

BOARD OF ALDERMEN

ITEM NO. E(2)

AGENDA ITEM ABSTRACT

MEETING DATE: September 2, 2003

TITLE: Personnel Ordinance Amendment

DEPARTMENT: NA	PUBLIC HEARING: YES or NO <u>X</u>
ATTACHMENTS: A. Ordinance Amendment	FOR INFORMATION CONTACT: Mike Brough 918-7315

PURPOSE: The Town Personnel Ordinance now provides that an employee who is subject to a disciplinary action is entitled to a hearing before the town manager, and that, upon request of the employee the hearing shall be open to the public. The purpose of this item is to consider an ordinance amendment that deletes the provision giving the employee the right to insist that the hearing be open to the public.

INFORMATION:

Subsection 4-48(a) of the Town Code now provides: "An employee may appeal any disciplinary action or proposed disciplinary action to the Manager. The appeal may be decided by the Manager after a review of any written documents submitted by the appellant and the department head who imposed the discipline, or at the request of the appellant, department head, or Manager, a hearing may be held by the Manager in accordance with this section. *If requested in writing by the employee, the hearing shall be open to the public.* (Emphasis added).

Recent experience with the implications of this provision suggests that it would be preferable to allow the manager the discretion whether an open hearing is warranted, rather than leaving this determination in the unilateral discretion of the employee who has requested the hearing. The rationale for this provision was that, even though the Personnel Privacy Act (G.S. 160A-168) would ordinarily require a closed hearing for dealing with personnel matters, an employee has the right to waive the privacy protections of the Act and therefore the employee that is the subject of the disciplinary action should be allowed to open the hearing if he or she chooses to do so. Experience has shown, however, that these hearings almost always involve some discussion of the actions or performance of supervisors of the disciplined employee, or co-workers, or both. Moreover, the type of candor that should be encouraged from witnesses can in fact be discouraged if the audience for the testimony is broader than it needs to be.

The attached ordinance amendment (Attachment A) deletes the last sentence of Subsection 4-48(1), quoted above in italics. The effect is to leave the decision whether to open a hearing to the discretion of the manager, assuming all employees whose interests are protected by the Personnel Privacy Act consent to do so. In practice, this would mean that only rarely would such a hearing be open (which has been true in the past). Of course, the Personnel Ordinance would continue to give a disciplined employee the right to have the three non-employee members of the Personnel Advisory Committee present at the hearing and to make their recommendations known to the manager as to the outcome of the hearing.

RECOMMENDATION:

The administration recommends that the Board adopt the attached ordinance.