

Memorandum



CITY OF DALLAS

DATE September 12, 2014

TO Members of the Budget, Finance & Audit Committee: Jerry R. Allen (Chair),
Jennifer S. Gates (Vice Chair), Tennell Atkins, Sheffie Kadane, Philip T. Kingston

SUBJECT September 24, 2014 Agenda Item #3: Amendments to Chapter 34 of the Dallas City
Code, "Personnel Rules"

Annually, the Department of Human Resources and the City Attorney's Office review and modify Chapter 34 of the Dallas City Code (City of Dallas Personnel Rules) to address outdated and/or obsolete information, changes to federal and state laws, and changes to updated City processes and procedures.

These rule changes require City Council approval and are scheduled for the September 24, 2014 Agenda. Attached are a list of the proposed changes and a copy of the ordinance changes.

If you have any questions, please contact Molly Carroll, Human Resources Director, at molly.carroll@dallascityhall.com or at 214-671-9810.

A handwritten signature in blue ink, appearing to read 'A.C. Gonzalez'.

A.C. Gonzalez
City Manager

Attachment

c: Honorable Mayor and Members of City Council
Warren M.S. Ernst, City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel F. Solis, Administrative Judge
Ryan S. Evans, First Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Forest E. Turner, Assistant City Manager
Joey Zapata, Assistant City Manager

Joey Zapata, Assistant City Manager
Mark McDaniel, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Charles M. Cato, Interim Assistant City Manager
Theresa O'Donnell, Interim Assistant City Manager
Molly Carroll, Director, Human Resources
Patricia Marsolais, Director, Civil Service
Sana Syed, Public Information Officer
Elsa Cantu, Assistant to the City Manager

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
1	34-4 DEFINITIONS in alphabetical order, make this the new (23) and move remaining definitions down by one letter	No Current Wording	GENDER IDENTITY AND EXPRESSION means an individual's real or perceived gender identity as male, female, both, or neither.	Added a definition of gender identity and expression.
2	34-4 Definitions (34)	PAID LEAVE means sick leave, vacation leave, holiday leave, court leave, death-in-family leave, military leave, and mandatory city leave	PAID LEAVE means sick leave, vacation leave, holiday leave, court leave, death-in-family leave, <u>fifteen days of military leave each calendar year</u> , and mandatory city leave	State law used to require public employers to pay 15 days of military leave each year. That law changed. While employers must still allow employees time off to serve, it is no longer required that employers provide paid military leave. This change allows the City to continue paying employees for 15 days of military service each year.
3	34-4 DEFINITIONS (46) Sexual Orientation. Insert this language and delete (a) and (b). Note: with the precious revision, #47, (46) will be renumbered to (47)	SEXUAL ORIENTATION means an individuals: (A) real or perceived orientation as heterosexual, homosexual, or bisexual; or (B) real or perceived gender identity. the actual or perceived status of an individual with respect to the individual's sexuality. Heterosexual, homosexual, and bisexual are examples of sexual orientation.	SEXUAL ORIENTATION means the actual or perceived status of an individual with respect to the individual's sexuality. Heterosexual, homosexual, and bisexual are examples of sexual orientation.	Revised definition of sexual orientation.
4	34-22 SICK LEAVE (o) Sick leave during leave without pay.	An employee on leave without pay forfeits use and accrual of sick leave for the duration of the leave without pay, except to the extent that the leave without pay is authorized by the Family and Medical Leave Act. Upon completion of the leave without pay, the employee must either physically return to work or, if ill, submit an approved doctor's statement justifying inability to return to work before sick leave credit and accrual may be restored.	An employee on leave without pay forfeits use and accrual of sick leave for the duration of the leave without pay, except to the extent that the leave without pay is authorized by the <u>City's</u> Family and Medical Leave provisions. Upon completion of the leave without pay, the employee must either physically return to work or, if ill, submit an approved doctor's statement justifying inability to return to work before sick leave credit and accrual may be restored.	Clarifies that the referenced document is the City of Dallas' Family and Medical Leave provisions which includes 'designated care recipients'.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
5	34-23 VACATION LEAVE (m) Vacation leave during leave without pay	An employee on leave without pay forfeits use and accrual of vacation leave for the duration of the leave without pay, except to the extent that the leave without pay is authorized by the Family and Medical Leave Act. Upon completion of the leave without pay, the employee must either physically return to work or, if ill, submit an approved doctor's statement justifying inability to return to work before sick leave credit and accrual may be restored.	An employee on leave without pay forfeits use and accrual of vacation leave for the duration of the leave without pay, except to the extent that the leave without pay is authorized by the City's Family and Medical Leave provisions. Upon completion of the leave without pay, the employee must either physically return to work or, if ill, submit an approved doctor's statement justifying inability to return to work before sick leave credit and accrual may be restored.	Clarifies that the referenced document is the City of Dallas' Family and Medical Leave provisions which includes 'designated care recipients'.
6	34-24 COMPENSATORY LEAVE. (b) Accrual	Compensatory leave is accrued at the rate of one full hour leave for each full hour worked over 80 hours in a pay period, up to a maximum balance of 80 hours.	Compensatory leave is accrued in <u>half hour increments</u> for each half hour worked over 80 hours in a pay period, up to a maximum balance of 80 hours.	Update rules to match current practice.
7	34-25 HOLIDAYS (f) Loss of holiday pay (3)	on approved leave without pay the day before and the day following an official holiday, except to the extent the leave is authorized by the Family and Medical Leave Act.	on approved leave without pay the day before and the day following an official holiday, except to the extent the leave is authorized by the City's Family and Medical Leave provisions.	Clarifies that the referenced document is the City of Dallas' Family and Medical Leave provisions which includes 'designated care recipients'.
8	34-27 DEATH-IN-FAMILY Leave (a) Eligibility	An allowance of three work days with pay is extended to every permanent employee when a member of the employee's immediate family dies.	An allowance of three work days with pay is extended to every permanent employee when a member of the employee's immediate family or a designated care recipient, as defined in Sec 34-24.1 (c) (2) of this chapter, dies.	Extends death leave to include 'designated care recipients'.
9	34-28 LEAVE WITHOUTH PAY (d) Service Credit (1)	An employee who is on leave without pay from work for more than six consecutive calendar weeks loses service credit for that period in excess of six calendar weeks, except to the extent that the leave without pay is authorized by the Family and Medical Leave Act.	An employee who is on leave without pay from work for more than six consecutive calendar weeks loses service credit for that period in excess of six calendar weeks, except to the extent that the leave without pay is authorized by the City's Family and Medical Leave provisions.	Clarifies that the referenced document is the City of Dallas' Family and Medical Leave provisions which includes 'designated care recipients'.
10	34-35 FAIR EMPLOYMENT PRACTICES. (a)	City management may not discharge an individual, fail or refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race, color, age, religion, sex, marital status, sexual orientation, national origin, disability, political opinions, or affiliations.	City management may not discharge an individual, fail or refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race, color, age, religion, sex, marital status, sexual orientation, <u>gender identity and expression, genetic characteristics,</u> national origin, disability, <u>military or veteran status,</u> political opinions, or affiliations.	Expands listing to include gender identity and expression, genetic characteristics, military and veteran status.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
11	34-35 FAIR EMPLOYMENT PRACTICES. (b)	City management may not limit, segregate, or classify employees or applicants for employment in a way that would deprive or tend to deprive and individual of employment opportunities or otherwise adversely affect an employee's status because of the individual's race, color, age, religion, sex, marital status, sexual orientation, national origin, disability, political opinions, or affiliations.	City management may not limit, segregate, or classify employees or applicants for employment in a way that would deprive or tend to deprive and individual of employment opportunities or otherwise adversely affect an employee's status because of the individual's race, color, age, religion, sex, marital status, sexual orientation, <u>gender identity and expression, genetic characteristics</u> , national origin, disability, <u>military or veteran status</u> , political opinions, or affiliations.	Expands listing to include gender identity and expression, genetic characteristics, military and veteran status.
12	34-38(c)(4)(A) GRIEVANCE AND APPEAL PROCEDURES.	a claim of discrimination because of the employee's race, color, religion, sex, sexual orientation, national origin, age, or disability as it affects the employee's training, promotion, advancement, or transfer; or	a claim of discrimination because of the employee's race, color, age, religion, sex, sexual orientation, <u>gender identity and expression, genetic characteristics</u> , national origin, disability, or <u>military or veteran status</u> as it affects the employee's training, promotion, advancement, or transfer; or	Expands listing to include gender identity and expression, genetic characteristics, military and veteran status.
13	34-38 GRIEVANCE AND APPEAL PROCEDURES (c) Terms and conditions add (21)	No Current Wording	at every grievance appeal level, the hearing officer shall only hear matters contained in the original grievance.	Clarifies that appeals are limited to the issues presented in the original grievance.
14	34-38 GRIEVANCE AND APPEAL PROCEDURES (i)(1)(a) final decision.	a claim of discrimination because of an employee's race, color, religion, sex, sexual orientation, national origin, age, or disability as it affects the employee's training, promotion, advancement, or transfer, which may be appealed to the civil service board;	a claim of discrimination because of an employee's race, color, age, religion, sex, sexual orientation, <u>gender identity and expression, genetic characteristics</u> , national origin, disability, or <u>military or veteran status</u> as it affects the employee's training, promotion, advancement, or transfer, which may be appealed to the civil service board;	Expands listing to include gender identity and expression, genetic characteristics, military and veteran status.
15	34-39 APPEALS TO THE CIVIL SERVICE BOARD (a)General provisions, applicability, jurisdiction, and quorum (3) This sections does not apply to: add (c)	No Current Wording	(c) Applicants for employment	Limits the right to file internal grievances to city employees only.
16	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (a)(4)(A) General provisions, applicability, jurisdiction, and quorum	A grievance of a current employee that is not settled at the final grievance and appeal procedure step and that involves a claim of discrimination because of an employee's race, color, religion, sex, sexual orientation, national origin, age, or disability as it affects the employee's training, promotion, advancement, or transfer, but only if the request for a grievance hearing:	A grievance of a current employee that is not settled at the final grievance and appeal procedure step and that involves a claim of discrimination because of an employee's race, color, age, religion, sex, sexual orientation, <u>gender identity and expression, genetic characteristics</u> , national origin, disability, or <u>military or veteran status</u> as it affects the employee's training, promotion, advancement, or transfer, but only if the request for a grievance hearing:	Expands listing to include gender identity and expression, genetic characteristics, military and veteran status.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
17	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (a) General provisions, applicability, jurisdiction, and quorum (4) (C)	Outlines provisions for an applicant to file a grievance.	Delete entire section (C)	Limits the right to file internal grievances to city employees only.
18	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (a) General provisions, applicability, jurisdiction, and quorum (6)	Any three members of the civil service board constitute a quorum for purposes of conducting any meeting or hearing under this section. All decisions or actions of the board under this section must be made by a majority of the board members present at a meeting or hearing.	Any <u>four</u> members of the civil service board constitute a quorum for purposes of conducting any meeting or hearing under this section. All decisions or actions of the board under this section must be made by a majority of the board members present at a meeting or hearing.	The Civil Service Board used to have five members, so a quorum was three. The Board now has seven members, so a quorum is four. This change reflects the new size of the Board.
19	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Prehearing deadlines (1)	Within five working days after the date of service of the request to the secretary of the civil service board, as shown on the certificate attached to the request under Subsection (a)(4)(A), (a)(4)(B), or (a)(4)(C) of this section, the secretary shall do the following:	To the fullest extent possible, within fifteen working days after the date of service of the request to the secretary of the civil service board, as shown on the certificate attached to the request under Subsection (a)(4)(A), (a)(4)(B), or (a)(4)(C) of this section, the secretary shall do the following:	This change provides the Civil Service Board Secretary additional time to process requests for hearings before the Civil Service Board.
20	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Prehearing deadlines (1)(A) add (i)	No Current Wording	The secretary of the civil service board may, with the approval of the civil service board chair, schedule a hearing outside of 60 to 90 calendar days from the date of the request.	This change provides the Civil Service Board Secretary additional time to schedule hearings when necessary.
21	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Prehearing deadlines.(1)(B)(i)	If the grievance involves a claim of discrimination, the statement of questions must read "Did the employee establish, by a preponderance of the evidence, the existence of discrimination based on the employee's (choose appropriate category - race, color, age, religion, sex, sexual orientation, national origin, or disability) as it affects the employee's (choose appropriate category - training, promotion, advancement, or transfer)?"	If the grievance involves a claim of discrimination, the statement of questions must read "Did the employee establish, by a preponderance of the evidence, the existence of discrimination based on the employee's (choose appropriate category - race, color, age, religion, sex, sexual orientation, <u>gender identity and expression, genetic characteristics, national origin, disability, or military or veteran status</u>) as it affects the employee's (choose appropriate category - training, promotion, advancement, or transfer)?"	Expands listing to include gender identity and expression, genetic characteristics, military and veteran status.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
22	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Prehearing deadlines (1)(B)(iii)	If a complaint is filed by an applicant for employment or an employee on initial probation, the statement of questions must read, "Did the applicant (or employee) establish, by a preponderance of the evidence, the existence of discrimination based on the applicant's (or employee's) (choose appropriate category - race, color, age, religion, sex, sexual orientation, national origin, or disability) as it affects the applicant's (or employee's) hiring?"	Delete entire section (iii)	Limits the right to file internal grievances to city employees only.
23	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (a) (6) (b) Prehearing deadlines (1)(B)(iv)		No wording change. Make this section the new (iii) following the deletion of the previous section	Adjusts item numbering due to document deletions.
24	34-39(b)(3) <u>Continuances.</u>	(C) If the parties agree to a continuance, the hearing will be continued for up to 60 calendar days.	(C) Other than in cases in which the parties agree to abate a hearing in order to await the final adjudication of underlying criminal charges, the parties may agree to a continuance, in which case the hearing will be continued for up to 60 calendar days. Agreed continuances in excess of 180 days from the date of the original setting of the hearing must be approved by the Civil Service Board Chair, or his or her designee who shall be a member of the Civil Service Board.	Requires approval by the Civil Service Board Chair or his or her designee for continuances of a hearing for more than 180 days.
25	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas	At least 20 working days before the hearing, each party may file with the secretary, and copy to the opposing party, a request for subpoena of witnesses and documents, in accordance with the following:	At least <u>30</u> working days before the hearing, each party may file with the secretary, and copy to the opposing party, a request for subpoena of witnesses and documents, in accordance with the following:	Changes the deadline for a request for subpoena of witnesses and documents.
26	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas (iii)	the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.	if documents are being subpoenaed, the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.	Clarification regarding subpoenaed items.
27	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas add (D)	No Current Wording	Either party may object to a subpoena request within seven working days after receiving notice of the subpoena request. Objections to subpoenas will be in writing, submitted to the secretary and copied to the opposing party, which will have three working days after receipt of the objections to respond in writing to the substantive reasons for the objections to the requested subpoenas.	Creates processes for subpoena requests for hearings before the Civil Service Board.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
28	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas add (E)	No Current Wording	The secretary will forward the objections and the response to the objections, if any, to the Board Chair for resolution. If the Board Chair is unavailable, the objections will be ruled upon by his or her designee, who shall be a member of the Civil Service Board.	Creates processes for subpoena requests for hearings before the Civil Service Board.
29	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas add (F)	No Current Wording	Once the scope of subpoenas is determined by the Board Chair, or if there are no objections to subpoena requests, each party will organize and number the responsive information ("the released documents") before turning it over to the secretary. The information will be provided within an amount of time determined by the Board Chair or, if there are no objections to the subpoena requests, in an amount of time determined by the secretary. The secretary shall provide a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.	Creates processes for subpoena requests for hearings before the Civil Service Board.
30	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas add (G)	No Current Wording	The individual picking up the released documents will sign for the produced information. The requesting party will then have three working days to submit, in writing, any objections to the completeness of the material produced. The producing party will have three working days to respond, in writing, to the substantive reasons for the requesting party's objections. The secretary shall maintain one complete copy of the subpoenaed material, to allow the Board Chair to fully assess and rule on any objections to the completeness of compliance with the subpoena.	Creates processes for subpoena requests for hearings before the Civil Service Board.
31	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas add (H)	No Current Wording	The secretary will forward the objections and any response to the objections to the Board Chair for resolution. If the Board Chair is unavailable, the objections will be ruled upon by his or her designee, who shall be a member of the Civil Service Board.	Creates processes for subpoena requests for hearings before the Civil Service Board.
32	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas add (I)	No Current Wording	Decisions rendered by the Board Chair (or his or her designee, if applicable) regarding subpoenas or responsive information are final and are not subject to further appeal.	Creates processes for subpoena requests for hearings before the Civil Service Board.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
33	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (b) Preparing Deadlines (5) Request for subpoenas add (J)	No Current Wording	After all decisions have been rendered by the Board Chair regarding the scope of documents to be released pursuant to a subpoena, the secretary shall provide a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.	Creates processes for subpoena requests for hearings before the Civil Service Board.
34	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (c) Hearings (1)	Any three members of the board constitute a quorum for a hearing this section. The board chair (or, in the chair's absence, the vice chair or longest serving board member present) shall preside at any hearing and make rulings regarding evidence or procedure. Upon motion of any board member, the board, by majority vote, may overrule or modify any ruling by the chair.	Any <u>four</u> members of the board constitute a quorum for a hearing this section. The board chair (or, in the chair's absence, the vice chair or longest serving board member present) shall preside at any hearing and make rulings regarding evidence or procedure. Upon motion of any board member, the board, by majority vote, may overrule or modify any ruling by the chair.	The Civil Service Board used to have five members, so a quorum was three. The Board now has seven members, so a quorum is four. This change reflects the new size of the Board.
35	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (c) Hearings (2), (3), and (4)	(2) The employee or applicant has the burden of establishing, by a preponderance of the evidence, that the city discriminated against the employee or the applicant or misapplied or misinterpreted a rule as alleged. (3) If the board, by majority vote determines, by a preponderance of the evidence, that the city discriminated against the employee or applicant or misapplied or misinterpreted a rule as alleged, the board shall direct such relief as it deems just and equitable. (4) The appealing employee or applicant:	remove the words "or applicant" where applicable.	Limits the right to file internal grievances to city employees only.
36	34-39 APPEALS TO THE CIVIL SERVICE BOARD. (d) Disposition (1) Dismissal (A), (B), and (C)	(A) The appealing employee or applicant fails to appear in person at the hearing, unless: (i) good cause for the failure to appear is shown; and (ii) the city would not be unduly prejudiced if the grievance or complaint is not dismissed. (B) The appealing employee or applicant fails to introduce sufficient evidence to prove the alleged discrimination or misapplication or misinterpretation of a rule. (C) The board cannot grant the relief that the appealing employee or applicant has requested.	remove the words "or applicant" where applicable.	Limits the right to file internal grievances to city employees only.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
37	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) Prehearing Deadlines (1)	Within five working days after the date of service of the request to the secretary, as shown on the certificate attached to the request under Subsection (a)(4)(C) of this section, the secretary shall do the following;	To the fullest extent possible, within fifteen days after the date of service of the request to the secretary, as shown on the certificate attached to the request under Subsection (a)(4)(C) of this section, the secretary shall do the following;	Provides the Civil Service Board Secretary additional time to process requests for hearings before the Civil Service Trial Board or an ALJ.
38	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) Prehearing Deadlines (1) (A) add (i)	No Current Wording	The secretary of the civil service board may, with the approval of the trial board chair or the administrative law judge, schedule a hearing outside of 60 to 90 calendar days from the date of the request.	Provides the Civil Service Board Secretary additional time to schedule hearings when necessary.
39	34-40(c)(3) <u>Continuances.</u>	(C) If the parties agree to a continuance, the hearing will be continued for up to 60 calendar days.	(C) Other than in cases in which the parties agree to abate a hearing in order to await the final adjudication of underlying criminal charges, the parties may agree to a continuance, in which case the hearing will be continued for up to 60 calendar days. Agreed continuances in excess of 180 days from the date of the original setting of the hearing must be approved by the Administrative Law Judge or the Trial Board Chair, or his or her designee, who shall be a member of the Trial Board.	Requires approval by the Trial Board Chair or the ALJ for continuances of a hearing for more than 180 days.
40	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) Preparing Deadlines (5) Request for subpoenas	At least 20 working days before the hearing, each party may file with the secretary, a request for subpoena of witnesses and documents, in accordance with the following:	Request for subpoenas. At least <u>30</u> working days before the hearing, each party may file with the secretary, and copy to the opposing party, a request for subpoena of witnesses and documents, in accordance with the following:	Changes the deadline for a request for subpoena of witnesses and documents.
41	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) (5) Request for subpoenas (iii)	the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.	if documents are being subpoenaed, the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.	Clarification regarding subpoenaed items.
42	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) (5) Request for subpoenas add (D)	No Current Wording	Either party may object to a subpoena request within seven working days after receiving notice of the subpoena request. Objections to subpoenas will be in writing, submitted to the Secretary and copied to the opposing party, which will have three working days after receipt of the objections to respond in writing to the substantive reasons for the objections to the requested subpoenas.	Creates processes for subpoena requests for hearings before a Trial Board or an ALJ.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
43	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) (5) Request for subpoenas add (E)	No Current Wording	The secretary will forward the objections and the response to the objections, if any, to the ALJ or Trial Board Chair for resolution. If the Trial Board Chair is unavailable, the objections will be ruled upon by his or her designee, who shall be a member of the Trial Board.	Creates processes for subpoena requests for hearings before a Trial Board or an ALJ.
44	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) (5) Request for subpoenas add (F)	No Current Wording	Once the scope of subpoenas is determined by the ALJ or Trial Board Chair, or if there are no objections to subpoena requests, each party will organize and number the responsive information ("the released documents") before turning it over to the secretary. The information will be provided within an amount of time determined by the ALJ or Trial Board Chair or, if there are no objections to the subpoena requests, in an amount of time determined by the secretary. The secretary shall release a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.	Creates processes for subpoena requests for hearings before a Trial Board or an ALJ.
45	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) (5) Request for subpoenas add (G)	No Current Wording	The individual picking up the released documents will sign for the produced information. The requesting party will then have three working days to submit, in writing, any objections to the completeness of the material produced. The producing party will have three working days to respond, in writing, to the substantive reasons for the requesting party's objections. The secretary shall maintain one complete copy of the subpoenaed material, to allow the ALJ or Trial Board Chair to fully assess and rule on any objections to the completeness of compliance with the subpoena.	Creates processes for subpoena requests for hearings before a Trial Board or an ALJ.
46	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) (5) Request for subpoenas add (H)	No Current Wording	The secretary will forward the objections and any response to the objections to the ALJ or Trial Board Chair for resolution. If the Trial Board Chair is unavailable, the objections will be ruled upon by his or her designee, who shall be a member of the Trial Board.	Creates processes for subpoena requests for hearings before a Trial Board or an ALJ.
47	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) (5) Request for subpoenas add (I)	No Current Wording	Decisions rendered by the ALJ or Trial Board Chair (or his or her designee, if applicable) regarding subpoenas or responsive information are final and are not subject to further appeal.	Creates processes for subpoena requests for hearings before a Trial Board or an ALJ.

Proposed Personnel Rule Changes - 2014

Item	Personnel Rules Reference	Personnel Rule Wording (Current)	Recommended Personnel Rule Wording	Reason
48	34-40 APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE (c) (5) Request for subpoenas add (J)	No Current Wording	After all decisions have been rendered by the ALJ or Trial Board Chair regarding the scope of documents to be released pursuant to a subpoena, the secretary shall release a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.	Creates processes for subpoena requests for hearings before a Trial Board or an ALJ.
49	34-43 WAGE SUPPLEMENTATION PLAN. (a) Administration	The director of human resources is authorized and directed to develop and distribute necessary administrative directives for the fair and efficient administration of the injured employees' wage supplementation plan.	The director of <u>risk management</u> is authorized and directed to develop and distribute necessary administrative directives for the fair and efficient administration of the injured employees' wage supplementation plan.	Corrects personnel rules to reflect the fact that this is the responsibility of the Director of the Department of Risk Management.

ORDINANCE NO. _____

An ordinance amending Chapter 34, "Personnel Rules," of the Dallas City Code by amending Sections 34-4, 34-22, 34-23, 34-24, 34-25, 34-27, 34-28, 34-35, 34-38, 34-39, 34-40, and 34-43, as amended; providing paid leave for military service; defining gender identity and expression; amending the definition of sexual orientation; reducing accrual of compensatory leave from one hour to one-half hour; expanding city management prohibition against discrimination to include gender identity or expression, genetic characteristics, and military or veteran status; clarifying that a hearing officer in a grievance appeal procedure shall only hear matters in the original grievance; limiting the right to file grievances to city employees only; increasing the number of civil service board members required to constitute a quorum to four for purposes of hearing appeals from grievance decisions and disciplinary actions against city employees; extending the deadline to set a grievance appeal hearing; clarifying the subpoena process for grievance appeal hearings; extending the deadline to set a disciplinary appeal hearing; providing additional time to set a disciplinary hearing; clarifying the subpoena process for disciplinary appeal hearings; assigning the authority to develop and distribute necessary administrative directives for the fair and efficient administration of the injured employees' wage supplementation plan to the director of risk management; making conforming, semantic, grammatical, and structural changes; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 34-4, "Definitions," of Chapter 34, "Personnel Rules," of the Dallas City Code is amended to read as follows:

"SEC. 34-4. DEFINITIONS.

In this chapter:

(1) ADMINISTRATIVE TERMINATION means termination because of death, disability, service retirement, or end of a temporary assignment.

(2) APPOINTMENT means:

(A) initial city employment; or

(B) placement into a position of department director, assistant department director, or other managerial personnel designated by the city council in accordance with Section 11, Chapter XVI of the city charter, regardless of whether the placement was through a competitive or noncompetitive selection process.

(3) ASSIGNMENT PAY means additional compensation for specialized duties as established by the salary and classification schedule.

(4) AUTHORIZED POSITION means an individual position described by a specific classification title and approved by the city council. Any change to an authorized position requires city council approval.

(5) BASE HOURLY RATE OF PAY means the hourly rate of an employee's base salary as established in the salary and classification schedule.

(6) BENEFIT means an employer-sponsored program that includes, but is not limited to, paid leave and health and life insurance benefits, but does not include wages, merit increases, service credit, or seniority.

(7) BREAK IN SERVICE means termination for one or more work days as a result of:

(A) administrative termination, resignation, reduction in force, or discharge, followed by reappointment; or

(B) leave of absence without pay for more than six consecutive calendar weeks, except to the extent that the leave without pay is authorized by federal or state law.

(8) CITY means the city of Dallas, Texas.

(9) CIVIL SERVICE BOARD means the civil service board of the city.

(10) CLASSIFICATION means all positions, regardless of departmental location, that are sufficiently alike in duties and responsibilities to:

- (A) be called by the same descriptive title;
- (B) be accorded the same pay scale under like conditions; and
- (C) require substantially the same education, experience, and skills.

(11) CLASSIFICATION CHANGE means revision of a position title that may include an adjustment of pay range.

(12) CLASSIFIED POSITION means a position that is subject to civil service rules and regulations as designated by the city charter.

(13) DEMOTION means a demotion as defined in Section 34-12(a) of this chapter.

(14) DISCHARGE means involuntary termination.

(15) EMPLOYEE means a person employed and paid a salary or wages by the city, whether under civil service or not, and includes a person on a part-time basis, but does not include an independent contractor or city council member.

(16) EMPLOYEES' RETIREMENT FUND BOARD means the board of trustees of the employees' retirement fund of the city of Dallas.

(17) EXEMPT EMPLOYEE means an exempt employee as defined by the Fair Labor Standards Act, as amended.

(18) FAMILY AND MEDICAL LEAVE ACT means the Family and Medical Leave Act of 1993 (29 U.S.C.A. §§ 2601 et seq.), as amended.

(19) FAMILY LEAVE means authorized leave as provided for in the Family and Medical Leave Act.

(20) FIRE DEPARTMENT means the fire-rescue department of the city.

(21) FLEX TIME means a balancing time entry process that provides an employee with the opportunity to substitute additional hours worked outside of his or her normal work schedule for time not worked during the same pay period in order to meet the total 80 hours required in a pay period. Flex time is a balancing entry only and is not paid leave.

(22) FURLOUGH LEAVE means time off from work when employees are placed in a temporary non-duty, non-pay status for required budgetary reasons.

(23) GENDER IDENTITY AND EXPRESSION means an individual's real or perceived gender identity as male, female, both, or neither.

(24) GRADE means a division of a salary and classification schedule with specified rates or ranges of pay.

(~~25~~[24]) GRIEVANCE means an employee's formal, written complaint regarding work conditions that the employee claims have been adversely affected by a violation, misinterpretation, or misapplication of a specific law, ordinance, resolution, policy, rule, or regulation.

(~~26~~[25]) IMMEDIATE FAMILY MEMBER means:

(A) a husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, brother, or sister of an employee; or

(B) any person related to an employee by blood or marriage and who resides in the same household as the employee.

(~~27~~[26]) INTERNAL APPEAL means an administrative appeal to which an employee may be entitled under this chapter, this code, the city charter, or departmental regulations.

(~~28~~[27]) LEAVE WITHOUT PAY means an authorized temporary absence without pay.

(~~29~~[28]) MANDATORY CITY LEAVE means paid leave that is provided to employees by the city as a result of budget-related pay reductions.

(~~30~~[29]) MERIT INCREASE means a discretionary increase in salary based on performance.

(~~31~~[30]) MILITARY LEAVE means authorized leave to perform duties in the military service as provided for in:

(A) the Uniformed Services Employment and Reemployment Rights Act;

(B) Chapter 431 of the Texas Government Code, as amended; and

(C) Chapter 613 of the Texas Government Code, as amended.

(~~32~~[31]) MILITARY SERVICE means:

(A) the uniformed services, as defined in the Uniformed Services Employment and Reemployment Rights Act;

(B) the state militia, as defined in Chapter 431 of the Texas Government Code, as amended; and

(C) the military service, as defined in Chapter 613 of the Texas Government Code, as amended.

(~~33~~³²) NON-CIVIL SERVICE EMPLOYEE means an employee who fills a position that is exempt from the provisions applicable to the civil service, as designated by the city charter. Non-civil service employees include:

(A) employees of the legal department, the city manager's office, the city auditor's office, the city secretary's office, the library department, the park and recreation department, and the radio department (WRR);

(B) municipal court judges; and

(C) city council office staff.

(~~34~~³³) NONEXEMPT EMPLOYEE means a nonexempt employee as defined by the Fair Labor Standards Act, as amended.

(~~35~~³⁴) PAID LEAVE means sick leave, vacation leave, holiday leave, court leave, death-in-family leave, fifteen days of military leave each calendar year, and mandatory city leave.

(~~36~~³⁵) POLICE AND FIRE PENSION BOARD means the board of trustees of the police and fire pension system of the city of Dallas.

(~~37~~³⁶) POSITION means a collection of tasks, duties, and responsibilities regularly assigned to and performed by an individual.

(~~38~~³⁷) PROBATION:

(A) Probation means a minimum six-month period:

(i) after initial appointment, during which an employee can be terminated without right of appeal; or

(ii) after promotion, during which an employee can be:

(aa) returned to the previous position, if a retreat right to the previous position exists; or

(bb) terminated without right of appeal, if no retreat right exists.

(B) Probation may be extended to allow:

(i) six months on-the-job work performance; or

(ii) completion of any written prerequisites to employment.

(C) Probation does not apply to positions in departments exempt from civil service, and employees in those positions do not serve a probationary period.

(D) The service of a probationary period or the successful completion of a probationary period does not convey upon, imply, or intend to imply that an employee has a property interest in continued employment or a contract of employment with the city.

(39[38]) PROMOTION means an increase in grade with a resulting increase in salary due to placement in a position as a result of a competitive or noncompetitive selection process.

(40[39]) REAPPOINTMENT means re-employment of a former city employee.

(41[40]) REASSIGNMENT means a change of an employee to an equivalent position (same grade) within the same department.

(42[41]) REDUCTION IN FORCE means a reduction in the number of budgeted positions due to a change in work or funds.

(43[42]) REGULAR RATE OF PAY means an employee's base hourly rate of pay plus additional payments as established in the salary and classification schedule.

(44[43]) RESIGNATION means a voluntary termination.

(45[44]) SALARY AND CLASSIFICATION SCHEDULE means a city council-approved resolution that establishes all position classifications for city employment and the corresponding pay rates.

(46[45]) SERVICE CREDIT means the total duration of city employment, less any adjustments for breaks in service.

(47[46]) SEXUAL ORIENTATION means the actual or perceived status of an individual^{2s} with respect to the individual's sexuality. Heterosexual, homosexual, and bisexual are examples of sexual orientation.

~~[(A) real or perceived orientation as heterosexual, homosexual, or bisexual; or~~

~~(B) real or perceived gender identity.]~~

(48[47]) SHIFT DIFFERENTIAL PAY means additional compensation for regularly scheduled work hours outside of the city's normal business hours, as specifically described in administrative directives of the city.

(49[48]) STEP means one salary increment within a grade for a sworn police or fire department employee.

(50[49]) SUSPENSION means unpaid disciplinary leave for a specified period of time.

(51[50]) SWORN EMPLOYEES OF THE POLICE DEPARTMENT means:

(A) police officers and all related classifications, including trainee police officers; and

(B) park rangers and all classifications above park ranger in the same classification family.

(52[51]) TASKING means release from duty upon completion of assigned work before the scheduled end of the work day.

(53[52]) TERMINATION means cessation of employment with the city.

(54[53]) TRANSFER means the change of an employee from a position in one department to an equivalent position (same grade) in another department, but that does not result in either promotion or demotion.

(55[54]) UNCLASSIFIED POSITION means an unclassified civil service position as designated by Section 3, Chapter XVI of the city charter.

(56[55]) UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT means the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C.A. §§ 4301 et seq.), as amended.

(57[56]) WORK WEEK means the seven-day period from Wednesday through Tuesday.

(58[57]) WORKING DAYS means Monday through Friday, excluding official holidays observed by the city of Dallas as set forth in Section 34-25 of this chapter.”

SECTION 2. That Subsection (o), “Sick Leave During Leave Without Pay,” of Section 34-22, “Sick Leave,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(o) Sick leave during leave without pay. An employee on leave without pay forfeits use and accrual of sick leave for the duration of the leave without pay, except to the extent that the leave without pay is authorized by the City’s Family and Medical Leave provisions [Aet]. Upon completion of the leave without pay, the employee must either physically return to work or, if ill, submit an approved doctor’s statement justifying inability to return to work before sick leave credit and accrual may be restored.”

SECTION 3. That Subsection (m), “Vacation Leave During Leave Without Pay,” of Section 34-23, “Vacation Leave,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(m) Vacation leave during leave without pay. An employee on leave without pay forfeits use and accrual of vacation leave for the duration of the leave without pay, except to the extent that the leave without pay is authorized by the City’s Family and Medical Leave provisions [Aet]. Upon completion of the leave without pay, the employee must either physically return to work or, if ill, submit an approved doctor’s statement justifying inability to return to work before vacation leave credit and accrual may be restored.”

SECTION 4. That Subsection (b), “Accrual,” of Section 34-24, “Compensatory Leave,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(b) Accrual. Compensatory leave is accrued in half [~~at the rate of one full~~] hour increments [~~leave~~] for each half [~~full~~] hour worked over 80 hours in a pay period, up to a maximum balance of 80 hours.”

SECTION 5. That Subsection (f), “Loss of Holiday Pay,” of Section 34-25, “Holidays,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(f) Loss of holiday pay. An employee will not receive pay for a holiday if the employee is:

(1) on unapproved leave without pay either the day before or the day following an official holiday;

(2) on unapproved leave without pay on a holiday on which the employee is normally scheduled to work; or

(3) on approved leave without pay the day before and the day following an official holiday, except to the extent the leave is authorized by the City’s Family and Medical Leave provisions [Aet].”

SECTION 6. That Subsection (a), “Eligibility,” of Section 34-27, “Death-In-Family Leave,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(a) Eligibility. An allowance of three work days with pay is extended to every permanent employee when a member of the employee’s immediate family, or the employee’s designated care recipient, as defined in Sec 34-24.1(c)(2) of this chapter, dies.”

SECTION 7. That Subsection (d), “Service Credit,” of Section 34-28, “Leave Without Pay,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(d) Service credit.

(1) An employee who is on leave without pay from work for more than six consecutive calendar weeks loses service credit for that period in excess of the six calendar weeks, except to the extent that the leave without pay is authorized by the City’s Family and Medical Leave provisions [~~Act~~].

(2) Notwithstanding Paragraph (1) of this subsection, service credit for an employee performing duties in the military service is governed by Section 34-40 of this chapter and administrative directives established pursuant to that section.”

SECTION 8. That Section 34-35, “Fair Employment Practices,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“SEC. 34-35. FAIR EMPLOYMENT PRACTICES.

(a) City management may not discharge an individual, fail or refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of the individual’s race, color, age, religion, sex, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, political opinions, or affiliations. Nothing in this subsection extends any employee benefits, including but not limited to paid or unpaid leave, medical benefits, or pension benefits, to any individual who is ineligible for those benefits under any other provision of this chapter, the city’s master health plan, the employees’ retirement fund program, or the police and fire pension system or under any other city ordinance or resolution or state or federal law.

(b) City management may not limit, segregate, or classify employees or applicants for employment in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect an employee’s status because of the individual’s race, color, age, religion, sex, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, political opinions, or affiliations.”

SECTION 9. That Subsection (c), “Terms and Conditions,” of Section 34-38, “Grievance and Appeal Procedures,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(c) Terms and conditions.

(1) An employee who may appeal a grievance or disciplinary action may have two levels of appeal hearings but no more than a total of four hearings. Appeals of demotions or terminations to the civil service trial board or an administrative law judge are counted as one level of appeal hearing.

(2) A grievance or a disciplinary appeal may be heard during regularly scheduled working hours without loss of pay to the employee, provided the privilege is not abused.

(3) Preparation of a grievance or a disciplinary appeal, except for seeking assistance from the department of human resources, is not permitted during the employee’s working hours.

(4) A sworn member of the police department or fire department may appeal a grievance only through Step 3, except that the grievance may be appealed beyond Step 3 if it involves:

(A) a claim of discrimination because of the employee’s race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, [~~age, or~~] disability, or military or veteran status as it affects the employee’s training, promotion, advancement, or transfer; or

(B) a claim relating to an interpretation or application of a civil service rule.

(5) Except for the final step in appealing a suspension, demotion, or discharge, a hearing under these procedures is an informal discussion held without the taking of a written record. An employee must be willing to discuss the evidence and answer questions concerning the grievance or appeal at each step. Failure to discuss the facts of the case at any informal level of these procedures will constitute withdrawal of the grievance or appeal and will cause the last decision rendered to become nonappealable.

(6) An employee may seek assistance or representation in presenting a grievance or an appeal at any step. Guidance and assistance on the grievance or appeal procedures may be obtained from the department of human resources. If another employee is selected to provide assistance or representation on the grievance or appeal, that employee is not eligible for regular pay but may be released on vacation leave or leave without pay, depending upon departmental procedure. The supervisor may also obtain assistance or representation.

(7) The days used to establish time limits in this section are working days. Time limits begin to run the working day following the incident, event, hearing, or notice. Unless otherwise provided, the time limits for grievance or appeal requests require that the grievance or appeal request actually be received within that time period by the office designated as the next step for the grievance or appeal.

(8) Unless due to reasons beyond the employee's control, if an employee fails to file a grievance or an appeal within the time limits prescribed in Subsection (f) of this section or fails to personally appear at a hearing, the matter will be considered as having been accepted and the last decision rendered will be nonappealable.

(9) If the hearing of a grievance or an appeal is not held within 20 working days after the date the request is received (unless the hearing date is extended by mutual agreement or for extraordinary circumstances such as a death in the family or documented illness), the employee requesting the hearing may proceed to the next level of appeal. The city manager, park board, civil service board, trial board, and administrative law judge hearing processes are excluded from this time limitation.

(10) If a disposition of a grievance or an appeal is not issued within the specified time limit, the employee may proceed to the next step, if applicable, by filing a grievance or appeal request to the next step within 20 working days after the date of the last hearing in the grievance or appeal process. If the employee fails to timely file a grievance or appeal request to the next step, the last disposition of the grievance or appeal is nonappealable.

(11) Any time limit specified in the procedures under this section may be extended by mutual agreement.

(12) A grievance filed against a department other than the employee's own department must be brought to the director of the charged department and is initiated at Step 3 of these procedures. The charged department is responsible for keeping the employee's own department informed of progress at each step of the grievance or appeal and for supplying the employee's department with copies of the findings.

(13) An employee who has not completed probation, when required, after appointment or reappointment to city employment may not file an appeal of a disciplinary action. An employee who has not completed probation, when required, after a promotion may not appeal a demotion.

(14) An employee shall not be subject to retaliation for using the grievance or appeal procedures.

(15) An appeal concerning a job performance rating, efficiency rating, or merit rating may not proceed beyond Step 3 unless the person issuing the job performance rating is a department director. In that case, the employee may appeal to an assistant city manager or, if the department reports to a board or commission, to a designated board or commission member.

(16) An appeal of a reprimand may not proceed beyond Step 3 unless the person issuing the reprimand is a department director. In that case, the employee may appeal to an assistant city manager or, if the department reports to a board or commission, to a designated board or commission member.

(17) The right to grieve ends if the employee terminates employment with the city.

(18) An employee may not grieve a position classification.

(19) The city vehicle collision appeal process will be administered in accordance with any applicable provisions of this chapter and with specific procedures and requirements outlined in the administrative directives of the city.

(20) An employee who files a grievance and subsequently files an appeal of the disposition of that grievance shall submit a copy of the original grievance at all levels of appeal.

(21) At every grievance appeal level, the hearing officer shall only hear matters contained in the original grievance.

SECTION 10. That Subsection (i), “Final Decision,” of Section 34-38, “Grievance and Appeal Procedures,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(i) Final decision.

(1) The disposition of a grievance or an appeal by the assistant city manager, city manager, employees’ retirement fund board, secretary of the civil service board, city auditor, or city secretary is nonappealable, except when the grievance or appeal involved a:

(A) [a] claim of discrimination because of an employee’s race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, [~~age~~, ~~or~~] disability, or military or veteran status as it affects the employee’s training, promotion, advancement, or transfer, which may be appealed to the civil service board;

(B) [a] civil service rule challenge, which may be appealed to the civil service board; or

(C) [a] demotion or discharge, which may be appealed to the trial board, unless provided otherwise in the city charter.

(2) The disposition of a grievance or an appeal by the police and fire pension board is nonappealable, except when the grievance or appeal involved:

(A) a claim of discrimination because of an employee’s race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, [~~age, or~~] disability, or military or veteran status as it affects the employee’s training, promotion, advancement, or transfer, which may be appealed to the civil service board; or

(B) a civil service rule challenge, which may be appealed to the civil service board.”

SECTION 11. That Section 34-39, “Appeals to the Civil Service Board,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“SEC. 34-39. APPEALS TO THE CIVIL SERVICE BOARD.

(a) General provisions, applicability, jurisdiction, and quorum.

(1) To the extent that a rule adopted by the civil service board and approved by the city council conflicts with a provision of this chapter, this chapter prevails.

(2) In this section:

(A) BOARD means the civil service board of the city.

(B) SECRETARY means the secretary of the civil service board.

(3) This section does not apply to:

(A) a department director, an assistant department director, or other managerial personnel designated by the city council in accordance with Section 11, Chapter XVI of the city charter; [~~or~~]

(B) a non-civil service employee; or[-]

(C) applicants for employment.

(4) The civil service board has jurisdiction to hear the following matters:

(A) A grievance of a current employee that is not settled at the final grievance and appeal procedure step and that involves a claim of discrimination because of an employee’s race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, [~~age, or~~] disability, or military or veteran status as it affects the employee’s training, promotion, advancement, or transfer, but only if the request for a grievance hearing:

(i) is filed in writing with the civil service board secretary within 10 working days after the date of the employee's receipt of the letter of the last disposition of the grievance;

(ii) contains the following information:

(aa) a brief explanation of the incident causing the complaint, including the date of occurrence;

(bb) a brief statement showing how the incident harmed the employee;

(cc) the type of discrimination alleged;

(dd) the remedy sought;

(ee) the signature of the employee; and

(ff) a certificate showing the date of service to the secretary; and

(iii) has a copy of the original grievance attached to the request.

(B) A grievance that is not settled at the final grievance and appeal procedure step and that involves an interpretation or application of a civil service rule, but only if the request for a grievance hearing:

(i) is filed in writing with the secretary within 10 working days after the date of the employee's receipt of the letter of the last disposition of the grievance; and

(ii) contains the following information:

(aa) a brief explanation of the incident causing the complaint, including the date of occurrence;

(bb) a brief statement showing how the incident harmed the employee;

(cc) the provision of the civil service board's code of rules and regulations that is in question;

(dd) the remedy sought;

(ee) the signature of the employee; and

(ff) a certificate showing the date of service to the secretary; and

(iii) has a copy of the original grievance attached to the request.

~~[(C) A complaint filed by an applicant for employment or an employee on initial probation with the city if the complaint:~~

~~(i) alleges discrimination because of the applicant's or employee's race, color, religion, sex, sexual orientation, national origin, age, or disability as it affects hiring;~~

~~(ii) is filed in writing with the secretary within 10 working days after the occurrence of the alleged discrimination; and~~

~~(iii) contains the following information:~~

~~(aa) a brief explanation of the incident causing the complaint, including the date of occurrence;~~

~~(bb) a brief statement showing how the incident harmed the applicant or employee;~~

~~(cc) the type of discrimination alleged;~~

~~(dd) the remedy sought;~~

~~(ee) the signature of the employee; and~~

~~(ff) a certificate showing the date of service to the secretary.]~~

(5) The civil service board does not have jurisdiction to hear:

(A) a grievance of an individual whose employment with the city has terminated, even if the original grievance was filed when the individual was a city employee; and

(B) a grievance on a matter that was not included in the original grievance filed by an employee.

(6) Any four ~~[three]~~ members of the civil service board constitute a quorum for purposes of conducting any meeting or hearing under this section. All decisions or actions of the board under this section must be made by a majority of the board members present at a meeting or hearing.

(b) Prehearing deadlines.

(1) To the fullest extent possible, within ~~Within~~ fifteen ~~five~~ working days after the date of service of the request to the secretary of the civil service board, as shown on the certificate attached to the request under Subsection ~~34-39(a)(4)(A), 34-39(a)(4)(B), or 34-39(a)(4)(C) [of this section]~~, the secretary shall do the following:

(A) Set a hearing before the civil service board within 60 to 90 calendar days after receipt of the request by the secretary; however, the secretary of the civil service board may, with the approval of the civil service board chair, schedule a hearing outside of 60 to 90 calendar days from the date of the request.

(B) Prepare a “statement of questions,” which must be styled, “Matter of (name of employee ~~[or applicant]~~)” and include the following language:

(i) If the grievance involves a claim of discrimination, the statement of questions must read “Did the employee establish, by a preponderance of the evidence, the existence of discrimination based on the employee’s (choose appropriate category - race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, ~~[or]~~ disability, or military or veteran status) as it affects the employee’s (choose appropriate category - training, promotion, advancement, or transfer)?”

(ii) If the grievance involves a claim of misinterpretation or misapplication of a board rule, the statement of questions must specify each rule alleged to have been violated.

(iii) ~~[If a complaint is filed by an applicant for employment or an employee on initial probation, the statement of questions must read, “Did the applicant (or employee) establish, by a preponderance of the evidence, the existence of discrimination based on the applicant’s (or employee’s) (choose appropriate category - race, color, age, religion, sex, sexual orientation, national origin, or disability) as it affects the applicant’s (or employee’s) hiring?”]~~

~~(iv)]~~ The statement of questions may not include any issue not included in the original grievance ~~[or complaint]~~.

(C) Transmit to each party notice of the hearing and the statement of questions.

(2) Objections.

(A) Within 10 working days after the date of service as shown on the certificate of service on the statement of questions, the parties shall file any objections to the statement of questions with the secretary.

(B) Within five working days after the date of service as shown on the certificate of service on the objections, a response may be filed.

(C) Objections may be resolved at the hearing immediately before evidence is accepted.

(3) Continuances.

(A) At least 15 working days before a hearing or two working days after a party learns of the facts requiring a continuance, whichever date is earlier, a motion for continuance of the hearing may be filed.

(B) Within five working days after the date of service as shown on the certificate of service on the motion for continuance, a response may be filed.

(C) Other than in cases in which the parties agree to abate a hearing to await the final adjudication of underlying criminal charges, [H] the parties may agree to a continuance, in which case, the hearing will be continued for up to 60 calendar days. Agreed continuances in excess of 180 days from the date of the original setting of the hearing must be approved by the civil service board chair, or his or her designee who shall be a member of the civil service board.

(D) If the parties do not agree to a continuance, the continuance may be granted by a majority of the board members present at a meeting or hearing at which the motion for continuance is considered.

(4) Exchange of information. At least 10 working days before the hearing, each party shall:

(A) exchange witness lists;

(B) exchange exhibits;

(C) stipulate to undisputed facts;

(D) stipulate to the admissibility of exhibits; and

(E) file with the secretary a position statement that must include a:

(i) [a] statement of the party's position on the issues in the statement of questions;

(ii) [a] designation of undisputed facts;

(iii) [a] list of witnesses and the estimated time required for the direct examination of each witness; and

(iv) [a] list of exhibits.

(5) Request for subpoenas. At least 30 [20] working days before the hearing, each party may file with the secretary a request for subpoena of witnesses and documents, in accordance with the following:

(A) The request for subpoena of witnesses and documents must include:

(i) the name and address of each witness to be subpoenaed;

(ii) if a witness is a city employee, the name of the employee's department; and

(iii) if documents are being subpoenaed, the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.

(B) The party requesting the subpoena shall notify the subpoenaed witness of postponements, rescheduling, and appearance times.

(C) The board has the power to compel the attendance of witnesses and the production of testimony and evidence, to administer oaths, and to punish for contempt in the same manner as provided for municipal judges.

(D) Either party may object to a subpoena request within seven working days after receiving notice of the subpoena request. Objections to subpoenas must be in writing, submitted to the secretary, and copied to the opposing party, who has three working days after receipt of the objections to respond in writing to the substantive reasons for the objection.

(E) The secretary shall forward the written objections and the response to the objections, if any, to the civil service board chair for resolution. If the civil service board chair is unavailable, the objections must be ruled upon by his or her designee, who shall be a member of the civil service board.

(F) Once the scope of the subpoena is determined by the civil service board chair, or if no objections are filed, each party shall organize and number the responsive information ("the released documents") before turning it over to the secretary. The released documents must be provided within an amount of time determined by the civil service board chair or, if no objections are filed, in an amount of time determined by the secretary. The secretary shall provide a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(G) The individual picking up the released documents must sign for the produced information. The requesting party has three working days to submit, in writing, any objections to the completeness of the released documents. The producing party has three working days to respond, in writing, to the substantive reasons for the requesting party's objections. The secretary shall maintain one complete copy of the released documents, to allow the civil service

board chair to fully assess and rule on any objections to the completeness of compliance with the subpoena.

(H) The secretary shall forward the objections and any response to the objections to the civil service board chair for resolution. If the civil service board chair is unavailable, the objections will be ruled upon by his or her designee, who shall be a member of the civil service board.

(I) Decisions rendered by the civil service board chair (or his or her designee, if applicable) regarding subpoenas or responsive information are final and are not subject to further appeal.

(J) After all decisions have been rendered by the civil service board chair regarding the scope of documents to be released pursuant to a subpoena, the secretary shall provide a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(6) Challenge of board members.

(A) At least 10 working days before the hearing, a motion to challenge a board member may be filed with the secretary and served upon all parties.

(B) Within five working days after the date of service as shown on the certificate of service on the motion to challenge a board member, a response may be filed.

(C) A challenge may not be made after the hearing begins, unless the challenge is based on a board member's:

- (i) ineligibility to hear the matter; or
- (ii) conduct during the hearing.

(D) If the challenged member does not voluntarily withdraw, the board, by a majority vote, not counting the vote of the challenged member, may remove the member.

(7) Service of subpoenas.

(A) At least five working days before the hearing, the secretary shall cause all subpoenas to be personally served.

(B) The secretary shall designate a person to deliver the subpoenas and that person shall sign each subpoena stating that the witness was served.

(C) The subpoena of an active city employee may be served through the director of the employee's department.

(8) Computation of time.

(A) In computing any period of time prescribed in this section, the day of the act or event from which the designated period of time begins to run is not included.

(B) The last day of the time period is included, unless it is a Saturday, Sunday, or official holiday observed by the city, in which event the period runs until 5:15 p.m. of the next day that is not a Saturday, Sunday, or official holiday observed by the city.

(C) Except as otherwise specified, time periods will be calculated based on calendar days.

(c) Hearings.

(1) Any four [~~three~~] members of the board constitute a quorum for a hearing under this section. The board chair (or, in the chair's absence, the vice chair or longest serving board member present) shall preside at any hearing and make rulings regarding evidence or procedure. Upon motion of any board member, the board, by majority vote, may overrule or modify any ruling by the chair.

(2) The employee [~~or applicant~~] has the burden of establishing, by a preponderance of the evidence, that the city discriminated against the employee [~~or applicant~~] or misapplied or misinterpreted a rule as alleged.

(3) If the board, by majority vote, determines, by a preponderance of the evidence, that the city discriminated against the employee [~~or applicant~~] or misapplied or misinterpreted a rule as alleged, the board shall direct such relief as it deems just and equitable.

(4) The appealing employee [~~or applicant~~]:

(A) may request the hearing or deliberations, which are usually open to the public, to be closed; and

(B) may not be compensated for time away from the employee's city position while attending a hearing, unless so ordered by the board.

(5) The board may exclude:

(A) redundant, irrelevant, or cumulative evidence;

(B) evidence that is not competent or properly authenticated;

(C) any exhibit not previously exchanged; and

(D) the testimony of a witness not previously identified as a witness.

(6) The secretary shall maintain a record of the hearing and shall, at the city's expense, appoint a court reporter to make a record of the hearing.

(7) The board shall [~~will~~] release city employee witnesses as soon as possible to return to city business.

(8) Placing witnesses under the rule.

(A) Upon request by either party, the witnesses on both sides shall be sworn and removed from the hearing room so they cannot hear the testimony as delivered by any other witness in the case.

(B) Witnesses shall be instructed that they are not to converse with each other or with any other person about the case, other than the attorneys in the case.

(9) After the parties have rested, the board may request a party to produce additional evidence as the board deems necessary to decide the issues before it.

(d) Disposition.

(1) Dismissal. A grievance [~~or complaint~~] or any part of a grievance [~~or complaint~~] must be dismissed for, but not limited to, any of the following reasons:

(A) The appealing employee [~~or applicant~~] fails to appear in person at the hearing, unless:

(i) good cause for the failure to appear is shown; and

(ii) the city would not be unduly prejudiced if the grievance [~~or complaint~~] is not dismissed.

(B) The appealing employee [~~or applicant~~] fails to introduce sufficient evidence to prove the alleged discrimination or misapplication or misinterpretation of a rule.

(C) The board cannot grant the relief that the appealing employee [~~or applicant~~] has requested.

(D) The board lacks jurisdiction.

(2) Board orders.

(A) The disposition of a grievance [~~or complaint~~] must be reduced to writing by the secretary and transmitted to the parties within three working days after the board has announced its ruling. This writing is the order of the board.

(B) The order is final unless a motion for rehearing is filed within 10 working days after the date on the written order.

(3) Relief. The board may grant the prevailing party relief that is just and equitable as is consistent with the city charter and other applicable law.

(4) Costs. The board may not authorize payment of attorney's fees, expenses, or costs or provide payment of damages beyond payment of salary and benefits that would have ordinarily been paid to the appealing employee.

(e) Post-hearing deadlines.

(1) Within 10 working days after the date on the written order, a motion for rehearing may be filed by either party.

(2) A motion for rehearing may be granted by the board only if the order:

(A) exceeds the board's authority;

(B) contains provisions impermissible under applicable law;

(C) is unclear; or

(D) incorrectly states the disposition of the matter.

(f) Other matters.

(1) If a court of law rules on an issue involved in the grievance [~~or complaint~~], the board's order must conform with the court's ruling or must be vacated in deference to the court's ruling, whichever is applicable.

(2) The board may order, with the consent of the parties, that any matters having common issues of fact be consolidated.

(3) No party or party representative shall communicate with any board member regarding the issues involved in the grievance [~~or complaint~~] except at the hearing.

(4) The board, by majority vote, may seek advice regarding its jurisdiction or the nature and extent of its authority from the city attorney.

(5) A party may be heard through a representative if that representative is designated:

(A) in writing filed with the secretary and served on all parties;

(B) on the record at the hearing before evidence is accepted; or

(C) through the signature of the representative on any paper filed with the secretary on behalf of the party.

(6) The secretary shall ensure that the board receives any materials filed by the parties.

(7) Any paper served by a party on the secretary must include a certificate showing service to all other parties.

(8) Service upon the city must be accomplished by serving the assistant city attorney assigned to the hearing.

(9) Nothing in this section may be construed to authorize the practice of law except as permitted by the Supreme Court of Texas.

(10) By presenting to the board (whether by signing, submitting, or later advocating) a request for a hearing, a complaint, a written or oral motion, or any other document, the party is certifying that it is acting in good faith.

(g) Nothing in this section conveys upon, implies, or intends to imply that an employee has a property interest in continued employment or a contract of employment with the city based on any right to grieve or appeal provided by this section or on the nondiscrimination policy stated in Section 34-35 of this chapter. Nothing in this section or in the nondiscrimination policy creates any right or remedy under any law or limits any existing right or remedy provided under any law.”

SECTION 12. That Subsection (c), “Prehearing Deadlines,” of Section 34-40, “Appeals to the Trial Board or Administrative Law Judge,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(c) Prehearing deadlines.

(1) To the fullest extent possible, within ~~Within~~ fifteen ~~[five]~~ working days after the date of service of the request to the secretary, as shown on the certificate attached to the request under Subsection (a)(4)(C) of this section, the secretary shall do the following:

(A) Set a hearing before a trial board or an administrative law judge within 60 to 90 calendar days after receipt of the request by the secretary; however, the secretary of the civil service board may, with the approval of the trial board chair or the administrative law judge, schedule a hearing outside of 60 to 90 calendar days from the date of the request.

(B) Prepare a “statement of questions,” which must be styled, “Matter of (name of employee)” and must specify the rules alleged to have been violated as stated in the letter of demotion or discharge.

(C) Designate the trial board members who will hear the appeal or, if elected by the employee, the administrative law judge.

(D) Transmit to each party notice of the hearing, the statement of questions, and the names of the trial board members or the name of the administrative law judge, whichever is applicable.

(2) Objections.

(A) Within 10 working days after the date of service as shown on the certificate of service on the statement of questions, the parties shall file any objections to the statement of questions with the secretary.

(B) Within five working days after the date of service as shown on the certificate of service on the objections, a response may be filed.

(C) Objections may be resolved at the hearing immediately before evidence is accepted.

(3) Continuances.

(A) At least 15 working days before a hearing or two working days after a party learns of the facts requiring a continuance, whichever date is earlier, a motion for continuance of the hearing may be filed.

(B) Within five working days after the date of service as shown on the certificate of service on the motion for continuance, a response may be filed.

(C) Other than in cases in which the parties agree to abate a hearing to await the final adjudication of underlying criminal charges, [If] the parties may agree to a continuance, in which case, the hearing will be continued for up to 60 calendar days. Agreed continuances in excess of 180 days from the date of the original setting of the hearing must be approved by the administrative law judge or the trial board chair, or his or her designee, who shall be a member of the trial board.

(D) If the parties do not agree to a continuance:

(i) for a hearing before a trial board, the continuance may be granted by a majority of the trial board members present at a meeting or hearing at which the motion for continuance is considered; or

(ii) for a hearing before an administrative law judge, the secretary shall request a ruling from the administrative law judge on the motion for continuance.

(4) Exchange of information. At least 10 working days before the hearing, each party shall:

(A) exchange witness lists;

(B) exchange exhibits;

(C) stipulate to undisputed facts;

(D) stipulate to the admissibility of exhibits; and

(E) file with the secretary a position statement that must include:

(i) a statement of the party's position on the issues in the statement of questions;

(ii) a designation of undisputed facts;

(iii) a list of witnesses and the estimated time required for the direct examination of each witness; and

(iv) a list of exhibits.

(5) Request for subpoenas. At least 30 [20] working days before the hearing, each party may file with the secretary, and copy the opposing party, a request for subpoena of witnesses and documents, in accordance with the following:

(A) The request for subpoena of witnesses and documents must include:

(i) the name and address of each witness to be subpoenaed;

(ii) if a witness is a city employee, the name of the employee's department; and

(iii) if documents are being subpoenaed, the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.

(B) The party requesting the subpoena shall notify the subpoenaed witness of postponements, rescheduling, and appearance times.

(C) The trial board or the administrative law judge has the power to compel the attendance of witnesses and the production of testimony and evidence, to administer oaths, and to punish for contempt in the same manner as provided for municipal judges.

(D) Either party may object to a subpoena request within seven working days after receiving notice of the subpoena request. Objections to subpoenas must be in writing, submitted to the secretary, and copied to the opposing party, who has three working days after receipt of the objections to respond in writing to the substantive reasons for the objections to the requested subpoenas.

(E) The secretary shall forward the objections and the response to the objections, if any, to the administrative law judge or trial board chair for resolution. If the trial board chair is unavailable, the objections must be ruled upon by his or her designee, who shall be a member of the trial board.

(F) Once the scope of the subpoena is determined by the administrative law judge or trial board chair, or if no objections are filed, each party shall organize and number the responsive information (“released documents”) before turning it over to the secretary. The released ~~documents—must~~documents must be provided within the amount of time determined by the administrative law judge or trial board chair or, if no objections are filed, in an amount of time determined by the secretary. The secretary shall release a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(G) The individual picking up the released documents must sign for the produced information. The requesting party has three working days to submit, in writing, any objections to the completeness of the released documents. The producing party has three working days to respond, in writing, to the substantive reasons for the requesting party’s objections. The secretary shall maintain one complete copy of the released documents, to allow the administrative law judge or trial board chair to fully assess and rule on any objections to the completeness of compliance with the subpoena.

(H) The secretary shall forward the objections and any response to the objections to the administrative law judge or trial board chair for resolution. If the trial board chair is unavailable, the objections shall be ruled upon by his or her designee, who shall be a member of the trial board.

(I) Decisions rendered by the administrative law judge or trial board chair (or his or her designee, if applicable) regarding subpoenas or responsive information are final and are not subject to further appeal.

(J) After all decisions have been rendered by the administrative law judge or trial board chair regarding the scope of documents to be released pursuant to a subpoena, the secretary shall release a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(6) Challenge of a trial board member or an administrative law judge.

(A) At least 10 working days before the hearing, a motion to challenge a trial board member or an administrative law judge may be filed with the secretary and served upon all parties.

(B) Within five working days after the date of service as shown on the certificate of service on the motion to challenge a trial board member or an administrative law judge, a response may be filed.

(C) A challenge may not be made after the hearing begins, unless the challenge is based on:

(i) the ineligibility of a trial board member or an administrative law judge to hear the matter; or

(ii) the conduct of a trial board member or an administrative law judge during the hearing.

(D) If a challenged trial board member does not voluntarily withdraw, the trial board, by a unanimous vote, not counting the vote of the challenged member, may remove the member.

(E) If a challenged administrative law judge does not voluntarily withdraw, the administrative municipal judge of the municipal court of record may remove the member.

(F) If a challenge results in withdrawal of a trial board member or an administrative law judge, the hearing may be continued to a date certain.

(G) If a challenge results in withdrawal of a trial board member or an administrative law judge, the secretary shall promptly designate a replacement and inform all parties of the replacement.

(H) A challenge to a substituted trial board member or administrative law judge must be submitted as soon as possible.

(7) Service of subpoenas.

(A) At least five working days before the hearing, the secretary shall cause all subpoenas to be personally served.

(B) The secretary shall designate a person to deliver the subpoenas and that person shall sign each subpoena stating that the witness was served.

(C) The subpoena of an active city employee may be served through the director of the employee's department.

(8) Computation of time.

(A) In computing any period of time prescribed in this section, the day of the act or event from which the designated period of time begins to run is not included.

(B) The last day of the time period is included, unless it is a Saturday, Sunday, or official holiday observed by the city, in which event the period runs until 5:15 p.m. of the next day that is not a Saturday, Sunday, or official holiday observed by the city.

(C) Except as otherwise specified, time periods will be calculated based on calendar days. ”

SECTION 13. That Subsection (a), Administration,” of Section 34-43, “Wage Supplementation Plan,” of Chapter 34, “Personnel Rules,” of the Dallas City Code is amended to read as follows:

“(a) Administration. The director of risk management [~~human resources~~] is authorized and directed to develop and distribute necessary administrative directives for the fair and efficient administration of the injured employees’ wage supplementation plan. Department directors shall authorize wage supplementation for their employees in accordance with the administrative directives. Determinations and decisions made by department directors are final, conclusive, and binding on all parties.”

SECTION 14. That Chapter 34 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance. Any proceeding, civil or criminal, based upon events that occurred prior to the effective date of this ordinance are saved, and the former law is continued in effect for that purpose.

SECTION 15. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 16. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

WARREN M.S. ERNST, City Attorney

By _____
Assistant City Attorney

Passed _____