

DIVISION 4. - CIVIL SERVICE^[5]

Footnotes:

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Editor's note— Ord. No. 92-02, 2-17-92, amended div. 4, §§ 77(1)—77(25), to read as set forth herein. Prior to such amendment, such sections contained similar provisions and derived from 1962 Ga. Laws (Act No. 793), page 2550, § 1(1)—(25); 1963 Ga. Laws (Act No. 142), page 2424, § 5; 1971 Ga. Laws (Act No. 1060), page 3488, §§ 3, 4; 1972 Ga. Laws (Act No. 620), page 2717, § 2; Ord. No. 84-7, § 1, 6-4-84; Ord. No. 84-8, § 1, 6-4-84; and Ord. No. 88-8, § 1, 3-7-88. Subsequently, Ordinance No. 94-13, adopted Aug. 15, 1994, amended this division to read as herein set out. Formerly, this division consisted of §§ 77(1)—77(27), which pertained to civil service and derived from 1962 Ga. Laws (Act No. 793), page 2550, §§ 1, 4, 6, and 14—16; § 1 of Ord. No. 84-8, adopted June 4, 1984; and Ord. No. 92-02, adopted Feb. 17, 1992.

Sec. 77(1). - Jurisdiction of civil service board.

- (a) It is the intent of the mayor and council to establish in the city a system of personnel administration based on merit principles and methods governing the classification of positions and the employment, conduct, movement and separation of civil service employees. It is also the intent of mayor and council to assist persons in building a career in government service and to attract, select and retain the best employees on merit, free from coercive political influences, with incentives in the form of equal opportunity for promotions according to the dictates of ethics, morality and law. To further the goals set forth herein and to ensure the fair treatment of all civil service employees, the mayor and council have adopted the City of Smyrna Personnel Policies and Procedures Manual which shall cover all civil service employees.
- (b) The civil service board shall have appellate jurisdiction over civil service employee adverse actions and employee grievances after the employee has followed the appeals process outlined in the City of Smyrna Policies and Procedures Manual.
- (c) In exercising such jurisdiction, the civil service board shall proceed in accordance with the appeals process outlined in the City of Smyrna Policies and Procedures Manual.
- (d) In exercising such jurisdiction the civil service board shall determine if the adverse action or employee grievance was procedurally and substantively in accordance with the City of Smyrna Policies and Procedures Manual and/or the operational rules and regulations of the employees department. If the civil service board finds that the adverse action or employee grievance was not in accordance with the City of Smyrna Policies and Procedures Manual and/or the operational rules and regulations, the civil service board shall act in accordance with the City of Smyrna Policies and Procedures Manual and shall be able to modify or reverse the adverse action or actions which lead to the employee grievance and may grant back pay and benefits as are consistent with the modification or reversal.
- (e) Any proposed changes in the hiring, promotion, and appeals policies and procedures of civil service employees shall be made available to civil service employees and submitted to the civil service board for its review and comment prior to adoption and implementation. The civil service board will review any proposed changes to determine if the same are in accordance with the intent of the provisions set forth herein. The civil service board shall forward to the mayor and council its comments regarding the proposed changes for a final decision thereon.

(Ord. No. 94-13, 8-15-94)

Sec. 77(1.1). - Officers and employees covered.

All officers and members of the fire and police departments of the City of Smyrna, as defined herein, who have satisfied the working test requirements shall be under and governed by the civil service rules and regulations established under the provisions hereinafter provided. Nothing herein contained shall be construed to prevent or preclude the removal of any officer or member of said fire or police departments of the City of Smyrna in accordance with the provisions of this act and the City of Smyrna Policies and Procedures Manual.

(Ord. No. 94-13, 8-15-94)

Sec. 77(2). - Definitions.

The following definitions, as used hereinafter, shall apply:

- (a) *Civil service board* means the group of persons charged with the administration of this division according to established rules and regulations as approved by the mayor and council.
- (b) *Civil service board member* means those persons elected or appointed to serve on the civil service board.
- (c) *Civil service employee* means those city employees holding positions, specifically named herein, in departments subject to this division on the date of adoption by the mayor and council, as follows:
 - (1) *Members of the fire department.* The words "members of the fire department," as used herein, shall mean and include uniformed personnel such as the assistant chief, captains, lieutenants, engineers, and firefighters, fire marshals and fire inspectors, and all others who are regularly carried on the payroll of such fire department, who may be called upon to fight fire, excluding civilian staff members. The fire chief in office at the time of adoption of this revision[, August 15, 1994,] shall be considered a civil service employee, however subsequent fire chiefs shall not be considered a civil service employee.
 - (2) *Members of the police department.* The words "members of the police department," as used herein, shall mean and include ranked personnel such as the majors, captains, lieutenants, sergeants, detectives, patrolmen, plainclothesmen, except secretaries, clerks, jail, communications or other civilian personnel. (Exception includes detention officers as civilian personnel.) The police chief in office at the time of adoption of this revision [, August 15, 1994,] shall be considered to [be] a civil service employee; however subsequent police chiefs shall not be considered a civil service employee.
- (d) *Non-civil service employee* means those city employees not specifically named by position or included herein on the date of adoption by the mayor and council.
- (e) *Resident* means any person residing within the corporate limits of the City of Smyrna for more than one year.
- (f) *Reserved.*
- (g) *Working days* means any day of the week except Saturday, Sunday or a legal holiday, where the city offices are closed.
- (h) *Adverse action* is defined by the City of Smyrna Policies and Procedures Manual, as kept on file in the office of the City of Smyrna Clerk.
- (i) *Grievance* is defined by the City of Smyrna Policies and Procedures Manual as kept on file in the office of the City of Smyrna Clerk.
- (j) *Working-test* is defined by the City of Smyrna Policies and Procedures Manual as kept on file in the office of the City of Smyrna Clerk.

(Ord. No. 94-13, 8-15-94)

Sec. 77(3). - Civil service board—Composition, election, terms, qualifications, removal, filling vacancies.

- (a) The original civil service board of the city which was organized under the prior amendment to the city charter (1959 Ga. Laws, pages 3217 et seq.) shall remain in effect and continue to function as herein provided and present members of the civil service board, who were appointed to the office as hereinafter provided, shall continue as members thereof until the expiration of their terms as provided in this section. Said members were selected as follows: **The mayor and council of the City of Smyrna appointed a resident of said city as a member of said civil service board for a term of six (6) years;** the members of the fire and police departments, by secret ballot, elected a resident of said City of Smyrna as a member of said civil service board for a term of four (4) years and the election was certified by the chiefs of the fire and police departments to the mayor and council of the City of Smyrna and entered upon the minutes of said council. The two (2) persons so elected a third resident of Smyrna for a term of two (2) years, and this selection was in writing and signed by them and entered upon the minutes of the mayor and council of the City of Smyrna. Thereby staggering the date of election of the members whereby one new member is chosen every two (2) years. In a subsequent charter revision (Ord. of 2-17-92(92-02)), the staggered terms of the members were set at four (4) year terms as each member was reelected. The present members of the civil service board, who were appointed to office prior to this revision shall continue as members of the civil service board until the expiration of their terms as provided in this section and shall function as an appellate body as set forth in this charter revision. **Beginning with the adoption of this revision, each civil service board members term shall be for two (2) years as each member is reelected.**
- (b) In the event of a vacancy upon said board caused by death, resignation, incapacity, inability or other cause, the vacancy shall be filled in the same manner that seat was originally filled, [i.e. by election by: a) either the mayor and council of the City of Smyrna, or b) the members of the departments of the city subject to the provisions of this act, or c) the two (2) members of said board who shall elect such successor] for the unexpired term.
- (c) All present members of the civil service board shall continue in office for the remainder of their respective terms and persons elected for a full term after passage of this act shall be elected for a two (2) year term. There shall be three (3) members of said board at all times and a member shall be eligible to succeed himself or herself if duly elected and otherwise qualified to do so. Although elected by separate bodies, the members of the board shall owe allegiance only to the fulfillment of their duties, and are not representatives of any group or department, and shall not undertake to represent any group or department but only to uphold the charter and laws of the City of Smyrna.
- (d) If any member of the civil service board shall:
- (1) Miss and fail to attend any two (2) consecutive meetings of the board duly and properly called,
 - (2) Violate any rule, law or ordinance of the City of Smyrna, State of Georgia, or County of Cobb, involving moral turpitude, misuse of funds or which prohibit any act which is repugnant to the public welfare or good conscience or morals of the community, or
 - (3) Violate any rule, law or ordinance of the City of Smyrna coming under this division or knowingly permit another person to do so, or
 - (4) Become physically or mentally unable to perform his regular duties as a civil service board member,
 - (5) Accept anything of value where the donor's intent is to influence any decision of the civil service board member,

then in such event the mayor and council of the City of Smyrna, after having given ten (10) days' prior notice, in writing, of the cause [and] thereafter having conducted a due process hearing thereon, at any regular or special meeting of the mayor and council of the City of Smyrna, may by resolution remove from office such member and declare that a vacancy exists on said board which shall be filled as hereinbefore provided in the same manner and by the same body as the person was elected for the remainder of his or her term of office. If so removed the successor shall be elected in the same manner and by the same body as the person was elected. No member of the civil service board who was removed by mayor and

council for reasons relating to conduct or violation of any rule, ordinance or law shall be eligible to again become a member of the civil service board.

- (e) No person shall be eligible to be a member of said board who is employed in any capacity or who holds any office of profit or trust under the city, county or state, or may otherwise have a conflict of interest by serving on the board, or who is less than twenty-five (25) years of age and a bona fide resident for at least one (1) year prior to his election and qualified voter of said city. At the expiration of the term of each member presently serving, a successor shall be elected by the mayor and council to fill the office of the member elected by them and by the members of the departments subject to the provisions of this act to fill the office of the member elected by the members, of the police and fire departments and the third members' terms shall be filled as herein provided.

(Ord. No. 94-13, 8-15-94; Mo. of 3-20-95)

Sec. 77(4). - Same—Taking oath—Ethics.

- (a) Every person who shall be elected as a member of such civil service board according to the provisions of this act shall, within fifteen (15) days after such election, qualify by taking oath that the person is eligible for said office and will execute the duties of the same according to the best of the person's knowledge and ability, and such other oath as may be required by the charter of the City of Smyrna and the laws of the State of Georgia of 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 mayor and council of the City of Smyrna.

Ethics: Each member of the civil service board shall:

- I. Give a full day's labor for a full day's pay and give to the performance of the duties the earnest effort and best thought.
- II. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- III. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or herself or his or her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of their governmental duties.
- IV. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- V. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of their governmental duties.
- VI. Never use any information coming to him confidentially in the performance of civil service board duties as a means for making private profit.
- VII. Uphold the constitution, laws, and legal regulations of the United States, State of Georgia, and the City of Smyrna and of all governments therein and never be a party to their evasion.

(Ord. No. 94-13, 8-15-94)

Sec. 77(5). - Promulgation of rules and regulations by mayor and council for internal operation of departments; adverse actions, demotion; reductions in force; working-test period.

- (a) The mayor and council of the City of Smyrna shall be charged with the internal operation of all departments under the provisions of this act and shall make such rules and regulations pertaining to the internal operations of such departments as it may deem necessary.

- (b) Persons who are the subject of adverse action or who shall have an employee grievance shall be entitled to have such adverse action or employee grievance reviewed in accordance with the procedures set forth in the City of Smyrna Personnel Policies and Procedures Manual.
- (c) The chiefs of the fire and police departments shall have authority to demote any member of their respective departments, and those civil service employees who are subject to such demotion shall be entitled to have such action reviewed in accordance with the procedures set forth in the City of Smyrna Personnel Policies and Procedures Manual. Reductions in rank or number of employees in all departments shall follow a general plan for reduction in force for the City of Smyrna, as may be approved from time to time by the mayor and council and filed in the office of the city clerk. Any such reduction in force and rank shall not be appealable to the civil service board.
- (d) All appointees to the departments and persons promoted to a higher position shall serve a working-test period of one (1) year. Such working-test period may be extended up to one (1) additional year by mutual consent of the chief of the department and the employee.

(Ord. No. 94-13, 8-15-94)

Sec. 77(6). - Certiorari in case of suspension or discharge.

In case of suspension, discharge or adverse action of any member of the civil service system of the City of Smyrna, said member shall have the right of certiorari of the superior court of Cobb County, Georgia, as provided by the laws of the State of Georgia, after first exhausting the appeal procedure outlined in the City of Smyrna Policies and Procedures Manual.

(Ord. No. 94-13, 8-15-94)

Sec. 77(7). - Service on employees of charges against them; hearing.

All disciplinary action taken against a civil service employee shall be in accordance with the provisions of the City of Smyrna Personnel Policies and Procedures Manual.

(Ord. No. 94-13, 8-15-94)

Sec. 77(8). - Administering oaths by board members.

In the course of any investigation by said civil service board, any member thereof shall have the power to administer oaths to witnesses.

(Ord. No. 94-13, 8-15-94)

Sec. 77(9). - Access of board to files, records and data.

The Human Resource Department of the City of Smyrna shall furnish the clerk of the civil service board with such resources and documents as may be needed by the civil service board to render a decision on each appeal brought before it. The civil service board shall also, at all reasonable times, have access to necessary files, records and data of the fire and police departments of the City of Smyrna and on request must be furnished with any such written information needed to reach their decision. The civil service board shall have the power to subpoena witnesses both on behalf of the city and the employee, and to require the production of any books, papers or records, material to the issues in said case. The subpoenas shall be issued in the same manner as subpoenas are issued by the City of Smyrna Municipal Court. Any person who refuses to comply with such subpoena, may be cited by the clerk of the civil service board to the City of Smyrna Municipal Court for punishment for contempt.

(Ord. No. 94-13, 8-15-94)

Sec. 77(10). - Legal counsel.

The city attorney or his or her designee shall be available to assist the civil service board on all legal matters which may arise during the discharge of its duties.

(Ord. No. 94-13, 8-15-94)

Sec. 77(11). - Organization and meetings of board; clerk.

Said civil service board shall elect one of its members as chairperson, who shall hold office as such chairperson at the pleasure of the board. Said civil service board shall hold regular meetings on the third Mondays in January, April, July and October, for the transaction of any business that may come before it and may hold special, adjourned or call meetings at any time that the same may be called by the chairperson of said board or by any two (2) members thereof. In the case of any and all special or called meetings of the board, called in the manner hereinbefore provided, the clerk of the board shall give all members of the board one (1) day's written notice of such call or special meetings; and such meeting cannot be legally held unless each member receives such one (1) day's written notice or waives same in writing. Provided, however, that if a member is absent from the city for more than thirty (30) continuous days; then in such event a meeting may be duly and regularly held upon giving the requisite notice to the other two (2) members of the board. At any regular, special or call meeting any two (2) members of the board shall constitute a quorum for the transaction of business and the votes of any two (2) members of the board shall be sufficient to transact its business. All meetings of the board shall be held in the city hall of the City of Smyrna, or in such place as the city council designates. Any meetings called shall be for the transaction of official business of the board. The clerk of the board shall be appointed by mayor and council and shall serve at the pleasure of mayor and council.

(Ord. No. 94-13, 8-15-94)

Sec. 77(12). - Minutes and records of board business.

Said civil service board shall keep minutes of their meetings and records of all business transacted by them at each and every meeting. All such minutes and records shall be on file in the office of the clerk of the mayor and council of the City of Smyrna. The clerk of the board, or his designee, shall attend all meetings of said civil service board and shall keep the minutes and records of same.

(Ord. No. 94-13, 8-15-94)

Sec. 77(13). - Salaries and expenses of board members and clerk; providing budget.

The mayor and council of the City of Smyrna shall provide the amount and for the payment of the salaries of the members of the said civil service board and the clerk, and the payment of all expenses of said board, if approved by the mayor and council, and shall provide in the annual budget for the estimation and appropriation of a sufficient amount to cover the same.

(Ord. No. 94-13, 8-15-94)

Sec. 77(14). - Political activity—Officers and employees; candidacy of board members.

No officer or employee of said fire or police department or member of the civil service board shall within the corporate limits of the City of Smyrna, solicit orally or by letter or otherwise or be in any manner

concerned in or with soliciting a vote or votes, or receiving any assessment or subscription or contribution for any candidate for municipal, county, state or federal office. Any such member or employee may, however, engage in whatever political activity he may desire to undertake during his off duty hours outside the corporate limits of the City of Smyrna. No member of the civil service board shall be eligible to run for election to any municipal office in the City of Smyrna, while serving as a member of said board.

(Mo. of 3-20-95)

Sec. 77(15). - Same—Extorting contributions; receiving rewards for support; reprisals for failure to support a candidate.

No member of said fire or police department shall in any manner 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 departments shall receive any promotion as a reward for his support of any candidate or political party, and no member of said departments shall be reduced in rank or pay or discharge[d] for his failure to support any candidate for political office.

(Ord. No. 94-13, 8-15-94; Mo. of 3-20-95)

Sec. 77(16). - Violations—Dismissal from service.

Any member of any department covered by this act employed by appointment under the civil service rules who shall willfully, or through culpable negligence, violate any provisions of this act, or any criminal statute of this state, or ordinance of this city, or the rules of said civil service board or mayor and council or of said departments, shall be dismissed from the services of the city, as hereinafter provided, and shall not be subject to reappointment for two (2) years thereafter.

(Ord. No. 94-13, 8-15-94; Mo. of 3-20-95)

Sec. 77(17). - Same—Punishment.

Any officer or employee of the city other than those holding office under the civil service rules who shall willfully, or through culpable negligence violate any of the provisions of this act shall be guilty of a misdemeanor, and on conviction thereof in the recorder's [municipal] court be fined a sum of not more than one thousand dollars (\$1,000.00) or sentenced to serve not more than thirty (30) days in the jail of said city.

(Ord. No. 94-13, 8-15-94; Mo. of 3-20-95)

Sec. 77(18). - "Grandfather" clause.

Every member of the department of the City of Smyrna among [coming] within the provisions of this act, who is a civil service employee of such department on the day upon which this act shall go into effect, shall retain his position without examination.

(Ord. No. 94-13, 8-15-94; Mo. of 3-20-95)

Sec. 77(19). - Severability of provisions of division.

In the event any word, section, paragraph or portion of this section [division] should be declared void, illegal, or unconstitutional the same shall not affect the remainder of this section or division as it is hereby enacted to provide for separate and divisible parts and provisions in such event.

(Ord. No. 94-13, 8-15-94; Mo. of 3-20-95)