

**TOWN OF GEORGETOWN
ORDINANCE NO. 09**

**DUE PROCESS FOR GEORGETOWN
EMPLOYEES AND WORKERS**

WHEREAS, THE TOWN COUNCIL BELIEVES IT MUST SET AN EXAMPLE IN ITS FAIR DEALINGS WITH EMPLOYEES AND WORKERS, AND

WHEREAS, THE TOWN COUNCIL SUBSCRIBES TO THE BELIEF IN THE DIGNITY OF ALL ITS WORKERS, AND

WHEREAS, THE TOWN COUNCIL WISHES TO STRENGTHEN THE MORALE OF ALL ITS WORKERS, AND

WHEREAS, THE TOWN COUNCIL BELIEVES IN THE DUE PROCESS RIGHTS OF ALL ITS CITIZENS AND WORKERS, AND

WHEREAS, THE TOWN COUNCIL DERIVES ITS POWERS UNDER THE STATUTES OF THE STATE OF INDIANA, AND

WHEREAS, THE TOWN COUNCIL DERIVES ITS FURTHER POWERS UNDER THE CONSTITUTIONS OF THE STATE OF INDIANA AND THE UNITED STATES,

THE TOWN COUNCIL OF GEORGETOWN NOW ORDAINS AND ESTABLISHES THIS ORDINANCE FOR THE DUE PROCESS PROTECTION OF ALL ITS WORKERS AND EMPLOYEES.

**SECTION 1
APPLICATION OF THIS ORDINANCE**

A. THIS ORDINANCE SHALL APPLY TO ALL EMPLOYEES AND WORKERS WHO RECEIVE PAY FROM ANY FUND OPERATED BY THE TOWN OF GEORGETOWN OR ITS ASSOCIATED AGENCIES OR DEPARTMENTS. THIS INCLUDES, BUT IS NOT LIMITED TO, SEWAGE, GARBAGE, POLICE, STREET, AND ANY OTHER AGENCIES AND DEPARTMENTS UNDER THE

JURISDICTION OF THE TOWN OF GEORGETOWN. THIS ORDINANCE DOES NOT INCLUDE THE CLERK/TREASURER, OR THE OFFICE OF THE CLERK/TREASURER.

B. THE TOWN MARSHALL AND THE TOWN MANAGER MAY HIRE (PROVIDED THE TOWN COUNCIL HAS APPROVED AND FUNDED A POSITION) AND DISMISS ANY WORKER UNDER THEIR RESPECTIVE JURISDICTIONS.

C. PROVIDED, HOWEVER, THAT SUCH HIRING DOES NOT DISCRIMINATE AGAINST ANY PERSON BECAUSE OF THE PERSON'S RACE, RELIGION, COLOR, AGE, DISABILITY OR ANY OTHER SUCH UNREASONABLE BIAS.

D. THE TOWN MARSHALL AND THE TOWN MANAGER MAY DISMISS ANY WORKER UNDER THEIR RESPECTIVE JURISDICTIONS.

E. PROVIDED, HOWEVER, SUCH DISMISSAL DOES NOT DISCRIMINATE AGAINST ANY PERSON BECAUSE OF THE PERSON'S RACE, RELIGION, COLOR, AGE, DISABILITY, OR ANY OTHER SUCH UNREASONABLE BIAS.

PROVIDED FURTHER, THAT SUCH DISMISSAL IS NOT ARBITRARY AND CAPRICIOUS, OR UNREASONABLE.

SECTION 2 APPEAL OF HIRING OR DISMISSAL

A. ANY WORKER, OR APPLICANT UNDER THIS ORDINANCE MAY APPEAL A FAILURE TO BE HIRED OR A DISMISSAL.

B. THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE TOWN MARSHALL OR TOWN MANAGER ACTED PROPERLY.

SECTION 3
APPEAL PROCEDURE

A. THE TOWN COUNCIL SHALL SET UP A COMMITTEE OF HUMAN RESOURCES THAT SHALL CONSIST OF THE TOWN COUNCIL PRESIDENT AND THE VICE-PRESIDENT.

B. THE WORKER SHALL MAKE HIS APPEAL WITHIN TEN (10) DAYS OF THE FAILED HIRING OR DISMISSAL. THE APPEAL MUST BE IN WRITTEN FORM AND PRESENTED TO THE TOWN COUNCIL PRESIDENT. THE APPEAL MUST BE SENT TO THE TOWN COUNCIL BY CERTIFIED MAIL WITH A RETURN RECEIPT THROUGH THE U.S. MAIL. IN ADDITION, THE COMMITTEE SHALL OBSERVE THE PROCEDURES OF INDIANA CODE § 36-8-3-4, ATTACHED HERETO, AND INCORPORATED HEREIN BY REFERENCE AS EXHIBIT A, IN RESPECT TO ALL FULL TIME QUALIFIED LAW ENFORCEMENT OFFICERS. FURTHER, THE COMMITTEE SHALL OBSERVE THE REQUIREMENTS OF INDIANA CODE § 36-5-2-13, ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AS EXHIBIT B, IN REGARD TO ALL OTHER TOWN EMPLOYEES.

C. THE COMMITTEE SHALL HAVE A CONFERENCE WITH THE WORKER AT WHICH TIME THE WORKER MAY PRESENT HIS EVIDENCE AND CASE TO THE COMMITTEE.

D. THE COMMITTEE SHALL HEAR THE EVIDENCE PRESENTED AND SHALL DECIDE WHETHER THERE SHOULD BE A FULL HEARING BEFORE THE TOWN COUNCIL.

E. UPON THE RECEIPT OF SUCH APPEAL THE COMMITTEE SHALL MEET WITH THE WORKER WITHIN FIFTEEN (15) DAYS OF RECEIVING THE SAID APPEAL.

F. THE WORKER MUST SUCCINCTLY OUTLINE WHY THE FAILURE TO HIRE OR THE DISMISSAL WAS A VIOLATION OF THIS ORDINANCE.

G. THE COMMITTEE SHALL MAKE A DECISION ON THE FAILURE TO HIRE OR THE DISMISSAL WITHIN TEN (10) DAYS OF THE HEARING.

H. THE WORKER MAY APPEAL THE COMMITTEE'S DECISION TO THE FULL TOWN COUNCIL, WITHIN TEN (10) DAYS OF THE RECEIPT OF THE COMMITTEE'S DECISION. THE APPEAL MUST BE IN WRITING AND SENT BY CERTIFIED MAIL WITH A RETURN RECEIPT AS OUTLINED IN SECTION B ABOVE.

I. THE TOWN COUNCIL, AFTER CONSULTATION WITH THE COMMITTEE, MAY AGREE TO HEAR THE APPEAL OR NOT. THE TOWN COUNCIL SHALL NOTIFY THE WORKER OF ITS DECISION TO HEAR THE CASE OR NOT TO HEAR THE CASE WITHIN FORTY-FIVE (45) DAYS. THE PROCEDURE OF NOTIFICATION SHALL BE AS OUTLINED ABOVE.

SECTION 4 **DEFINITIONS**

A. "WORKER" AND "EMPLOYEE" ARE DEFINED AS ANYONE RECEIVING WAGES OR MONIES IN EXCHANGE FOR WORK, EXCEPT INDEPENDENT CONTRACTORS.

B. "TOWN COUNCIL" IS THE DULY ELECTED TOWN BOARD OF THE TOWN OF GEORGETOWN WHICH ACTS AS A LEGISLATIVE BODY OF THE TOWN OF GEORGETOWN.

C. "COMMITTEE OF HUMAN RESOURCES" IS THE BODY SET UP TO LISTEN TO APPEALS FROM WORKERS IN THE EMPLOY OF THE TOWN OF GEORGETOWN, ALSO REFERRED AS COMMITTEE.

D. "LAW ENFORCEMENT OFFICER" IS DEFINED AS A FULL TIME EMPLOYEE OF GEORGETOWN WHO HAS SUCCESSFULLY COMPLETED A REQUIRED LAW ENFORCEMENT OFFICER TRAINING COURSE AT THE INDIANA LAW ENFORCEMENT ACADEMY AND HAS BEEN EMPLOYED BY GEORGETOWN FOR AT LEAST SIX (6) MONTHS.

E. "APPLICANT" IS ANYONE APPLYING FOR FULL OR PART TIME EMPLOYMENT WITH THE TOWN OF GEORGETOWN.

SO ORDAINED AND PASSED THIS 23 DAY OF
FEBRUARY, 2006.

Gary L Smith
GARY SMITH, PRESIDENT

Jeff Mc Caffrey
JEFF MC CAFFREY, VICE-
PRESIDENT

Jay Davis
JAY DAVIS, MEMBER

Chris Carter
CHRIS CARTER, MEMBER

ATTEST:

Dean Hammersmith
DEAN HAMMERSMITH, MEMBER

Doug Cook
DOUG COOK, CLERK-
TREASURER

IC 36-8-3-4

West's Annotated Indiana Code Currentness
 Title 36. Local Government (Refs & Annos)

Article 8. Public Safety

Chapter 3. Safety Boards; Disciplinary Procedures

36-8-3-4 Police officers and firefighters; discipline, demotion and dismissal; hearings; appeals; administrative leave

Sec. 4. (a) This section also applies to all towns and townships that have full-time, paid police or fire departments. For purposes of this section, the appropriate appointing authority of a town or township is considered the safety board of a town or township. In a town with a board of metropolitan police commissioners, that board is considered the safety board of the town for police department purposes.

(b) Except as provided in subsection (m), a member of the police or fire department holds office or grade until the member is dismissed or demoted by the safety board. Except as provided in subsection (n), a member may be disciplined by demotion, dismissal, reprimand, forfeiture, or suspension upon either:

- (1) conviction in any court of any crime; or
- (2) a finding and decision of the safety board that the member has been or is guilty of any one (1) or more of the following:
 - (A) Neglect of duty.
 - (B) A violation of rules.
 - (C) Neglect or disobedience of orders.
 - (D) Incapacity.
 - (E) Absence without leave.
 - (F) Immoral conduct.
 - (G) Conduct injurious to the public peace or welfare.
 - (H) Conduct unbecoming an officer.
 - (I) Another breach of discipline.

The safety board may not consider the political affiliation of the member in making a decision under this section. If a member is suspended or placed on administrative leave under this subsection, the member is entitled to the member's allowances for insurance benefits to which the member was entitled before being suspended or placed on administrative leave. In addition, the local unit may provide the member's allowances for any other fringe benefits to which the member was entitled before being suspended or placed on administrative leave.

(c) Before a member of a police or fire department may be suspended in excess of five (5) days without pay, demoted, or dismissed, the safety board shall offer the member an opportunity for a hearing. If a member desires a hearing, the member must request the hearing not more than five (5) days after the notice of the suspension, demotion, or dismissal. Written notice shall be given either by service upon the member in person or by a copy left at the member's last and usual place of residence at least fourteen (14) days before the date set for the hearing. The hearing conducted under this subsection shall be held not more than thirty (30) days after the hearing is requested by the member, unless a later date is mutually agreed upon by the parties. The notice must state:

- (1) the time and place of the hearing;
- (2) the charges against the member;
- (3) the specific conduct that comprises the charges;
- (4) that the member is entitled to be represented by counsel;
- (5) that the member is entitled to call and cross-examine witnesses;
- (6) that the member is entitled to require the production of evidence; and
- (7) that the member is entitled to have subpoenas issued, served, and executed in the county

where the unit is located.

If the corporation counsel or city attorney is a member of the safety board of a city, the counsel or attorney may not participate as a safety board member in a disciplinary hearing concerning a member of either department. The safety board shall determine if a member of the police or fire department who is suspended in excess of five (5) days shall continue to receive the member's salary during the suspension.

(d) Upon an investigation into the conduct of a member of the police or fire department, or upon the trial of a charge preferred against a member of either department, the safety board may compel the attendance of witnesses, examine them under oath, and require the production of books, papers, and other evidence at a meeting of the board. For this purpose, the board may issue subpoenas and have them served and executed in any part of the county where the unit is located. If a witness refuses to testify or to produce books or papers in the witness's possession or under the witness's control, IC 36-4-6-21 controls to the extent applicable. The proper court may compel compliance with the order by attachment, commitment, or other punishment.

(e) The reasons for the suspension, demotion, or dismissal of a member of the police or fire department shall be entered as specific findings of fact upon the records of the safety board. A member who is suspended for a period exceeding five (5) days, demoted, or dismissed may appeal the decision to the circuit or superior court of the county in which the unit is located. However, a member may not appeal any other decision.

(f) An appeal under subsection (e) must be taken by filing in court, within thirty (30) days after the date the decision is rendered, a verified complaint stating in concise manner the general nature of the charges against the member, the decision of the safety board, and a demand for the relief asserted by the member. A bond must also be filed that guarantees the appeal will be prosecuted to a final determination and that the plaintiff will pay all costs adjudged against the plaintiff. The bond must be approved as bonds for costs are approved in other cases. The unit must be named as the sole defendant, and the plaintiff shall have a summons issued as in other cases against the unit. Neither the safety board nor the members of it may be made parties defendant to the complaint, but all are bound by service upon the unit and the judgment rendered by the court.

(g) In an appeal under subsection (e), no pleading is required by the unit to the complaint, but the allegations are considered denied. The unit may file a motion to dismiss the appeal for failure to perfect it within the time and in the manner required by this section. If more than one (1) person was included in the same charges and in the same decision of dismissal by the safety board, then one (1) or more of the persons may join as plaintiffs in the same complaint, but only the persons that appeal from the decision are affected by it. The decision of the safety board is final and conclusive upon all persons not appealing. The decision appealed from is not stayed or affected pending the final determination of the appeal, but remains in effect unless modified or reversed by the final judgment of the court.

(h) A decision of the safety board is considered prima facie correct, and the burden of proof is on the party appealing. All appeals shall be tried by the court. The appeal shall be heard de novo only upon any new issues related to the charges upon which the decision of the safety board was made. The charges are considered to be denied by the accused person. Within ten (10) days after the service of summons the safety board shall file in court a complete transcript of all papers, entries, and other parts of the record relating to the particular case. Inspection of these documents by the person affected, or by the person's agent, must be permitted by the safety board before the appeal is filed, if requested. Each party may produce evidence relevant to the issues that it desires, and the court shall review the record and decision of the safety board upon appeal.

(i) The court shall make specific findings and state the conclusions of law upon which its decision is made. If the court finds that the decision of the safety board appealed from should in all things be affirmed, its judgment should state that, and judgment for costs shall be rendered against the party appealing. If the court finds that the decision of the safety board appealed from should not be affirmed in all things, then the court shall make a general finding, setting out sufficient facts to show the nature of the proceeding and the court's decision on it. The court shall either:

- (1) reverse the decision of the safety board; or
- (2) order the decision of the safety board to be modified.

(j) The final judgment of the court may be appealed by either party. Upon the final disposition of the appeal by the courts, the clerk shall certify and file a copy of the final judgment of the court to the safety board, which shall conform its decisions and records to the order and judgment of the court. If the decision is reversed or modified, then the safety board shall pay to the party entitled to it any salary or wages withheld from the party pending the appeal and to which the party is entitled under the judgment of the court.

(k) Either party shall be allowed a change of venue from the court or a change of judge in the same manner as such changes are allowed in civil cases. The Indiana Rules of Trial Procedure govern in all matters of procedure upon the appeal that are not otherwise provided for by this section.

(l) An appeal takes precedence over other pending litigation and shall be tried and determined by the court as soon as practical.

(m) Except as provided in IC 36-5-2-13, the executive may reduce in grade any member of the police or fire department who holds an upper level policy making position. The reduction in grade may be made without adhering to the requirements of subsections (b) through (l). However, a member may not be reduced in grade to a rank below that which the member held before the member's appointment to the upper level policy making position.

(n) If the member is subject to criminal charges, the board may place the member on administrative leave until the disposition of the criminal charges in the trial court. Any other action by the board is stayed until the disposition of the criminal charges in the trial court. An administrative leave under this subsection may be with or without pay, as determined by the board. If the member is placed on leave without pay, the board, in its discretion, may award back pay if the member is exonerated in the criminal matter.

IC 36-5-2-13

West's Annotated Indiana Code Currentness
Title 36. Local Government (Refs & Annos)
 *Article 5. Government of Towns
 *Chapter 2. Town Legislative Body and Executive
 ➔**36-5-2-13 Removal of town employee**

Sec. 13. The town executive must have the approval of a majority of the town council before the executive may discharge, reduce in grade under IC 36-8-3-4, or remove a town employee.

