

**ORDINANCE 2025-03**

**AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, ADDING DIVISION 5 (POST TERMINATION HEARINGS; HEARING OFFICER) TO ARTICLE III OF CHAPTER 2 OF THE MADEIRA BEACH CODE OF ORDINANCES; PROVIDING FOR CONFLICT, CODIFICATION, AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, § 5.7(C) of the City Charter provides that the Madeira Beach Civil Service Commission is responsible for the preparation of the City’s personnel rules, and that once such proposed rules are concurred with by the City Manager, the same shall be proposed to the Board of Commissioners for consideration, and who may by ordinance adopt them with or without amendment; and

**WHEREAS**, the Board of Commissioners and the Civil Service Commission conducted a joint meeting on October 25, 2023, at which time the Board of Commissioners provided policy direction related to how termination appeals should be conducted and the limited appeal rights of at will employees; and

**WHEREAS**, the Board of Commissioners, having received the recommendation of its Civil Service Commission and the City Manager, and upon having received relevant advice from the City Attorney’s Office, and after having conducted a public hearing allowing citizens to provide input, finds that it is in the best interests of the City to adopt a provision for post termination hearings, the limited appeal rights of at will employees, and the appointment and related duties of a hearing officer.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of City Commissioners of City of Madeira Beach, Florida, that:

**Section 1.** Division 5 (Post Termination Hearings; Hearing Officer) of Article III (Boards, Committees, Commissions) of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach is hereby created to read as follows:

**DIVISION 5. – POST TERMINATION HEARINGS; HEARING OFFICER**

**Sec. 2-130. – Right to seek review of terminations for cause.**

(a) As further provided for in the city’s adopted personnel policies, employees, other than those designated as part-time, temporary, probationary, or at-will, shall have the right to seek review of disciplinary terminations in accordance with this article and the personnel policies.

(b) City employment positions designated as serving at the will of the city manager may be terminated for any or no reason and are therefore not entitled to seek review of termination from city employment. However, to afford at-will employees an opportunity to succeed under a new city manager, a newly-appointed city manager may not terminate any at-will employee for no reason prior to six months from the date the new city manager assumes her or his position. If a newly-appointed city manager terminates an at-will employee during the first six months of her or his tenure as city manager, the city manager must find, in writing, that the at-will employee committed serious misconduct or was significantly incompetent in the performance of her or his duties.

(c) Notwithstanding the foregoing, nothing in this section shall preclude any employee from pursuing any claims related to the termination of her or his employment, as may be provided for in state or federal law.

**Sec. 2-131. – Hearing officer to be appointed.**

(a) There shall be one or more hearing officers contractually appointed by the board of commissioners to provide hearing officer services under this division. Hearing officers shall possess the experience and qualifications necessary to preside over quasi-judicial proceedings and to understand and rule upon questions of for cause public employment termination cases. As a supplement or alternative to locally-contracted hearing officers, the board of commissioners may also contract with the state division of administrative hearings (where allowed by statute) to provide hearing officer services. The city manager shall not participate in any manner in the establishment of credentials for hearing officers, screening hearing officer candidates, or removing hearing officers from service.

(b) The city attorney shall assist the board of commissioners in identifying qualified hearing officers and in developing appropriate services contracts with such persons under such terms and conditions as the board of commissioners agrees to approve.

(c) Hearing officers shall conduct their hearings in a professional and neutral manner. With respect to issues of alleged conflicts and motions for recusal, hearing officers shall be governed by the same standards as the state’s judicial officers.

**Sec. 2-132. – Termination appeals to be heard by hearing officer; scope of review.**

(a) A hearing officer appointed pursuant to this division shall hear appeals of disciplinary terminations. Where multiple hearing officers have been secured, the city clerk shall endeavor to assign cases on a rotational basis so that, on average and over time, all hearing officers obtain roughly the same opportunities to preside over appeals.

(b) The hearing officer may, based upon the findings of fact and conclusion of law as to the just cause question, recommend reinstatement, reinstatement but with some lesser form of discipline, or may recommend that the termination be upheld.

(c) The jurisdiction of the hearing officer shall be confined to the question of whether, based on the facts and evidence introduced at the hearing, an appealing city employee was

terminated for just cause. The hearing officer does not have jurisdiction to rule upon alleged violations of state or federal law, alleged violations of the state or federal constitution, or to base a ruling on common law theories founded in contract or equity. Employees wishing to raise such issues may do so through the filing of an action in a court of competent jurisdiction.

(d) The hearing officer shall transmit her or his order to the city clerk, who shall promptly and simultaneously transmit a copy to the appealing employee, the city manager, and the city attorney. Where possible, such transmittals shall be by email attachment.

### **Sec. 2-133. – Conduct of the hearing.**

(a) The hearing officer shall have the power to administer oaths, issue subpoenas, compel the production of books, papers and other documents, to rule upon pre-hearing motions, to control the hearing room, and to receive evidence.

(b) The hearing officer shall conduct the hearing in accordance with the hearing officer's procedure manual promulgated by the city attorney.

(c) The employee may represent her or himself or may be represented by a licensed attorney. To ensure compliance with Florida Statutes § 454.23 (providing that it is a felony for a person not an attorney to practice law), and to ensure the city is not a party to facilitating the unauthorized practice of law, the employee may not be represented by any person not a licensed attorney.

(d) While the employee is the appellant in the proceeding, the city manager shall have the burden of proof as to the question of whether there was factual and legal just cause for the termination.

(e) Either party (the city or the appellant) is entitled but not required to secure the services of a court reporter to make a record of the proceedings. If an appeal of the hearing officer's order to the civil service commission is requested, either party is entitled to request that the civil service commission not schedule its hearing until a transcript of the testimony has been obtained from the court reporter and filed with the city clerk as part of the record. The party ordering the transcript will be obligated to pay for the transcript.

### **Sec. 2-134. – Review by civil service commission.**

(a) An employee who had invoked the right to present an appeal to the hearing officer may, within ten (10) business days of the date of the hearing officer's order being transmitted to the employee by the city clerk, seek a review of the order by the civil service commission. Such review shall be as provided for in this article.

(b) If an employee fails to appeal a disciplinary termination to the hearing officer, or to then further appeal to the civil service commission, then the employee shall be deemed to have waived the right to assert that she or he was not terminated for just cause.

- (c) The city manager has the right to seek a review of a hearing officer's order by the civil service commission. The city manager must submit her or his review request to the civil service commission's clerk within ten (10) business days of the date of the hearing officer's order being transmitted to the city manager by the city clerk.
- (d) The civil service commission's disposition of an appeal under this section shall be by a written order incorporating the hearing officer's findings of fact and making appropriate conclusions with respect to the question of just cause. In its order the civil service commission may reject or modify the conclusions of law and interpretations of administrative rules contained in the proposed order of the hearing officer, but may not reject or modify the findings of fact unless the civil service commission determines from a review of the complete record and states with particularity that the findings of fact were not based upon competent substantial evidence, or that the proceedings upon which the findings were based did not comply with the essential requirements of law. The language of this subsection shall not be construed to grant or otherwise permit the civil service commission to reopen any evidentiary hearing or to commence taking or retaking any evidence or testimony.
- (e) The written order may be adopted at the civil service commission's hearing or may be drafted and signed by the chair subsequent to the hearing. A copy of the civil service commission's order shall promptly and simultaneously be transmitted by the city clerk to the appealing employee, the city manager, the city attorney, and the board of commissioners. Where possible, such transmittals shall be by email attachment.
- (f) Once the city manager receives a copy of the hearing officer's order which has not further been appealed to the civil service commission, or once the city manager receives a copy of an order of the civil service commission, the city manager shall proceed in the manner set forth in the city's personnel policies. The civil service commission's order shall be considered a final quasi-judicial order for all appellate purposes.

**Sec. 2-135. – Authority to enter alternative agreements.**

- (a) The city manager shall have the authority to enter last chance agreements with employees in lieu of termination, under such terms and conditions as the city manager may determine are in the city's best interest. Such agreements shall be developed with the assistance of the city attorney and shall provide, at a minimum, that an employee's violation of its terms and conditions shall result in immediate termination and a waiver of any right to appeal under this division.
- (b) The city manager shall have the authority to enter voluntarily separation agreements with employees under such terms and conditions as the city manager may determine are in the city's best interest. Such agreements shall be developed with the assistance of the city attorney and shall provide, at a minimum, for the payment of some additional consideration to the separating employee and for a waiver in favor of the city and its officers of all employment-related claims.

**Section 2.** For purposes of codification of any existing section of the Madeira Beach Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**Section 3.** Ordinances or parts of ordinances in conflict herewith to the extent that such conflict exists are hereby repealed.

**Section 4.** In the event a court of competent jurisdiction finds any part or provision of the Ordinance unconstitutional or unenforceable as a matter of law, the same shall be stricken and the remainder of the Ordinance shall continue in full force and effect.

**Section 5.** The Codifier shall codify the substantive amendments to the Code of Ordinances of the City of Madeira Beach contained in Section 1 of this Ordinance as provided for therein and shall not codify the exordial clauses nor any other sections not designated for codification.

**Section 6.** This Ordinance shall take effect on January 5, 2025.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, THIS \_\_\_\_\_ day of \_\_\_\_\_, 2025.**

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Anne-Marie Brooks, Mayor

**ATTEST:**

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Clara VanBlargan, MMC, MSM, City Clerk

**APPROVED AS TO FORM:**

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Thomas J. Trask, City Attorney

