

PERSONNEL COMMITTEE

13-008-O

REPLACEMENT

ORDINANCE NO. _____

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

BY COUNCILORS GARDNER, HARTMAN AND STAUBER:

The city of Duluth does ordain:

Section 1. That Section 13-1 of the Duluth City Code, 1959, as amended, be amended to read as follows:

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 (PELRA), 2012 Minnesota Statutes Chapter 179A, to which the city is a party shall supersede these rules and regulations as required by Minnesota law. The provisions and employee protections of PELRA, 2012 Minnesota Statutes Chapter 179A, whether subsequently amended or rescinded, are hereby incorporated into Chapter 13 to the extent allowed by Minnesota law.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.

Section 2. That Section 13-2 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 13-2. Definitions.

The definitions provided for in the Minnesota Public Employment Labor Relations Act (PELRA), 2012 Minnesota Statutes Chapter 179A, whether subsequently amended or rescinded, are hereby

incorporated into this Chapter to the fullest extent allowed by Minnesota law. The following additional 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 reappointment, 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) Public Employment Labor Relations Act (PELRA). 2012 Minnesota Statutes Chapter 179A. PELRA regulates labor relations between the city, its employees, and the labor organizations that represent city employees.

(st) Reappointment list. A list containing the names of city employees within the classified service who have been demoted for non-disciplinary reasons;

(tu) 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;

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

Section 3. That Section 13-3 of the Duluth City Code, 1959, as amended, be amended as follows:

Sec. 13-3. Duties of the board.

(a) The board shall oversee compliance with this Chapter. The board may investigate any allegation of a violation of this Chapter. If the board rules there has been a violation, it can recommend a remedy to the appointing authority. If the appointing authority does not apply the remedy recommended by the board, the

board may then recommend that same remedy to the city council.

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

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

Section 4. That Section 13-8 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 13-8. Reclassification of positions.

(a) 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 either a different current classification or to a new classification created by the secretary, both subject to the approval of the chief administrative officer. New job classifications created as a result of this process shall also comply with Section 13-7. The board may modify new job classifications created by the secretary, subject to the chief administrative officer's approval. New job classifications, including any approved amendments, shall be submitted to city council for approval, but not until the employee's appeal period pursuant to this Chapter has expired.

(b) 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.~~

(c) The secretary shall inform the board of the status of all new, pending, and completed job audits at each board meeting.

Section 5. That Section 13-10 of the Duluth City Code, 1959, as amended, be amended to read 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;~~

(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.

Section 6. That Section 13-16 of the Duluth City Code, 1959, as amended, be amended to read as follows:

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; the list shall be presented to the board for non-public review at the next meeting of the board;

(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.

Section 7. That Section 13-21 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 13-21. Cancellation of eligible lists.

The secretary shall provide written notice to all persons whose name appeared on the cancelled list. 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 may not cancel an entry level eligible list in the police officer and firefighter organization units if that list has seven (7) or more names. The secretary must obtain board approval prior to canceling promotional

lists in the police officer, police lieutenant, and firefighter organization units unless there are less than three (3) names on the list;

Section 8. That Section 13-29 of the Duluth City Code, 1959, as amended, be amended as follows:

Sec. 13-29. Appeals to the board.

(a) Right to appeal.

~~(1) Any applicant who has been qualified by the secretary to is participating~~ in a selection process for a position within the classified service and any current classified employee whose civil service status is directly affected by an action taken by of the secretary pursuant to this Chapter 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) Reporting notice of appeal to the board. The secretary shall forward appeal notices to all board members within seven (7) calendar days of receiving them;

(~~ed~~) 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;~~

(~~de~~) 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 reappointment or re-employment list;

(4) Appeals from applicants on an eligible list canceled by the secretary pursuant to Section 13-21(a);

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

(6) Appeals from the secretary's decision not to perform a job audit requested by a classified employee;

(7) Appeals from the secretary's decision not to change an employee's job classification following a job audit of that employee's position;

(58) 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; this restriction of modification and waiver will not prevent the board from hearing appeals of the secretary's interpretation of

qualifications, skills, abilities or experience requirements as stated in the job description and job announcement;

(ef) 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;

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

(gh) 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;

(hi) 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;

(+j) 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 9. That a new Section 13-30 of the Duluth City Code, 1959, as amended, is hereby added as follows:

Sec. 13-30. Temporary positions.

During any calendar year, no person shall be employed in a temporary position as defined by the Minnesota Public Employment Labor Relations Act (PELRA) for more than 67 days worked; no person shall be employed in more than one temporary position during a calendar year for a total period that exceeds 67 days worked without board approval.

Section 10. That this ordinance shall take effect 30 days after its passage and publication.

Approved as to form:



Attorney

CCREQ/ATTY SBH:cjk 3/4/2013

STATEMENT OF PURPOSE: This ordinance amends Chapter 13 of the Duluth City Code, 1959, as amended, relating to Civil Service. This ordinance includes changes recommended in the majority reports presented to the Council on January 14, 2013 by the Civil Service Reform Working Group.