

LEGISTAR NO: 20131039ORDINANCE NO: 7691**AN ORDINANCE**

AMENDING the Civil Service portion of the Code of Marietta to change the ten days allowed to file a grievance to be the same as the seven days allowed for general employees to file a grievance and to remove a section inadvertently left in the code describing appeals for the lack of promotion and the section on alleged discrimination.

BE IT ORDAINED BY THE MAYOR AND. COUNCIL OF THE CITY OF MARIETTA, GEORGIA THAT:

Section 1. The Code of Marietta, Georgia, is hereby amended to read as follows

CHAPTER 4-8 - CIVIL SERVICE RULES AND REGULATIONS**4-8-010 - 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" for the purposes of this chapter shall be those members of the police and/or fire departments who are members of the Civil Service system as defined in the Marietta City Charter, Section 4.13

(Code 1978, § 4-2001; Ord. No. 5359, 9/21/94; Ord. No. 5575, 6/12/96; Ord. No. 6063, 11/10/1999, § 3)

4-8-020 - Cause for appeal.

The following adverse 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. The suspension of an employee of the department, with or without pay, in excess of ten days (112 hours for fire fighters).

- D. The involuntary retirement of an employee.

All appeals shall be filed in writing with the office of the clerk of the civil service board within seven calendar days after the receipt of official notification of the action in question, or from the effective date of the action, whichever first occurs. Nongrievable actions shall include all items listed as powers of city management listed under Section 4-4-2-040 (F)(3) of the city/BLW personnel rules and regulations, as amended, as well as oral and written reprimands and suspensions with or without pay of ten work days or less (112 hours or less for fire fighters). 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.

(Code 1978, § 4-2002; Ord. No. 5359, 9/21/94; Ord. No. 5402, 3/8/95; Ord. No. 5575, 6/12/96; Ord. No. 5643, 1/8/97)

4-8-030 - 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 seven 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 working days in advance of the date, time and place designated for hearing the appeal. Such hearing shall be heard within 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.

(Code 1978, § 4-2003; Ord. No. 5359, 9/21/94; Ord. No. 5575, 6/12/96)

4-8-040 - 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.

(Code 1978, § 4-2004; Ord. No. 5359, 9/21/94; Ord. No. 5575, 6/12/96)

4-8-050 - Rendering decision.

After due consideration, the board shall render its judgment affirming, reversing or modifying the action of the department within 30 days after 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.

(Code 1978, § 4-2005; Ord. No. 5359, 9/21/94; Ord. No. 5575, 6/12/96)

4-8-060 - 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 30 days; and

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.

(Code 1978, § 4-2006; Ord. No. 5359, 9/21/94; Ord. No. 5575, 6/12/96)

4-8-070 - Training.

The human resources director shall cause to be provided, four hours of training for each civil service board member within the first 12 months of his/her appointment. Annually thereafter for each member with service of more than one year, the civil service board attorney and/or the human resources director shall provide a two-hour training session. Training as described in this section shall include, but not be limited to, hearing procedures.

(Code 1978, § 4-2007, Ord. No. 5508, 11/8/95; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

4-8-080 - Legal assistance.

The civil service board shall recommend to the city council the name of an attorney specializing in employment law to provide legal assistance to the civil service board. The council may appoint the attorney recommended by the civil service board or some other attorney deemed qualified by the council to hold such position. The appointed attorney shall serve at the pleasure of the city council and may be removed from this appointment by the council. The appointed attorney shall attend all meetings and hearings of the civil service board as directed.

(Ord. No. 5643, 1/8/97)

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 of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

Section 3. All Ordinance or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 4. This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: October 9, 2013

APPROVED:

R. Steve Tumlin
R. Steve Tumlin, Mayor

ATTEST:

Stephanie Guy
Stephanie Guy, City Clerk

Approved as to Form:

Douglas R. Haynie
Douglas R. Haynie, City Attorney
Daniel White