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1 BEFORE THE BOARD OF COUNTY COMMISSIONERS

2 FOR THE COUNTY OF LINCOLN

3 Ordinance # 185

Lincoln County Legal Counsel

4 AN ORDINANCE AMENDING ORDINANCE NO. 155, CHAPTER SEVEN, GENERAL  
5 ADMINISTRATION, PERSONNEL MANAGEMENT, SECTION 7.315(4)(c) ET SEQ,  
AND DECLARING AN EMERGENCY

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8 The Lincoln County Board of Commissioners ORDAINS  
9 as follows:

10 Section 7.315(4)(c), et seq, of the Lincoln County  
11 Code shall be amended to read:

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14 [see following pages]  
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- (4) Kinds of disciplinary action follow:
- (a) An oral reprimand is a warning procedure rather than a punitive action and serves to caution the employe that corrective conduct is necessary to avoid a more severe form of discipline.
  - (b) A written reprimand is a formal warning action and places the employe on official notice that failure to correct conduct will result in more severe discipline.
  - (c) A suspension without pay may be imposed following oral or written reprimand. In the case of severe misconduct, an immediate suspension may be imposed. A suspension without pay shall not exceed 30 days at any one time. A suspended employe shall be notified in writing of the reasons for suspension. A suspended regular employe shall be afforded an opportunity to respond to reasons for suspension either during but no later than 10 days following conclusion of the suspension. Such response may be in writing or appearance before the appointing authority. A

(Rev. 10-6-82)

suspended employe may be represented by counsel or other person in such appearance before an appointing authority. Following the employe's response, the appointing authority may affirm or modify the order of suspension. No service credit may be acquired by an employe during the period of suspension.

"(d) Demotion, both in pay and in class, may be used as a form of discipline when discharge is not warranted or when the appointing power believes that the employe has the potential for correcting conduct.

"(e) A dismissal of a regular employe by an appointing power may be made for any of the causes listed in subsection (3) of this section. When an appointing power believes cause for dismissal exists, the appointing power shall give the employe whose dismissal is under consideration written notice of the pending action. Such notice shall be provided to the employe at least 10 days prior to the intended effective date and shall include:

(A) a statement of improper conduct, inadequate performance, or other cause for

discipline engaged in by the employe; and

(B) a statement that dismissal is being considered as a possible sanction to the stated improper conduct, inadequate performance, or other cause; and

(C) a statement of the time and place that the appointing authority is scheduling a hearing within the period of notice to provide the employe an opportunity to respond to the stated charges of cause. The employe may be represented by counsel or other person or may respond to the charges in writing in lieu of appearing at such hearing.

The appointing power may suspend an employe without pay during the time of response to a notice that dismissal is under consideration if the appointing power believes the good of the service requires the immediate removal of the employe.

An employe may then be dismissed if:

(A) the employe has appeared at the

hearing in response to the statements in the notice that dismissal is under consideration and the employe's response has been received and reviewed by the appointing power; or

- (B) the employe has responded in writing to the notice of pending dismissal; or
- (C) the employe has chosen not to respond to the statements in the notice within the stated time that dismissal was under consideration.

If the appointing power's conclusion on the matter is to dismiss the employe, written notice of such action shall be forwarded to the employe setting forth the cause for dismissal and the effective date. Should the appointing power deem that dismissal is not called for, the appointing power may impose a lesser form of discipline or may provide full reinstatement.

"(5) Appeals of suspension and dismissal to Board:  
Filing of appeals must be in accordance with  
these rules:

- (a) Any regular employe who is suspended and/or dismissed, shall have the right to appeal such action to the Board. Notice of appeal must be filed with the Board not later than 10 days after the conclusion of the suspension or effective date of the dismissal. The appeal must be in writing and must contain a detailed statement specifying:
- (A) the disciplinary action being appealed;
  - (B) the reasons why the employe believes the action was not in good faith, for cause, or was in error.

An employe may waive the right to a hearing and appeal the action on the basis of the employment record.

- (b) Appeals shall be considered filed when received by the Board. Filing of an appeal shall not operate to stay the imposition and effect of any disciplinary sanctions. At any time during the course of the appeal and hearing procedure, the Board may order an investigation into the merits of the

disciplinary action, the results of which shall be made available to the employe and appointing power. An employe filing a disciplinary appeal shall have access to his/her employment file upon reasonable notice to the personnel office.

- (c) The time and place of a disciplinary hearing will be set by the Board and written notice thereof sent by registered or certified mail or shall be hand delivered to employe and appointing power at least 10 days prior to the hearing date. Hearings on appeals of disciplinary actions will be set no later than 30 days from the date of filing the appeal. A hearing before the Board will be public unless a private hearing is requested in writing by the employe. In the event a private hearing is requested, the hearing shall be conducted as an executive session pursuant to ORS 192.660, et seq.

- (d) Postponement of a hearing before the Board may be permitted for good cause, which includes, but is not limited to:
  - (A) illness of employe;
  - (B) lack of quorum of Board members due to illness or excused absence;
  - (C) the gathering of additional evidence.
- (e) General procedure for conducting hearings:
  - (A) The Board will open the hearings with a brief introduction of parties and issues and may make provisions for a record of the hearing.
  - (B) The parties may make opening statements.
  - (C) The parties may call witnesses and present evidence in support of their respective positions. Each party or witness offering testimony shall take an oath or affirmation to tell the truth prior to testifying.
  - (D) The Board may ask questions of any party or witness at any time during the hearing.
  - (E) Each party shall be allowed the opportunity to cross examine opposing witnesses and parties.

- (F) The parties may make closing arguments.
  - (G) The rules of evidence shall be informal and hearsay evidence shall be allowed.
  - (H) The parties to the hearing may be represented by counsel or other person.
  - (I) All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to observe this rule may result in expulsion from the hearing.
  - (J) During the course of a hearing, the Board may provide for conferences between the parties, the stipulation of facts, continuances, and may receive and act upon motions.
- (e) Board findings and orders:
- (A) At the conclusion of the presentation of evidence or closing arguments, the Board shall deliberate and reach a decision to affirm, modify, or deny the disciplinary action. The Board's decision shall be based upon a determination of whether the appointing

power's decision was based upon substantial evidence, whether the employe's conduct was in substantial compliance with the personnel rules, and whether the disciplinary sanction is proportionate to the severity of the infraction and consistent with the personnel rules.

- (B) In the event the Board denies or modifies disciplinary action, it may order reinstatement of the employe and other appropriate relief or sanction. Unless otherwise ordered by the Board, a reinstated employe shall retain continuous seniority and other rights appurtenant to his/her employe class.
- (C) Within seven days of the Board's decision on an appeal, it shall prepare specific written findings of fact, conclusions of law, and a statement of its reasoning in reaching its decision. A copy of the document shall be forwarded to the parties to the appeal and included in employe's personnel file.

