

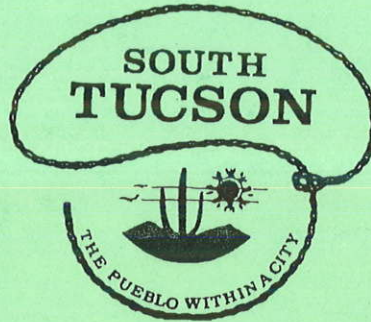
Chapter 17

**PERSONNEL\***

- Art. I. In General, §§ 17-1—17-15
- Art. II. Merit System, §§ 17-16—17-45
  - Div. 1. Generally, §§ 17-16—17-40
  - Div. 2. Merit System Commission, §§ 17-41—17-45

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\*Cross references—Officers and employees generally, § 2-51 et seq.; fire department, § 6-16 et seq.; police department, Ch. 18.  
State law reference—Overtime pay for public employees, A.R.S. § 23-391 et seq.



## CITY OF SOUTH TUCSON ORDINANCE NO: 12-03

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**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA RELATING TO PERSONNEL AND APPEALS TO THE MERIT SYSTEM COMMISSION; AMENDING CHAPTER 17, DIVISION 2, SECTIONS 17-45(e) and 17-45(g).**

**WHEREAS**, the City of South Tucson has established a merit system commission to hear appeals of employees that have been demoted, suspended or dismissed; and

**WHEREAS**, the City of South Tucson wishes to establish a new standard of "just cause" for the merit system commission to use in conducting appeals by employees and also desires to amend the process and time limit for appeals of the merit system commission's findings;

**NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, AS FOLLOWS:**

**SECTION 1.** The South Tucson City Code, Chapter 17, Division 2, Section 17-45(e) and Section 17-45(g) are hereby amended by as follows:

**Sec. 17-45 (e)**The commission shall not be bound by the technical rules of evidence prevailing in courts. If, after the hearing, the Commission determines that there was just cause for the action imposed, then the order shall be affirmed. If the Commission determines that there was not just cause for the action taken either: (1) because some or all of the charges were not proven to the satisfaction of the Commission; and/or (2) whether or not all of the charges were proven, the action imposed was, in the sole discretion of the Commission, too severe, then the order shall be revoked or modified. The Commission shall have the power to direct appropriate remedial action and shall do so after taking into consideration just and equitable relief to the employee in the best interest of the City and the public. (Ord. No. 12-2, 6-26-12, Ord. No. 83-6, § XII, 1-9-84)

**Sec. 17-45 (g)** Findings and decisions of the commission shall be final and shall be subject only to judicial review by special action to the Superior Court. The time limit for judicial review shall be thirty-five (35) days from the date of final decision by the merit system commission. (Ord. No. 12-2, 6-26-12, Ord. No. 83-6, § XII, 1-9-84)

**SECTION 2:** That Ordinance 12-02 of the City of South Tucson entitled "Amendments to South Tucson City Code, Chapter 17, Division 2, Section 17-45(e), 17-45(g)" is hereby adopted, an emergency is hereby declared and all ordinances or parts of ordinances in conflict herewith are hereby amended.

**SECTION 3:** That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance, the City of South Tucson, Arizona, hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase, irrespective of the fact that any sections, subsections, sentences, clauses and phrases be declared unconstitutional.

**SECTION 4:** That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of actions acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

**SECTION 5:** That the various City Officers and Official(s) and/or any other duly appointed deputy are authorized and directed to perform all acts necessary or desirable to give effect and to carry out all the duties authorized under this Ordinance and the City Code.

**SECTION 6:** That where this Ordinance conflicts or overlaps with any other Ordinance, Code provision or regulation, whichever imposes the more stringent restrictions for the health, safety and welfare of the public shall prevail.

**SECTION 7:** The City Clerk is ordered and directed to cause this Ordinance to be published and posted as required by the South Tucson City Code and by state law.

**SECTION 8:** The City Clerk shall attest to the adoption of this Ordinance and cause same to be maintained as a public record as required by law. This Ordinance shall become effective after posting and publication as required by law and passed and adopted by Mayor and Council.

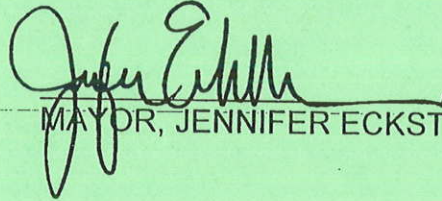
**SECTION 9:** The Ordinance shall be effective on June 26, 2012.

**SECTION 10:** The South Tucson City Code, Chapter 17, Division 2, Section 17-45(e) and 17-45(g) are hereby amended to the above. Any ordinance or parts of an ordinance or any part of the South Tucson City Code in conflict with the provisions of this

Ordinance are hereby repealed to the extent of such conflict as of the effective date hereof.

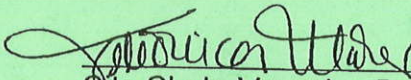
**PASSED, ADOPTED and APPROVED** by the Mayor and Council of the City of South Tucson, Arizona, this 26<sup>th</sup> day of June, 2012.

**APPROVED/EXECUTED**

  
MAYOR, JENNIFER ECKSTROM

ATTEST:

APPROVED AS TO FORM:

  
City Clerk, Veronica B. Moreno

  
City Attorney, Patrick Alan Moran, Esq.

## ARTICLE I. IN GENERAL

Secs. 17-1—17-15. Reserved.

## ARTICLE II. MERIT SYSTEM

### DIVISION 1. GENERALLY

#### Sec. 17-16. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Appointed official* means a person designated in section 17-18, paragraph (2).

*Classified status* means the status of an employee when employee is retained in a position of the classified service after the successful completion of the initial probation period.

*Eligible person* means a person who has attained passing score(s) on required personnel examination(s) for a specific position within the classified service and who meets the requirements of citizenship or the Immigration Reform and Control Act (IRCA Form I-9).

*Employee* means a person who works for the city and who is paid a wage, salary, or stipend from public monies in accordance with official entries on the payroll records of the city.

*Probation* means a specified period of employment following appointment, reemployment, transfer, promotion, or demotion. Probation is the final step in the examination process during which the work performance of an employee is evaluated.

*Promotion* means a change in the assignment of an employee from a position in one (1) class to a position in another class having a higher range of pay.

*Selecting authority* means the department head or the department head's duly authorized representative.

*Suspension* means the temporary separation of an employee from a position for disciplinary reasons without pay.

*Termination* means the involuntary separation of a person from city employment for cause other than an abolishment of a position, or termination of emergency provision, or temporary employment. (Ord. No. 83-6, § III, 1-9-84)

*Cross reference*—Definitions and rules of construction generally, § 1-2.

#### Sec. 17-17. Objectives.

(a) It is the objective of the merit system to inspire public confidence in the city's service, to assist the administrative officers of the city in the efficient performance of their tasks, and to afford employees in the classified service an opportunity for honorable and useful employment. To meet these ends, the merit system, its director, and all officers and employees of the city shall work toward:

- (1) The equality of opportunity for all qualified persons to compete for positions in the classified service.
- (2) Promotion therein on the basis of ability, loyalty and efficiency.
- (3) The orderly classification of duties, standardization of salaries, and uniformity of hours and conditions of employment.

(b) The objectives of the system of personnel administration and classification for the employees shall be carried out according to the principles of the merit system.

(Ord. No. 83-6, § II, 1-9-84)

#### Sec. 17-18. Scope.

The provisions of this article apply to all employees of the city except the following:

- (1) Elected officials and members of boards or commissions;
- (2) The following appointed officials:
  - a. The city manager.
  - b. The city attorney.
  - c. The city magistrate.
  - d. The city public defender.
  - e. The city clerk.
  - f. The police chief.
  - g. The fire chief.
  - h. The city public works director.
  - i. The director of public safety.
  - j. The director of the housing authority.

- (3) Volunteer personnel and personnel appointed to serve without pay.
  - (4) Consultants and experts rendering temporary professional service.
  - (5) Director of personnel.
  - (6) Temporary, emergency and probationary employees.
- (Ord. No. 83-6, § II, 1-9-84)

**Sec. 17-19. Compliance.**

All employees and department heads of the city shall conform to, comply with, and aid in carrying into effect the provisions of this article and any rules adopted pursuant to the provisions of this article.

(Ord. No. 83-6, § XVI, 1-9-84)

**Sec. 17-20. Status of present employees.**

Employees holding positions with the city who have rendered satisfactory service prior to the effective date of Ordinance No. 83-6 shall be continued in their classified status or as probationary employees.

(Ord. No. 83-6, § VIII, 1-9-84)

**Sec. 17-21. Personnel department and personnel director.**

(a) There is hereby established a personnel department, the executive head of which shall be the personnel director. The director shall be appointed by the city manager.

(b) The director who shall be responsible for performing personnel functions assigned to the department by the merit system commission.

(c) The city manager may choose to act in the capacity of the director with full authority to delegate such responsibility to others as deemed necessary.

(d) The personnel director is not a member of the classified service. The director shall be a person who has had experience in the field of public personnel administration and is in sympathy with generally accepted merit principles and public employment practices of the profession.

(e) The personnel director as executive head of the personnel department shall direct and supervise all of the department's assigned responsibilities. The director shall report to the city manager and, in addition to any and all duties which the city manager shall require, it shall be the duty of the director:

- (1) To attend meetings of the merit system commission and to act as its secretary and keep minutes of its proceedings.
- (2) To establish and maintain a roster of all employees in the service of the city in which there shall be set forth as to each employee the class title, pay or status and other pertinent data.
- (3) To appoint with the approval of the city manager such employees of the personnel department and such specialist assistance as may be necessary to carry out effectively the provisions of this article.
- (4) To develop in cooperation with the appointing authorities and others, programs for the improvement of employee effectiveness including training, health, counseling and welfare.
- (5) To review the operation and effect of this article and of the rules and to report the findings and recommendations to the merit system commission and the council.
- (6) To perform any other lawful acts which he may consider necessary or desirable to carry out the purposes and provisions of this article.

(Ord. No. 83-6, §§ IV(A), VII, 1-9-84)

**Sec. 17-22. Appointments and promotions generally.**

Except as otherwise provided, all appointments and promotions shall be made according to merit and fitness as ascertained by examinations given in accordance with the provisions of this article.

(Ord. No. 83-6, § II, 1-9-84)

**Sec. 17-23. Discrimination.**

No discrimination shall be exercised in any manner by a department head or city employee against or in favor of any applicant, eligible; or employee

because of political or religious opinions or affiliations, or because of age, handicap, race, sex, religious creed, national origin or ancestry by refusing to hire, employ or to ban a person or to discharge a person from employment, or discriminate against a person in compensation, or in termination conditions of privileges of employment, all as specified in A.R.S. tit. 41, ch. 9, art. 4 [§ 41-1401 et seq.].

(Ord. No. 83-6, § XIII, 1-9-84)

**Sec. 17-24. Veteran's preference.**

A veteran of the Army, Navy, Marine Corps and Coast Guard of the United States, holding an honorable discharge therefrom, and who qualifies under the United States Veteran's Administration or as defined in A.R.S. § 42-276 shall be accorded with preference set forth in A.R.S. tit. 38, ch. 3, art. 7 [§ 38-491 et seq.].

(Ord. No. 83-6, § XIV, 1-9-84)

**Sec. 17-25. Waiver or suspension of competitive examinations.**

(a) Competitive examinations for positions in the classified service may be suspended for a specified or an indefinite period, if the council and/or the merit system commission shall determine that it would be in the best interests of the city. Such suspension shall be limited to those positions or classes requiring peculiar or exceptional qualifications or those in which recruitment is so difficult that competition is impractical.

(b) Nothing in this section precludes the city manager from appointing any individual to any classified service position within the city for a period of sixty (60) days in an emergency. Any extension of an appointment beyond sixty (60) days shall require the approval of the council and the commission as provided in subsection (a) of this section.

(Ord. No. 83-6, § IX, 1-9-84)

**Sec. 17-26. Minimum qualifications.**

The minimum qualifications or standards provided for service and classified positions of the city shall not be less than those prescribed by law.

(Ord. No. 83-6, § X, 1-9-84)

**Sec. 17-27. Reprimand, suspension, demotion and dismissal.**

(a) A department head or the designated representative thereof, subject to any regulations issued by the council, may reprimand an employee in the classified service of the city under the department head's jurisdiction or suspend the employee, without pay or with reduced pay, for an aggregate period not exceeding ten (10) calendar days in any twelve-month calendar period. Additional days of suspension in a calendar year must be authorized by the city manager.

(b) The department head or the designated representative thereof, subject to any regulations issued by the council may demote an employee in the classified service of the city under the department head's jurisdiction to a position in a lower class or grade. The department head shall give the personnel director written notice of intention to effect such demotion before the date on which it is intended to become effective.

(c) A department head or the designated representative thereof, may dismiss any employee in the classified service of the city for cause if the good of the service will be served thereby. A permanent employee shall be given written notice of such dismissal and one (1) copy of the same shall be filed with the personnel director and one (1) copy of the same shall be filed with the council. The notice shall set forth the reasons for dismissal in sufficient detail to indicate whether the employee was discharged for misconduct, incompetency, or other reasons relating to the effective performance of duties and shall be prepared in such form and given in such manner as the personnel director prescribes. The name of any such employee dismissed for incompetency of any other reasons relating to the effective performance of duty shall be immediately removed from the eligible list in the office of the personnel director, subject, however, to reinstatement by the merit system commission.

(Ord. No. 83-6, § XI, 1-9-84)

**Secs. 17-28--17-40. Reserved.**

**DIVISION 2. MERIT SYSTEM COMMISSION**

**Sec. 17-41. Established.**

There is established a merit system commission. (Ord. No. 83-6, § IV(B), 1-9-84)

**Sec. 17-42. Members.**

(a) The merit system commission consists of five (5) members appointed from among adult residents or representatives of the business community of the city by the council for terms of four (4) years each. No member of the commission shall hold, or be a candidate for, any elective public office.

(b) Any one (1) of the following shall constitute the resignation of a commission member and authorize the council to appoint a new member to fill the unexpired term so vacated:

- (1) Absence from three (3) consecutive quarterly meetings.
- (2) Becoming a candidate for any elective public office.
- (3) Accepting any appointive office or employment in any state, county, city, town or local political subdivision.

(c) Members of the commission shall receive subsistence and travel expenses incurred while traveling from their places of residence to the place meetings are held or in the performance of other duties of the commission in the same manner as is provided by law for state officers. (Ord. No. 83-6, §§ IV(B), V(A), (C), (E), 1-9-84)

**Sec. 17-43. Meetings and officers.**

The merit system commission shall hold regular quarterly meetings and in addition, may hold such special meetings as the chairperson of the commission deems necessary. A chairperson and vice-chairperson shall be elected by the members of the commission in January of each year and the chairperson shall not be permitted to succeed himself or herself. Meetings of the commission shall be open to the public and executive sessions may be held as provided by law. (Ord. No. 83-6, § V(D), 1-9-84)

*State law references*—Open meetings, A.R.S. § 38-431.01; executive sessions, A.R.S. § 38-431.03.

**Sec. 17-44. Powers and duties.**

(a) The merit system commission may promulgate merit system rules for all employees of the city who are in the classified service. The merit system rules shall establish rules for examination, eligibility, classification, appointment, grievances, termination of city employees and other related matters as established in the merit system rules. It shall also make recommendations to the council with the advice and counsel of the city manager concerning pay, benefits, and other personnel matters for classified service employees of the city.

(b) The merit system commission, pursuant to recognized merit system principles of public employment, shall, with the advice and counsel of the city manager:

- (1) Classify or reclassify all positions occupied by employees of the city within each department of the government employing such employees. It shall also recommend schedules of salary and other compensation payable for such employee classification. Such recommendations shall be made to the council through the city manager.
- (2) Fix and refix standards and qualifications of all positions so classified.
- (3) Provide a plan for fair and impartial selection, appointment, retention and separation or removal from service by resignation or dismissal of all classified employees of the city.
- (4) Provide a plan for the promotion of city employees which shall give appropriate consideration to qualifications, record of performance, seniority and conduct in the appropriate department. Vacancies within a department shall be filled whenever possible by a promotion.
- (5) Adopt such rules and regulations as may be necessary for the orderly administration of the provisions of this article.
- (6) Review appeals from any order of any department head in connection with suspension, demotion or dismissal of a classified employee of the city. The commission's de-



termination thereon shall be final except on appeal as provided for in A.R.S. tit. 12, ch. 7, art. 6 [§ 12-901 et seq.].

- (7) Shall recommend to the council its views regarding classified service employees wages, vacation time, sick leave and other employee benefits. Such recommendations shall be submitted to the council, through the city manager, no later than March 31st of each year and shall be solely advisory in nature.
  - (8) Recommend rules and regulations governing the grant of leaves of absence without pay which shall be granted to all probationary and permanent employees who have or shall be called for terms of either voluntary or involuntary service in the Army, Navy, Marine Corps or other military forces of the United States.
- (Ord. No. 83-6, § VI, 1-9-84)

#### Sec. 17-45. Appeals.

(a) Any employee in the classified service who is demoted, suspended, or dismissed, may obtain a review of such action or alleged grievance by presenting a written appeal to the merit system commission. Such an appeal shall be filed with the personnel director within ten (10) days from the effective date of such demotion, suspension or dismissal or within ten (10) days of the completion of the discussion of the grievance with the department head whichever is later.

(b) A copy of such appeal shall be forwarded by the personnel director to the department head concerned. The commission shall thereupon assign a time and a place for a hearing and shall give notice thereof to all parties concerned. Within twenty (20) days from the filing of the appeal, the commission shall commence the hearing and either affirm, modify or revoke the order.

(c) The appellant may appear personally, produce evidence, have counsel and if requested by the appellant, demand a public hearing.

(d) Both the employee and the department head shall be notified within a reasonable time in advance of the date set for hearing. The commission, or hearing officer duly appointed by the com-

mission, shall conduct the hearing. The commission or the hearing officer shall keep a record of the hearing.

(e) The commission shall not be bound by the technical rules of evidence prevailing in courts. If after a hearing a majority of the commission determines that the action appealed from was arbitrary or taken without reasonable cause, the appeal shall be sustained; otherwise, the appeal shall be dismissed. The commission shall have the power to direct appropriate remedial action and shall do so after taking into consideration just and equitable relief to the employee and the best interests and effectiveness of the classified service.

(f) Within ten (10) days of a decision by the commission sustaining an appeal, the department head shall take such measures as are necessary to comply with the remedial action directed by the commission and shall render a report of such measures to the personnel director.

(g) Findings and decisions of the commission shall be final and shall be subject only to administrative review as provided in A.R.S. tit. 12, ch. 7, art. 6 [§ 12-901 et seq.].

(h) Matters involving examinations, compensations, schedules and class of positions may not be appealed under this section.

(i) An employee laid off or dismissed by reason of economy, lack of work, insufficient appropriations, change in departmental organization, or abolition of position may file an appeal with the commission only on the grounds that the order of lay off or dismissal has not been determined in accordance with this article or the rules of the commission.

(Ord. No. 83-6, § XII, 1-9-84)

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