

**Agenda No #4264**  
**Sponsor: Council Member Freel**

**AN ORDINANCE TO AMEND CHAPTER 40 OF THE CITY  
CODE REGARDING MEDICAL REQUIREMENTS OF EMPLOYEES**

**WHEREAS**, the City of Wilmington (the “City”) Personnel Code serves as a labor relations guide for the City and reflects principles of merit, equity and fairness on which the City was founded; and

**WHEREAS**, Wilmington City Council deems it necessary and proper to amend the Personnel Code to be consistent with changes to applicable law; and

**WHEREAS**, the provisions of this Ordinance were reviewed by the Administrative Board in accordance with the requirements of Section 4-200 of the City Charter.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** The entirety of Section 40-54 of the City Code, including the title “Physical requirements of employees,” is hereby deleted and shall be replaced as follows, with the new title “Medical Requirements of Employees.”

Sec. 40-54 Medical Requirements of Employees.

(a)

The City requires all employees to be able to perform the essential functions of their jobs, with or without reasonable accommodation, without causing a direct threat to self or others in the workplace or creating an undue hardship. All candidates who have received a *bona fide* offer of employment shall be subjected to a pre-employment examination to determine their ability to perform the essential functions of the job, with or without reasonable accommodations. No candidate shall have a property interest in continued employment until a formal offer of employment is made.

(b)

Employees may be subject to examinations, provided such examinations are job-related and

consistent with business necessity.

(c)

Accommodation requests shall be made by the candidate/employee to the Human Resources Department. The Human Resources Department and the relevant departmental supervisor will engage in an interactive process with the employee/candidate (and, in certain cases, with the individual’s physician) to determine what, if any, reasonable accommodations could be provided. All accommodation requests shall be determined on a case-by-case basis and in light of the specific circumstances of each case.

(d)

In the event a qualified employee with a disability is unable to perform the essential functions of the job without a direct threat or undue hardship and there is no vacant and funded position to which the employee qualifies to transfer without violating a collective bargaining agreement or other laws, the employee shall be afforded a pre-termination notice and, a hearing before the Personnel Appeal Board with an opportunity to present his or her case and the opportunity to cross examine witnesses.

**SECTION 2. Effective Date:** This Ordinance shall become effective immediately upon its date of passage by City Council and approval by the Mayor.

First Reading . . . . . September 15, 2016  
Second Reading. . . September 15, 2016  
Third Reading . . . . .  
Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved as to form this \_\_\_\_  
day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Assistant City Solicitor

Approved this \_\_\_\_ day of \_\_\_\_\_, 2016

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Mayor

**SYNOPSIS:** This Ordinance amends Chapter 40 of the City Code (the Personnel Code) by replacing Section 40-54 to comply with the Americans with Disabilities Act.