

ORDINANCE NO. 2029

AN ORDINANCE TO AMEND SECTION 4.12 OF THE SOUTH MILWAUKEE CODE CIVIL SERVICE REGULATIONS AND TO CREATE A GRIEVANCE PROCEDURE

WHEREAS by virtue of changes Wis. Stat. 66.0509 it has become necessary to establish a civil service grievance procedure;

NOW THEREFORE, pursuant to the authority granted in Wis. Stats. 66.0101 and 66.0509, the Common Council of the City of South Milwaukee does hereby ordain as follows:

Section 1: Section 4.12 of the Municipal Code of Ordinances is hereby amended to read as follows:

4.12 CIVIL SERVICE COMMISSION AND GRIEVANCE PROCEDURE

I. THE CIVIL SERVICE COMMISSION COMPOSITION, DUTIES, RULES AND POLICIES;

(A) CIVIL SERVICE COMMISSION MEMBERS.

(1) A Civil Service Commission is hereby created for the City of South Milwaukee pursuant to Section 66.0509 of the Wisconsin Statutes.

(2) The members of the Civil Service Commission shall be appointed by the Mayor, subject to confirmation by the Common Council, and shall hold office as hereinafter provided until removed for cause by a majority vote of the Common Council after a hearing and submission of complaint in writing. Said Commissioner shall serve without remuneration.

(3) The Civil Service Commission shall consist of five members, legal residents of the City of South Milwaukee. No person holding an elective office shall be appointed to serve on said Commission.

(4) The initial appointments shall be made for terms of one, two, three, four and five years respectively, and subsequent appointments made for a term of five years. Terms of office shall commence on the first day of July, and in case of a vacancy on said Commission, the office shall be filled for the unexpired term by appointment by the Mayor with confirmation by the Common Council.

(5) Every member of said Commission shall take and file the official oath.

(6) The Commission shall annually appoint one of the members as Chairman and another as Secretary of said Commission.

(7) The City Clerk shall, if requested, furnish stenographic help and shall furnish the necessary supplies to enable said Commission to carry out its appointed functions.

(8) The Commission shall keep, supervise, and preserve in the Office of the City Clerk the record of all examinations, hearings, minutes, etc., and other records of its own proceedings.

(9) The Commission shall conduct, in general, written or physical examinations of qualified applicants, establish eligibility lists, and determine the fitness of applicants for respective positions in the City

government. A qualified applicant is an applicant that meets the minimum qualifications as set forth in the Common Council-approved job description.

(10) Employees under the jurisdiction of the Police and Fire Commission shall not be included in the Civil Service Program. Subject to any applicable statutory limitations, the Common Council shall make appointments to the following professional positions: City Administrator, City Engineer, Water and Wastewater Superintendent(s), Library Director, Public Health Administrator, Environmental Health Specialist/Sanitarian, Medical Advisor, Senior Center Director, Street Superintendent, Assistant Street Superintendent, Assistant Library Director, Assistant to the WWTF Superintendent, Water Utility Office Manager, Engineering & Inspection Supervisor, GIS/Surveying Technician, Public Health Nurse, and any position where minimum qualifications include a professional degree. Where the professional position is one which routinely reports to a Board or Commission, the applicable Board or Commission shall conduct the initial review of applicants for the position and shall recommend the appointment of the best suited candidate to the Common Council and the Common Council may accept or reject the recommendation.

(B) CLASSIFIED AND UNCLASSIFIED SERVICE.

(1) The following positions shall constitute the unclassified service of the City and shall be exempt from the provisions of these rules and policies:

(a) All elected officials.

(b) All members of Boards and Commissions.

(c) Seasonal employees and traffic crossing guards.

(d) Temporary and emergency employees authorized by the Mayor.

(e) All professional positions.

(f) All members of the Police and Fire Departments under the jurisdiction of the Mayor and Police and Fire Commission.

(2) The classified service shall include all other positions now existing or permanent positions hereafter created, and the provisions of these rules and regulations shall apply thereto.

(C) COMMISSION TESTING RULES.

(1) The Civil Service Commission shall prepare or cause to be prepared and revised as needed, rules covering the following:

(a) Applications for employment;

(b) Preparation, conduct and scoring of examinations;

(D) EXAMINATION OF APPLICANTS.

(1) The Civil Service Commission shall conduct written, oral and/or performance examinations to determine the fitness of applicants for all positions in the classified service. All successful applicants hired through the Civil Service testing process must establish permanent residence within the City within one year from date of employment and retain residence within the City for the duration of employment. The Civil Service Commission shall refuse to examine an applicant, or shall after examination remove his/her name from the employment list, if the said applicant for any reason fails to meet the qualifications established for the class of position for which he/she applies

(2) All examinations shall be public, competitive, and open to all applicants who, based on their qualifications are eligible to appointment to any position within the class for which such examinations are held, within the limitations specified in these rules and regulations, the classification plan, and the rules promulgated by the Civil Service Commission. All examinations shall be so designed as to determine fairly the capacity of the persons examined to perform the essential job functions of the position to be filled. Applicants may be disqualified during the test for being disruptive or cheating on the test. Applicants may be disqualified for any misrepresentation on the application or any misrepresentation made during the pre-employment process.

(3) No questions in any examination shall relate to religious or political opinions or affiliations.

(4) To assist them in their duties, the Civil Service Commission shall have the right, whenever they deem necessary, to appoint Examining Committees who are experienced in the particular field or line of work for which the applicants for positions are being examined. The Civil Service Commission shall review the findings of the Examining Committee and give due consideration to such findings when submitting eligibility lists.

(5) Examination of Applicants.

(a) Announcement. All examinations for positions in the classified service shall be published by posting announcements in the City Hall, on official bulletin boards, and in such other places and through such other media as the Civil Service Commission deems advisable. The announcements shall specify the title and wage range of the class for which the examination is announced; the time, place, and manner of making applications; closing date of receiving applications; and other pertinent information.

(b) Competitive Examinations. Subject to such labor contracts as may apply, all appointments and promotions in the classified service of the City shall be made according to merit and fitness to be ascertained by competitive examinations. Such examinations shall be prepared by, or under, the direction of the Civil Service Commission, with the assistance of an Examining Committee, if necessary, or the Department Heads when deemed advisable by the Civil Service Commission. Examinations shall relate to those matters which will test fairly the capacity and fitness of the applicants to discharge efficiently the essential job functions of the position(s) for which the examinations are held. Examinations may include written, oral, physical or performance tests, or any combination of these. They may take into consideration such factors as education, experience, aptitude, knowledge, character, physical abilities, or any other qualifications which measure the applicant's ability to perform the essential job functions of the position sought. All reasonable accommodations will be made to any applicant with a disability to ensure such individual is given a fair test opportunity. In order to avoid the possibility of discrimination, the identity of applicants will be concealed in all examinations. The Civil Service Commission may require applicants to submit proof of their military service at the time of the examination and will keep a record of this information. Competitive entrance examinations shall be open to all applicants who meet the

standards or requirements fixed by the Department Heads with regard to experience, character, education, and such other factors as may be related to the ability of the applicant to perform with reasonable efficiency the essential job functions of the position. Promotional tests shall be open to all regular employees who meet the necessary requirements and who are serving in an appropriate class.

Promotional examinations may be limited to a single department or a subdivision thereof as dictated by applicable labor contracts or in the absence of a controlling labor contract, as the Department Head shall designate. In the event the Department Head believes, based on his/her personal knowledge of the abilities of a current employee in his/her department, that a current employee can competently fill a vacancy, the Department Head may fill a vacancy on a probationary basis without a promotional exam and will report the probationary promotion to the Civil Service Commission and Common Council.

(c) Method of Rating. Sound measurement techniques and procedures shall be used in rating the results of tests and determining the relative ranking of the applicants. In all examinations, the minimum rating by which eligibility may be achieved shall be established by the Department Head. Such minimum ratings shall also apply to the ratings of any part of the test. Applicants may be required to attain at least a minimum rating on each part of the test in order to receive a passing grade.

(d) Veteran's Preference. Proof of eligibility for veteran's preference shall be provided by veterans in the form of their discharge papers, a certified copy, a photostatic copy, or other satisfactory evidence of honorable service. Disabled veterans additionally shall submit on such form as may be required by the Civil Service Commission, proof of disability certified by the appropriate federal agency responsible for the administration of veterans' affairs. Veteran's preference points shall be awarded as required by Section 230.16(7), Wis. Stats.

(e) Notification of Examination Results. Each person who takes an examination shall be given written notice in a sealed envelope as to whether he or she passed or failed in such examination and of his or her relative position and grade on the eligibility test, or of his or her failure to attain a place on the list. Each person in an examination shall be entitled to inspect his or her rating and examination papers, but examination papers shall not be open to the general public. Such inspection shall be permitted only at such hours and places as are specified by the Civil Service Commission.

(E) EMPLOYMENT ENTRANCE LISTS. After each examination, the Civil Service Commission shall prepare an employment entrance or eligible list of those candidates who have secured a passing grade as established for that examination, arranged in order of the rating received.

(1) Order of Names on Entrance Lists. Names of applicants scoring passing grades (eligibles) shall be placed on lists in the order of their final earned rating plus veterans' preference credit.

(2) Availability of Eligibles. It shall be the responsibility of eligibles to notify the Civil Service Commission in writing of any change of address or other changes affecting availability for employment. However, the Civil Service Commission may circularize lists or use other methods to determine at any time the availability of eligibles. Whenever an eligible submits a written statement restricting the conditions under which he/she will be available for employment, his/her name may be withheld from any certification which does not meet the conditions which he/she has specified. An eligible may file a new written statement at any time within the duration of an eligible list modifying any prior statement as to conditions under which he/she will be available for employment.

(3) Duration of Lists. The time during which a list shall remain in force shall be one year from the date on which it was originally established by the Civil Service Commission. Eligible lists will be

retained by the Civil Service Commission for one year. Applicants will be certified to Department Heads in the manner described herein.

(F) METHOD OF FILLING VACANCIES. Whenever an appointing authority desires to fill a vacancy in any position in the classified service, the Civil Service Commission shall certify to him/her three names. The appointing authority shall make a probationary appointment therefrom. The appointing authority shall inform the Civil Service Commission of the appointment.

(1) REQUISITION. When a vacancy occurs, the Department Head shall submit a personnel requisition in the manner prescribed by the Civil Service Commission providing the pertinent facts relative to the essential job functions, responsibilities, and qualification requirements of the position which is to be filled. If a list of eligibles is available, certification will be made in the manner prescribed.

(2) CERTIFICATION OF CANDIDATES. In the filling of all vacancies with the exception of transfers, the three names certified shall be those of the three persons standing highest on the proper list. If there is more than one vacancy, the Civil Service Commission will certify four names more than the existing vacancies.

(3) ACCEPTANCE OF APPOINTMENT. If the applicant accepts the appointment and presents him/herself for duty within such period of time as the Department Head shall prescribe, he/she shall be deemed to be appointed; otherwise, he/she shall be deemed to have declined the appointment.

(G) TEMPORARY AND EMERGENCY APPOINTMENTS.

Temporary appointments for short-term employment which may be required for special projects or unusual workloads shall be made from lists when determined by the Common Council. If no list exists or if certification from lists is impracticable, the Mayor may authorize the temporary appointment of any qualified individual. The acceptance or refusal by an eligible of a temporary appointment shall not affect his/her standing on the list. Any period of employment under a temporary appointment shall not be counted as a part of the probationary service period in case of subsequent appointment to a permanent position.

II DISCIPLINE AND GRIEVANCE PROCEDURE

(A) Discipline. Discipline may result when an employee's actions do not conform with generally accepted standards of good behavior, when an employee violates a policy or rule, when an employee's performance is not acceptable, or when the employee's conduct is detrimental to the interests of the City. Disciplinary action may call for any of four steps – verbal warning, written warning, suspension (with or without pay), or termination of employment – depending on the problem and the number of occurrences. There may be circumstances when one or more steps are bypassed. Certain types of employee problems are serious enough to justify either a suspension or termination of employment without going through progressive discipline steps. The City reserves the right, in its sole discretion, to impose disciplinary action as may be appropriate to the particular circumstances.

(B) Grievance Procedure. This policy is intended to comply with Section 66.0509, Wis. Stats., and provides a grievance procedure addressing issues concerning workplace safety, discipline and termination. This policy applies to all employees covered under Section 66.0509, Wis. Stats., other than police and fire employees subject to Section 62.13(5), Wis. Stats. An employee may appeal any level of discipline under this grievance procedure. For purposes of this policy, the following definitions apply:

(C) "Employee discipline" includes all levels of progressive discipline, but shall not include the following items:

1. Placing an employee on paid administrative leave pending an internal investigation;
2. Counseling, meetings, or other pre-disciplinary action;
3. Actions taken to address work performance, including use of a performance improvement plan or job targets;
4. Demotion, transfer, or change in job assignment; or
5. Other personnel actions taken by the employer that are not a form of progressive discipline.

(D) "Employee termination" shall include action taken by the employer to terminate an individual's employment for misconduct or performance reasons, but shall not include the following personnel actions:

1. Voluntary quit;
2. Layoff or failure to be recalled from layoff at the expiration of the recall period;
3. Retirement;
4. Job abandonment, "no-call, no-show", or other failure to report to work; termination of employment due to medical condition which renders the employee unable to perform the essential functions of the job and for which a reasonable accommodation is not available; or lack of qualification or license, or other inability to perform job duties.

(E) "Workplace safety" is defined as conditions of employment affecting an employee's physical health or safety, the safe operation of workplace equipment and tools, safety of the physical work environment, personal protective equipment, workplace violence, and training related to same.

(F) Any written grievance filed under this policy must contain the following information:

1. The name and position of the employee filing it,
2. A statement of the issue involved,
3. A statement of the relief sought,
4. A detailed explanation of the facts supporting the grievance and the names of all witnesses to the facts;
5. The date(s) the event(s) giving rise to the grievance took place,
6. The identity of the policy, procedure, or rule that is being challenged;
7. The steps the employee has taken to review the matter, either orally or in writing, with the employee's supervisor; and
8. The employee's signature and the date.

III Steps of the Grievance Procedure

Employees should first discuss complaints or questions with their immediate supervisor. Reasonable efforts should be made by supervisors and employees to resolve any questions, problems, or misunderstandings that have arisen before filing a grievance.

(A) Step 1 – Written Grievance Filed with the Department Head. The employee must prepare and file a written grievance with the Department Head within five (5) business days of when the employee knows, or should have known, of the events giving rise to the grievance. The Department Head or his/her designee will investigate the facts giving rise to the grievance and inform the employee of his/her decision, if possible within ten (10)

business days of receipt of the grievance. In the event the grievance involves the Department Head, the employee may initially file the grievance with the City Administrator, who shall conduct the Step 1 investigation.

(B) Step 2 – Review by City Administrator. If the grievance is not settled at Step 1, the employee may appeal the grievance to the City Administrator within five (5) business days of the receipt of the decision of the Department Head at Step 1. The City Administrator or his/her designee will review the matter and inform the employee of his/her decision, if possible within ten (10) business days of receipt of the grievance. The City Administrator or his/her designee's decision may be orally or in writing, but if given orally, the City Administrator shall, as soon as may be convenient, reduce the decision to writing and provide the employee with a copy of the written decision. An oral decision is effective as of the time it is given to the employee.

(C) Step 3 – Impartial Hearing Officer. If the grievance is not settled at Step 2, the employee may request in writing, within five (5) business days following receipt of the City Administrator's decision, a written review by an Impartial Hearing Officer. The City shall select the Impartial Hearing Officer. The Impartial Hearing Officer shall not be a City employee. In all cases, the grievant shall have the burden of proof to support the grievance. The Impartial Hearing Officer will determine whether the City acted in an arbitrary and capricious manner. This process does not involve a hearing before a court of law; thus, the rules of evidence will not be followed. Depending on the issue involved, the Impartial Hearing Officer will determine whether a hearing is necessary, or whether the case may be decided based on a submission of written documents. The Impartial Hearing Officer shall prepare a written decision.

(D) Step 4 – Review by the Governing Body. If the grievance is not resolved after Step 3, the employee or the City Administrator may have the decision of the Impartial Hearing Officer reviewed by the Governing Body. A request for review must be filed within five (5) business days of receipt of the written decision from the Impartial Hearing Officer. For Library employees, the appeal shall be filed with the Library Board. For all other employees, the appeal shall be filed with the Common Council. The Common Council or Library Board shall not take testimony or evidence; it may only determine whether the Impartial Hearing Officer reached an arbitrary or incorrect result based on a review of the record before the Impartial Hearing Officer. The matter will be scheduled for the Common Council's or Library Board's next regular meeting. The Common Council or Library Board will inform the employee of its findings and decision in writing within ten (10) business days of the Common Council or Library Board meeting. The Common Council or Library Board shall decide the matter by majority vote and this decision shall be final and binding.

(E) An employee may not file a grievance outside of the time limits set forth above. If the employee fails to meet the deadlines set forth above, the grievance will be considered resolved. If it is impossible to comply with the deadlines due to meeting notice requirements or meeting preparation, the grievance will be reviewed at the next possible meeting date. An employee must process his/her grievance outside of normal work hours, unless the employee elects to use accrued paid time (vacation, comp time, etc.) in order to be paid for time spent processing his/her grievance through the various steps of the grievance procedure.

(F) A decision is deemed received by the employee two business days after it is

mailed by first class mail to the employee's address of record. [For example, a decision mailed on a Friday will be deemed received on the following Tuesday.] A request for review or hearing before the hearing officer is filed when received by the City Administrator during normal business hours.

(G) Costs: Each party shall bear its own costs for witnesses and all other out-of-pocket expenses, including possible attorney fees, in investigating, preparing, or presenting a grievance. The fees of the Hearing Officer will be paid for by the City. If the Hearing Officer finds that the grievance is frivolous, the Hearing Officer shall order that the Hearing Officer's fees paid by the City be reimbursed to the City by the grievant.

(F) Time Limits: The term "days" as used in this provision means business days, and a business day is each day or part of a day when the City Clerk's office is open for business. The employer and grievant may mutually agree to waive time limits, in writing.

1. A grievance or decision or appeal is considered timely if received by the City Administrator during normal business hours.

2. The employer and grievant may mutually agree, in writing, to waive any step to facilitate or expedite resolution of the grievance.

3. If the grievance is not answered within the time limits, the grievant may proceed to the next available step within 7 days.

(IV) WORKPLACE SAFETY GRIEVANCE PROCEDURE

(A) Step 1: Any employee who personally identifies, or is given information about, a workplace safety issue or incident must notify his/her supervisor of the issue or incident as soon as reasonably practicable. All safety issues, no matter how insignificant the situation may appear to be, must be reported.

Time Limit: Any workplace safety incident or issue must be reported by an employee within 24 hours after the incident or issue was raised in order to be addressed as part of the grievance procedure.

A written report of the incident or issue, outlining the events that transpired and resolution, if any, shall be signed by all concerned parties and submitted to the City Administrator for review and consideration within 7 days of the incident or issue.

(B) Step 2: After receipt of the written report, the City Administrator will conduct additional investigation, as required, and normally issue a final report on his/her findings and conclusions within 21 days of receipt of the written report. Copies of the report will be given to the persons who signed the written report.

(C) Step 3: The employee may appeal the findings and conclusions of the City Administrator and request a review by an Impartial Hearing Officer. The City shall select the Impartial Hearing Officer. The Impartial Hearing Officer shall not be a City employee. In all cases, the grievant shall have the burden of proof to support the grievance. The Impartial Hearing Officer will determine whether the City acted in an arbitrary and capricious manner. This process does not involve a hearing before a court

of law; thus, the rules of evidence will not be followed. Depending on the issue involved, the Impartial Hearing Officer will determine whether a hearing is necessary, or whether the case may be decided based on a submission of written documents. If the Impartial Hearing Officer determines a hearing is necessary, he/she may require the parties to submit documents and witness lists in advance of the hearing in order to expedite the hearing. At the conclusion of the review, the Impartial Hearing Officer shall record one of three outcomes: 1) Sustaining the conclusions of the City Administrator, 2) Reversing the conclusions of the City Administrator, or 3) Recommending additional investigation prior to final determination.

Time Limit: If the employee does not submit a written appeal to the City Administrator requesting a review before an Impartial Hearing Officer within 7 days after receipt of the City Administrator's Report, the grievance can no longer be addressed in the grievance procedure. If requested timely, the review will normally be scheduled within 30 days of receipt of the request for review.

(D) Step 4: If the grievance is not resolved after Step 3, the employee or the City Administrator may have the decision of the Impartial Hearing Officer reviewed by the Governing Body. In cases where the Impartial Hearing Officer recommends additional investigation, at the conclusion of the additional investigation, the matter will be automatically referred to the Governing Body. For Library employees, the appeal shall be filed with the Library Board. For all other employees, the appeal shall be filed with the Common Council. The Common Council or Library Board shall not take testimony or evidence; it may only determine whether the Impartial Hearing Officer reached an arbitrary or incorrect result based on a review of the record before the Impartial Hearing Officer. The matter will be scheduled for the Common Council's or Library Board's next regular meeting. The Common Council or Library Board will inform the employee of its findings and decision in writing within ten (10) business days of the Common Council or Library Board meeting. The Common Council or Library Board shall decide the matter by majority vote and this decision shall be final and binding..

Time Limit: The employee may request a review before the Governing Body by filing a request within 5 business days of receipt of the written decision of the Impartial Hearing Officer. If not submitted timely, the grievance can no longer be addressed in the grievance procedure.

(E) Costs: Each party shall bear its own costs for witnesses and all other out-of-pocket expenses, including possible attorney fees, in investigating, preparing or presenting a grievance. The fees of the Impartial Hearing Officer will be paid for by the City. If the Impartial Hearing Officer finds that the grievance is frivolous, the Impartial Hearing Officer shall order that the Impartial Hearing Officer's fees paid by the City be reimbursed to the City by the grievant.

(F) Time Limits: The term "days" as used in this provision means business days, and a business day is each day or part of a day when the City Clerk's office is open for business. The employer and grievant may mutually agree to waive time limits, in writing. An employee must process his/her grievance outside of normal work hours, unless the employee elects to use accrued paid time (vacation, comp time, etc.) in order to be paid for time spent processing his/her grievance through the various steps of the grievance procedure. A decision is deemed received by the employee two business days after it is mailed by first class mail to the employee's address of record. [For example, a decision mailed on a Friday will be deemed received on the following Tuesday.]

1. A grievance or decision or appeal is considered timely if received by the City Administrator during normal business hours.

2. The employer and grievant may mutually agree, in writing, to waive any step to facilitate or expedite resolution of the grievance.

3. If the grievance is not answered within the time limits, the grievant may proceed to the next available step within 7 days.

(V) Construction of these Rules and Regulations.

The provisions of these rules and regulations are severable, and if any part of these rules and regulations shall be held to be unconstitutional or invalid, by the valid judgment or decree of any court of competent jurisdiction, such particular part be rejected or deleted without affecting, impairing, or invalidating the remaining parts of these rules and regulations. It is hereby declared that it is the intent of the Common Council that these rules and regulations, and each word, clause, sentence, paragraph, and section thereof would have been enacted, had such constitutional or invalid section or part thereof not have been included herein.

Section 2: This Ordinance was adopted at a regular meeting of the Common Council of the City of South Milwaukee on September 20, 2011, seven (7) aldermen voting in favor thereof and zero (0) voting against. This ordinance shall take effect upon passage and publication as provided by law.

BY ORDER OF THE COMMON COUNCIL
OF THE CITY OF SOUTH MILWAUKEE


Thomas Zepecky, Mayor


James Shelenske, City Clerk

Date Adopted: September 20, 2011

Date Published: September 29, 2011