



CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

2012 APR 18 PM 5:55

AGENDA

REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: LaWanna Preston

SUBJECT: Amendment to City Ordinance No. 8979

DATE: April 2, 2012

City Administrator

Approval

Date

4/18/12

RECOMMENDATION

Staff recommends that the City Council amend City of Oakland Ordinance NO. 8979 C.M.S. which is codified at the Oakland Municipal Code section 2.08.050, clarifying the authority of the Port Board of commissioners and the Civil Service Board of the City of Oakland with regard to the establishment, modification, or elimination of classifications included in the City's Civil Service system.

EXECUTIVE SUMMARY

During negotiations with unions representing employees of the Port Department (Department 46), both Service Employees International Union, Local 1021, and the Western Council of Engineers requested changes to City Ordinance No 8979 C.M.S.(codified as Oakland Municipal Code Section 2.08.050). These changes are intended to clarify the relationship between the Board of Port Commissioners and the City of Oakland Civil Service Board with regard to the promulgation of rules, and the establishment, modification, and elimination of classifications. The proposed amendments are consistent with the express terms of the Charter of the City of Oakland.

On December 16, 2011, the California Court of Appeals issued a decision regarding a Port of Oakland employee in an engineering classification. The Appellate decision and Trial Court's factual findings are consistent with the City's position to amend Ordinance No 8979 C.M.S. The Court stated "While the Port enjoys an amount of autonomy with respect to many of its functions (Charter section 706), Port employees, with exceptions not relevant here, are included with the City's civil service system and subject to its civil service rules (Charter section 714). The Port is also authorized to maintain its own personnel rules provided they are consistent with the City's civil rules."

Item: _____

April 30, 2012

OUTCOME

The amendments to City Ordinance No. 8979 C.M.S. will implement the terms of Charter Section 714, which states “All permanent places of employment in and under the Board shall be included within the personnel system of the City established pursuant to and subject to the provisions of Article IX of this Charter, except the Executive Director and his two principal assistants, the Secretary of the Board, The Port Attorney and Legal Assistants, Chief Wharfinger, field and Traffic Representatives, and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight...” The proposed changes make the following clarifications:

1. Consistent with Section 714 of the Charter of the City of Oakland, all employees of the Port Department, except for those specifically exempted by Charter, procedures established by the Charter, or action of the Civil Service Board, shall be included within the personnel (civil service) system of the City.
2. The Board of Port Commissioners may adopt personnel rules and procedures consistent with the Charter, the provisions of Municipal Code Chapter 2.08, and the City’s Civil Service Rules and Procedures.
3. Personnel rules and procedures adopted by the Board of Port Commissioners after the date of the amendment will not become effective until approved by the Civil Service Board.
4. The authority to create, modify, or eliminate classifications within the civil service system and to determine whether a classification falls within the civil service system rests solely within the City’s Civil Service Board, and the Port Department does not have independent authority to establish, modify or eliminate classifications.
5. The agreement reached with organized labor explicitly leaves in place existing classifications not included in the “Common Classes” list in Appendix B to the City’s Personnel Manual and shall remain in effect unless modified or eliminated by the Civil Service Board.

BACKGROUND/LEGISLATIVE HISTORY

Section 700 of the Oakland City Charter established the Port Department, “To promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation.” The Port Department is governed by a Board of Port Commissioners, which has the exclusive control and management of the Port Department (Oakland City Charter section 701). Among its delineated powers, the Board of Port Commissioners has the authority to employ and appoint an Executive Director, and such other officers, employees and agents as may be necessary in the efficient and economical carrying out

Item: _____
City Council
April 30, 2012

of its functions and to prescribe and fix their duties, authority and compensation (Oakland City Charter section 706). The Charter exempts the following personnel from the Civil Service

System: the Executive Director and his two principal assistants, the Secretary of the Board; the Port Attorney and Legal Assistants; the chief wharfing, field and traffic representatives; and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight (Oakland City Charter section 714). All other employees of the Port Department are subject to the City's civil service system. (*Id.*)

Since the Port remains a Department of the City, the Charter grants the City Council significant control over the Port and limits the Port Department's powers in a number of areas, including personnel matters. In 1974, the City Council adopted Ordinance 8979 C.M.S., which established the authority of the Civil Service Board. Section III Civil Service Board, states "It shall be the function of the Civil Service Board to enforce, through general supervision of the personnel system, the provisions of this ordinance and Article VIII of the Charter; to study, investigate and research into such areas and matters as the City Manager, or the Council through the City Manager, or the Board of Port Commissioners, may request, or as it may deem advisable; to make reports and recommendations in writing thereon and to formulate policy recommendations or recommend changes to the Personnel Manual for the better realization of the objectives of this personnel system, as set for in section 800 of the Charter; to approve the exception of positions under Section 802 (f) of the Charter;..."

Section V. Port Department states "The Board of Port Commissioners is hereby authorized to establish personnel rules and procedures consistent with this ordinance and the Charter and to provide for administration of such rules for employees of the Port Department. Until the Board of Port Commissioners adopts such personnel rules and procedures, the rules of the Civil Service Board, insofar as they are consistent with this ordinance, shall remain in effect with respect to Port employees."

ANALYSIS

The Charter specifically limits the Port's powers with respect to establishing personnel rules and procedures. Charter Section 706 (21) states "To employ and appoint an Executive Director, and such other officers, employees and agents as may be necessary in the efficient and economical carrying out of its functions and to prescribe and fix their duties, authority and compensation, and to require such officers, employees and agents to give a bond in such an amount as the Board may require for the faithful discharge of their duties. All offices and places of employment in the permanent service of the Board shall be created by ordinance duly passed."

Charter Section 714 Personnel System states "All permanent places of employment in and under the Board shall be included within the personnel system of the City established pursuant to and subject to the provisions of Article IX of this Charter, except the Executive Director and his two principal assistants, the Secretary of the Board, the Port Attorney and Legal Assistants, chief

Item: _____
City Council
April 30, 2012

wharfinger, field and traffic representatives, and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight. The exemption of such personnel

for the operation of civil service rules shall not in any way affect such pre-existing civil service rights as such employee may hold. Charter Sections 902 The Competitive Service- states "The Competitive Civil Service shall include all offices and employments in the City government except:" Subsection (c) list the specific Port positions that are exempt from the Civil Service System, it states "Department heads, one secretary to executive director, the secretary of the board, commercial representatives and freight and cargo handlers and checkers employed by the Port Department; also such others engaged in the handling of ships and shipping as are found by both the Board of Port Commissioners and the actions of the Civil Service Board as provided for pursuant to Article VI to hold positions peculiar to the operations of the port as commercial enterprise." The Charter provides that all other Port employees are included in and subject to the Civil Service System. All exemptions not specified in the Charter must be recommended by the City Council and approved by the Civil Service Board, pursuant to section 902 (f) of the Charter.

The Port's claim that the Amendments attempt to eliminate the Port's authority over its employees by making them subject to the Civil Service System is predicated on the erroneous conclusion that all Port employees are exempt from the Civil Service System. This conclusion conflicts with the Charter, which, as shown above, expressly limits the Board's exclusive control over Port employees to specific classifications and includes all other Port employees in the Civil Service System. The Amendment is appropriate and consistent with the Charter.

To the extent the Port relies upon the Oakland Municipal Code Section 2.08.050 (the codification of Ordinance No. 8979 C.M.S.), this is also of no avail. As the City's governing body, the Council has express authority under the Charter to exercise the corporate powers of the City, including all powers of legislation in municipal affairs; i.e. adopting and amending ordinances. Pursuant to this authority, the Council adopted and can now amend Ordinance No. 8979 C.M.S.. Given the Port's position and the limitations specified in the City Charter, amendment of Ordinance No. 8979 is necessary to clarify the terms of the Ordinance.

PUBLIC OUTREACH/INTEREST

No public outreach is required.

COORDINATION

Once the Ordinance and Municipal Code have been amended, the Civil Service Board and the Director, Human Resources Management will be charged with implementation of the Council's directive. Specifically, the Civil Service Board through its assigned legal and personnel staff will be tasked with reviewing the Port's existing Personnel Manual to ensure consistency with the Charter and the Civil Service Rules. The City's personnel staff will have to work closely with

Item: _____
City Council
April 30, 2012

the Port's personnel staff to review the Port's approximately three hundred and fifty six (356) classifications. Therefore, the Civil Service Board will be responsible for incorporating

the civil service classes into the City's classification plan. The Civil Service Board will also be responsible for ensuring enforcement of the civil service rules, so that the rules are applied equitably to all employees under the Charter mandated comprehensive personnel system.

COST SUMMARY/IMPLICATIONS

The Amendment to City Ordinance No. 8979 will increase the workload of employees in the Department of Human Resources Management. The staff will be required to make sure all merit system principals, rules and applications are followed and the classification plan for the Port is consistent with the City's Civil Service rules. The Department of Human Resources Management will monitor the work flow for six (6) months and evaluate the workload.

SUSTAINABLE OPPORTUNITIES

Economic:

Not applicable

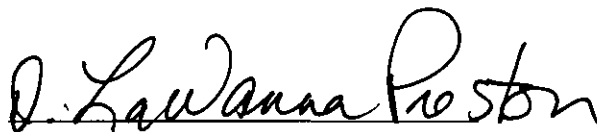
Environmental:

Not applicable

Social Equity:

Not applicable

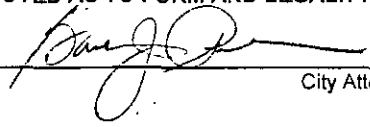
Respectfully submitted,



D. LaWanna Preston
Employee Relations Director,
Office of the City Administrators

Item: _____
City Council
April 30, 2012

INTRODUCED BY COUNCILMEMBER _____

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City Attorney
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2012 APR 18 PH 5:55

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 8979 C.M.S. WHICH IS CODIFIED AT OAKLAND MUNICIPAL CODE CHAPTER 2.08 TO CLARIFY THE AUTHORITY OF THE PORT BOARD COMMISSIONERS AND THE OAKLAND CIVIL SERVICE BOARD WITH REGARD TO THE ESTABLISHMENT, MODIFICATION, AND ELIMINATION OF CLASSIFICATIONS INCLUDED IN THE CITY'S CIVIL SERVICE SYSTEM.

WHEREAS, Section 700 of the City Charter establishes the Port Department as a department of the City of Oakland known as the "Port Department"; and

WHEREAS, the City Charter established the Civil Service Board and authorizes the City Council to provide by ordinance for a modern system of personnel administration for the competitive civil service; and

WHEREAS, Charter Section 714, states "All permanent places of employment in and under the Board shall be included within the personnel system of the City established pursuant to and subject to the provisions of Article IX of the Charter, except the Executive Director and his two principal assistants, the Secretary of the Board, the Port Attorney and legal Assistants, Chief Wharfinger, Field and Traffic Representatives, and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight. The exemption of such personnel from the operation of civil service rules shall not in any way affect such pre-existing civil service rights as such employee may hold"; and

WHEREAS, it is necessary to clarify the authority of the Port Board of Commissioners under the City Charter with respect to the establishment, modification and elimination of classifications in the City's competitive Civil Service System;

The Council of the City of Oakland does ordain as follows:

SECTION 1. Oakland Municipal Code Chapter 2.08 hereby is amended to read in its entirety as follows; additions are indicated by underscoring and deletions are indicated by strike-through-type; portions of the provisions not cited or not shown in underscoring or strike-through type are not changed:

Chapter 2.08 CIVIL SERVICE RULES AND PROCEDURES

2.08.010 - Adoption of a personnel system.

2.08.020 - Administration.

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2.08.030 - Civil Service Board.

2.08.040 - Personnel Manual.

2.08.050 - Port Department.

2.08.060 - Nondiscrimination.

2.08.010 - Adoption of a Personnel System.

In order to achieve the values of a modern system of personnel administration, enumerated in Section ~~800-900~~ of the Charter, and to provide for a personnel system based on merit as required by Section ~~804-900~~ of the Charter, including the constitution of the Civil Service Board in accordance with Section ~~504-901~~ of the Charter, the following personnel system is hereby adopted.

2.08.020 - Administration.

The City ~~Manager-Administrator~~ shall be responsible for the administration of the personnel system, in accordance with Section ~~404-503~~ of the Charter and subject to the provisions of this ordinance. The City ~~Manager-Administrator~~ shall appoint a Personnel Director who shall, subject to the direction of the City ~~Manager Administrator~~:

- (1) Be responsible for the efficient operations of the Personnel Department of the City.
- (2) Prepare and maintain the Personnel Manual.
- (3) Prepare and maintain the uniform position classification plan, including detailed position descriptions.
- (4) Administer competitive examination for positions in the classified civil service and maintain eligible lists of qualified candidates.
- (5) Perform such other duties as the City ~~Manager~~ Administration may assign.

2.08.030 - Civil Service Board.

It shall be the function and duty of the Civil Service Board to enforce, through general supervision of the personnel system, the provisions of this ordinance and of Article ~~VIII~~ IX of the Charter; to study, investigate and research into such areas and matters as the City ~~Manager Administrator~~, or the Council through the City ~~Manager Administrator~~, or the Board of Port Commissioners, may request, or as it may deem advisable; to make reports and recommendations in writing thereon and to formulate policy recommendations or recommended changes to the Personnel Manual for the better realization of the objectives of the personnel system, as set forth in Section ~~800~~ 900 of the Charter; to approve the exception of positions under Section ~~802f~~ 902 (f) of the Charter; to perform the appellate duties and functions hereafter described; to review and approve changes to the Personnel Manual, excepting those which are administrative in nature, proposed by the City ~~Manager Administrator~~, provided that changes in which the Board does not concur may be made with the approval of Council; and to perform such other duties and functions as the City ~~Manager Administrator~~ may for time to time request. The following special provisions shall apply to the Civil Service Board.

1 A. Composition. The Board shall consist of seven members who will be appointed pursuant to Section ~~504~~ 601 of the Charter and who shall serve without compensation. Two members shall be appointed for a term of one year, two for two years, and three for four years, said terms to commence upon the date of appointment. Thereafter, each appointment shall be for a term of four years, except that an appointment to fill a vacancy shall be for the unexpired term only.

2 B. Vacancy. A vacancy in the Board will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by Section ~~504~~ 601 of the Charter. Convictions of a felony, misconduct, incompetence, inattention to or inability to perform his duties, and unexcused absence from meetings pursuant to procedures adopted in accordance with subsection 4 D below shall constitute cause for removal.

3 C. Officers, Meetings. Each year at its first regular meeting in July, the Board shall elect a chairman and vice-chairman from amongst its members. The Board shall meet at least once each month in the City Hall, at an established time suitable for its purpose. Such meetings shall be designated regular meetings. Meetings called by the Mayor or City Manager-Administrator, and meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. Written notices of special meetings shall be given to the Board members, the Council, the City Manager, Administrator the Board of Port commissioners, and the public press at least twenty-four hours before the meeting is convene.

4-D. Procedures. The Board shall, in consultation with the City Manager Administrator and with the approval of the Council establish procedures for the conduct of its meetings. The affirmative vote of four members shall be required for the adoption of any motion. The Board shall make its reports, findings and recommendations in writing unless otherwise requested. All reports, findings and recommendations shall be made to the City Manager Administrator who shall forward those matters within the province of the Council, or the Board of Port Commissioners, as jurisdiction may be.

5-E. Staffing. The City Manager Administrator shall provide the Board with assistance from City employees under his/her jurisdiction. The provisions of Section 221 of the Charter shall apply to members of the Board.

6 F Appeals. An employee having permanent status in the competitive civil service shall have the right to appeal suspension, fine, demotion, or discharge for incompetence, misconduct, or failure to properly perform his/her duties or to observe department rules and standards provided that such appeal shall not involve considerations of the merits or necessity of any departmental practice, procedures, rules, regulations orders, standards or level of service. Any such appeal shall be governed by the following procedures provided that alternative procedures are not set forth in a memorandum of understanding approved by the City Council.

(a) As soon as practicable but within a maximum of 72 hours after making the order of suspension, fine, demotion or discharge, the appointing authority of his designated representative shall serve on the affected employee written notice which shall fairly apprise the employee of the reasons for such action, such notice to be served in accordance with the Personnel Manual.

(b) The employee who elects to appeal such disciplinary action shall file his/her appeal in writing, in the manner prescribed in the Personnel Manual, within ten calendar days of the date of such written notice. The appeal shall address each of the reasons for the disciplinary action enumerated in the written notice and may provide any relevant

additional information. The appeal shall thereafter be heard according to the provisions of the Personnel Manual, pursuant to Section IV of this ordinance.

(c) Subject to the foregoing provisions, a supervisor may suspend any subordinate then under his/her direction for a period not to exceed one working day.

(d) As used in this ordinance, the term "appointing authority" shall mean the City Manager Administrator, or the City Attorney, or the City Auditor, or the Board of Port Commissioners, as the jurisdiction may be.

2.08.040 - Personnel Manual.

The Personnel Manual shall provide such administration policies, procedures, rules, and regulations as may be appropriate to carry out the intent of the Charter and this ordinance for the administration of the civil service system. The Personnel Manual may include but need not be limited to, the following matters: appeal procedures, classification of positions, salary administration, personnel records, selection, examination, eligible lists, probationary period, disciplinary actions, resignations and lay-offs, work schedules, leaves and vacations, training, and employee safety and health. The City Manager Administrator may provide in the Personnel Manual for special recognition, in an appropriate manner, other than by promotion or appointment, of City employees who have demonstrated outstanding merit in the service of the City of an extraordinary nature. The rules of the Civil Service Board in existence at the time of adoption of this ordinance, insofar as they are consistent with this ordinance, shall continue in effect until amended or revised by provision of the Personnel Manual, or by such rules as may be provided by the Board of Port Commissioners in a Personnel Manual for the Port Department.

2.08.060 Port Department.

Consistent with Section 714 of the Charter of the City of Oakland, all employees of the Port Department, except for those specifically exempted by Charter, procedures established by the Charter, or action of the Civil Service Board, shall be included within the personnel (civil service) system of the City.

Subject to the approval of the Civil Service Board, The Board of port Commissioners is authorized to establish personnel rules and procedures consistent with this chapter, and the Charter and to provide for the administration of such rules for employees of the Port Department. Until the Board of Port Commissioners adopts such personnel rules and procedures, the rules of the Civil Service Board, insofar as they are consistent with this ordinance, shall remain in effect with respect to Port employees. Any such rules and procedures shall be consistent with and subordinate to: (1) the City Charter, (2) this chapter, and (3) rules adopted by the Civil Service Board (Personnel Manual) (collectively, "City Civil Service Rules"). In the event of any conflict between the Port personnel rules and procedures and the City Civil Service Rules, the City Civil Rules shall control.

Personnel rules and procedures promulgated by the Board of Port Commissioners shall not be effective until approved by the Civil Service Board. The Civil Service Board may approve such personnel rules and procedures at any public meeting, by simple majority vote finding that the rules and procedures are consistent with the City Civil Service Rules.

The Board of Port Commissioners has no authority to create, modify, or eliminate any classification subject to the personnel system. However, it may propose that the Civil Service Board establish, modify, or eliminate any classification included within the personnel system of the City and utilized by the Port Department. The Civil Service Board retains the sole

authority to establish, modify, or eliminate any classification within the personnel system of the City and to determine whether any classification (not specifically exempted by Charter) shall be exempt from the personnel system. However, to the extent permitted by law, classifications not included in the "Common Classes" list in Appendix B to the City's Personnel Manual shall remain in effect unless modified or eliminated by the Civil Service Board.

2.08.060 - Nondiscrimination.

No person employed in the service of the City, or seeking admission thereto, shall be employed, promoted, demoted, dismissed, or discriminated against because of political opinions or affiliations, or because of race, color, ancestry, natural origin, religious belief, or sex. It is the intent of this ordinance to facilitate the realization of equal employee opportunities in the City service. Such policies as the Council may adapt to that end shall be applicable to the entire personnel system.

SECTION 2. Remaining Provisions Unchanged. Except as amended, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland Municipal Code Chapter 5.12 shall remain unchanged and in full force and effect.

SECTION 3. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions, which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

Brooks, Brunner, De La Fuente, Kaplan, Kemighan, Nadel, Schaaf and President Reid

Ayes:

Noes:

Abstentions:

Absent:

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California