

CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTER-OFFICE MEMORANDUM

To: Michael Colón, Council President
From: Matthew J. Deschler, Assistant Solicitor
Re: Proposed amendments to Article 157
Date: March 4, 2022

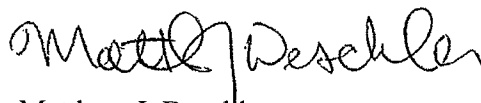
Enclosed for Council's action and review is a proposed ordinance amending Article 157 relating to Civil Service. The amendments include updates to the cross-references and the replacement of the City Controller with the City Clerk as the individual who receives the filed oaths of office of board members.

In Section 3, the proposed removal of certain language should not be interpreted as the City not being desirous of competitive examinations, provision for which is amply made elsewhere in the State Civil Service Act and in the rules and regulations of the Civil Service Board. Rather, the proposed deletion eliminates somewhat confusing references to the Bureaus of Police and Fire and more strictly tracks the language of the State Civil Service Act, which does not include the proposed deleted language. Further, the deletion helps clarify that it is uniformed personnel who are subject to civil service and also that the police and fire chiefs are not appointed through the civil service.

In Section 5, the proposed change clarifies that the City has adopted the default position that civil service grievances are submitted to City Council for hearings rather than to the Civil Service Board. In order for the Civil Service Board to hear a grievance, City Council would need

to designate by ordinance the Board as the hearing body, which has not been done. Therefore, the proposed amendment removes the surplus references to the Civil Service Board to provide greater clarity that Council is the hearing body. In addition, Council is thought to be the more appropriate hearing body since it retains its own solicitor to advise it, whereas the Law Bureau furnishes the solicitor to the Civil Service Board, which would create a conflict of interest in the event that the Board were to hold a hearing on a grievance against the City, in which case outside counsel would need to be retained.

At a meeting on December 1, 2021, the Civil Service Board recommended the enactment of this amendment.

A handwritten signature in black ink, reading "Matt J. Deschler". The signature is written in a cursive, flowing style.

Matthew J. Deschler
Assistant Solicitor

Cc: J. William Reynolds, Mayor
Eric Evans, Business Administrator
Michelle Cichocki, Human Resources Director
John F. Spirk, Jr. Esq, Solicitor

Bill No. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BETHLEHEM, COUNTIES OF LEHIGH AND
NORTHAMPTON, COMMONWEALTH OF PENNSYLVANIA, AMENDING ARTICLE 157
OF THE CODIFIED ORDINANCES OF THE CITY OF BETHLEHEM,
TITLED "CIVIL SERVICE BOARD"

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Article 157 of the Codified Ordinances of the City of Bethlehem shall be amended as follows: (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

CROSS REFERENCES

~~Examination of appointees—See 3rd Class §4401 (53 P.S. § 39401)~~ Appointment of
~~Examining Boards—See 3rd Class §4402 (53 P.S. §39402)~~
~~Examination regulations—See 3rd Class §4404 (53 P.S. §39404)~~
~~Selection of appointee from lists—See 3rd Class §4406 (53 P.S. §39406)~~ Suspension and
~~discharge—See 3rd Class §4408 (53 P.S. §39408)~~
~~Review of eligibility lists—See 3rd Class §4410 (53 P.S. §39410)~~
~~Fire Civil Service—See 53 P.S. §39861~~
Third Class City Code Civil Service (11 Pa.C.S. §§ 14401 – 14410)
Officers and employees - See ADM. Art. 117
Employment provisions - See ADM. Art. 123

SECTION 2: Article 157.01(a)(1) of the Codified Ordinances of the City of Bethlehem shall be amended as follows: (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

(1) Establishment; Membership; Term. Pursuant to the provisions of the Act of March 19, 2014 (P.L. 52, No. 22), a Civil Service Board is created that shall provide_ for and oversee the examination of applicants for appointment and promotion to any position in the Police and Fire Departments except for the positions of police chief and fire chief. Terms of members of the board shall be staggered. The Mayor, with advice and consent of Council, shall initially appoint to the board one person to serve for two years, one person to serve for three years, and one person to serve for four years. Upon the expiration of the term of any member a successor shall be appointed by the Mayor, with the advice and consent of city council, to serve upon the board for a term of four years. If

any vacancies occur, they shall be filled by the Mayor, with the advice and consent of Council, for the unexpired term.

Each of the members, before entering upon the duties of his office, shall take and subscribe to the oath of office prescribed by the Constitution of Pennsylvania and the Act of Assembly above mentioned, 53 Pa. C.S. §1141, and file the same, duly certified by the officer administering it, with the City Clerk ~~Controller~~. No salary or other compensation shall be paid to any member of the Board. Any person who is a registered elector of the City of Bethlehem may be appointed to the board. No city officer, official or employee shall be eligible for appointment to the civil service board.

Two members of the board shall constitute a quorum necessary for the transaction of business of that board.

The board shall organize immediately after new appointments to the board are made. After organizing, the board shall elect one of its members as a chairperson and one as a secretary.

SECTION 3: Article 157.01(b) of the Codified Ordinances of the City of Bethlehem shall be amended as follows: (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

(b) Appointments and Promotions. ~~All appointments of employees to, and promotions in, the Bureaus of Police and Fire, shall be made according to qualifications and fitness, to be ascertained by examinations, which, so far as practicable, shall be competitive.~~ No person or persons may be appointed to any uniformed position in the police or fire departments, excluding chiefs, without having first passed all the examinations hereinafter provided for and without having been appointed in the manner and according to the terms and provisions and conditions of this Article.

SECTION 4: Article 157.01(c)(1) of the Codified Ordinances of the City of Bethlehem shall be amended as follows: (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

(1) Matters subject to rules and regulations. The civil service board shall, in accordance with this Article ~~act~~, adopt rules and regulations concerning the following matters that may include:

SECTION 5: Article 157.01(g) of the Codified Ordinances of the City of Bethlehem shall be amended as follows: (underlined text denotes additions, whereas ~~strikeouts~~ denote deletions):

(g) Suspension, Discharge and Discipline; Reduction of Employees; Appeals. All employees subject to civil service shall be subject to suspension, discharge and discipline by the director of the department in which the employee works for misconduct or violation of any law of this Commonwealth, ordinance of the city or regulation of the department. If it should become necessary to reduce the number of employees in said department for purposes of economy, seniority rights shall prevail, and any and all removals for such cause or causes shall be from the members last appointed, and the member or members serving the shortest time shall be removed first; but members with longer times of service may be discharged for cause.

(1) Any employee aggrieved by the suspension, discharge or discipline imposed by a department director more serious than a suspension of three days without pay may request a hearing before the city council, ~~or by the civil service board if designated by ordinance~~. At the hearing, the employee may be represented by counsel.

~~(1)~~ (2) Any civil service employee aggrieved by the decision of the council ~~or the civil service board~~ shall have the right to appeal in accordance with 2 Pa.C.S. Ch. 7 Subch. B (relating to judicial review of local agency action). This review shall be exclusive. Where no such appeal is taken within the time prescribed by law, the decision by the city council ~~or the civil service board~~ shall become final in accordance with the law. The issue before the court shall be whether the action of the council ~~or the civil service board~~ shall be affirmed or be modified in any respect or whether the charges should be dismissed or whether the suspension or demotion made by the director shall be affirmed or rescinded. Where any employee has been suspended and the charges are dismissed or the suspension rescinded on appeal, the employee shall receive full compensation for the entire period of suspension.

~~(2)~~ (3) In any case in which a police officer or firefighter who is a member of a bargaining unit is subject to suspension, discharge or discipline, the police officer or firefighter shall have the option of challenging the suspension, discharge or discipline imposed by using the procedures provided in subsections ~~(g) and (g)(1)~~ or by a proceeding in grievance arbitration. A choice to proceed either by subsection ~~(a)~~ (g)(1) or by grievance arbitration shall foreclose the opportunity to proceed in the alternative method.

SECTION 6: That all ordinances and sections thereof that are inconsistent with this Ordinance are hereby repealed.

Sponsored by _____

Passed finally in Council this _____ day of _____, 2022.

President of Council

ATTEST:

City Clerk

This Ordinance approved this _____ day of _____, 2022.

Mayor