



**CITY COUNCIL
ATLANTA, GEORGIA**

22-O-1290

AN ORDINANCE BY COUNCILMEMBER LILIANA BAKHTIARI AS AMENDED BY FINANCE/EXECUTIVE COMMITTEE TO AMEND CHAPTER 114, ARTICLE VI, DIVISION 3, SECTION 114-550 OF THE CITY OF ATLANTA CODE OF ORDINANCES TO PROVIDE THAT WHERE THE CIVIL SERVICE BOARD APPEAL HAS NOT BEEN COMMENCED WITHIN 18 MONTHS AFTER RECEIPT OF THE NOTICE OF APPEAL, THE ADVERSE ACTION WHICH IS THE SUBJECT OF THE APPEAL SHALL BE DISMISSED WITHOUT PREJUDICE AND THE EMPLOYEE SHALL THEREAFTER BE ENTITLED TO “BACK-PAY” AND OTHER RELIEF AFFORDED BY SECTION 114-553(C) OF THE CITY CODE, IN ORDER TO PROVIDE AN INCENTIVE TO ELIMINATE UNDUE DELAY IN PROVIDING EMPLOYEES WITH THEIR CIVIL SERVICE BOARD HEARINGS; TO PROVIDE THAT WHEN AN ADVERSE ACTION IS DISMISSED IN ACCORDANCE WITH THIS AMENDMENT, THE CITY OF ATLANTA MAY RE-IMPOSE THE ADVERSE ACTION SO DISMISSED WITHIN 6 MONTHS OF THE DATE OF DISMISSAL PURSUANT TO THE PROCEDURES SET FORTH IN ARTICLE VI, DIVISION 3 OF CHAPTER 114 OF THE CITY CODE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to Section 114-546(1) of the City of Atlanta Code of Ordinances (City Code), “[a]ny nonprobationary employee in the classified service or any nonprobationary sworn officer of the department of police who holds the rank of lieutenant or below that of lieutenant or sworn officer of the department of fire who holds the rank of captain or any rank below that of captain shall have the right to file an appeal of an adverse action, i.e., suspension, demotion or dismissal, to the civil service board pursuant to the procedures set forth in [the City Code]; and

WHEREAS, pursuant to City Code Section 114-550(1), civil service board hearings “shall be held within 60 days after receipt of the notice of appeal by the commissioner of human resources”; and “[a]ny hearing officer/panel shall have the authority to postpone or to continue a hearing upon its own motion or upon the motion of either party”; and

WHEREAS, despite the direction that Civil Service Board hearing shall be held within 60 days after receipt of the notice of appeal by the commissioner of human resources, there has been a persistent backlog in the number of Civil Service Board appeals which have not been held within 60 days; and

WHEREAS, a delay which prevents the City of Atlanta to conduct a Civil Service Board appeal within 60 days shall not act as a de jure violation of the due process rights of an employee so affected per se; See *Glass v. City of Atlanta*, 293 Ga. App. 11, 16, 666 S.E.2d 406, 410 (2008); and

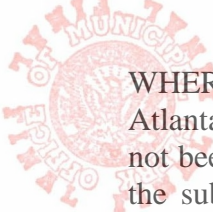
WHEREAS, nevertheless such a delay acts as the de facto cause of an unacceptable level of uncertainty and hardship for affected employees; and

WHEREAS, it is the desire of the Atlanta City Council to Amend City Code Section 114-550 to provide an incentive to eliminate undue delay in providing employees with their Civil Service Board hearings; and

2022-12(22-O-1290)

PAGE 1 OF 4





WHEREAS, specifically, and notwithstanding the requirements of 114-550(1), it is the desire of the Atlanta City Council that 114-550 be amended to provide that where the Civil Service Board appeal has not been commenced within 18 months after receipt of the notice of appeal, the adverse action which is the subject of the appeal shall be dismissed without prejudice and the employee shall thereafter be entitled to “back-pay” and other relief afforded by Section 114-553(c) of the City Code; and

WHEREAS, any period of postponement or continuance of the hearing for the convenience of the affected employee shall be excluded from the calculation of this 18 month period; and

WHEREAS, to ensure that the City of Atlanta is not itself unduly prejudiced, when an adverse action is dismissed in accordance with this amendment, the City of Atlanta may re-impose the adverse action so dismissed within 6 months of the date of dismissal pursuant to the procedures set forth in Article VI, Division 3 of Chapter 114 of the City Code.

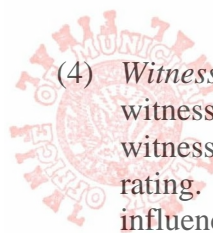
THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS, as follows:

SECTION 1. That Chapter 114 (Personnel), Article VI (Labor Relations), Division 3 (Disciplinary Action), Section 114-550 (Hearing Procedures), of the City of Atlanta Code of Ordinances shall hereby be amended to add a new subsection (8) such that it shall thereafter read as follows (with permanent insertions in underline font):

Sec. 114-550. Hearing procedures.

Under this article, the following are established to provide uniform procedures for the conduct of hearings by the board or hearing officer appointed by the board:

- (1) *Notice of hearing.* The hearing shall be held within 60 days after receipt of the notice of appeal by the commissioner of human resources. Within ten days prior to the date for which the hearing is set, the commissioner of human resources shall designate, from an alphabetical rotation system, a hearing officer/panel of the civil service board and an appropriate time and place to conduct the hearing and shall so notify all parties in writing. Such notification shall be mailed or served at least ten days prior to the date for which the hearing is set. Any hearing officer/panel shall have the authority to postpone or to continue a hearing upon its own motion or upon the motion of either party.
- (2) *Representation.* Opportunity shall be afforded both parties a representative of their choice. All arrangements for providing legal counsel shall be the responsibility of the party desiring such representation.
- (3) *Prehearing conference.* The hearing officer/panel may arrange a prehearing conference for the purpose of reviewing the matter being appealed and establishing stipulations to expedite the hearing.



(4) *Witnesses.* The appellant or the agency may request the attendance of employees or other persons as witnesses when their testimony will aid in establishing the facts in the case. Employees appearing as witnesses shall be released from duty without the loss of pay or time and without effect on their service rating. No person shall directly or indirectly use or threaten to use any official authority or other influence which would tend to discourage any other person from testifying.

(5) *Subpoenas.*

a. *Request for subpoena.* The appellant, the department or the hearing officer/panel may request the commissioner of human resources to issue subpoenas for witnesses for hearings. The cost for securing the attendance of witnesses who are noncity employees, including fees or mileage, shall be computed and assessed in the same manner as prescribed by law for civil cases in the superior court.

b. *Issuance of subpoenas.* Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party in the matter may apply to the superior court of the county in which the hearing is being held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.

c. *Quashing or limiting subpoenas.* Once issued, a subpoena may be quashed or limited by the hearing officer/panel upon the motion of the hearing officer/panel or any party or at the request of the witness, if it appears that the subpoena was used primarily as a means of harassment, that the testimony or documents sought are cumulative, that the testimony or documents sought are not relevant or material, that to respond to the subpoena would be unduly burdensome or that for other good reasons basic fairness dictates that the subpoena should not be enforced.

(6) *Record of hearing.* A court reported recording shall be made of all hearings; however, the recording of a hearing shall not be transcribed unless approved by the commissioner of human resources. If the transcription is so made pursuant to a request by either party in the hearing, the cost thereof shall be borne by the party making the request. In addition to the recording of the hearing of the transcription thereof, all documents entered into the record during the hearing shall be made part of the official record of the hearing.

(7) *Appointing authority's opportunity to be heard.* At the request of the appointing authority or at the invitation of the hearing officer/panel or the board, the appointing authority or designee shall be entitled to be heard and to submit evidence in any appeal in which the interpretation of a civil service rule, regulation, policy or practice is at issue.

(8) *Dismissal for want of commencement.* Notwithstanding the requirements of subsection (1) of this section, where the hearing is not held within 18 months after receipt of the notice of appeal by the commissioner of human resources, the adverse action which is the subject of the appeal shall be dismissed without prejudice, and the appellant shall thereafter be entitled to relief set forth in section 114-553(c), except that any period of postponement or continuance of the hearing for the convenience of the appellant shall be excluded from the calculation of this 18 month period. When an adverse action is

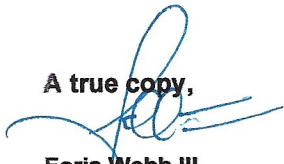
dismissed in accordance with this subsection, the City of Atlanta may re-impose such adverse action within 6 months of the date of dismissal pursuant to the procedures in this division.

SECTION 2: The amendments in this ordinance shall become effective immediately.

SECTION 3: That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict only.

SECTION 4: That the Municipal Clerk is instructed to retain all legislative history references in the codified versions of Chapter 114 including Editor's notes, and shall not delete any such references, but shall amend them to include this ordinance.

A true copy,


Foris Webb III
Municipal Clerk

ADOPTED as amended by the Atlanta City Council
APPROVED per City Charter Section 2-403

MAY 02, 2022
MAY 11, 2022