

ORANGE COUNTY  
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT  
Meeting Date: January 22, 2009

Action Agenda  
Item No. 6-f

**SUBJECT:** Second Reading: Third Party Presence in the Employee Disciplinary Process

**DEPARTMENT:** County Manager  
Human Resources Department

**PUBLIC HEARING:** (Y/N)

NO
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**ATTACHMENT(S):**

**INFORMATION CONTACT:**  
Laura Blackmon, County Manager  
245-2300  
Michael McGinnis, Human Resource  
Director 245-2550  
Annette Moore, Staff Attorney 245-2317

**PURPOSE:** To consider the second reading of an amendment to the Orange County Personnel Ordinance Article IX, section 4d(1) providing for a third party presence at a pre-disciplinary conferences prior to demotion, suspension or termination of an employee.

**BACKGROUND:** This is the second reading of an amendment to Article IX, Section 4d(1) of the Orange County Personnel Ordinance which currently provides:

- d. The department head and/or management representative(s) hold the pre-dismissal conference with the employee.
  - (1) No third parties, including attorneys or other representatives may be present at this conference. The Personnel Director or the Personnel Director's designee may be present at management's or the employee's request.

Note: This prohibition may be waived with the consent of the department head and the employee.

The N.C.G.S. §153A-45 provides that in order for an ordinance to be adopted on its first reading it "must receive the approval of all the members of the board of commissioners. If the ordinance is approved by a majority of those voting but not by all the members of the board... it shall be considered at the next regular meeting of the board." The Board then has 100 days after introduction of the ordinance to adopt the change to the ordinance.

The history of actions on this issue is as follows:

- In response to a citizen concern, the Board at its August 19, 2008 meeting requested staff bring forward information on third party presence at pre-disciplinary conferences in cases of suspension without pay, demotion or dismissal.

- On September 16, 2008 staff provided the Board information that the Ordinances requirement of third party presence at pre-disciplinary conferences, unless agreed upon by both parties, was constitutional. The Board requested additional information.
- On October 28, 2008 at a Board Worksession staff provided information indicating an amendment to the Ordinance allowing third party presence would apply to 53% of the County employees. Unless agreed upon by the elected officials and department directors, employees in the Sheriff and the Register of Deeds Offices as well as the Departments of Social Services and Health would be exempt from the amendment. Staff was asked to provide options to the Board at its November 18, 2008 meeting.
- On November 18<sup>th</sup> three options for third party presence were provided. The Board voted 3-2 to amend Article IX, Section 4d(1) as follows:

(1) An eligible employee may have a third party present at this conference as provided in the Rules and Regulations adopted for this Section. The third party may be a friend, family member, trained mediator, or another employee but not an attorney. The person is considered a support person and is allowed to participate in the conference. The support person may have training or specific ability to provide the assistance needed by the employee. The Human Resources Director or the Human Resource Director's designee may be present at management's or the employee's request.

The amendment did not receive unanimous approval and was placed on the Board's agenda on December 11, 2008 for second reading.

- On December 11, 2008 the Board voted 6-0 to adopt an amendment to Article IX, Section 4d(1) of the Personnel Ordinance different from the amendment adopted on November 18, 2008. The amendment voted on is as follows:
- (1) An eligible employee may have a third party present at this conference as provided in the Rules and Regulations adopted for this Section. The third party may be a friend, family member (but not a spouse or domestic partner) or another employee but not an attorney. The person is considered a support person and is allowed to participate in the conference, only in so far as the support person addresses his or her comments to the employee. The Human Resource Director or the Human Resource Director's designee may be present at management's or the employee's request.

On December 11, 2008 the full Board was not present to vote on the amendment. Therefore the Board must consider the amendment at its next regular meeting and the amendment must be adopted within 100 days after its introduction to be approved.

**FINANCIAL IMPACT:** None

**RECOMMENDATION(S):** The Manager recommends the Board consider the second reading of the amendment.