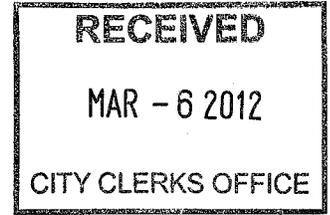


MOTION TO AMEND ORDINANCE 11-060-O

BY COUNCILOR BOYLE:



I move to amend Ordinance 11-060-O as follows:

Sec. 13-10. Determination of type of eligible list to be created.

(a) When employment tests are to be held to establish an eligible list, the secretary, in consultation with the appointing authority, shall determine whether to administer a promotional only, internal only, internal and open, or open only test process; however, promotional only test processes shall be administered for higher level classifications in the police and fire departments only, ~~excluding management classifications in the police department and fire prevention classifications in the fire department;~~

## MOTION TO AMEND ORDINANCE 11-060-O

BY PRESIDENT HARTMAN:

I move to amend Ordinance 11-060-O as follows:

Sec. 13-2. Definitions.

The following definitions apply to this Chapter:

(a) Appointing authority. The chief administrative officer, department head or acting department head, or staff officer appointed pursuant to charter or statute;

(b) Board. The civil service board established pursuant to Chapter V of the Charter;

(c) Charter. The City Charter for the city of Duluth;

(d) Chief administrative officer. The chief administrative officer for the city or such officer's designee;

(e) Class or class of positions. A group of positions established under this Chapter sufficiently similar in respect to the duties, responsibilities qualifications, and authority that the same descriptive title may be used to designate each position allocated to the class;

(f) Class description. A description of the major duties of each class, examples of tasks performed, and the minimum qualifications required, and other essential functions of the class;

(g) Classification plan. The classes of positions within the classified service;

(h) Classified employee. Any employee, except an employee provisionally appointed, who, in accordance with the provisions of this Chapter, occupies any position in the classified service, or who is on leave of absence from such position if such position

is held vacant pending the employee's return;

(i) Classified service. Any position in the service of the city except the following:

(1) Any position excluded from the definition of public employee under applicable state law; or

(2) Any other position which is exempted from the classified service by the Charter;

(j) Eligible. Any person whose name is on a re-appointment, re-employment, internal-employment or open-employment list for a given class and who continues to meet the minimum qualifications for the position;

(k) Eligible list. A list of the names of persons who have been found qualified for employment in positions in the classified service, including the names of persons on the reappointment, re-employment, promotional, internal-employment and open-employment lists;

(l) Employment test. A test or group of tests used to determine the relative fitness of applicants for positions allocated to a class;

(m) Internal-employment list. A list of names of persons currently employed in the classified service who have qualified through employment tests administered by the secretary for employment in other positions allocated to a different class;

(n) Layoff series. A list of class titles that has been created to allow a qualified employee to bump into a lower classification, and whose order has been negotiated as provided in a collective bargaining agreement to which the city is a party;

(o) Open-employment list. A list of names of persons who have qualified through employment tests administered by the secretary for employment in positions allocated to

a class. within the classification plan;

(p) Organization unit. Any department, office or division of the city government commonly recognized as a unit for purposes of administration;

(q) Position. A full or part-time job held by one person, unless the job is filled by a job sharing arrangement;

(r) Promotional list. A list containing the names of persons currently employed in the classified service in the police or fire departments in a lower class of position, as determined by pay range, who have qualified through employment tests administered by the secretary for promotion to a higher class of position in the same department;

(s) Reappointment list. A list containing the names of city employees within the classified service who have been demoted for nondisciplinary reasons;

(t) Re-employment list. A list of the names of persons who have occupied permanent positions allocated to any class, who have been separated from the service as a result of layoff or approved leave of absence, and who, in accordance with this Chapter, are entitled to have their names certified to the appointing authority when vacancies in the class are to be filled;

(u) Secretary. The manager of human resources for the city or the manager's designee.

(v) Permanent position. Any position which exists or which is likely to exist for a period of more than 100 working days.

(w) Temporary position. Any position described in subsections (1), (2), (3) or (4) below. The terms of any job description adopted for use in the classified service shall not be deemed to establish, or to be evidence of, the existence of a temporary position.

Temporary positions are:

(1) Any position which exists, or is likely to exist for a period of 67 working days, or less, in a calendar year;

(2) Any position which exists, or is expected by management to exist, for a period of more than 67 days worked in a calendar year, but for not more than 100 calendar days in a calendar year;

(3) Any position which is occupied by a person who is employed as a participant pursuant to the Federal Older American Community Employment Act, as amended; or other person who is a participant in a service or job training program which is organized so that the funding source of the pay received by the participant is the federal government or the state government;

(4) Any position occupied by an individual whose assigned work schedule does not exceed the lesser of 14 hours each week or 35 percent of the normal work week in the employee's work unit.

(x) Temporary employee. Any person who occupies a nonclassified position described in subsections (i), (ii) or (iv) of the definition of "temporary position." Persons occupying nonclassified positions described in Subsection (iii) of said definition are not temporary employees.

Sec. 13-30. Special conditions for employment of CETA employees.

Notwithstanding any provision of this Chapter to the contrary, no person who is employed in a position in the classified service pursuant to the federal Comprehensive Employment and Training Act of 1973, as amended, and who did not gain such position by

compliance with this Chapter, shall be employed in such position for more than 52 weeks.

Sec. 13-31. Probation period for classified employees--duration; applicability to persons laid off or demoted without cause or who become members of the armed forces in times of war or other emergency.

Any person appointed to a position in the classified service after certification from an eligible list shall be on probation for a period of six months, unless a longer period is specified in the public notice of such tests; and any person who bumps from a position in one classification to a position in a lower classification, pursuant to a layoff, as provided for in a collective bargaining agreement of the city, shall be on probation for a period of six months; provided, that if an employee bumps or has been laid off or demoted without fault on the part of such employee, and has completed the probationary period in the classification to which he or she is bumping, being demoted or reappointed, such employee shall not be required to serve a second probationary period; provided further, that if an employee bumps or is laid off or demoted without fault on the part of such employee during the probationary period, and is appointed to a position in the same class in the same organization unit from which such employee bumped or was laid off or demoted, the probationary period already served shall be carried over to the new appointment, but if appointed in a different organization unit, such employee shall serve a full probationary period for the class; provided further, that any employee who has been appointed to a permanent position in the classified service who, subsequent to September 18, 1940, shall become a member of the armed forces of the United States in time of war or other emergency declared by proper authority, or who shall thereafter become a member of said

armed forces during said time, who has not served the required probationary period for said position at the time of becoming a member of said armed forces shall, with the approval of the appointing authority and the board, at the date that such employee becomes a member of the armed forces of the United States, be considered to have completed said probationary period.

Sec. 13-32. Temporary positions.

(a) During any calendar year no individual shall be employed in a temporary position described in Subsection (i), of the definition of "temporary position," for more than 67 days actually worked, nor shall any individual, during a calendar year, be employed in more than one temporary position for a period that exceeds 67 days worked;

(b) Any position described in Subsection (ii) of the definition of "temporary position" shall be occupied only by a student who is, or within 90 days has been, enrolled for not less than 12 credit hours at a college or university, or for not less than five courses in a high school or vocational-technical school, and is less than 22 years of age, and has indicated an intention to continue as a student during or after temporary employment.

Sec. 13-33. Notice of temporary appointee beginning work.

The appointing authority shall notify the secretary of the date any appointee begins work in a temporary position.

Sec. 13-34. Temporary position becomes permanent after 100 working days.

If any time it becomes evident that the employment in such temporary position will extend for more than a period of 100 working days, the position shall be considered a permanent one, and certification shall be made from the appropriate eligible list, as provided in this Chapter.

Sec. 13-35. Temporary vacancies in permanent positions.

Whenever a temporary vacancy in a permanent position occurs due to sickness, leave of absence, military leave of absence, or other similar cause, such vacancy shall be filled by certification from the re-appointment list, re-employment list, promotional list, or employment list.

Sec. 13-36. Special leave of absence without pay--authority to grant; maximum amount.

Except as otherwise provided below, any classified employee who is mentally or physically incapacitated to perform his duties or who desires to engage in a course of study such as will increase his usefulness on his return to his duties, or who for any reason considered good by the appointing authority and the board desires to secure leave from his regular duties, may, with the approval of the appointing authority and the board, be granted special leave of absence without pay for a period of not exceeding one year. The appointing authority of any classified employee may, with out the approval of the board, grant such employee special leave of absence without pay for a number of working days not to exceed a total of 30 in any calendar year.

Sec. 13-37. Same--Board to determine status of employee upon return.

For each separate case of special leave without pay approved by the board, the board shall, at the time it approves the leave, determine whether the employee granted such leave shall be entitled to his former position on his return from such leave or whether his name shall be placed on the re-employment list for the respective class.

Sec. 13-38. Military leave of absence--duty of board to grant.

Any employee, while holding a permanent position in the classified service of the city, who, subsequent to September 16, 1940, shall have become a member of the armed forces of the United States in time of war or other emergency declared by proper authority, or who shall hereafter become a member of said armed forces during said time, shall be granted a leave of absence for the term of said military service and shall, upon receiving a discharge from such military service, be reinstated to said position.

Sec. 13-39. Same--Reinstatement of employee upon return.

Reinstatement of any employee on military leave of absence shall be at the same salary which he would have received had he/she not taken such leave and shall be upon the following conditions:

(a) That the position has not been abolished;

(b) That the employee is not physically or mentally disabled from performing the duties of such position;

(c) That he makes written application for reinstatement to the appointing authority

within 90 days after termination of such service;

(d) That he submits to the appointing authority an honorable discharge or other form of release by proper authority indicating that his military or naval service was satisfactory.

Sec. 13-40. Same--Employee to retain civil service rights.

Upon reinstatement of any employee who has been on military leave of absence, said employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave and other benefits as if he had been actually employed during the time of such emergency.

Sec. 13-41. Same--Probationary employees.

Any employee who has been appointed to a permanent position in the classified service of the city who, subsequent to September 16, 1940, shall have become a member of the armed forces of the United States, in time of war or other emergency declared by proper authority, or who shall hereafter become a member of said armed forces during said time, who has not served the required probationary period for said position at the time of becoming a member of said armed forces shall, with the approval of the appointing authority and the civil service board, at the date that he becomes a member of the armed forces of the United States, be considered to have completed said probationary period and shall thereafter have full civil service status as though a full probationary period had been served and shall be granted a military leave of absence in accordance with the rules set out in this Chapter, and shall, upon completion of such military service, if he is physically and mentally able to perform the duties of the position, be reinstated to the position which

he held at the time of becoming a member of said armed forces in accordance with the rules hereinbefore set out.

Sec. 13-42. Temporary vacancy in permanent position--defined.

A vacancy created by an employee receiving a military or special leave of absence shall be known as a temporary vacancy in a permanent position.

Sec. 13-43. Same--Name of substitute to be placed on re-employment list upon return of incumbent.

The name of any person appointed to a temporary vacancy in a permanent position as a substitute and who has been certified from an eligible list shall, upon the reinstatement of the regular incumbent, be placed upon the re-employment list.

Sec. 13-44. Same--When substitute may be appointed as regular incumbent.

If it shall have been determined that the regular employee who has been on a leave of absence is physically or mentally unable or elects not to return to said permanent position, said substitute who has been certified from an eligible list shall be appointed to said position as the regular employee, subject to the provisions of this Chapter.

Sec. 13-45. Same--Substitute may be placed on re-employment list if called into armed forces.

The name of any substitute appointed from an eligible list, who, while acting as such, becomes a member of the armed forces of the United States in time of war or other

emergency declared by proper authority, shall be placed upon the re-employment list for the proper class, if, within 90 days after receiving an honorable discharge from said armed forces said substitute shall file a written request with the board and if said substitute is mentally and physically capable of handling said position; provided, that if the name of more than one such substitute is placed upon said re-employment list, such names shall be arranged on such list in the order of original appointment.

Sec. 13-46. Removal of classified employees--to be for cause only; prohibited grounds.

Any employee holding a position in the classified service who has completed the probation period prescribed in accordance with this Chapter may be removed only for cause upon written charges and after an opportunity to be heard in his own defense; provided, that in no case may an employee be removed on account of his religious or political opinions or affiliations or for refusing to contribute to a political fund or to render political service.

Sec. 13-47. Same--Grounds.

The following shall be sufficient cause for removal, though removals may be made for causes other than those enumerated:

(a) That the employee is incompetent or inefficient in the performance of his or her duties;

(b) That the employee has been wantonly careless or negligent in the performance of his or her duties;

(c) That the employee has been brutal in his or her treatment of public charges,

fellow employees, or other persons;

(d) That the employee has been offensive in his or her conduct toward his or her fellow employees or the public;

(e) That the employee has violated any lawful or official regulation or order or failed to obey any lawful and reasonable direction given him or her by his or her superior officer when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in a lower morale in the organization or to result in loss, inconvenience or injury to the city or to the public;

(f) That the employee has taken for personal use a fee, gift or other valuable thing in the course of his or her work or in connection with it when such fee, gift or other valuable thing is given him or her by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons;

(g) That the employee is engaged in a private business or in an outside trade or occupation when the duties of his or her position, as prescribed by law or regulation or by his or her official superior, require his or her entire time for their performance;

(h) That the employee has failed to pay or make reasonable provision for the future payment of just debts when annoyance is caused his or her superior officer or scandal is caused the service because of such failure;

(i) That the employee has been convicted of a criminal offense or of a misdemeanor involving moral turpitude;

(j) That the employee, through negligence or willful conduct, has caused damage to public property or waste of public supplies;

(k) That the employee during his or her hours on duty has engaged in any form

of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold political office or when not on duty has engaged in any political activity to such an extent that his or her efficiency during working hours has been impaired or that it has caused him or her to be tardy or absent from his or her work;

(l) That the employee has used or has attempted or caused to be used political influence in securing promotion, transfer, leave of absence or increased pay;

(m) That the employee has been involved in an apprenticeship or training program approved by the joint apprenticeship training committee, and has failed to satisfactorily participate in such program.

Sec. 13-48. Same--Who may file removal charges; secretary may suspend without pay employees against whom charges are filed.

The appointing authority, any member of the civil service board, the secretary or any citizen may file written charges, in duplicate, asking for the removal of any employee in the classified service; provided, that the secretary shall file charges against any employee in the classified service whose service ratings, as determined by the reports of the rating officers or by investigation, fall below the minimum standards established by the board pursuant to Section 13-111 for two consecutive rating periods; and provided further, that the appointing authority may suspend without pay the employee against whom charges are filed, pending the decision of the board.

Sec. 13-49. Same--Grounds to be stated in charge.

Any charges filed against any classified employee shall state specifically the cause or causes enumerated in this Chapter or other cause considered sufficient to constitute ground for removal, and in addition, the specific act or acts of such employee constituting such cause, provided, that in no case shall such vague and indefinite charges as "for the good of the service" be considered reason for removal.

Sec. 13-50. Same--Notice to employee.

Upon receiving any such charges, the secretary shall forthwith mail one copy by certified mail to the last known address of the classified employee against whom such charges are brought. Such notice shall also advise such employee that he may, within five days from the date on which such notice is mailed, file an answer with the board, may request that the board investigate the charges and may request an opportunity to be heard in his own behalf.

Sec. 13-51. Same--Investigation of charges by board.

Upon its own initiative or at the request of such classified employee, the board itself or through some person or board appointed by it, shall within ten days if practicable and in any case within 30 days, investigate such charges, and at the request of such employee or upon its own initiative give such employee an opportunity to be heard on his own behalf.

Sec. 13-52. Same--Action by board.

As soon as practicable after the completion of an investigation and after a hearing

is held, or in case there is no investigation or no hearing held, and after the expiration of five days from the mailing of the charges to the employee, or as soon thereafter as practicable, the board shall act upon the charges and may in its discretion:

(a) Order the restoration of the employee to his position without loss of pay or with reduced pay during the period between the filing of the charges and the making of the order;

(b) Order the demotion of the employee to a class for which a lower maximum rate of compensation is prescribed;

(c) Order the removal of the employee from the position in the city classified service; provided, that in case of such removal, the board may, in its discretion, put the name of the employee on the reemployment list for the class for certification when a vacancy occurs in some other organization unit if in its judgment it will be for the good of the city service to allow the employee further opportunity for employment.

Sec. 13-53. Same--Decision of board final.

The finding and decision of the board, or of any person or board appointed by it, when approved by the board, shall be final and not subject to review by any court except as to the procedure followed.

Sec. 13-54. Same--Board not bound by rules of evidence or procedure.

The board, or the person or board appointed by it to investigate charges, may proceed in an informal manner, and in no case shall be bound by the procedure or rules of evidence observed in courts of record.

Sec. 13-55. Same--Removed employees not eligible for future tests.

Unless otherwise determined by the board, no employee who has been removed from the classified service in the manner enumerated in this Chapter shall be allowed to compete in any future tests held to establish eligible lists.

Sec. 13-56. Resignations--advance notice by employee; notice to secretary.

Any employee in the classified service who wishes to resign in good standing shall give the appointing authority written notice of at least four weeks, unless the appointing authority consents to his leaving on shorter notice. Such notice of resignation shall be forwarded forthwith to the secretary by the appointing authority, together with a report as to the character of the employee's services.

Sec. 13-57. Same--Effect of resignation without notice.

If any employee resigns from the classified service without giving the required notice, the secretary shall enter that fact on his roster card, and such failure to give the required notice may be considered sufficient reason for rejecting any future application from him to enter tests.

Sec. 13-58. Same--Withdrawal of resignation by employee.

Any classified employee who has resigned after giving proper notice may, within 30 days after termination of employment, and with the consent of the board, withdraw his resignation and be restored to the position vacated if such position is still in the classified service, and if it is still vacant or is filled by a provisional employee; if it is not thus available,

he may, upon written request to the secretary, have his name placed on the re-employment list for the appropriate class.

Sec. 13-59. Same--When resignation presumed.

Any classified employee who is absent from duty for three consecutive business days without securing leave from his superior officer or without notifying him of the reason for his absence and the time when he expects to return, or who fails to notify the secretary of his readiness to resume his duties within five days after the expiration of a leave of absence, shall be considered to have resigned, and such resignation shall be treated as a resignation without notice and a report thereof made to the secretary.