



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Motion Signature

File Number: 20210589

Charter Amendment related to Firefighter and Police Officer Civil Service

Motion to approve Amendment to the Charter for the City of Marietta Section 4.13 entitled "Firefighter and Police Officer Civil Service".

Second Reading
Public Hearing Required

Date April 13, 2022

R. Steve Tumlin, Jr.

R. Steve Tumlin, Jr., Mayor

Stephanie Guy

Stephanie Guy, City Clerk

AN ORDINANCE

Amending the City Charter, Part 1, Article IV, Division 2, Section 4.13, et seq., (Firefighter and Police Officer Civil Service).

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

Section 4.13 - Established.

Section 1: The Charter of the City of Marietta, Part 1, Article IV, Division 2 (Firefighter and Police Officer Civil Service), shall be amended as follows:

Section 4.13 - Established.

(a) Purpose. There is hereby established a Marietta Police and Fire Civil Service System for the purpose of providing Civil Service Employees the opportunity to seek administrative review of adverse actions constituting cause of appeal under the Civil Service Rules and Regulations. All Certified Firefighters of the Fire Department below the rank of deputy chief, upon successfully completing their initial work test period, and all Certified Peace Officers of the Police Department below the rank of deputy chief, upon successfully completing their initial work test period, shall be Civil Service Employees under the Marietta Police and Fire Civil Service System.

(b) Intent. Upon achieving such status, Civil Service Employees 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 the Chiefs of the Fire and Police Departments from taking proper adverse action, up to and including termination, against any Civil Service Employee in his/her department, for cause, subject to the Civil Service Employee's right hereunder to seek administrative review as herein provided.

Section 4.14 - Definitions.

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

Civil Service Employees. All Certified Firefighters of the Fire Department below the rank of deputy chief who have successfully completed an initial work test period and all Certified Peace Officers of the Police Department below the rank of deputy chief who have successfully completed an initial work test period.

Certified Firefighter. Any duly sworn firefighter who is currently certified by the Georgia Firefighter Standards and Training Council (or any successor agency charged by law with regulating, certifying, and/or licensing firefighters in the State of Georgia) as having met and as

being in compliance with all laws, rules, and/or regulations required for employment in the fire service in the State of Georgia.

Certified Peace Officer. Any duly sworn law enforcement or peace officer who is currently certified by the Georgia Peace Officer Standards and Training Council (or any successor agency charged by law with regulating, certifying, and/or licensing law enforcement or peace officers in the State of Georgia) as having met and as being in compliance with all laws, rules, and/or regulations required for employment in the field of law enforcement in the State of Georgia.

Clerk of the Civil Service Board. The City Clerk or his or her designee, who shall be responsible for certifying the eligibility of each candidate for appointment or reappointment to the Civil Service Board, for coordinating and providing administrative assistance with Civil Service Board elections, including certifying election results, for receiving filings and serving notices on behalf of the Civil Service Board, for scheduling and posting notice of Civil Service Board meetings, including hearings, in accordance with the open meetings laws of the State of Georgia, for taking and maintaining minutes of such meetings, for scheduling training for Board members and maintaining training records, and for performing such other tasks as set forth in this division and in the Civil Service Rules and Regulations.

Immediate Family Member. Includes spouse, son, daughter, father, mother, brother, sister, half-brother, half-sister, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

Section 4.15 - Membership; Terms; Vacancies; Training.

(a) Appointment of Members. 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 as hereinafter provided. All five appointments shall be entered on the minutes of the City Council. 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 hereinafter 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 hereinafter provided, by Civil Service Employees of the Fire and Police Departments.

(b) Election for Nominations of Post 2 and Post 4 Members. The Post 2 and Post 4 members shall each serve pursuant to appointment as specified herein by the City Council following a nomination by election by a plurality of the Civil Service Employees of the Fire and Police Departments. Said election shall be by secret ballot conducted by the Clerk of the Civil Service Board who shall certify the results to the City Council. The City Council shall consider, but shall not be bound by, nominations made as a result of said elections.

(c) Nomination of Post 5 Member. The four members selected to fill Post 1, Post 2, Post 3, and Post 4 on the Civil Service Board may nominate an eligible person to fill Post 5 by majority vote during the Board's regular January meeting. The Board's nominee shall be identified in the minutes and presented to the City Council by the Clerk of the Board. The Board's nominee shall be considered by the City Council for appointment as the fifth member of the Civil Service Board, but the City Council is not bound to the nomination and may appoint any otherwise eligible person to Post 5. In the event that the members of the Post 1, Post 2, Post

3, and Post 4 are unable, by majority vote, to nominate a fifth member, within thirty (30) days after their appointment, the City Council shall proceed to appoint an otherwise eligible person to the Post 5 position.

(d) Terms of Civil Service Board Members. The five members of the Civil Service Board shall be appointed as follows for the terms set forth herein:

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

Post 5: The initial and all subsequent terms served by this member shall be one year which will begin on February 1 and end on January 31 of the following year.

At the expiration of the term of each member, the appointment shall be made thereafter by the same method and upon the same terms and conditions as provided herein and each Post member shall serve until a successor has been appointed by the City Council.

(e) Eligibility. No person shall be eligible to be a member of said Board who:

(1) holds any elected governmental position, is employed by a municipal or county government, or was previously employed by the City less than three years prior to commencement of the term to which appointment is sought;

(2) is less than 25 years of age;

(3) is not a bona fide resident and qualified voter of the City;

(4) has an Immediate Family Member serving in an elected or appointed position with the City;

(5) has an Immediate Family Member who is currently employed by the City;

(6) previously served on the Civil Service Board but was removed for cause less than five years earlier (provided, however, that if any nominee was removed for cause more than five years earlier, the Clerk of the Civil Service Board shall notify the City Council, in writing, of such removal and the reasons for same prior to its vote on the appointment);

(7) previously was employed by the City but was involuntarily separated for disciplinary reasons or resigned or retired in lieu of discipline or while under investigation; or

(8) previously served as a firefighter or law enforcement officer but had his/her certification revoked for disciplinary reasons or for reasons relating to misconduct by the Georgia Firefighter Standards and Training Council (or any successor agency), the Georgia Peace Officer Standards and Training Council (or any successor agency), or any similar state or federal agency responsible for regulating, certifying, or licensing firefighters or law enforcement officers in other jurisdictions.

(f) Vacancies. In the event of a vacancy upon said Board caused by death, resignation, removal, or other cause, the vacancy shall be filled as provided herein and the person filling such vacancy shall be appointed to serve for the unexpired term.

(g) Training.

(1) The City's Director of Human Resources and Risk Management, or his or her designee, shall attend all regular and called meetings of the Civil Service Board. Based on his or her own observations and in consultation with the Attorney for the Board, as well as in due consideration of any requests from the Board, the Director of Human Resources and Risk Management shall identify necessary and appropriate areas of annual training for the Board members and, with the assistance of the Clerk, shall schedule same.

(2) Except as provided below, all training provided to the Civil Service Board shall be attended by each member of the Board.

(3) In addition, the Director of Human Resources and Risk Management, in consultation with the Attorney for the Board, shall design an appropriate initial orientation program for newly appointed members of the Civil Service Board to be attended by each new member within the first twelve (12) months of his or her initial appointment. Other members of the Civil Service Board may, but need not, attend the initial orientation program.

Section 4.16 - Oath.

Every person who shall be appointed or reappointed as a member of such Civil Service Board shall, within 15 days after such appointment or reappointment, qualify by taking oath that he or she is eligible for said office and will honestly and faithfully discharge the duties of the office to the best of his or her ability without fear, favor, or partiality, and such other 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 of the Board.

Section 4.17 - Chairperson; Meetings; Quorum.

(a) Chairperson of the Civil Service Board. At a regular meeting held in January of each year, the Civil Service Board, in addition to transacting any other appropriate business, shall elect by a majority of the Board one (1) of its members as Chairperson, who shall hold office as such Chairperson at the pleasure of the Board. The duties of the Chairperson shall be to preside at all regular and special meetings and hearings of the 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 City Council or the Board.

(b) Civil Service Board Meetings. In addition to the regular January meeting, upon proper notice, the Civil Service Board may hold special, adjourned, or called meetings at any time that the same may be called by the Chairperson of said Board or by any two (2) members thereof. All such meetings shall be held in City Hall or in such place as the City Council holds its meetings.

(c) Notice to Board Members of Meetings. In the case of all special or called meetings of the Board, the Clerk of said Board shall issue a notice of the special or called meeting, stating time, place, and subject, and said notice 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. Provided, however, if a member absents himself or herself 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. Only matters set forth in the notice of the special or called meeting shall be considered at the meeting except as may otherwise be permitted by State law.

(d) Quorum. 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.

Section 4.18 – Meetings open to public; minutes.

All meetings of the Civil Service Board, including hearings, shall be conducted in accordance with the open meetings laws of the State of Georgia, including all requirements relating to notice, agendas, and the recording of minutes (which shall be maintained in the office of the Clerk of the Board and made available to the public upon request).

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 compensation of the members of said Civil Service Board and the Clerk of such Board and the reimbursement of all expenses of said Board. If such expenses other than compensation 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.

Section 4.20 – Political activity by Civil Service Employees.

(a) The political activity of Civil Service Employees is subject to the same restrictions and limitations as are imposed on all employees of the City of Marietta/BLW in the Personnel Rules and Regulations; provided, however, that said restrictions and limitations shall not be interpreted or applied in any manner inconsistent with federal or state constitutional or statutory law.

(b) No Civil Service Employee or other Certified Firefighter or Certified Peace Officer employed by the City shall in any way undertake or threaten to degrade, discharge, or demote, or in any manner change the official rank or pay of any Civil Service Employee, 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 Civil Service Employee shall receive any promotion as a reward for his or her support of any candidate or political party, and no Civil Service Employee shall be

reduced in rank or pay or discharged for his or her failure to support any candidate for political office.

Section 4.21 – Effect of recommendation for employment.

No recommendation made by any elected or appointed official of the City on behalf of any person applying for employment with the Fire or Police Departments shall be considered except as the same may apply to the general moral character of the applicant. Likewise, no applicant for employment shall be hired based solely on any request made by any officer or official, whether said officer or official be a City, County, State or national officer or official.

Section 4.22 – Reserved.

Section 4.23 – Penalty for violations by Civil Service Employee.

Any Civil Service Employee who shall willfully, or through culpable negligence violate any provisions of this division, or any criminal statute of this State, or the Civil Service Rules and Regulations, the Personnel Rules and Regulations, or any other ordinance of this City, or the standards of conduct, standard operating procedures (SOPs), and directives of his or her department, shall be subject to disciplinary action up to and including termination of employment.

Section 4.24 – Removal of Civil Service Board Member.

(a) Removal Due to Non-Attendance. 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 Clerk of the Board shall certify same, in writing, to the City Council. Any member of the Civil Service Board may make a recommendation to the City Council regarding the removal or non-removal of the non-attending member, which recommendation should be presented in writing to the Clerk, who shall thereafter submit it to the Council. Upon receipt of the Clerk's certification of non-attendance or as otherwise provided in sub-paragraph (e) of this Section 4.24, the Council, at any regular or special meeting, and with or without a hearing, may by resolution declare said member's position on the Board to have been vacated. In such event, said vacancy shall be filled as provided in Section 4.15.

(b) Removal Due to Failure to Complete Training. If the training required by Section 4.15(g) of this Charter is not completed in accordance with the Civil Service Rules and Regulations, the Clerk of the Board shall certify same, in writing, to the City Council. Any member of the Civil Service Board may make a recommendation to the City Council regarding the removal or non-removal of the non-compliant member, which recommendation should be presented in writing to the Clerk, who shall thereafter submit it to the Council. Upon receipt of the Clerk's certification of non-compliance or as otherwise provided in sub-paragraph (e) of this Section 4.24, the City Council, at any regular or special meeting, and with or without a hearing, may by resolution declare such member's position on the Board to have been vacated. In such event, said vacancy shall be filled as provided in Section 4.15.

(c) Removal Due to Ineligibility or Loss of Eligibility. If a significant question arises as to whether a given member of the Board (i) was ineligible at the time of his or her appointment or reappointment to serve on the Board pursuant to any provision of Section 4.15(e) or (ii) has lost eligibility for such service under Section 4.15(e)(1), (3), (4) or (5), the City Manager or

his/her designee shall notify said member of same, in writing, and shall therein inform the member of his/her right to appeal the matter to the City Council pursuant to Section 4.24(d) of this division by submitting such request, in writing, to the Clerk of the Board within seven (7) days of his or her receipt of such notice. In such event, the Clerk shall, in turn, promptly forward said request to the City Council, who shall thereafter proceed as provided in Section 4.24(d). In the absence of a timely request for hearing, the Clerk shall so notify the Council and said member's term on the Board shall be deemed to have been vacated. In such event, said vacancy shall be filled as provided in Section 4.15.

(d) Removal for Cause. Any member of the Civil Service Board shall be subject to removal for cause including, but not limited to, violation of any of the provisions of this division or the Civil Service Rules and Regulations adopted hereunder. Removal for cause shall be by a majority vote of the Council after a full hearing before same. The affected Civil Service Board member shall be served with written notice of the charges against him or her no less than five (5) days before the date set for such hearing. Notwithstanding the foregoing, the Council's vote on the affected Board member's removal may be conducted without a hearing if the member expressly waives his or her right to a hearing, in writing, within the five-day notice period above-stated.

(e) No Restriction on City Council's Discretion to Act. Nothing in this Section is intended, or shall be interpreted or applied, as imposing any restrictions on the City Council's right to make any inquiry or take any other appropriate action, including the initiation of removal proceedings, upon its receipt of credible information – whether from the Clerk, the Civil Service Board, or any other reliable source – implicating a Civil Service Board member's eligibility, his or her compliance with the attendance and training requirements of this division, or the existence of cause for his or her removal.

(f) Copies of Notices. Copies of all notices, certified or otherwise, submitted to the City Council by the Clerk in accordance with any provision of this Section 4.24 shall be served by the Clerk on each member of the Board (including the affected Board member), the Attorney for the Board, and the Director of Human Resources and Risk Management.

Section 4.25 – Civil Service Rules and Regulations.

(a) The Civil Service Board shall make, amend, supplement, or rescind rules and regulations as may be necessary and appropriate to carry out the purposes of this division and for:

(1) Defining causes for appeal and non-grievable actions.

(2) Establishing the grievance process.

(3) Establishing hearing procedures (including, but not limited to, provisions addressing the order and burden of proof, evidentiary standards and rulings, the administration of oaths, the granting of continuances, and preparation and issuance of the Board's decision).

(4) Initial orientation training for all newly appointed members of the Civil Service Board and annual training for all Board members.

(5) Such other matters consistent with the provisions of this division as the Board may deem necessary and appropriate to efficiently and effectively fulfill its duties and responsibilities hereunder.

(b) Notwithstanding the foregoing, no rule or regulation shall prevent the chiefs of the fire and police departments from taking proper adverse action, for cause, against any Civil Service Employee in their respective departments, up to and including termination, subject to the Civil Service Employee's right hereunder to seek administrative review. Furthermore, no rule or regulation shall restrict the chiefs of the fire and police departments in the proper exercise of their authority to suspend without pay any member of their respective departments for cause for periods not to exceed 10 days (112 hours for firefighters) without a hearing by the Civil Service Board.

(c) All such rules and regulations, including any amendment, supplementation, or rescission or such rules and regulations, 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 Civil Service Rules and Regulations, set forth in Part 4 of the Municipal Code of Marietta, shall remain in full force and effect.

Section 4.26 – Hearings.

Any Civil Service Employee as defined in this division who is the subject of an adverse action constituting cause of appeal under the Civil Service Rules and Regulations may either request a hearing before the Civil Service Board or submit a grievance/appeal through their Chief/City Manager channels in accordance with Article 4-4-22 of the Personnel Rules and Regulations.

Section 4.27 - Witness's oath.

In the course of any hearing or other proceeding properly before the Civil Service Board, any member thereof, as well as the Attorney for the Board, shall have the power to administer oaths to any witness.

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 public 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 public record information as the Board may deem necessary to efficiently and effectively fulfill its duties and responsibilities hereunder.

Section 4.29 - Right of Certiorari.

After a final decision is rendered by the Civil Service Board on an appeal in accordance with the Civil Service Rules and Regulations, any party to the hearing may apply for certiorari to the Superior Court of Cobb County pursuant to the Georgia Certiorari Act.

Section 4.30 - Initial work test period.

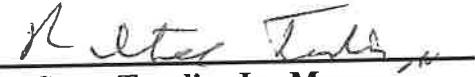
All newly hired members of the Fire and Police Departments shall be employed pursuant to an initial work test period of eighteen (18) months from date of appointment, as determined by the City Council and set forth in Section 4-4-6-070 of the City's Personnel Rules and Regulations. The Chiefs may take adverse action, up to and including discharge, against any employee serving an initial work test period within their respective departments and such employee shall not be entitled to appeal such adverse action to the Civil Service Board. Working test periods are subject to extension in accordance with Section 4-4-6-070(C) of the City/BLW's Personnel Rules and Regulations.

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: April 13, 2022

APPROVED: 
R. Steve Tumlin, Jr., Mayor

ATTEST:


Stephanie Guy, City Clerk

Approved as to Form:


Douglas R. Haynie, City Attorney