

BERWICK PERSONNEL APPEALS BOARD ORDINANCE

Section 1. Establishment

This Ordinance is adopted pursuant to the provisions of Maine law (30A MRSA 2691 and 3001).

Section 2. Purpose.

The purpose of this Ordinance is to provide an additional appeals step to an employee who may be suspended without pay or discharged by the Town Manager pursuant to the authority granted the Town Manager by the Town of Berwick Personnel Policy and by Maine law (30A MRSA 2631 et seq.). Under present law, a municipality that adopts the Town Manager Plan of Government adopts all of its provisions which include the sole authority of the Town Manager to hire and to discharge employees either during their probationary period or following completion of it for cause and after notice and hearing. It is advisable to provide an additional appeals step at the local level in order to guarantee an aggrieved employee the opportunity to an appeals hearing process beyond the notice and hearing process provided by the Town Manager. The purpose of this Ordinance is to provide that appeals hearing process to those employees who do not already have a multi-step appeals process provided by either a collective bargaining agreement or by a personal employment agreement.

Section 3. Authority.

In carrying out the duties imposed by this Ordinance, the Berwick Board of Selectmen shall act as the Berwick Personnel Appeals Board when requested to do so.

Section 4. Procedures.

Any Municipal employee of the Town of Berwick who is suspended without pay or who is discharged by the Town Manager pursuant to the authority granted the Town Manager by the Town of Berwick Personnel Policy and by Maine Law and who does not have a further appeal process available to him/her such as under a collective bargaining agreement may appeal this decision to the Board of Selectmen sitting as the Berwick Personnel Appeals Board (hereinafter the "Board"). Such an appeal must be taken within fourteen (14) days of the Town Manager's decision and shall be filed in writing stating the basis for the appeal and the relief requested. The Board shall promptly schedule a hearing date and shall notify both the appellant and the Town Manager of the date, time and place of the hearing.

Section 5. Hearing.

The Board shall sit in executive session pursuant to the provisions of Maine law (1 MRSA 405, 6A) unless the appellant requests a public session in writing as provided for in the law.

The Board shall establish its rules of procedure at the outset of the hearing and shall ensure that both parties have received notice of the hearing and understand the rules to be

followed during it. The Board shall conduct a de novo hearing. It may receive any oral or documentary evidence and may provide for the exclusion of irrelevant, hearsay, immaterial or unduly repetitious evidence during the hearing. The Board may place anyone providing testimony under oath.

At any hearing, a party may be represented by an agent or by an attorney. Once begun, hearings shall only be continued to another time with the concurrence of both parties.

Board Members shall not participate in any ex parte discussion pertaining to the matter being heard prior to, during or following the hearing. Any question as to whether a particular issue involves a conflict of interest sufficient to disqualify a Board Member from participating in the hearing and/or voting on its outcome shall be decided by the remaining Board Members.

A majority vote of those Board Members present and voting is required to decide an appeal hearing. A quorum shall consist of three Board Members. When a bare quorum decides an appeal hearing, a decision by two Board Members shall constitute a majority vote for the purpose of this Ordinance.

Section 6. Decision.

At the conclusion of the hearing and upon its return to public session, the Board shall decide whether to grant the appellant's request or to uphold the action of the Town Manager. In reaching its decision, the Board shall have reviewed the appeal based on the evidence contained in the record created as a result of the hearing. The Board shall reverse the decision of the Town Manager only if it finds that the decision is not supported by substantial evidence in the record and/or is contrary to the provisions of state law or a local ordinance. The Board shall prepare a written decision in each appeal in the form of findings of fact and conclusions of law. Whether the decision becomes public information shall be determined by the "final written decision" provision in Maine law (30A MRSA 2702, B, 5a).

Section 7. Appeal to Court.

An appellant dissatisfied with the decision rendered by the Berwick Personnel Appeals Board may file an appeal with the court pursuant to Rule 80B of the Maine Rules of Civil Procedure.