NORTHWEST ARCTIC BOROUGH ASSEMBLY
ORDINANCE 16-06

AN ORDINANCE OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY AMENDING TITLE 3 TO PROVIDE FOR INDEPENDENT HEARING OFFICER REVIEW OF CERTAIN EMPLOYMENT ACTIONS AND FOR RELATED PURPOSES.

WHEREAS: the Borough Assembly wishes to amend Chapters 3.40 and 3.48, and adopt Chapter 3.52 to provide for Independent Hearing Officer review of employee grievances and disciplinary actions in the place of Personnel Committee review; and

WHEREAS: the Assembly has determined that it is in the Borough’s best interest to provide for independent review of disciplinary actions as outlined in this Ordinance.

NOW THEREFORE BE IT ENACTED BY THE NORTHWEST ARCTIC BOROUGH ASSEMBLY:

Section 1: Chapter 3.40 of the Borough Code is amended as follows, with additions indicated by underline in blue and deletions by strikethrough in red:

3.40.050 Record and notice of disciplinary action.

A. All forms of disciplinary action, except verbal admonishments, must:

1. Be in writing;
2. State the full circumstances surrounding the incident, such as:
   a. The nature of the incident;
   b. The date, time and location of the incident; and
   c. Witness statements;
3. The precise discipline administered; and
4. Contain a notation requesting the employee’s comments.

B. Written records of verbal warnings shall be prepared by the employee’s supervisor and a copy given to the employee as soon as practicable following the warning.
C. Before an employee may be dismissed, demoted with a reduction in pay, or suspended without pay, the employee shall be given written notice of the intent to discipline containing the information required by subsection (A) of this section. The notice shall also contain notice of the employee's right to request an interview with the personnel officer or a hearing before an independent hearing officer the personnel committee in accordance with NABC 3.40.060. If the employee is unavailable, the notice shall be given by mail.

D. If immediate disciplinary action was taken pursuant to NABC 3.40.030(C), the employee shall be given written notice in accordance with subsection (A) of this section within three working days of the date the disciplinary action was taken.

E. A copy of the action shall be placed in the employee's personnel file, after the individual has acknowledged receipt by signature, or refused receipt, which refusal shall be acknowledged by the personnel officer.

3.40.060 Pre-disciplinary interview and hearing.

A. An employee may request an informal interview with the personnel officer for the purpose of reviewing the circumstances giving rise to the proposed disciplinary action. At the interview the employee shall be given the information regarding the action, and given an opportunity to respond if desired. At the conclusion of the interview, the personnel officer will advise the employee of the decision to rescind the proposed disciplinary action, to impose a lesser form of discipline, or to proceed with the disciplinary action as originally proposed. A written notation of this decision shall be made and a copy given to the employee.

B. An employee may request a pre-disciplinary hearing before an independent hearing officer the personnel committee established appointed under NABC 3.04.070, 3.52.010 only by submitting a written request to the employee's department head, no later than 5:00 p.m. on the tenth calendar day following the day on which the employee received the notice of intent to discipline, the date of mailing such notice, or the date of the interview with the personnel officer pursuant to this section, whichever is later. Failure of the employee to timely submit written notice shall constitute a waiver of the employee's right to a pre-disciplinary hearing.

C. The independent hearing officer personnel committee shall schedule a pre-disciplinary hearing no later than the fifteenth calendar day after receipt of a written request by the employee. The pre-disciplinary hearing shall be held only if the employee submits a timely written request as provided above.

D. Existing pay status shall not be provided beyond the fifteenth day if the employee or the employee's representative requests and is granted an extension of the hearing date for any reason. If the borough requests and is granted an extension of the hearing date for any reason, the employee shall be continued in pay status.
E. The hearing before the independent hearing officer personnel committee shall be recorded and such recording, together with any documentary evidence submitted to the independent hearing officer personnel committee, shall form the record of the hearing.

F. Both the affected employee and a representative of borough management may exercise the following rights at the hearing:

1. To testify;

2. To present witnesses and other evidence;

3. To cross-examine witnesses;

4. To be represented by a person of their choice at their own expense.

G. The independent hearing officer personnel committee may exercise independent judgment as to the weight of the evidence on legal issues raised by the parties. The employer shall prove the existence of just cause to discipline the employee by a preponderance of the evidence presented.

H. The independent hearing officer personnel committee shall issue a written decision no later than seven calendar days after the close of the hearing. The decision shall include a clear and precise statement of the reason for the decision.

I. The independent hearing officer personnel committee may affirm the disciplinary action, or impose a lesser disciplinary action, or prohibit the imposition of discipline against the employee for incidents examined at the hearing.

J. The affected employee may appeal the independent hearing officer's personnel committee pre-disciplinary decision by filing a written notice of appeal with the Alaska Superior Court in accordance with the Alaska Rules of Civil Procedure within 30 days after the employee's receipt of the personnel committee's independent hearing officer's decision.

Section 2: Chapter 3.48 of the Borough Code is amended as follows, with additions indicated by underline in blue and deletions by strikethrough in red:

3.48.030 Steps for handling of grievance.

The grievance of any employee shall be handled in the following manner, each step to be taken only if satisfactory adjustment cannot be obtained on the previous level. If the grievance is of a personal nature such that it would cause undue embarrassment
or seem fruitless in the employee's efforts, the employee may skip that step. However, no more than one step may be skipped and the employee must state in writing the personal nature of the grievance to the next level supervisor. It is the employee's responsibility to appeal to the next step within five days of the decision on the previous step. The employee's failure to process a grievance within the time limits shall constitute a termination of the grievance.

A. Step 1: to the employee's immediate supervisor. The employee shall discuss the grievance with the employee's immediate supervisor. If the grievance cannot be resolved informally through discussion, it shall then be reduced to writing as a formal grievance, and the written grievance shall be submitted to the department head. The written grievance must be submitted within 15 calendar days of the date that the employee knows or has reason to know of the conduct or actions upon which the grievance is based. The written grievance must describe the actions or omissions that are alleged to constitute improper conduct by the borough and must indicate the rule or rules that have allegedly been misapplied, misinterpreted or violated by the borough.

B. Step 2: to the department head. The department head must meet with the parties and render a written decision to the grievant within 10 calendar days of receipt of the grievance. If the employee fails to appeal the department head's decision within five calendar days, such failure to respond will serve to declare the grievance as settled based upon the department head's decision.

C. Step 3: to the personnel officer. Within five calendar days of receipt of the decision in Step 2, the grievant may appeal to the personnel officer who shall meet with the parties and within 10 calendar days render a written decision to the grievant. The decision of the personnel officer shall be binding upon the parties.

D. Upon receipt of the personnel officer's decision, the employee shall have five calendar days in which to submit a written request for review by the independent hearing officer personnel committee. If the employee fails to file a written request for review within the five calendar days, such failure will serve to declare the grievance as settled based upon the personnel officer's decision. The decision of the independent hearing officer personnel committee shall be final and binding upon the parties.

Section 3: Chapter 3.52 of the Borough Code is adopted as follows:

Chapter 3.52
INDEPENDENT HEARING OFFICERS

Sections:

Ord. 16-06 NABC Title 3
3.52.010 Appointment.

When required under this title, the Mayor will appoint an independent hearing officer.

3.52.020 Qualifications.

An independent hearing officer must be an attorney licensed to practice law in the State of Alaska, or have training and experience in arbitration, mediation, or employment law. An independent hearing officer may not hold any other appointed or elected office or position with the Borough.

3.52.030 Compensation.

An independent hearing officer will receive compensation on a prorated hourly rate. An independent hearing officer will also receive compensation for reasonable expenses incurred in carrying out the duties of this Chapter.

3.52.040 Duties.

Independent hearing officers shall have jurisdiction over appeals from the personnel officer’s decision as described in Chapters 3.40 and 3.48 of this Code.

3.52.050 Conflict of Interest.

An independent hearing officer shall not hear a case in which the officer has a conflict of interest. Conflict of interest is defined in Chapter 2.36 of this Code.

3.52.060 Ex Parte Communications.

A. An independent hearing officer acts in a quasi-judicial capacity and must not engage in ex parte communications concerning an appeal with Borough employees, interested parties, members of the Assembly, the appellant, or any parties associated with the decision pertaining to the appeal.
B. If an ex parte communication occurs, the independent hearing officer must disclose the communication on the record prior to rendering a decision. The independent hearing officer shall only take information brought forward in an appropriate manner into consideration.

Section 4: This Code Ordinance shall be effective immediately.

PASSED AND ADOPTED THIS 24th DAY OF January 2016.

[Signature]
Carl Weisner, Assembly President

PASSED AND APPROVED THIS 24th DAY OF January 2016.

[Signature]
Clement Richards, Sr., Mayor

SIGNED AND ATTESTED TO THIS 24th DAY OF January 2016.

[Signature]
Stella Atoruk, Borough Clerk

ATTEST:

First Reading: October 25, 2016
Second Reading: January 14, 2016