

EXHIBIT A – Ordinance No. 04-18

CHAPTER 35. - EMPLOYEE POLICIES AND BENEFITS

Sec. 35.001. - DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Governing authority. The municipal officers of the City who are authorized to enact the ordinances of the municipality, and shall include only those officers who are authorized to vote on those ordinances.

Seniority. The length of service in any department in the municipality.

Sec. 35.002. - APPLICATION; EXCLUSIONS.

(A) All persons regularly employed by the municipality in any department shall be construed to come within the provisions of this subchapter, except Assistant City Managers, Assistants to the City Manager, Department Heads and Police Majors. This subchapter shall not include any officer or person employed part time or for temporary duty only; nor shall it include employees covered under the terms of a collective bargaining agreement, or expired collective bargaining agreement which is subject to renegotiation unless otherwise expressly provided in this subchapter or in the code of rules and regulations or in the collective bargaining agreement.

(B) The provisions of this subchapter shall not apply to those persons appointed by the City Commission.

(C) An employee appointed to the position of Major in the Police Department after October 1, 1996, with previous permanent status under the Civil Service Act, shall have the right to return to the employee's previously held civil service position.

~~Sec. 35.003. - CIVIL SERVICE BOARD.~~

~~(A) A Civil Service Board for the municipality is hereby created.~~

~~(1) The Board shall be composed of five (5) regular members, three (3) members of the Board to be persons of different vocations or vocational backgrounds, not employed by the municipality in any other capacity, official or otherwise, and shall be appointed by the governing authority of the municipality for a term of two (2) years. The fourth and fifth regular members of the Board shall be elected from City employees at large, but not both from the same department. The term of the fourth and fifth regular members shall be for one year. In addition to the five (5) regular members, as above provided, there shall be two (2) alternate members, one to be appointed by the governing authority, and to have a different vocation or vocational background than the three (3) other appointed members, and the other to be elected from the City employees at large, but from a different department than either the fourth or fifth regular~~

~~members of the Board. The term of the alternate member appointed by the governing authority shall be for two (2) years. The term of the alternate member elected from the City employees shall be for one year. This board shall be composed of five (5) regular members and two (2) alternate members only. The terms of the appointed members of the Board serving at the time this subchapter becomes law shall continue until the expiration of their four-year term. Members appointed after this subchapter becomes law shall serve for two (2) years from the date of their appointment. The regular members of the Board other than those elected from City employees, shall appoint the judges and clerk for the election of the fourth and fifth regular members and the second alternate member. The time for the election shall be set by the three (3) regular members first appointed to the Board, and thereafter the election shall be held on that date each year, or any other date as may be designated by the governing authority.~~

- ~~(2) — Each department is allowed only one candidate for the general election. If more than one candidate enters for the position, a departmental election supervised by the Department Head will be held to determine the candidate whose name will then be placed on the ballot at large. The departmental election will be held two (2) weeks prior to the general election.~~
- ~~(3) — For those employees who are on vacation, ill, on other assignments out of the City, or who are assigned to shift work other than the day shift, they shall be given the opportunity to enter an absentee ballot to be provided by the Board and made available one week prior to the general election. Along with the names for the candidates, a place for the printed name and signature of the absentee voter must appear in order for it to be counted. The Board will not be responsible for mailing or distributing at large absentee ballots as it will be the eligible employee who must request the ballot from his department. Absentee ballots must be received no later than the date of the general election in order to be validated.~~
- ~~(4) — The votes shall be consolidated on the following day after the election. The candidates receiving the highest and second highest number of votes shall be declared elected as fourth and fifth regular members of the Civil Service Board, and the candidate receiving the third highest number of votes shall be declared elected as the second alternate member of the Board, provided that the regular and alternate employee members of the Board must all be from different departments.~~

~~(B) — Should a vacancy occur during the course of the one-year term of the fourth and fifth regular members of the Civil Service Board (being those elected from the City employees), then the second alternate member of the Board shall automatically assume the vacant seat of the fourth or fifth regular member of the Board. Thereafter, the qualified candidate receiving the next highest number of votes in the prior city employee election shall automatically become the new second alternate member of the Board, provided that this new second alternate member must be from a different department than the then two (2) regular employee members of the Board.~~

~~(C) Immediately after appointments and elections have been made and held as above provided, the Board shall organize and elect a Chairperson, a Vice Chairperson, and one of its members chief examiner, who shall act as Secretary to the Board. The Board may appoint any other assistants to the secretary as may be necessary. All members of the Civil Service Board shall serve without recompense, unless otherwise provided by the governing authority.~~

Sec. ~~35.004~~ 35.003. - ADOPTION OF CODE OF RULES AND REGULATIONS.

~~(A) Subject to the qualifications contained in Section 35.002(A), the City Manager shall adopt, enact, and amend a code of prepare rules and regulations: in the form of a Personnel Policies and Procedures Manual ("PPM"), which shall be effective upon issuance by the City Manager. This code PPM shall cover the regulations for the conduct and direction of the employees and shall prescribe their duties, hours of work, discipline, and control. The code PPM shall contain rules and regulations for the appointment, employment, and discharge of persons in all positions in the municipality, based on merit, efficiency, character and industry. This code PPM shall have the force and effect of law on employees of the municipality. The Civil Service Board shall have authority to make reviews concerning the enforcement of this subchapter and report to the City Manager.~~

~~(B) The PPM shall be subject to modification, amendment, or expansion as deemed necessary by the City Manager.~~

Sec. ~~35.005~~. -- LIST OF ELIGIBILITY.

~~The Civil Service Board, or its examiners subject to its approval, shall provide examinations for those positions requiring examination as provided in the code of rules and regulations, and maintain lists of eligibles. The City Manager shall divide the departments into grades. These lists may be certified at a time as may be determined by the Board, but not less than once a year and shall be available for examination at any time. Appointments shall be made to fill vacancies from this list of eligibles, except as otherwise provided herein, and members of a department shall be moved from any grade to a higher grade only after passing an examination prescribed by the Board, if the position is one requiring examination under the code of rules and regulations.~~

Sec. ~~35.006~~. -- SUSPENSION OF PROVISIONS REQUIRING COMPETITION.

~~In the case of a vacancy in a position in a department where peculiar and exceptional qualifications of a scientific, managerial, professional or educational character are required and upon satisfactory evidence that the position can best be filled by a selection of some designated person of high qualities, the Civil Service Board, on a vote of a majority of its members, may suspend any provisions requiring competition in that place, and all cases of suspension of the examination shall be recorded by the Civil Service Board, with the reason for the suspension and shall be open to the public. At the time of the appointment, the grade of the appointee shall be fixed by the City Manager.~~

Sec. ~~35.007~~. -- FIXING PAY, POSITION AND CLASSIFICATION THROUGH BUDGETARY PROCESS.

~~(A) The City Commission shall fix the pay of all employees, shall fix the number of positions in each particular classification in each department and may increase or reduce the number of positions in any classification or the number of classifications in each department, or may abolish~~

~~any classification or position in any or all departments, through the budgetary process. The City Manager may vary the number of positions in any classification or the number of classifications in any or all departments during the budget year to meet City requirements.~~

~~(B) — In the event of a reduction in the number of positions in any classification in any or all departments or a reduction of classifications in any or all departments, the employees shall be retained according to seniority. In the event of the elimination of a position or classification within a department, employees who are affected shall have the opportunity to bump back within the department to another position or, if applicable, to another classification, if the employee, in the opinion of the Department Head and the City Manager, is qualified for the proposed position and has received a satisfactory performance evaluation for the year preceding the reduction in force. The employee shall thereafter receive the pay applicable to the new position or classification. In the event the position or classification previously eliminated in the reduction in force is again increased, those employees forced back as aforesaid shall be first to succeed to the restored position or classification previously held by the employee with permanent status according to seniority, without further examination or probationary period.~~

~~(C) — In the event a reduction in the force causes an employee to go into inactive duty, the inactive employee shall not receive any pay, but the inactive employee shall not lose seniority, provided the inactive employee remains inactive for a period not to exceed one year and reenters active duty within ten (10) days after notice has been given to the inactive employee by the City Manager that the position previously held by the employee is open.~~

~~(D) — In the event an employee dissents to the seniority rating, a hearing shall be held by the Board and the seniority determined, and the findings of the Board shall be final.~~

~~Sec. 35.008. — DISCHARGE OF EMPLOYEE.~~

~~The discharge of a permanent employee other than at the end of a probationary period shall not become effective until the City Manager shall have first served upon an employee of the department a written statement or notice of discharge which shall contain one or more reasons or grounds for discharge together with those specifications of facts as will enable an employee to make an explanation, and file it with the Civil Service Board, together with a copy of the notice of discharge and explanation, if any, made by the employee.~~

~~Sec. 35.009. — APPEAL; HEARING; PROCEDURE.~~

~~(A) — An employee who has been discharged, demoted or suspended without pay for a period in excess of seven (7) calendar days may appeal to the Civil Service Board for a hearing within ten (10) calendar days from the time he was served with notice of discharge, demotion or suspension without pay (as above referred to), as shown by that notice. In the case of discharge, the hearing shall be held within ninety (90) days, but not sooner than sixty (60) days, from the date that an appeal shall have been so filed with the Civil Service Board. In the cases of demotion and suspension without pay for a period in excess of seven (7) calendar days, the hearing shall be held within thirty (30) days from the date that an appeal shall have been so filed with the Board. Hearing dates in all appeals may be extended if mutually agreed to by the employee, the City, and the Board. Written notice shall be given to the person so removed, demoted or suspended and to the head of the proper department of the time and place of hearing the appeal, which hearing shall be open to the public.~~

~~(B) In instances of proper and timely appeals by employees to the Civil Service Board regarding disciplinary matters, pursuant to subsection (A) of this Section, the following procedures shall be applicable. Matters which the City Manager formally states are not disciplinary actions, although such matters may involve certain personnel actions, including terminations for failure to have or maintain job qualifications and requirements, shall not be appealable to the Civil Service Board. Only disciplinary matters, where so identified by the City Manager, of terminations, demotions, and suspensions without pay in excess of seven (7) calendar days are appealable to the Civil Service Board.~~

- ~~(1) The Civil Service Board, in hearings of appeals of discharged employees, shall function as a jury in civil litigation, with a Board counsel selected to function as a judge in civil litigation. As the trier of fact, the Board shall make findings of fact which shall be reduced to written form by the Board counsel.~~
- ~~(2) The Board as a body only shall conduct hearings of appeals of demoted employees and of appeals of employees suspended without pay for a period in excess of seven (7) calendar days. With the consent of the governing authority, the Board may, or where both parties jointly request such, the Board shall utilize the Board counsel format in the demotion and suspension appeal cases, in the same manner as provided herein in hearing cases of appeals by discharged employees. However, at all meetings and hearings of the Board, the Chairperson of the Board shall continue to act as the presiding officer to preside over the conduct and setting of those meetings and hearings.~~
- ~~(3) If the Board counsel format is not utilized, the Board may request that the City Commission appoint and retain an attorney-at-law to provide legal advice to the Board at hearings of appeals only. A board counsel shall be selected by a drawing conducted by the City Clerk, or a designated assistant City Clerk, herein referred to as the Clerk. The City Manager, on behalf of the City, shall submit to the Clerk names of two (2) qualified lawyers and their respective addresses in separate sealed envelopes; and the Civil Service Board shall likewise submit the names of two (2) qualified lawyers. The names must be submitted within ten (10) days from the date an appeal is filed with the Board. The drawing shall be held on the next regular business day after the expiration of the ten-day period.~~
- ~~(4) The four (4) envelopes containing the four (4) names shall be placed in a receptacle by the Clerk and retained in his custody. The Clerk shall notify the Chairperson of the Civil Service Board and the City Manager of the time of the drawing so that each may, if they so desire, have a representative present. The Clerk shall draw four (4) names and designate the order in which the names are drawn. The first name drawn shall be the Board counsel, and the order of the other names drawn will indicate the order of succession of the Board counsels if their predecessors are unable to serve.~~
- ~~(5) If either the City Manager or the Board fails to submit names within the ten-day period, the Clerk shall proceed to draw the two (2) names submitted; and~~

~~the first name drawn shall be the Board counsel and the second name his successor.~~

- ~~(6) Whenever the Board counsel format is utilized, the Board counsel shall function as a judge in civil litigation in conducting hearings of appeals to the Civil Service Board of discharged employees. The Board counsel must be a member of the State bar in good standing for the preceding five (5) years. The Board counsel shall rule upon admission of evidence and all other questions of law. The Board counsel shall also rule upon questions of conflict of interest and on motions to disqualify members of the Civil Service Board from serving on that board during a particular hearing. The Board counsel shall provide instructions to the Civil Service Board prior to its making findings of fact, which instructions shall be similar to jury instructions utilized in civil litigation. The Civil Service Board shall follow and abide by the Board counsel's rulings on all questions of law, including but not limited to his instructions, his rulings on conflict of interest questions and on motions to disqualify a member of the Civil Service Board from serving in a particular case.~~
- ~~(7) It is the intent of this subchapter that the Board counsel and the Civil Service Board (when acting together) shall respectively function in the capacities of judge and jury, as the judge and jury would function in civil litigation. However, during the course of an appeal the Board counsel shall, to the extent he deems compatible with due process and fairness, fully inform the Board of all matters pertaining to the appeal and hearing.~~
- ~~(8) The Civil Service Board shall hear the evidence upon the charges and specifications as filed with the Board by the City Manager. No material amendment of, or addition to, those charges or specifications will be considered by the Board counsel or the Board. The proceedings shall be as informal as is compatible with justice.~~
- ~~(9) The order of proof at all hearings shall be as follows: The City Manager shall present his evidence in support of the charges and specifications. The appellant shall then produce any evidence as he may wish to offer in his defense. The parties in interest may then offer rebuttal evidence. The Board counsel and the Board shall hear opening statements and closing arguments, when same are requested by either of the parties.~~
- ~~(10) In all hearings, irrelevant, immaterial or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not the evidence would be admissible in a trial in the Courts of the State. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.~~

- ~~(11) The Board counsel or the Board, by its Chairperson, in hearings where no Board counsel is used, shall have the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon his own motion, and to effect discovery which shall be permitted on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, except where otherwise modified by this subchapter. Motions to shorten the time for responding to a discovery request shall be liberally granted by the Board counsel, or by the Board when no Board counsel is used.~~
- ~~(12) In the case of an appeal of an employee's discharge, each party must advise the other in writing within thirty (30) days from the date the appeal was filed with the Board, who their witnesses will be and the addresses of those witnesses. In other appeal cases each party must advise the other party in writing of their witnesses and their addresses within ten (10) days from the date the appeal was filed with the Board. Failure to so notify the opposing party of the names and addresses of the other party's witnesses, when requested to do so in writing, shall entitle the deprived party to a reasonable continuance, or the undisclosed witnesses will be disqualified from testifying, as determined by the Board counsel, or by the Board when no Board counsel is used. Copies of all documentary evidence and exhibits shall be made available to the opposing party when prepared and not later than ten (10) days prior to the hearing, along with the opportunity to examine the originals. Failure to furnish those copies, with the opportunity to examine the originals, shall entitle the deprived party to reasonable continuance, or documentary evidence and exhibits shall be excluded from the evidence, as determined by the Board counsel or by the Board when no board counsel is used.~~
- ~~(13) A party shall be permitted to conduct cross examination when testimony is taken or documents are made a part of the record.~~
- ~~(14) Any person subject to a subpoena or order directing discovery may, before compliance and on timely petition, request the Board counsel or the Board, if there is no Board counsel hearing the subject appeal, to invalidate the subpoena or order on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material.~~
- ~~(15) A party may seek enforcement of a subpoena or order directing discovery issued under the authority of this subchapter, by filing a petition for enforcement in the circuit court of the judicial circuit wherein the person failing to comply with the subpoena or order resides. A failure to comply with an order of the Court shall result in a finding of contempt of court. However, no person shall be in contempt while the subpoena or order is being challenged as provided in subsection (B)(14) of this Section.~~
- ~~(16) After the hearing of the appeal, when a Board counsel is used, the Board counsel shall submit to the Board his instructions, conclusions of law, and rulings on any questions of law presented by the parties, as well as his legal~~

~~interpretation of the code of rules and regulations as the same may apply to the particular case. The Board counsel may make a submittal to the Board at the conclusion of the hearing or at a later time agreeable to the Board counsel and the Board.~~

- ~~(17) The Board will then render its final decision in the form of a final order. The final order of the Board relative to the appeal of a discharged employee shall be in writing and include findings of fact and conclusions of law separately stated, and it shall be rendered within thirty (30) days after the last day of the hearing or receipt of transcript, if applicable, whichever is later. If a party submitted proposed findings of fact or filed any written application or other request in connection with the hearing, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request. The order shall also contain a finding relative to the degree of severity of the discipline which has been imposed, which shall be binding except in instances where a Board counsel is used, in which case the finding shall be advisory only to the Board counsel, in which case such finding shall be advisory only to the Board counsel, whose decision on the severity of discipline, if any, shall be final and shall be included in the final written order.~~
- ~~(18) The above-described Board's final order relating to the hearing of appeals of suspensions without pay for more than seven (7) calendar days and demotions shall be rendered within thirty (30) days after the last day of the hearing or receipt of transcript, if applicable, whichever is later.~~
- ~~(19) The thirty-day period as it relates to the final order in employee discharge appeal cases and the Board's final order in employee suspension and demotion appeal cases, as referred to above, may be waived or extended with the consent of all parties.~~
- ~~(20) Parties shall be notified either personally or by mail of any order, and, unless waived, a copy of the final order shall be delivered or mailed to each party or to his attorney of record.~~

~~Sec. 35.010. FALSE SWEARING BY PERSON GIVING EVIDENCE.~~

~~Any willful false swearing on the part of any witness or person giving evidence before the presiding officer or the Civil Service Board as to any material fact in those proceedings shall be deemed perjury, and shall be punished in the manner prescribed by law for that offense.~~

~~Sec. 35.011. FAILURE TO APPEAR BEFORE APPEALS HEARING.~~

~~If the employee whose appeal is to be heard as set out in the foregoing Sections shall fail to appear for no good reason at the time fixed for the hearing, evidence shall be heard and a final order entered thereon. If the City Manager shall fail to appear at the hearing, and if no evidence be offered in support of his charges, the evidence as offered by the employee may be heard and a final order entered thereon.~~

~~Sec. 35.012. -- SUSPENDING EMPLOYEE WITHOUT PAY.~~

~~(A) — The City Manager may suspend a permanent employee without pay for a reasonable period not to exceed thirty (30) days, for purposes of discipline; however, if criminal charges have been formally instituted against a permanent employee, the City Manager may suspend him without pay until his case is finally adjudicated, even though the suspension exceeds thirty (30) days. If the employee charged with criminal conduct is adjudged guilty of any of the charges, the City Manager may dismiss that employee. If the employee is acquitted or cleared of the charges, the City Manager shall restore the employee to his employment with full back pay for the full period of time of his suspension. Successive suspensions without pay shall not be allowed.~~

~~(B) — In all cases of suspension without pay, demotion or dismissal which are appealable to the Civil Service Board, the City Manager shall furnish the employee with a copy of a notice thereof specifying his reasons for the same and give the employee a reasonable time in which to make and file an explanation. Any employee suspended without pay for a period in excess of seven (7) days (including suspension without pay in excess of seven (7) days because of criminal charges instituted), dismissed or demoted shall have the right of appeal to the Civil Service Board in the manner set forth in Section 35.009 with reference to an appeal in the case of dismissal, except the duty to provide a Board counsel is not mandatory in demotion and suspension cases. Whenever the dismissal, suspension without pay, or demotion of an employee, appealable to the Civil Service Board and heard as herein provided, is disapproved by the Board and a reinstatement ordered, the employee involved may, as determined by the Board, receive the pay he lost because of that dismissal, suspension or demotion.~~

~~Sec. 35.013. -- DISMISSAL.~~

~~(A) — Any permanent employee of the municipality may be dismissed by the City Manager when there is no longer any need for the position held by the employee because of a change in work. In the event a vacancy exists elsewhere in the City, the City Manager may, if the City Manager so desires, appoint the employee to fill the vacant position if the employee is qualified for the position and the employee's performance evaluation for the preceding year was satisfactory. In the event there is no other work for the employee, the employee's dismissal shall be final and there shall be no appeal of the dismissal to the Civil Service Board.~~

~~(B) — Any permanent employee who is dismissed for misconduct or delinquency or who resigns while charges are pending, shall be disqualified from taking any Civil Service examination in the City within a period of five (5) years thereafter.~~

~~Sec. 35.014. -- PREFERENTIAL BONUS POINTS.~~

~~A preferential bonus of five (5) points shall be added to the examination score of any eligible veteran, un-remarried widow or widower of a veteran who died of a service-connected disability, or recipient of any Armed Forces Expeditionary Medal or Global War on Terrorism Expeditionary Medal competing for a Civil Service position in the City. A preferential bonus of ten (10) points shall be added to the examinations score of any eligible disabled veteran who served on active duty in any branch of the Armed Forces who has a service-connected disability or is receiving disability retirement benefits or pension by reason of public laws or spouse of a disabled veteran or spouse of a person missing in action competing for a Civil Service position in the City.~~

Secs. 35.004—35.029. - RESERVED