTANDING OF THE CHARGES OR PERTINENT FACTS.
- (5) THE PRELIMINARY HEARING IS TO BE RELATIVELY BRIEF IN DURATION (I.E., 15 TO 45 MINUTES) AND IS NOT INTENDED TO RESOLVE ALL THE ISSUES, BUT MERELY TO GIVE THE EMPLOYEE AN OPPORTUNITY TO RESPOND TO THE BASIC FACTS UPON WHICH A CHARGE IS BASED, SINCE AN EVIDENTIARY HEARING WOULD STILL BE AVAILABLE TO ADDRESS MORE SUBTLE, INVOLVED OR COMPLEX ISSUES.
- (6) THE MEMBERS OF COUNCIL MAY ASK QUESTIONS IN ORDER TO UNDERSTAND THE EMPLOYEE'S RESPONSE OR THE RECOMMENDATION FOR DISCIPLINARY ACTION, BUT THE EMPLOYEE IS NOT SUBJECT TO CROSS-EXAMINATION AND NEED NOT ANSWER ELABORATE QUESTIONS. IF THE EMPLOYEE PROVIDES AN ALIBI, THE PRESIDING OFFICIAL SHOULD ASK FOR THE NAMES OF THE WITNESSES. THE PRESIDING OFFICIAL MAY ALSO ASK IF THE EMPLOYEE HAS ANY DEFENSES THAT THE EMPLOYEE WOULD LIKE THE COUNCIL TO CONSIDER.

H. THE EVIDENTIARY HEARING SHALL BE CONDUCTED OR PROSECUTED BEFORE THE COUNCIL BY THE DEPARTMENT HEAD RECOMMENDING THE DISCIPLINARY ACTION AND/OR THE TOWN ADMINISTRATOR OR OTHER DESIGNEE IN THE FOLLOWING MANNER:

- (1) THE CLOSED EVIDENTIARY HEARING SHALL BE RECORDED.
- (2) THE PROSECUTING OR PRESENTING OFFICIAL(S) SHALL STATE THE REASON(S) FOR THE DISCIPLINARY ACTION AND REVIEW RELEVANT SUPPORTING EVIDENCE INCLUDING ANY DOCUMENTATION.
- (3) THE EMPLOYEE SHALL BE AFFORDED AN OPPORTUNITY TO REFUTE THE REASON(S) FOR DISCIPLINARY ACTION AND ENTER INTO THE RECORD ANY RELEVANT DOCUMENTATION TO SUPPORT HIS/HER POSITION.

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(4) THE EMPLOYEE MAY PRESENT ANY CONTRARY OR MITIGATING EVIDENCE INCLUDING CALLING OR QUESTIONING EMPLOYEES OR OTHER WITNESSES PROVIDED THE SUBJECT EMPLOYEE REASONABLY REQUESTS THEIR PRESENCE AT THE HEARING IN ADVANCE.

- (1) SAID PRESENTING OR PROSECUTING OFFICIALS SHALL PRESENT THE CASE AND PROVE THE CHARGES BY A PREPONDERANCE OF THE EVIDENCE.
- (2) IF THE EMPLOYEE INDICATES THAT A DISABILITY WAS THE CAUSE OF THE CONDUCT AT ISSUE, THEN THE PERSONNEL OFFICER SHOULD SEEK A MEDICAL OPINION AS TO WHETHER THERE IS EVIDENCE OF DISABILITY AND WHETHER THE DISABILITY CAUSED THE MISCONDUCT. IF THE EVIDENCE SHOWS THAT MISCONDUCT IS DISABILITY CAUSED, THE TOWN MAY ABANDON THE DISCIPLINARY PROCESS AND ELECT TO MOVE TO A DISABILITY OR REASONABLE ACCOMMODATION REVIEW PROCESS. HOWEVER, SHOULD THE DISABILITY BE DEEMED TO HAVE CAUSED THE EMPLOYEE TO MAKE THREATS OF VIOLENCE OR ENGAGE IN VIOLENCE AGAINST COWORKERS OR OTHERS, THEN THE TOWN MAY NONETHELESS PROCEED WITH THE DISCIPLINE.
- (3) IF FURTHER INVESTIGATION PROVES THAT ADDITIONAL MISCONDUCT OR CHARGES OCCURRED, IT IS NECESSARY TO RESTART THE PRE-DISCIPLINARY PROCEDURAL DUE PROCESS WITH A NEW NOTICE OF INTENT THAT PROVIDES THE EMPLOYEE NOTICE OF THE ADDITIONAL MISCONDUCT AND CHARGES.
- (4) THE HEARINGS MAY BE CONTINUED AS NEEDED BY THE COUNCIL.

I. IF THE COUNCIL TAKES AN ADVERSE ACTION AGAINST THE EMPLOYEE, IT SHALL PLACE ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW INTO THE JOURNAL AND/OR ADOPT A RESOLUTION OF SAID FINDINGS REGARDING THE DISCIPLINARY MATTER.

J. THE EMPLOYEE SHALL BE NOTIFIED BY THE TOWN ADMINISTRATOR OR OTHER DESIGNEE, WITHIN FIVE (5) BUSINESS DAYS, OF THE RESULTS OF THE FINAL HEARING.

K. EXCEPT FOR THE CHIEF OF POLICE, THIS SECTION DOES NOT APPLY TO SWORN LAW ENFORCEMENT PERSONNEL.

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~~[6.60]~~6.70 SEAT BELT POLICY

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**AND BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon its passage.

PASSED this 1<sup>st</sup> Day of February, 2016.

ATTEST:

THE MAYOR AND COUNCIL OF THE  
TOWN OF FOREST HEIGHTS

*Signature on file*

\_\_\_\_\_  
Bonita Anderson, Town Clerk

*Signature on file*

By: \_\_\_\_\_  
Jacqueline Goodall, Mayor

*Signature on file*

By: \_\_\_\_\_  
C. Lynn Smith-Barnes, Council President

CERTIFICATION

I, hereby certify, as the duly appointed Town Clerk of the Town of Forest Heights, Maryland, that on the 1<sup>st</sup> day of February 2016 with 6 Aye votes and 0 Nay votes the aforesaid Resolution 06-16 passed.

*Signature on file*

\_\_\_\_\_  
Bonita Anderson, Town Clerk

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