

COUNCIL BILL NO. 394294

ORDINANCE NO. 5359

AN ORDINANCE

ADOPTING an appeals procedures for the Civil Service Board as directed in the revised Civil Service Board Charter Amendment adopted by the City Council on April 3, 1994, Section 4.25 Rules and Regulations.

WHEREAS, The Civil Service Board, on September 8, 1994, approved the adoption of Rules and Regulations relative to Section 4.25 Rules and Regulations of the City Charter, (b) Grievance Process, and (c) Hearings - conduction of, and;

WHEREAS, Section 4.25 (d) directs that all such rules, regulations, and qualifications shall be subject to approval by the council and shall only be effective on and after the date of such approval;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MARIETTA, GEORGIA THAT:

Section 1: Marietta City Code, Part 4, Chapter 2, Civil Service Rules and Regulations, Sections 4-2001 through Section 4-2012, is hereby amended to delete Sections 4-2001 through Sections 4-2012 in its entirety, and substitute in lieu of the following new Sections:

Section 4-2001 DEFINITIONS.

(a) Adverse Action is an action taken by the Department that results in monetary loss due to disciplinary suspension without pay, disciplinary demotion, or disciplinary dismissal.

(b) Department shall mean the Marietta Police Department and the Marietta Fire Department.

(c) Employee or employees shall be those members of the department as defined in Marietta City Code, Police and Fire Civil Service, Section 4.14.

COUNCIL BILL NO. 394294ORDINANCE NO. 5359**Section 4-2002****CAUSE FOR APPEAL.**

The following departmental actions may be cause for the filing of an appeal by an employee of the Department and, upon request by the employee would require a formal hearing before the Civil Service Board:

- (a) Termination of employment,
- (b) Demotion,
- (c) An appeal by any employee of the Department who fails to receive a promotion to which he or she may be eligible through the adopted promotional process,
- (d) The suspension of an employee of the Department, with or without pay, in excess of ten (10) days,
- (e) The involuntary retirement of an employee.
- (f) Unfair treatment in the application or the interpretation of the Personnel Rules and regulations, departmental rules, or administrative directives.
- (g) Alleged discriminatory action on the basis of race, color, creed, national origin or ancestry, sex, handicap, religion, age, or political affiliation.

All appeals shall be filed in writing with the office of the Clerk of the Civil Service Board within ten (10) calendar days after the receipt of official notification of the action in question, or from the effective date of the action, whichever first occurs. Non-grievable actions shall include all items listed as powers of city management listed under Chapter 1, Section 3, par. F, Numbers 1 through 11 of the City of Marietta/BLW Personnel Rules and Regulations, as amended. Any employee of the Marietta Police Department or Marietta Fire Department contending that any Departmental rule or regulation is illegal or unjust shall so notify the Civil Service Board, in writing, within 30 days after the posting of the Departmental rule or regulation. If such complaint is not made to the Civil Service Board, as herein provided, any employee charged subsequently with a violation of said Departmental rule or regulation shall not be permitted to avail himself or herself of the defense of the inequity of such rule, and therefore would not be entitled to a hearing before the Civil Service Board, except in those instances where the rule is in violation of the federal or state constitution or federal or state law. Employees who are serving a probationary period with the department are not entitled to a hearing before the Civil Service Board.

Section 4-2003**GRIEVANCE PROCEDURE.**

A grievance that is of such a serious nature that it cannot be handled on the department level, shall be filed in the form of a written appeal with the office of the Clerk of the Civil Service Board within ten (10) calendar days after the receipt of official notification of the action in question, or from the effective date of the

action, whichever first occurs. When a formal appeal is received and upon the determination by the Board that it is a grievable appeal, the Board shall acknowledge its receipt and notify the Chief of the department(or his/her designee in his/her absence) concerned that such appeal has been filed within two working days following such determination.. The appellant and the department concerned shall be notified in writing at least ten (10) working days in advance of the date, time and place designated for hearing the appeal. Such hearing shall be heard within thirty (30) calendar days following the receipt of notice of appeal by the Clerk of the Civil Service Board. The appellant and the department concerned shall have the right to present witnesses, to give evidence and to have legal representation.

Section 4-2004**HEARING PROCEDURES.**

An appeal duly and properly filed shall be heard in open hearing before the Board on the date, time and place as the Board shall designate. No such hearing shall be held in closed or executive session except as allowed by State law. The following procedures shall prevail, and the proceedings shall be as informal as is compatible with justice:

The order of proof shall be as follows:

(a) The Board shall hear the evidence upon the charges and specifications as filed by the Department, and shall not consider any additional evidence beyond the scope of the charges, and may exclude evidence which is purely cumulative. All testimony shall be given under oath

(b) The appellant shall then present evidence in support of the appeal.

(c) The evidence of each party may be supported by the submission of pertinent documents. The employee and the Department may be represented by counsel, and may present, examine, and cross-examine witnesses. In addition, the Board may interrogate both parties and all witnesses to obtain necessary information.

(d) The Board will allow each party to present pertinent rebuttal evidence.

(e) The evidentiary portion of the hearing before the Civil Service Board shall be open to the public; however, the deliberation of the findings of the Board shall occur in closed session. After the Board has heard from all involved parties, the Chairperson will close the meeting.

Section 4-2005**RENDERING DECISION.**

After due consideration, the Board shall render its judgment affirming, reversing or modifying the action of the Department within thirty (30) days after

COUNCIL BILL NO. 394294ORDINANCE NO. 5359

conclusion of the hearing, unless extended by agreement of the parties. The Clerk shall take note of the judgment and properly notify all parties concerned. Such judgment by the Civil Service Board shall be final.

Section 4-2006 REQUEST FOR CONTINUATION.

A continuation of an appeal may be granted by the Board if the following conditions are met:

- (a) Either a written request signed by each party personally (and not by counsel) verifying each party's agreement to the continuance is received in the office of the Clerk prior to the hearing or a party shows good cause for such continuance; and;
- (b) Any agreement for a continuance must stipulate that both parties waive the right to have the appeal heard within thirty (30) days.
- (c) If a continuance is granted, the Board will reschedule the date, time and place of the hearing; and,
- (d) A second grant of continuance will only be made for exceptional circumstances and will be at the discretion of the Board.

Section 2: It is hereby declared to be the intention of this ordinance that its sections, paragraphs, sentences, clauses and phrases are severable, and if any section, paragraph, sentence, clause or phrase are severable of this ordinance is declared unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

Section 3: All ordinances or part of ordinances in conflict with this ordinance are here repealed.

Section 4: This ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia Law 1983, page 4119

DATE: September 21, 1994APPROVED: 

Ansley L. Meaders, Mayor

ATTEST: Sheila R. Hill, CMC
City Clerk