

**Career Service Board Meeting #2400**

**Minutes**

**Thursday, August 19, 2021, 9:00am**

**Webb Municipal Building**

**201 W. Colfax Ave, First Floor, Career Service Hearings Office**

**Karen DuWaldt (Co-Chair)**

**Patricia Barela Rivera**

**David Hayes**

**LaNee Reynolds**

**I. Opening:** *Meeting was called to order at 9:00am. All members of the Career Service Board were present in addition to Bob Wolf, Sr. Asst. City Attorney to the Board, and Karen Niparko, Executive Director, Office of Human Resources (“OHR”).*

**1. Approval of the Agenda for the August 19, 2021 Board Meeting.**

*Board Member Patricia Barela Rivera made a motion, seconded by Board Member David Hayes, to approve the agenda for the August 19, 2021 meeting, which was approved unanimously by the Board.*

**2. Approval of the Minutes for the June 17, 2021 Board Meeting.**

*Board Member LaNee Reynolds made a motion, seconded by Board Member Patricia Barela Rivera, to approve the minutes for the July 15, 2021 meeting, which was approved unanimously by the Board.*

**II. Board Comments:** *Board Co-Chair Karen DuWaldt read the following statement into the record, which Ms. DuWaldt noted was supported and approved by all members of the Career Service Board.*

*“It is our intention to always treat those who make presentations to the Board with respect and patience; and to give our full attention and open minds to each issue. That did not happen last month during the EDI presentation given by Rory McLuster and Lizzie Schoon. We offer our deepest apologies for the unnecessary interruption of their presentation, and for any embarrassment this may have caused them”*

*“Although we have, and probably will continue to, stumble when we deal with these difficult issues, the Board would like to affirm our steadfast commitment to the Mayor’s Office of Social Equity & Innovation, and its citywide effort to eliminate social inequity in race and social injustices by evaluating institutional and structural governmental systems, policies, and practices to dismantle racism.”*

*“We would like to make it clear the Office of Human Resources has our full support regarding those initiatives. Thank you.”*

**III. Public Comments:** *Karen Niparko, Executive Director of OHR, commented on behalf of the agency that she very much appreciated the Board’s statement today, as this is a very important initiative for the city.*

#### IV. Public Hearing:

##### 1. Public Hearing Notice No. 651 – Prevailing Wage: Fire Extinguisher Repairer & Pest Controller

*Alena Duran, Sr. Classification & Compensation Analyst, presented Public Hearing Notice No. 651 to adopt a change in the pay and/or fringe benefits of the wage classification series of “Fire Extinguisher Repairer and Pest Controller” in accordance with section 20-76(c)(3) of the Denver Revised Municipal Code.*

*The following pay and fringe benefits revision was proposed, based on the service contract method:*

	<u>Current</u>			<u>Proposed</u>		
	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>	<u>Base Wage</u>	<u>Fringes</u>	<u>Total</u>
<b>Fire Extinguisher Repairer</b>	\$20.72	\$6.93	\$27.65	<b>\$27.77</b>	<b>\$7.74</b>	<b>\$28.18</b>
<b>Pest Controller</b>	\$20.41	\$6.90	\$27.31	<b>\$22.45</b>	<b>\$7.19</b>	<b>\$29.64</b>

*A motion was made by Board Member David Hayes, which was seconded by Board Member LaNee Reynolds, to approve Public Hearing Notice 651, which was unanimously approved by the Board.*

##### 2. Public Hearing Notice 647 – Proposed Revisions to Career Service Rules 3 & 9

*Cindy Bishop, Deputy Director of OHR, and Nicole de Gioia-Keane, Director of Classification & Compensation, presented proposed revisions to Career Service Rules 3 and 9, with additional minor changes to Rules 1, 3, 5, and 12.*

*Ms. Bishop noted a new law, the Colorado Equal Pay for Equal Work Act, became effective on January 1, 2021 to eliminate gender wage gaps and promote pay equity in the workplace. This prohibits discrimination in wages based on sex, or sex in combination with any other protected category. Pay differences among workers performing substantially similar work may exist, however, they must be based on defined pay factors.*

*The new law requires employers to take a broader look at internal pay equity, which OHR has done, requiring various rule changes. Most of the proposed rule changes are administrative revisions regarding re-promotion, pay reviews, and working out-of-classification.*

*Ms. Bishop noted the history behind the re-promotion concept, which originally existed in the Rules to address multiple promotions, where employees automatically received an 8% pay increase. This provision led to situations where employees occasionally received multiple promotions in a short period of time and became overpaid for their level of responsibility.*

*As a result, this automatic increase was eliminated from the rule a year ago, and was replaced with defined pay setting factors regardless of the reason for the internal movement (promotion, demotion, rehire, and transfer). The term “re-promotional appointment” consequently needs to be removed from all the relevant rules.*

*Board Co-Chair Karen DuWaldt commented she had never heard the term “re-promotion” before and asked if it meant a promotion which takes place during a certain period of time, to which Ms. Bishop answered was twelve months.*

*Rule 3-30 C is revised to add the word “benefits” to the contents of all job posting in accordance with the Equal Pay Act. Board Member David Hayes asked how benefits are defined, as this can encompass a wide variety of offerings.*

*Ms. Bishop replied that a link is now included in all job postings to provide candidates with the full package of benefits provided, rather than writing out the benefits for each posting.*

*Ms. de Gioia-Keane reviewed the changes to Rule 9-5F-Pay Factors, which are in conformity with the new law, requiring market conditions to be removed and merit system to be added to the city’s pay factors.*

*Ms. DuWaldt clarified that market conditions can be used to set the pay range for a particular classification, but not to set individual pay, to which Ms. de Gioia-Keane confirmed was correct.*

*Ms. Bishop noted a change to Rule 9-32 in which an employee transfers from one classification to another classification in the same pay range. Currently, if the employee is paid above the range minimum, a pay increase cannot be provided upon transfer. The rule revision will allow the Recruiter to review pay upon transfer to ensure internal pay equity for the particular cohort, which may or may not result in a pay increase for the employee.*

*Ms. DuWaldt asked if the transfer is taking place of posting a position for competitive recruitment, to which Ms. Bishop stated most transfers represent open positions being filled internally, with some exceptions for transfers taking place within an agency.*

*Ms. de Gioia-Keane noted a change to Rule 9-39, in which the current provision provides Class & Comp must first look within a particular department or agency when comparing pay for an employee whose compensation is being reviewed, and if there is no internal comparator, then review citywide. The revision provides for a citywide review of pay within a particular classification to ensure internal pay equity is being maintained across all agencies.*

*Rule 9-65-Working Assignment out of Job Classification is being revised to address certain issues in light of the new law. Currently, an appointing authority may temporarily assign duties of a vacant or temporarily unoccupied position in a higher-level classification to an employee in a lower-level classification for up to one year.*

*Concerns about the current rule provisions include: (1) the assignment can be extended with no clear end date; (2) 100% of the duties must be assigned, when in practice, only some of the duties are covered on an interim basis; (3) Temporary pay is not effective for 15 days, even though the employee is performing the duties; (4) Pay adjustment is limited to 8%, with no consideration for the complexity and level of the duties performed temporarily.*

*The revisions will provide: (1) extensions of assignments are up to six months with OHR approval; (2) 70% of the duties must be performed by one employee who is assigned to the higher-level classification; (3) 15 day waiting period is eliminated, with the proposed pay adjustment taking effect on the next available Sunday. (4) Makes clear an employee's current FLSA status does not change when working out-of-class.*

*The interim pay adjustment is revised to provide an 8% increase if the higher-level classification is one to two grades higher than the employee's current classification, and a 12% increase if the higher-level classification is three or more grades higher. This change aligns pay practice with the Charter's requirement of like pay for like work.*

*Board Member David Hayes asked if working out-of-classification is a common occurrence, to which Ms. de Gioia-Keane replied in the affirmative. Mr. Hayes asked how the choice is made of which employee to select for the assignment, which Ms. de Gioia-Keane noted was usually obvious in most cases (i.e. a manager to cover a vacant director classification).*

*Ms. DuWaldt asked if Rule 9-65 should be revised to make it explicitly clear the out-of-classification assignment is not a promotion and does not require a competitive job posting. Shelby Felton, Sr. Asst. City Attorney, stated the rule is clear it can only be for up to one year, however, additional language could be added if necessary.*

*Ms. DuWaldt noted today's discussion for the record is probably sufficient to address the concern, which Ms. de Gioia-Keane noted could be revisited if experience shows Class & Comp is receiving a lot of inquiries or concerns about the practice.*

*Mr. Hayes commented some of the concern is alleviated by the assumption the person performing the role on an interim basis has the inside track on eventually being selected permanently once the position is posted competitively.*

*Ms. de Gioia-Keane agreed, while Ms. Bishop noted there are no guarantees, and the Rules require the position be posted with a minimum of three candidates interviewed. There are situations where an outside candidate is ultimately selected instead due to their superior qualifications.*

*Board Member LaNee Reynolds asked how often that occurs, to which Ms. Bishop stated she can recall three specific situations over the past two years where it happened.*

*Ms. Reynolds stated she would interested in seeing specific statistics regarding the diversity of candidates, both internal and external, when it comes to promotions and assignments that fall under Rule 9-65 to see if there is any implicit bias present.*

*Ms. Reynolds noted in many cases employees who may be qualified do not even apply for the open opportunity, as there is a feeling there is already an "heir apparent" who will be selected for the position.*

*Ms. Bishop replied she agreed, however, Talent Acquisition does not currently have those statistics and it would have to be something developed for a future presentation. Chris Longshore, Director of HR Technology & Innovation, concurred this information is not currently being tracked.*

*Board Member Patricia Barela Rivera stated she agreed on the importance of having those statistics as the issue of pre-selection is often problematic for many organizations, especially in today's environment with focus on equity.*

*A motion was made by Board Member Patricia Barela Rivera, which was seconded by Board Co-Chair Karen DuWaldt, to approve Public Hearing Notice 647, which was unanimously approved by the Board.*

### 3. Public Hearing Notice 648 – Proposed Revision to Career Service Rule 9-80

*Alisha Gronniger, OHR Wellness Program Administrator, presented Public Hearing Notice 648 to revise Career Service Rule 9-80G-Employee Volunteer Program.*

*Ms. Gronniger noted the Employee Volunteer Program was approved by the Board in April 2019 and was new at the time. The rule prohibited full-time employees who had not completed their probationary period from participation, as well as part-time, limited employees.*

*After two years of experience, it has been determined there is value in allowing limited, part-time, and probationary employees to participate in the program, while specifying on-call employees are not eligible.*

*Board Member Patricia Barela Rivera asked how many employees are participating in the program, to which Ms. Gronniger noted was about 200 annually, which Wellness & Benefits is hoping to increase.*

*Ms. Gronniger stated she would often hear from leaders that a particular limited, part-time employee would love to participate, but was prohibited by rule, even though the employee had 15 years of service.*

*Karen Niparko, Executive Director of OHR, commented the intent of the program was to encourage as many employees as possible to get involved with their community outside of their job.*

*Board Co-Chair Karen DuWaldt asked if the available volunteer programs have declined due to the pandemic, to which Ms. Gronniger replied in the affirmative. Ms. Gronniger stated the re-start of many programs has been very slow, but there are some encouraging signs.*

*Ms. Barela Rivera asked if all employees are provided the available opportunities. Ms. Gronniger stated the program is called Denver Good Deeds and has a website on the DenverHub intranet where employees can sign up to available opportunities. Employees are also encouraged to come up with suggestions for future opportunities.*

*A motion was made by Board Member David Hayes, which was seconded by LaNee Reynolds, to approve Public Hearing Notice 648, which was approved unanimously by the Board.*

4. Public Hearing Notice 649 – Proposed Revision to Career Service Rule 10-72

*Heather Britton, Director of Benefits & Wellness, presented a proposed revision to Career Service Rule 10-72C-Administrative Leave.*

*Ms. Britton noted the revision makes explicit that unused administrative leave is not payable upon separation of employment from the city, nor may any unused leave be donated to another employee.*

*Administrative Leave has never been paid out to employees upon separation, however, there has been an increase in employee inquiries as to where in the Rules it is prohibited to do so, requiring a specific revision to the rule.*

*Board Member David Hayes asked for clarification as to what administrative leave is given for, to which Ms. Britton replied the Rules specify a variety of circumstances in which managers may grant it, including for exemplary performance.*

*As a result of the pandemic, many employees began losing a significant amount of vacation and/or PTO time accrued to the maximum allowed, as they could not take their time as usual. The Budget & Management Office proposed employees be awarded the lost time as administrative leave, provided it was budget neutral.*

*Board Co-Chair Karen DuWaldt asked Shelby Felton, Sr. Asst. City Attorney, if there was any concern about revising the rule to make it more explicit with language making it clear administrative time does not accrue, nor is it time earned, but is only awarded by request to ensure the city is in compliance with case law that requires payout of accrued time.*

*Ms. Britton responded the rule is already clear about how administrative time is granted. Ms. Felton noted the city's position at this time is that we are not part of the Colorado Wage Act nor subject to the rulemaking to-date, which could change in the future, but is not something that is legally clear at this time. PTO and vacation time clearly is time earned and must be paid, as specified in the Rules.*

*A motion was made by Board Member David Hayes, which was seconded by Board Co-Chair Karen DuWaldt, to approve Public Hearing Notice 649, which was unanimously approved by the Board.*

5. Public Hearing Notice 650 – Proposed Revision to Career Service Rule 14-10

*Tony Gautier, HR Manager, presented a proposed revision to Career Service Rule 14-10C-Types of Separation Other Than Dismissal.*

*Mr. Gautier noted the rule currently states an employee's effective date of separation is the day after the employee's last day of work. Since OHR went live with Workday in January 2017, the separation date is now the same as the employee's last day of work and the rule language needs to be updated.*

*Board Member LaNee Reynolds asked when medical benefits end for terminated employees, to which Heather Britton, Director of Benefits & Wellness, responded was 30 days. This was not affected by the prior rule language of terminating the day after.*

*A motion was made by Board Member Patricia Barela Rivera, which was seconded by Board Member David Hayes, to approve Public Hearing Notice 650, which was unanimously approved by the Board.*

**V. Director's Briefing:**

1. Workforce Response – Mandatory Vaccination Public Health Order

*Karen Niparko, Executive Director of OHR, was joined by Chris Longshore, Director of HR Technology & Innovation, and Shelby Felton, Sr. Asst. City Attorney, to present an update to the Board regarding the mandatory vaccination public health order issued on August 2<sup>nd</sup> for all city employees.*

*Mr. Niparko noted the public health order requires all city employees to have received either one dose of the Johnson & Johnson vaccine, or two doses of the Pfizer or Moderna vaccines, plus two week to build antibodies, by September 30<sup>th</sup>, giving employees approximately two months to become fully vaccinated.*

*Employees have the right to apply for a religious or medical exemption from the mandate, which are being reviewed by OHR and the City Attorney's Office ("CAO"). Any career service employee that does not comply with the public health order or receive a valid exemption will be subject to discipline under Rule 16, up to and including dismissal.*

*Mr. Longshore noted OHR had created a process by which employees can upload their vaccination cards into Workday. The HR Records team is checking and verifying the vaccination card is valid and approximately 5,100, or 37%, of the 15,000 inbox requests have been received to-date. For career service employees, the response rate is 56%.*

*The city's 120 boards and commissions have appointed members who also must comply with the vaccination mandate. These individuals are not in Workday and a process has been created to verify each member's card, as was done before today's board meeting, or a Teams meeting can be set up to verify cards.*

*Board Co-Chair Karen DuWaldt asked how much pushback from employees has been received on the mandate. Ms. Niparko responded both OHR and the CAO have received feedback that has been highly charged and difficult, as expected given everyone's strong views on the topic of the vaccines. The city's position is this a public health order and all employees must comply for the greater safety of all.*

*Board Member Patricia Barela Rivera asked how many employees have rejected being vaccinated, to which Ms. Niparko responded is not yet being tracked given we are early in the process.*

*Ms. Felton presented an overview of the medical and religious exemption request process, which is being overseen by OHR and subsequently individually reviewed by the CAO for a final decision. OHR has received 135 exemption requests, of which only a handful are medical, with the rest being religious.*

*Ms. DuWaldt asked how the CAO is assessing whether a religious exemption request is a result of a sincerely held belief, to which Ms. Felton noted she cannot comment as this would be in the realm of legal advice. The medical exemption requests are mostly short-term conditions only such as pregnancy.*

*Upon approval of a request, an accommodation letter will be sent out to the employee outlining how they will be able to comply with the mandate, which will include mandatory mask-wearing and a test every five days. Accommodations are subject to additional review and could change.*

*Board Member David Hayes asked if a medical exemption is granted for those employees who already have contracted the virus, to which Ms. Felton answered was not a valid exemption as the guidelines from the CDC state a vaccine is still required within 60 to 90 days of recovery. Board Member LaNee Reynolds noted this guidance had changed and a shorter period was now recommended.*

*Ms. DuWaldt asked if there was a sense that most of the exemption requests had been received at this point, to which Ms. Felton said there were a flood received at the beginning, but this number had declined. Ms. Felton noted her numbers do not include the Department of Safety.*

*Ms. Reynolds asked who paid for the weekly testing, to which Ms. Felton replied was free and information is provided to employees as to where they can obtain testing. The city reviewed hosting its own testing capability, however, this was cost-prohibitive at \$200,000 monthly.*

*Ms. Felton noted testing must be done on the employee's own time and the results are expected with 24 to 48 hours, which could change if testing demand becomes high. Ms. Reynolds asked why the city is not required to pay employees for this time, as private sector employers do, to which Ms. Felton responded it is not a requirement as the city has already granted an accommodation exempting the employee from vaccination.*

*Ms. Felton noted the mandate is a result of a public health order and paying employees for the time is considered an undue burden on the city. Another issue is the direct threat posed to the public if, for example, an unvaccinated firefighter entered a nursing home and potentially was able to infect others.*

*Ms. DuWaldt clarified the city's position is the vaccination is a condition of employment, and by providing an accommodation to vaccination, in turn, the employee must be tested on their own time and without pay, to which Ms. Felton replied in the affirmative.*

*The Board asked several other questions regarding the process, including whether employees are subject to disciplinary action while waiting for results and the use of at-home testing.*

*Ms. Niparko noted Bob McDonald, the Executive Director of Public Health, is holding all-hands meetings with all agencies to educate employees on the origin and creation of the vaccines, the importance of these public health measures, and the effectiveness of vaccination in preventing severe disease and death.*

**VI. Executive Session:**

*The Board went into executive session at 10:14am and discussed several OHR issues with Karen Niparko.*

**VII. Adjournment:** *Adjournment was at 11:21am.*