

PERSONNEL COMMITTEE

11-060-0

REPLACEMENT 2  
AS AMENDED

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 13 OF THE DULUTH CITY  
CODE, 1959, AS AMENDED, RELATING TO CIVIL SERVICE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Chapter 13 of the Duluth City Code, 1959, as amended, is amended by deleting the language of the Chapter as it existed prior to the effective date of this ordinance and by adopting the following language as Chapter 13 of the Duluth City Code, 1959, as amended:

CIVIL SERVICE.

Sec. 13-1. Purpose.

The civil service board is established pursuant to Chapter V of the Duluth City Charter. This Chapter 13 shall constitute the rules and regulations of the board and are established pursuant to Section 36, Chapter V, of the Duluth City Charter. Minnesota law and agreements reached under the Minnesota Public Employment Labor Relations Act to which the city is a party shall supersede these rules and regulations as required by Minnesota law. The purpose of this Chapter 13 is to ensure a fair, efficient and effective system of city human resource administration that meets the needs of the city and provides an equal opportunity for all qualified individuals to obtain employment within the civil service of the city.

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.

Sec. 13-3. Duties of the board.

(a) In addition to the authority and responsibility conferred upon the board by Chapter V of the Charter and by the provisions of this Chapter, the board shall act in accordance with the authority and responsibility conferred upon it by any provision of any collective bargaining agreement to which the city is a party;

(b) The board shall serve as a veteran's hearing board as provided by Minnesota law;

(c) All new civil service board members shall participate in training regarding the role of the board, employment laws and other pertinent human resources topics necessary to carry out their duties;

(d) All civil service board members shall participate in annual training regarding applicable employment laws and pertinent human resources topics.

Sec. 13-4. Meetings of the board.

All meetings of the board shall be open to the public as required by state law. A simple majority of the board membership then serving shall constitute a quorum for meeting purposes. Any meeting shall be adjourned in the absence of a quorum. Regular

meetings of the board shall be scheduled once per month. The board shall make the determination of whether to hold or cancel meetings when there is no business requiring board action. Special meetings of the board may be held at any time on the call of the secretary or the board chair, or pursuant to the standing rules of the board.

Sec. 13-5. Duties of secretary to the board.

(a) The secretary shall act as the secretary to the board, attend meetings of the board, prepare matters that require board action, and prepare the board minutes;

(b) The secretary shall serve as a nonvoting ex officio member of the board and shall have the right to participate in board discussions;

(c) The secretary shall arrange for all training of the board required by this Chapter.

Sec. 13-6. Civil service administration, duties of the secretary.

Unless otherwise provided herein, the secretary shall have all powers necessary to administer the functions and provisions of this Chapter. These powers include, but are not limited to, the creation and maintenance of the class descriptions, administration of all civil service hiring processes, maintenance of the eligible lists, and maintenance of employment records as required by state or federal law.

Sec. 13-7. Establishment of and amendments to the classification plan.

(a) Management shall meet and confer with the applicable union personnel committee, labor management committee or appropriate union representative regarding all new and revised class descriptions of all positions within the classification plan prior to approval by the board ~~chief administrative officer~~ and city council;

~~(b) If management and the applicable union cannot reach agreement on any class description, the board shall review and make a recommendation to the city council as to whether the class description should be approved or denied;~~

~~(c)~~ The classification of all positions within the classified service shall be approved by the chief administrative officer;

(c) ~~(d)~~ An appointing authority, subject to the approval of the chief administrative officer, shall determine the classifications to be utilized within any organizational unit under the supervisory authority of such appointing authority;

(d) ~~(e)~~ The chief administrative officer may abolish existing classes that are obsolete and no longer in use, subject to the approval of city council.

Sec. 13-8. Reclassification of positions.

If after the evaluation of a position, it is the opinion of the secretary that there has been a significant change in the duties of such position, the secretary may assign such position to a different classification, subject to the approval of the chief administrative officer. Upon reclassification of the position, the chief administrative officer shall, after receipt of the secretary's and appointing authority's recommendation, determine whether the reclassified position will be filled through an employment test or by the appointment of the incumbent of the former position to the reclassified position. The secretary shall notify the affected employee in writing at least ten calendar days prior to implementation of the chief administrative officer's determination. New job classifications created as a result of this process shall not be submitted to city council for approval until the appeal period has expired.

Sec. 13-9. Requirements for entrance into the classified service.

No permanent appointment to a position in the classified service shall be made unless the person so appointed has satisfied the following criteria:

(a) Filed the application materials required by the secretary;

(b) Qualified by passing the required test(s);

(c) Been certified in accordance with this Chapter; provided, that no additional application materials other than proof of license, certificate or educational requirement, and ability to perform the essential functions of the class as specified in the class description, shall be required from a person who has been employed and whose name is certified from a re-employment or re-appointment list unless required by state or federal law.

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;

(b) Only persons currently employed in the classified service who have completed a probationary period for a position within the service, may apply to participate in an internal test process;

(c) All persons at least 18 years old, and who may be legally employed in the United States, may apply to participate in an open test process.

Sec. 13-11. Tests to determine fitness of applicants, notice.

(a) The secretary shall select the employment tests used to determine the fitness of applicants for positions in any class and to establish the eligible lists;

(b) For each employment test given the secretary shall issue an appropriate notice containing a description of the duties and qualifications, the type of eligible list to be created, the type of test(s), relative weight assigned to each test or group of tests, the minimum rating, if any, required in any test or group of tests, and any other information deemed appropriate by the secretary;

(c) The duration of any eligible list shall be determined by the secretary prior to issuance of the notice and shall be included in the notice.

Sec. 13-12. Applications for appointment.

(a) All applications for appointment to the classified service shall be filed with the secretary;

(b) Application materials shall be determined by the secretary;

(c) All applications shall be filed with the secretary by the deadline specified in the public notice. The secretary shall reject any application received after the specified deadline;

(d) All applicants shall provide evidence that they meet the minimum qualifications for the class and other documents as required by federal or state law.

Sec. 13-13. Rejection of applicants for cause and reconsideration of action.

(a) The secretary may, for cause, reject any applicant at any time prior to their appointment. The secretary shall provide written notice to the applicant specifying the reason for the action and shall advise the applicant of the ability to request an appeal of the action as provided in this Section;

(b) The applicant must request an appeal within ten calendar days after issuance of the secretary's notice. The request shall be in writing, shall contain a complete statement of the reasons supporting the appeal, include any supporting documentation, and shall be signed and dated by the applicant. The request shall be addressed to the secretary and filed with the office of the secretary. Filing may be accomplished by electronic submission, personal delivery or United States mail addressed to the secretary; however, filing shall not be timely unless the request is delivered to the office of the secretary within the time provided by this Section;

(c) The secretary shall reject any request for appeal delivered after the time limit provided in this Section and shall cause the applicant to be notified of the rejection;

(d) The filing of a timely request for appeal shall stay all proceedings in furtherance of the applicable hiring process;

(e) The secretary shall reconsider the rejection based on the appeal documentation within five days of receipt. If the secretary upholds the rejection, the secretary shall call a meeting of the board as soon as possible to hear the appeal.

#### Sec. 13-14. Grounds for rejection of applicants.

Any of the following may be deemed sufficient cause for rejecting an applicant, though rejection may be made for causes other than those enumerated:

(a) That the applicant failed to timely file their application;

(b) That the applicant is found to lack any of the minimum qualifications as stated in the class description;

(c) That the applicant is unable to perform the essential functions of the class;

(d) That the applicant has been removed from previous employment with the city for cause, delinquency or misconduct;

(e) That the applicant has made a false statement in their application;

(f) That the applicant has been previously employed in the classified service and has been removed for cause or did not resign in good standing.

Sec. 13-15. Testing procedure.

(a) The secretary shall ensure that all tests are administered in a fair and lawful manner;

(b) Any person who obtained or used without permission any extraneous, forbidden or unfair source of information or otherwise cheated shall be deemed to have failed the test. A violation of this Section by a current employee of the city shall constitute just cause for discipline;

(c) If the secretary determines that the tests held were not fair, the secretary may void the tests and take any other appropriate corrective action;

(d) The secretary shall notify in writing all test participants of the action and rights to appeal the decision.

Sec. 13-16. Creation of eligible list.

(a) Following the completion of test scoring, the secretary shall prepare an eligible list showing the names of the test participants, the raw score of each participant in each test or group of tests and the participant's total weighted score;

(b) The names of the participants shall be arranged on the eligible list in the order of total weighted scores with the highest first; provided, that if two or more participants have the same weighted score, those names shall be placed on the eligible list in the same rank;

(c) In no case shall the name of any applicant be included on an eligible list if the applicant fails to obtain a passing score on any test or group of tests, as stated in the notice of the test. Sec. 13-17. Notification of test results and access to examination data.

(a) The secretary shall send to each test participant a written report of their test results, and, if the participant's name is placed on the eligible list, their relative standing on the list;

(b) Access and release of examination data shall comply with state and federal law.

Sec. 13-18. Duration of eligible lists.

(a) An eligible list shall become effective on the date the list is approved by the secretary;

(b) Any name placed on a re-appointment list shall remain on the list for five years. Any name shall be removed if the person separates from the classified service for any reason;

(c) Any name placed on a re-employment list due to a layoff shall remain on the list for the person's class and any lower class of that layoff series until such time that the person is rehired, has indicated he/she wishes to have his/her name removed from the list, or has refused to accept an appointment offered him or her unless a different period of time is specified in a collective bargaining agreement to which the city is a party;

(d) Any name placed on a re-employment list for reasons other than layoff shall remain on the list for a period of one year. Sec. 13-19. Re-appointment list--ranking of names.

The names of persons eligible for inclusion on a re-appointment list shall be ranked in order of seniority within the classified service. The secretary shall provide written notice to persons whose names are placed on a re-appointment list.

Sec. 13-20. Re-employment list-ranking of names.

The names of persons eligible for inclusion on a re-employment list shall be ranked on the list for their class and lower classes in the layoff series in order of their seniority.

Sec. 13-21. Cancellation of eligible lists.

The secretary may cancel any eligible list under the following circumstances:

(a) Illegality, fraud or mistake has affected the creation or maintenance of a list;

(b) The secretary determines that an insufficient number of names remain on the list;

The secretary shall provide written notice to all persons whose name appeared on the cancelled list.

Sec. 13-22. Criminal history background checks.

The secretary is authorized to coordinate pre-employment background investigations on applicants for appointment to the classified service, subject to the limitations of federal and state law.

Sec. 13-23. Certification of eligibles.

Whenever a vacancy in a position in the classified service is to be filled other than by transfer or demotion, the appointing authority shall request that the secretary certify the names of the persons eligible for appointment.

(a) The secretary shall certify from the list in the following order: re-appointment, re-employment, promotional, internal-employment and/or open-employment list;

(b) When certification from a re-appointment or re-employment list is made, the secretary shall certify the name of the person whose name is highest on the list and who still meets the qualifications of the classification;

(c) When certification from a promotional or internal-

employment list is made, the secretary shall certify the names of the three persons highest on the internal employment list; however, when more than one vacancy is to be filled, the number of names certified shall be twice the number of such vacancies. If the internal-employment list has less than three names, additional names may be certified from the open-employment list. Certification shall start with the name in the highest position on the promotional or internal-employment list. When certification is made from a rank consisting of more than one name, the names of all persons in such tied rank shall be certified;

(d) When certification from an open employment list is made, the secretary shall certify the names of the seven persons highest on the open employment list; however, when more than one vacancy is to be filled, an additional two names shall be certified for each additional vacancy. When certification is made from a rank consisting of more than one name, the names of all persons in such tied rank shall be certified;

(e) The appointing authority may also request the certification of the name of an additional eligible in case one whose name was first certified withdraws from consideration, does not accept the position or does not respond to the appointing authority's communications;

(f) The secretary shall provide notice of certification by mail or via electronic communication to the applicant certified at the last notification address appearing in the secretary's records;

(g) The notification shall advise the applicant of the certification, the title of the position, the organization unit, the name and address of the appointing authority and other appropriate instructions;

(h) A copy of the notice shall be sent to the appointing

authority.

Sec. 13-24. Delay of appointment by appointing authority.

(a) If in the opinion of the appointing authority there are an inadequate number of names certified, the appointing authority may refuse to appoint anyone so certified and may then wait for an adequate eligible list to be established;

(b) If a re-appointment list or re-employment list is established for such class before an adequate internal-employment and/or open-employment list is established, such re-appointment list or re-employment list shall be used.

Sec. 13-25. Provisional appointments to permanent positions pending tests.

(a) When an appointing authority requests certification of eligibles and no eligible list for the class exists, or when an appointing authority refuses to appoint from names certified because the number of names certified was inadequate, the appointing authority may hire a qualified person for provisional appointment to the position as provided in this Section;

(b) No position shall be provisionally occupied more frequently than one period of 180 days in any 12 consecutive months;

(c) The provisional appointment shall expire upon the happening of any of the following events:

(1) An eligible is appointed and begins employment on the agreed upon start date;

(2) A period of 180 days from date of provisional appointment has passed.

Sec. 13-26. Probation period for classified employees.

Except as otherwise provided by this Section, 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 or the period specified in the test notice, whichever is longer.

(a) Any person who bumps from a position in one classification to a position in a lower classification and pursuant to a lay-off, as provided for in a collective bargaining agreement, 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 of such employee, and has completed the probationary period in the classification to which he or she is bumping, being demoted or re-appointed, such employee shall not be required to serve a second probationary period;

(b) If an employee bumps or is laid off or demoted without fault 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.

Sec. 13-27. Rejection of probationary employee.

The appointing authority may at any time before the expiration of the probation period reject any person appointed to a position; provided, that the appointing authority shall forthwith provide a written report to the secretary of the action, identifying the date the rejection becomes effective and the reasons for the rejection. Any probationary employee who fails to successfully complete probation shall be considered permanently separated from the classified service in the classification last held and shall not be entitled to have their name placed on an eligible list.

Sec. 13-28. Temporary vacancies in permanent positions.

(a) A vacancy created by the absence of the incumbent shall be known as a temporary vacancy in a permanent position, and any person appointed to fill such vacancy shall be known as a substitute in that position;

(b) Whenever a temporary vacancy in a permanent position occurs, the appointing authority may fill the position through certification in the following order: from the re-appointment list, re-employment list, internal-employment list or open-employment list, as provided for in these rules;

(c) The substitute appointment shall terminate upon the return of the incumbent. Upon termination, one of the following actions shall occur:

(1) If the substitute has not completed the probation period, the substitute's name shall be restored to the eligible list from which certification occurred. If that list has expired, the substitute shall be terminated; however, if the appointment was made from an internal-employment list, the substitute shall be returned to the position previously held;

(2) If the substitute has completed the probation period, the substitute's name shall be placed on a re-employment list and if hired from an internal employment list, the substitute shall be returned to the position previously held;

(d) In such cases where it is determined that the incumbent will not return to the position, the substitute shall be appointed to the position as the regular employee if the substitute has successfully completed the probation period;

(e) If no eligible list exists, or no person certified from such list accepts the appointment, the appointing authority may fill the position with a provisional appointment.

Sec. 13-29. Appeals to the board.

(a) Right to appeal.

(1) An applicant who has been qualified by the secretary to participate in a selection process for a position within the classified service and any employee whose civil service status is directly affected by an action of the secretary may appeal to the board as provided in this Section;

(2) An applicant who has been rejected under Section 13-13 of this Code may appeal to the board the basis for the rejection as provided in this Section;

(b) Manner and time for appeal. An appeal is perfected by filing a notice of appeal within ten calendar days after the secretary's written notification of the action. The notice of appeal shall be in writing, shall contain a complete statement of the matter in controversy and the relief requested, and shall be signed and dated by the appellant. The notice shall be addressed to the board and filed with the office of the secretary. Filing may be accomplished by electronic submission, personal delivery or United States mail addressed to the secretary; however, filing shall not be timely unless the notice of appeal is received in the office of the secretary within the time fixed for appeal;

(c) Secretary's authority to reject appeals. The secretary shall reject any appeal received after the time limit provided by this Section or any appeal that exceeds the authority of the board as provided by this Section;

(d) Board scope of authority. Unless otherwise provided by this Chapter, state or federal law, or required by a collective bargaining agreement, the board's jurisdiction shall be to hear and render a decision on:

(1) Appeals challenging the fairness or scoring of a test, including the number of veteran's preference points allotted to an applicant;

(2) Appeals from applicants that have been rejected under Section 13-13 of this Code;

(3) Appeals of the secretary's action related to placement on a re-appointment list;

(4) Appeals of the secretary's action that directly impacts the civil service status of a current classified employee;

(5) In rendering its decision the board shall not modify or waive any of the qualifications, skills, abilities or experience requirements provided for in the classification description;

(e) Limitation of board authority. Unless otherwise required by the provisions of a collective bargaining agreement to which the city is a party, the board shall have no authority to hear the appeal of a dispute that is subject to the grievance article of a collective bargaining agreement;

(f) Suspension of employment process pending appeal. The filing of a timely appeal shall stay all proceedings in furtherance of the applicable employment action;

(g) Notification of board decision. After due deliberation, the board shall render its decision on the record. Within ten calendar days of the board's decision the secretary shall provide written notice of the decision to the appellant and appointing authority. The notice of decision shall be delivered by any reasonable means. The secretary shall provide a copy of the record of decision upon request and as required by Minnesota law. The appellant shall be deemed to have actual notice of the decision on the date the decision was rendered if the appellant or the

appellant's representative was present during the meeting at which the board took the action;

(h) Finality of board decision. All decisions of the board are final. Any party aggrieved by a decision of the board may appeal as authorized by Minnesota law;

(i) Implementation of board decision. The secretary shall implement the decision of the board, and in so doing shall determine and implement steps necessary to ensure that legal compliance is maintained.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

  
\_\_\_\_\_  
Department Director

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved:

  
\_\_\_\_\_  
Auditor

HR/ATTY MAL:dma 11/22/2011

STATEMENT OF PURPOSE: The Mayor's Workforce Recruitment Task Force began meeting last July to discuss barriers to employment and needed updates to City hiring practices. The Task Force reviewed the Civil Service Code, interviewed stakeholders, and benchmarked other City's that still have civil service. The Task Force reported its findings and recommendations to the Council at two meetings in August. The Task Force's recommendations were discussed in Human Resources, with the Unions, and the current Civil Service Board. The new Code incorporates the recommendations to allow the Human Resources Department to manage the hiring process without bringing each step to the Board thereby making the process more timely and efficient. Per its recommendations, the Code retains the Board as an appellate body for the process and reflects its recommendations

that the City remove redundancies with current law, collective bargaining agreements, and portions of the Code where other remedies exist.