

LEGISTAR#: 20190066  
ORDINANCE NO: 8079

AN ORDINANCE

**Amending the City Charter, Section 4.13, et seq., related to the Fire and Police Civil Service System to comply with *Delay v. Sutton*, 304 Ga. 338 (2018) and other administrative updates.**

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**NOW THEREFORE, THE COUNCIL OF THE CITY OF MARIETTA HEREBY ORDAINS:**

Section 1: The Charter of the City of Marietta, Part 1, Article IV, Division 2 shall be retitled “Firefighter and Police Officer Civil Service,” and shall read as follows:

“Section 4.13 - Established.

There is hereby established a Marietta Police and Fire Civil Service System. All certified peace officers as defined in Georgia state law who have satisfactorily completed an initial work test period and who are below the rank of Police Deputy Chief of the Marietta Police Department and all certified firefighters as defined in Georgia state law who have satisfactorily completed an initial work test period and who are below the rank of Deputy Chief of the Marietta Fire Department, shall be under the Marietta Police and Fire Civil Service System, hereinafter created, and all persons who may thereafter be as described above shall thereafter remain and continue their respective employment as municipal officers and employees during satisfactory performance and obedience to City laws and ordinances and such reasonable rules and regulations as may be adopted by the City Council as hereinafter provided; however, nothing herein contained shall be construed to prevent or preclude proper adverse action, up to and including termination, against any officer or member of said fire department or police department for cause.

The incumbents of the position of deputy chief as of February 12, 1997, shall retain rights under the civil service system as provided herein for the duration of their occupancy of the position of deputy chief.

(Ord. No. 5293, 4/13/94, Exh. A; Ord. No. 5658, 2/12/97; Ord. No. 6068, 12/8/1999, § 1)

Section 4.14 - Definitions.

The following definitions, as used in this division, shall apply:

*Members of the fire department.* All certified firefighters, as defined in Georgia state law, of the department below the rank of deputy chief who have successfully completed an initial work test period.

*Members of the police department.* All certified peace officers as defined in Georgia state law of the department below the rank of deputy chief who have successfully completed an initial work test period.

(Ord. No. 5293, 4/13/94, Exh. A; Ord. No. 5658, 2/12/97; Ord. No. 6068, 12/8/1999, § 2)

#### CIVIL SERVICE BOARD

##### Section 4.15 - Membership; terms; vacancies.

The Civil Service Board for the City of Marietta shall consist of five members at all times and the members shall be appointed by the City Council hereafter provided. The Post 1 and Post 3 members of the Civil Service Board shall be appointed by the City Council for the City of Marietta, as hereafter provided. The Post 2 and Post 4 members shall also be appointed by the City Council, and the City Council shall consider, but not be bound by, nominations made as a result of elections, as hereafter provided, by members of the fire and police departments. The four members as selected herein to fill Post 1, Post 2, Post 3 and Post 4 may nominate a fifth member of the Civil Service Board who shall be a resident of the City of Marietta and such person so nominated shall be considered by the City Council for appointment to Post 5 as a member of the Civil Service Board. However, the City Council is not bound to the nomination, and may appoint any otherwise eligible person to Post 5. The Civil Service Board's nomination for the Post 5 position shall be in writing and signed by the other four post members. In the event that the members of the Post 1, Post 2, Post 3 and Post 4 are unable, by majority vote, to select a fifth member, within thirty (30) days after their election, the City Council shall proceed to appoint an otherwise eligible person to the Post 5 position. The five members of the Civil Service Board shall be appointed as follows for the terms set forth herein:

Post 1: This member shall be appointed by City Council and shall serve for a three year-term which will begin on January 1 and end on December 31 of the specified term.

Post 2: This member shall be appointed by the City Council. The City Council shall consider, but not be bound to appoint the nominee elected by a plurality by the members of the fire and police departments, by secret ballot. The term shall be for a three-year term which will begin on January 1 and end on December 31 of the specified term.

Post 3: This member shall be appointed by the City Council and shall serve a three-year term which will begin on January 1 and end on December 31 of the specified term.

Post 4: This member shall be appointed by the City Council. The City Council shall consider, but not be bound to appoint the nominee elected by a plurality by the members of the fire and police departments, by secret ballot. The term shall be for a three-year term which will begin on January 1 and end on December 31 of the specified term.

Post 5: This member shall be appointed by the City Council. The Civil Service Board members from Post 1, Post 2, Post 3, and Post 4 by majority vote during the Board's regular January meeting may nominate an otherwise eligible person to serve on Post 5 as specified herein. The initial and all subsequent terms shall be for a one-year term which will begin on February 1 and end on January 31 of the following year.

Each Post member shall serve in accordance herein and until a successor has been appointed by the City Council. No person shall be eligible to be a member of said Board who: holds any elected governmental position, or is employed by, a municipal or county government; is less than 25 years of age; is not a bona fide resident and qualified voter of said City; has an immediate family member serving in an elected position with said City or has an immediate family member who is currently employed by a city department, or a department properly designated as under Civil Service jurisdiction as set forth in Section 4.14 of this Code. Immediate family member is defined as spouse, son, daughter, father, mother, brother, sister, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law. Members of the Civil Service Board who were serving on April 13, 1994, who would have been ineligible due to this paragraph, were allowed to serve the remainder of their specified terms. The Post 2 and Post 4 members shall serve pursuant to appointment as specified herein by the City Council following an election which shall be conducted by the Clerk of the Board who shall certify the results to the City Council. All five positions shall be entered on the minutes of the City Council. At the expiration of the term of each member, the appointment shall be thereafter by the same method and upon the same terms and conditions as provided herein.

In the event of a vacancy upon said Board caused by death, resignation or other cause, the vacancy shall be filled as originally provided herein and the person filling such vacancy shall be appointed to serve for the unexpired term. If any member of the Civil Service Board shall miss and fail to attend any two consecutive meetings of the Board duly and properly called as herein provided, the council, at any regular or special meeting, may by resolution terminate the term of such member and declare that a vacancy exists on said Board, which shall be filled as above provided.

The Director of Human Resources and Risk Management of the City of Marietta, or his or her designee, shall attend all regular and special meetings of the Board. All such training provided by the Director shall be attended by each member of the Board. If the training as provided by the Director of Human Resources and Risk Management is not completed within the calendar year as specified, the Chairman may recommend to the City Council termination of the term of such member. The City Council at any regular or special meeting by resolution, with or without a recommendation of the Chairman, may terminate the term of such member and declare that a vacancy exists on such Board and that such vacancy shall be filled as above provided.

As of April 13, 1994, the terms of the various posts were to expire as follows:

Post 1—December 31, 1994

Post 2—December 31, 1994

Post 3—December 31, 1995

Post 4—December 31, 1995

Post 5—January 31, 1995

(Ord. No. 5293, 4/13/94, Exh. A; Ord. No. 5506, 11/8/95; Ord. No. 5658, 2/12/97)

#### Section 4.16 - Oath.

Every person who shall be elected as a member of such Civil Service Board shall, within 15 days after such appointment, qualify by taking oath that he is eligible for said office and will execute the duties of the same according to the best of his or her knowledge and ability, and such oath as may be required by the charter of the City and the laws of the State for public officials. Such oath shall be administered by any person authorized by law to administer oaths and a copy thereof filed with the clerk.

(Ord. No. 5293, 4/13/94, Exh. A)

#### Section 4.17 - Chairman; meetings; clerk; quorum.

Said Civil Service Board shall elect by a majority of the Board one (1) of its members as chairman, who shall hold office as such chairman at the pleasure of the Board. The Chairman shall be elected at the January meeting of each year. The duties of the Chairman shall be to preside at all regular and special meetings of the Board, to conduct all hearings of said Board, call special meetings of the Board upon proper notice and perform such other duties as may be prescribed from time to time by the Board. Said Civil Service Board shall hold a regular meeting in January for the transaction of any business that comes up. The Civil Service Board may hold special, adjourned, or called meetings at any time that the same may be called by the Chairman of said Board or by any two (2) members thereof. In the case of all special or called meetings of the Board, called in the manner herein before provided, the Clerk of the said Board, which Clerk shall be the City Clerk or his or her designee, shall issue a notice of the special or called meeting, stating time, place and subject and shall be served personally upon each member of the Board or left in their usual places of residence at least 24 hours before the time of the meeting. Only matters set forth in the notice of the special or called meeting shall be considered at the meeting. Provided, however, if a member absents himself from the city for more than 30 continuous days, a meeting may be duly and regularly held upon giving the requisite notice to the remaining members of the Board. At any regular, special, or called meeting any three (3) members of the Board shall constitute a quorum for the transaction of business and the votes of any three (3) members of the Board shall be sufficient to transact its business. All meetings of the Board shall be held in the City Hall, or in such place as the City Council holds its meetings.

(Ord. No. 5402, 3/8/95; Sec. 1; Ord. No. 5293, 4/13/94, Exh. A)

#### Section 4.18 - Minutes.

Said Civil Service Board shall keep minutes of its meetings and records of all business transacted by it at each meeting. All such minutes and records shall be open to inspection at all times by the public and shall be on file in the office of the city clerk. The city clerk or his or her designee shall attend all meetings of said Civil Service Board and shall keep the minutes and records of same.

(Ord. No. 5293, 4/13/94, Exh. A)

#### Section 4.19 - Compensation.

The compensation of the members of the said Civil Service Board and the Clerk of such Board shall be established by ordinance by the City Council. The Council shall provide for the payment of the salaries of the members of said Civil Service Board and the Clerk of such Board and the payment of all expenses of said Board. If such expenses other than salaries are approved by the Council, said expenses shall be provided in the annual budget for the estimation and appropriation of a sufficient amount to cover same.

(Ord. No. 5293, 4/13/94, Exh. A)

#### Section 4.20 - Political activity by members of fire or police departments prohibited.

- (a) No officer or employee or member of said fire department or police department shall solicit orally or by letter or otherwise or receive or be in any manner concerned in soliciting any votes or receiving any assessment or subscription or contribution of any candidate for any municipal office of the city.
- (b) No member of said fire department or police department shall in any way undertake or threaten to degrade, discharge, or demote, or in any manner change the official rank or pay of any officer or employee of said departments, or promise or threaten to do so, for giving or withholding or neglecting to make any contribution of money or any valuable thing for any person, party or for any political purpose whatsoever, or for the support of any candidate. No member of said fire department or police department shall receive any promotion as a reward for his or her support of any candidate or political party, and no member of said fire department or police department shall be reduced in rank or pay or discharged for his or her failure to support any candidate for political office.

(Ord. No. 5293, 4/13/94, Exh. A)

#### Section 4.21 - Effect of recommendation for employment.

No recommendation made by any officer or official, whether said officer or official be a City, County, State or national officer or official, of any person being examined for membership in said departments shall be considered except as the same may apply to the general moral character of the applicant.

(Ord. No. 5293, 4/13/94, Exh. A)

#### Section 4.22 - Reserved.

Section 4.23 - Penalty for violations by member of department.

Any member of the fire department or police department, by appointment under the civil service rules, who shall willfully, or through culpable negligence violate any provisions of this division, or any criminal statute of this state, or such ordinance of this City, or the rules of the said Civil Service Board or of said respective departments shall be subject to disciplinary action up to and including termination of employment.

(Ord. No. 5293, 4/13/94, Exh. A)

Section 4.24 - Penalty for violation by Civil Service Board member.

Any member of the Civil Service Board who shall violate any of the provisions of this division shall be subject to removal by a majority vote of the council after a full hearing before same and after having been served with written notice of the charges against him or her five (5) days before the date set for such hearing. The finding of the council upon such a hearing shall be final and conclusive and such person so removed shall not thereafter be eligible for reappointment upon said board for a period of five (5) years. If so removed, his or her successor shall be appointed in the same manner as he or she was appointed.

(Ord. No. 5293, 4/13/94, Exh. A)

Section 4.25 - Rules and regulations.

The Civil Service Board shall make rules and regulations to carry out the purpose of this division and for:

- (a) Political Activity.
- (b) Grievance Process.
- (c) Hearings-conduction of.
- (d) Any such rules and regulations in accordance with the provisions of this division as it may deem necessary. 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.

Until rules and regulations are adopted as stated above, the current rules and regulations pursuant to Part 4 of the Municipal Code of Marietta shall apply and remain in full force and effect.

(Ord. No. 5293, 4/13/94, Exh. A)

Section 4.26 - Hearings.

Non-probationary members of the fire department below the rank of deputy chief or of the police department below the rank of deputy chief who are removed, discharged, demoted, adversely affected by the promotional process, or involuntarily retired may either request a hearing before the Civil Service Board or submit a grievance/appeal through their department

head/city manager channels in accordance with Article 4-4-22 of the Municipal Code of Marietta. The chiefs of the fire and police departments shall have the authority to suspend without pay any member of their respective departments upon cause for periods not to exceed 10 days (112 hours for fire fighters) without a hearing by the Civil Service Board. Suspensions for periods in excess of 10 days (112 hours for fire fighters) shall be given pending hearing by the Civil Service Board. Said hearing shall be held within thirty (30) calendar days following the receipt by the affected member of official notification of the action or shall be deemed waived unless the Board grants an extension upon the request of any party. The charges upon which such disciplinary action was taken shall be heard before the Civil Service Board after service upon the person charged with a copy of the charges, as herein before provided. The decision of the Board thereon shall be given in writing to all parties and a copy thereof filed with the City Clerk. In all proceedings before the Civil Service Board, all members are expected to attend unless previously excused by the Chairman. The city attorney shall appear and represent the interest of the City when requested or ordered by the City. The person against whom charges are preferred or the appellant shall have the right to employ counsel to represent him at the hearing before said Board. Said Board shall have power to subpoena witnesses both on behalf of the City and the accused or appellant and to require the production of any books, papers or records material to the issues in said case, by subpoena to be issued in the same manner as subpoenas are issued by the municipal court, signed by the Chairman of said Board. Said Board shall have power to punish for contempt by a fine not exceeding \$100 or imprisonment not exceeding seven (7) calendar days any person willfully failing or refusing to obey such subpoena.

(Ord. No. 5402, 2/8/95, Sec. 2; Ord. No. 5293, 4/13/94, Exh. A; Ord. No. 5348, 9/21/94, Sec. 1; Ord. No. 5658, 2/12/97)

#### Section 4.27 - Witness's oath.

In the course of any investigation by said Civil Service Board, any member thereof shall have the power to administer oaths to any witness.

(Ord. No. 5293, 4/13/94, Exh. A)

#### Section 4.28 - Records of departments; availability.

Except to the extent prohibited by law, the Civil Service Board shall at all times have access to all files, records and data of the fire and police departments of the city, and on request to either the chief of the fire department, the chief of the police department or the city clerk or department of human resources and risk management, must be furnished with any such record information as may be approved by the City Council.

(Ord. No. 5293, 4/13/94, Exh. A; Ord. No. 5658, 2/12/97)

Section 4.29 - Right of certiorari.

After decision is rendered by the Civil Service Board in accordance with the Civil Service Board rules, any party to the hearing may apply for certiorari to the appropriate Superior Court pursuant to the laws of this State.

(Ord. No. 5293, 4/13/94, Exh. A)

Section 4.30 - Initial work test period.

All appointments and reappointments shall be on an initial work test period for eighteen (18) months from the date of appointment. At any time before the expiration of said initial work test period, the chiefs may discharge any individual serving an initial work test period within their respective departments and such individual shall not be entitled to a hearing upon such discharge. If an individual has not been discharged before the expiration of the work test period, his/her appointment shall be deemed complete.

(Ord. No. 5293, 4/13/94, Exh. A; Ord. No. 6068, 12/8/1999, § 3)”

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 Ordinances 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: March 13, 2019

APPROVED:   
R. Steve Tumlin, Jr., Mayor

ATTEST:   
Stephanie Guy, City Clerk

Approved as to Form:   
Douglas R. Haynie, City Attorney