

1 SB465
2 150674-1
3 By Senator Ward (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 25-APR-13

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to the City of Alabaster in Shelby County;
14 to establish a civil service system and to provide for
15 classified services; to establish a personnel board and to
16 provide for the appointment, term, and powers of board
17 members; to provide for the establishment of registers and
18 filling of vacancies; to provide penalties; and to repeal Act
19 93-493, 1993 Regular Session (Acts 1993, p. 789) and Act
20 96-504, 1996 Regular Session (Acts 1996, p. 640).

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. TITLE. This act shall apply only to the
23 City of Alabaster in Shelby County and shall be known and may
24 be cited as "The City of Alabaster Civil Service System Act."

25 Section 2. PURPOSE. The purpose of this act includes
26 all of the following:

1 (1) To promote the greater efficiency and economy in
2 the administration of the government of the City of Alabaster.

3 (2) To prohibit political and personal retaliation.

4 (3) To promote longevity and equal treatment of all
5 employees of the city by the establishment of conditions of
6 service which will attract to the service of the city
7 qualified persons of character and ability.

8 (4) To provide a means to recruit, select, develop,
9 and maintain an effective and responsible workforce that
10 includes policies and procedures for employee hiring and
11 advancement, training and career development, job
12 classification, salary administration, retirement fringe
13 benefits, discipline, discharge, and other related activities.

14 (5) To ensure that all personnel administration
15 actions regarding employees in the regular service are made
16 without regard to race, national origin or ancestry, religion,
17 political affiliation, or other non-merit factors.

18 (6) To provide that all personnel administration
19 actions shall be based on merit principles and fitness to
20 perform the work required.

21 (7) To provide fair and equal opportunity for public
22 service.

23 Section 3. DEFINITIONS. For the purposes of this
24 act, the following words shall have the following meanings:

25 (1) APPOINTING AUTHORITY. The mayor, the city
26 council, the city manager, or any employee of the city duly

1 authorized to make appointments to the regular service by
2 virtue of his or her supervisory capacity.

3 (2) CERTIFICATION. A submission of names of
4 eligibles from a reemployment list, a promotion list, or an
5 eligible register to an appointing authority for the purpose
6 of filling a position in the classified service.

7 (3) CITY. The City of Alabaster, Shelby County,
8 Alabama.

9 (4) CITY MANAGER. The person appointed pursuant to
10 Section 11-43-20, Code of Alabama 1975, as the administrative
11 head of the municipal government.

12 (5) CLASS. A group of positions in the regular
13 service sufficiently similar in respect to the duties,
14 responsibilities, and authority that the same descriptive
15 title may be used to identify all positions allocated to the
16 class, that the same requirements as to education, experience,
17 capacity, knowledge, proficiency, ability, and other
18 qualifications should be required of the incumbents, that the
19 same tests of fitness may be used to choose qualified
20 employees, and that the same schedule of compensation can be
21 made to apply with equity.

22 (6) CLASSIFICATION. The assigning of a position to
23 the appropriate class in accordance with its duties,
24 responsibilities, and authority.

25 (7) CLASSIFIED SERVICE. Any employment position in
26 the city, whether regular, probationary, temporary, or exempt,

1 for which a position of employment exists and the salary and
2 benefits of which are determined by the appointing authority.

3 (8) COUNCIL. Those individuals elected to the city
4 council of the city.

5 (9) DEMOTION. Any disciplinary or other action which
6 reduces the pay grade or pay step of a non-exempt employee in
7 the regular service.

8 (10) DIRECTOR. The personnel director appointed by
9 the mayor or city manager.

10 (11) ELIGIBLE. A person whose name is on a
11 reemployment list, a promotion list, or an eligible register.

12 (12) ELIGIBLE REGISTER. A record containing the
13 names of those persons who have successfully completed
14 prescribed tests, listed and ranked in order of their final
15 earned average from the highest to the lowest, and are
16 qualified for original appointment to positions in the class
17 for which the test was held.

18 (13) MAYOR. The individual elected to the official
19 position of mayor of the city.

20 (14) OPEN-COMPETITIVE. The process of seeking
21 qualified candidates for a regular position from any qualified
22 person including taking applications from the general public
23 and other employees in the regular service not otherwise in
24 the department for which the position exists.

25 (15) PAY GRADE. The specific pay range set forth in
26 the pay plan for a classification.

1 (16) PAY STEP. The specific pay rate within a pay
2 range as set forth in the pay plan.

3 (17) PERSONNEL BOARD. The board created by this act.

4 (18) POSITION. Any job or set of duties in the
5 regular service requiring the full-time employment of one
6 person in the performance and exercise thereof.

7 (19) PROBATIONARY EMPLOYEE. An employee appointed to
8 a regular position from a reemployment list, promotion list,
9 or eligible register who has not completed his or her
10 probationary period.

11 (20) PROMOTION. An advancement from one class to
12 another related occupational class with increased duties or
13 responsibilities, or both, and for which a higher rate of pay
14 is prescribed.

15 (21) POLICY, RULE, or REGULATION. Policies, rules,
16 or regulations adopted by the city in accordance with this act
17 which are considered necessary to carry out this act and to
18 develop a comprehensive civil service system, so long as the
19 policies, rules, and regulations adopted by the city do not
20 modify or change the intent of this act.

21 (22) PUBLIC HEARING. A meeting of the board, open to
22 the public, at which any citizen, taxpayer, or party at
23 interest may appear and be heard.

24 (23) PUBLIC NOTICE. A written notice placed upon the
25 bulletin board maintained at or near the entrance to the
26 offices of the city clerk in a place accessible to the public
27 during business hours.

1 (24) PUBLIC RECORDS. A record which the public has
2 the right to inspect in a reasonable manner during ordinary
3 business hours.

4 (25) QUALIFICATIONS. The minimum experience,
5 educational, physical, and personal requirements determining
6 the eligibility of an applicant for examination.

7 (26) REEMPLOYMENT LIST. A list containing the names
8 of persons who have occupied, and have been separated from,
9 regular positions in the classified service and who are
10 entitled to preference in appointment to vacancies in
11 positions.

12 (27) REGULAR EMPLOYEE. An employee who was appointed
13 under this act to a regular classified position and who has
14 completed his or her probationary period, the hours of work of
15 which shall be fixed by the appointing authority with due
16 regard to the convenience of the public, and to working hours
17 customarily observed in the community.

18 (28) REGULAR POSITION. Any position in the regular
19 service which has required or which is likely to require the
20 full-time services of an individual without interruption for a
21 period of more than six months.

22 (29) SEASONAL POSITION. Any position in the
23 classified service which requires or is likely to require the
24 services of an incumbent during certain parts of each year,
25 only at recurring annual or other periods.

26 (30) SERIES. A subdivision of a group consisting of
27 two or more classes of positions, similar as to line of work

1 but differing in responsibility or difficulty, which
2 constitutes steps in a normal line of promotion.

3 (31) SPECIFICATIONS. A formal statement descriptive
4 of a position that contains all of the following:

5 a. The title and class.

6 b. A description of the duties or responsibilities
7 thereof.

8 c. The minimum qualifications required of applicants
9 as to education, experience, physical ability, and other
10 attributes.

11 (32) TEMPORARY POSITION. Any employment position in
12 the city which is not regular, but which requires or is likely
13 to require the services for a set period of time.

14 (33) TESTS. Written or oral examinations, or both,
15 or other methods established as herein provided to determine
16 the merit, efficiency, and general fitness of applicants for
17 positions.

18 (34) TITLE. The term used to designate all
19 employment by class and grade and shall be descriptive of the
20 duties of the position.

21 Section 4. PERSONNEL BOARD. (a) (1) There is created
22 a personnel board which shall be composed of three members to
23 be selected as follows:

24 a. One member shall be elected by the employees of
25 the regular service to serve for a term of four years.

26 b. One member shall be appointed by the mayor and
27 the council to serve for a term of three years.

1 c. One member shall be appointed by the two members
2 appointed by the mayor and council, and elected by the
3 employees of the regular service, respectively, to serve for a
4 term of two years.

5 (2) Each member elected or appointed thereafter
6 shall serve a term of four years or until their successor is
7 selected and takes office. Vacancies shall be filled for the
8 unexpired term by the selecting authority in the same manner
9 as the original appointees. Any board members serving at the
10 adoption of this act shall continue to serve the fullness of
11 the term to which they were appointed.

12 (b) Only persons who are qualified resident electors
13 of the city shall be selected to the board. No person shall be
14 selected to the board who, at the time of appointment, or for
15 three years prior to appointment, shall have held public
16 office or political party office or have been a candidate for
17 public office. No person shall be selected to the board who at
18 the time of appointment is an employee of the city.

19 (c) The board shall do all of the following:

20 (1) Meet in regular session at least semiannually
21 and at other times as necessary to transact the business of
22 the board.

23 (2) Promulgate the board policies, rules, and
24 regulations necessary to carry out its duties under this act.

25 (3) Hear and render decisions relative to appeals of
26 disciplinary and related matters as set forth in this act.

1 (4) Transact any other business within the purview
2 of the board and within the intent of this act.

3 Section 5. PERSONNEL DIRECTOR. (a) The mayor or city
4 manager shall appoint a personnel director. The director shall
5 be experienced in the field of personnel administration and
6 shall administer an efficient and economical merit system in
7 accordance with the rules arising therefrom, and shall carry
8 out the policies established by the board. The personnel
9 director shall maintain neutrality between employees and the
10 appointing authority. The personnel director may be suspended
11 or terminated by the mayor or city manager for cause set forth
12 in the act, subject to a right of appeal directly to the
13 personnel board. Any regular employee may file a complaint
14 against the director directly to the mayor.

15 (b) In addition to the duties and responsibilities
16 set forth elsewhere in this act, the director shall do all of
17 the following:

18 (1) Serve as secretary to the board.

19 (2) Prepare for approval of the board any policies,
20 rules, and regulations needed to carry out board action under
21 this act.

22 (3) Coordinate with the city as to the effectiveness
23 of the system and compliance with this act by the conduct of
24 studies and inquires deemed necessary, and report the findings
25 along with any recommendations for improvements to the city.
26 In connection with the investigations, hearings, or inquiries,
27 the director may administer oaths, issue subpoenas, require

1 the attendance of witnesses, and compel the production of
2 records, documents, and papers pertaining to the subject under
3 consideration.

4 (4) Study the organization and operation, and
5 manpower requirements of the departments, and make
6 recommendations for improvements to the council.

7 (5) Maintain an official roster of all positions in
8 the city wherein shall be recorded the various personnel
9 transactions affecting the employee.

10 (6) Promote and assist in the establishment of
11 programs for general employee pension, welfare, health, and
12 career development.

13 (7) Maintain all employee and retiree files complete
14 with all tax and benefit elections of the employee, resumes,
15 disciplinary actions, responses, applications, and copies of
16 certifications and training classes relevant to the class or
17 position of the employee and required by the city for
18 continued employment.

19 (8) Counsel employees on their rights under the act
20 and city policy.

21 Section 6. EMPLOYEES. On the effective date of this
22 act, all employees holding regular full-time positions in the
23 service of the city shall continue in their regular status in
24 the classified service as provided in this section, unless the
25 position to which they are appointed or elected is otherwise
26 exempted by this act. The service shall be divided into two
27 categories, as follows:

1 (1) A regular service comprised of all employees and
2 appointees holding regular full-time positions in the service
3 of the city. Employees occupying these positions shall be in
4 the classified service unless specifically exempted from the
5 service under this act.

6 (2) The exempt service shall include any of the
7 following:

8 a. Part-time employees.

9 b. Persons engaged in teaching or in supervising
10 teaching in the public schools who work for the city.

11 c. Officials elected by popular general vote.

12 d. The city clerk, the city treasurer, or the city
13 clerk-treasurer elected pursuant to Section 11-43-3, Code of
14 Alabama 1975, or any equivalent statute.

15 e. The police chief or fire chief elected pursuant
16 to Section 11-43-5, Code of Alabama 1975, or any equivalent
17 statute.

18 f. Any city manager appointed under Section
19 11-43-20, Code of Alabama 1975, or any equivalent statute.

20 Provided, that nothing herein shall require the appointment of
21 a city manager.

22 g. Any person other than the city clerk, city
23 treasurer, or city clerk-treasurer appointed or elected under
24 Section 11-43-3 or 11-43-5, Code of Alabama 1975, but only to
25 the extent of the official designation as a statutory official
26 within the city.

27 h. The judge of any court.

- 1 i. The city attorney.
- 2 j. The city prosecutor.
- 3 k. The administrative assistant to the mayor.
- 4 l. The director of personnel.
- 5 m. Persons serving in long-term positions funded or
- 6 partially funded by state or federal grant funds.
- 7 n. Common laborers, seasonal employees, and
- 8 temporary employees as determined by the city.
- 9 o. Part-time members of boards.
- 10 p. Attorneys, physicians, surgeons, and dentists
- 11 who, with permission of the appointing authority of the city,
- 12 engage in outside similar employment.

13 Section 7. PUBLIC RECORDS. (a) Public records are
14 those records as defined in Section 41-13-1, Code of Alabama
15 1975. The records may be reviewed in a manner prescribed by
16 the city, taking into account confidentiality, convenience,
17 and related factors.

18 (b) Minutes of board meetings, active employment
19 rosters, and financial records shall be retained permanently.
20 Applications and examination papers of successful candidates
21 shall be retained for the duration of appropriate eligible
22 registers.

23 Section 8. CLASSIFICATION PLAN. (a) The
24 classification plan shall provide a complete inventory of all
25 employee positions in the service of the city and an accurate
26 description and specifications for each class of work, and all
27 other employee positions in the city for which salary and

1 benefits are set out by the city, with the exception of the
2 city council and mayor. The plan shall standardize titles so
3 that each is indicative of a definite range of duties and
4 responsibilities and has the same meaning throughout the
5 service and shall show whether the position is deemed a
6 regular position or exempt position.

7 (b) The classification plan shall consist of the
8 following:

9 (1) A grouping in classes of positions which are
10 approximately equal in difficulty and responsibility that call
11 for the same general qualifications, and that can be equitably
12 compensated within the same range of pay under similar working
13 conditions.

14 (2) Class titles that are descriptive of the work of
15 the class, and identify the class. These class titles shall be
16 used in all personnel, accounting, budget, and related
17 records. No person shall be appointed to or employed in a
18 position in the classified service under a title not included
19 in the classification plan. Working titles may be used in the
20 course of departmental routine to indicate authority, status
21 in the organization, or administrative rank.

22 (3)a. Job descriptions for each position shall first
23 be recommended by the mayor or city manager and then adopted
24 by the council by resolution in its discretion. The written
25 specifications for each position shall consist of the
26 following:

1 1. A title which is descriptive and consistent with
2 other titles in the plan.

3 2. A brief overall description of the kind and level
4 of work.

5 3. Examples of typical duties performed in positions
6 in the class.

7 4. Qualification requirements setting forth the
8 necessary experience, education, certifications, physical
9 endurance, physical fitness level, or other requirements.

10 5. The required knowledge, skills, and abilities
11 needed in order to perform the work, the pay grade associated
12 with the position, and the supervision of the position.

13 b. Specifications shall be interpreted in their
14 entirety and in relation to others in the classification plan.
15 Particular phrases or examples shall not be isolated and
16 treated as a full definition of the class. Specifications
17 shall be descriptive and explanatory of the kind of work
18 performed and not necessarily inclusive of all duties
19 performed.

20 (4) An allocation list showing the class title of
21 each position in the regular service as identified by the name
22 of the occupant.

23 (c) The classification plan shall be used as
24 follows:

25 a. As a guide in recruiting and examining candidates
26 for employment.

1 b. For determining lines of promotion and in
2 developing employee training programs.

3 c. For determining salaries to be paid for various
4 types of work based on wage surveys and job analysis.

5 d. For determining personnel service items in
6 departmental budgets.

7 e. For providing uniform job terminology
8 understandable by all officials, employees, and the general
9 public.

10 (d) The council by resolution, with the assistance
11 of the director, shall prepare or direct the preparation of
12 the classification plan as needed from time to time. When the
13 plan is completed and adopted, the director shall submit to
14 each department head a copy of the class specifications for
15 each position class and a list allocating the positions in the
16 jurisdiction to the tentative position classes. The department
17 head shall notify employees about the allocation of their
18 respective positions. A copy of the class specification and
19 individual allocation shall be made available to the employee
20 or his or her representative on request.

21 (e) The director shall maintain the classification
22 plan so that it will reflect the duties performed by each
23 employee in the classified service and the class to which each
24 position is allocated. The director shall do all of the
25 following:

1 (1) Recommend to the mayor or city manager and city
2 council the establishment of new position classes and the
3 deletion or revision of existing classes.

4 (2) Review the duties and responsibilities of each
5 new position established, and allocate the position to the
6 appropriate position class.

7 (3) Make periodic studies of positions to determine
8 changes in duties and responsibilities and based on findings
9 recommend reallocation or reclassification of positions.
10 Classification studies may be made at the request of the
11 mayor, city manager, or city council. Changes in duty
12 assignments must be more than temporary in nature and the
13 current employee must be performing the duties for a
14 sufficient duration to warrant investigation.

15 (4) Direct the grading and classifying of all
16 positions in the classified service at least once every five
17 years.

18 (f) When a position is reallocated to a higher
19 position class, a lower position class, or another position
20 class at the same level, the method of filling the position
21 shall be determined under this act regarding transfers,
22 demotions, or promotions as may be appropriate.

23 (g) The mayor or city manager may recommend to the
24 city council the elimination of, or modification to, approved
25 job descriptions and positions in the classification plan,
26 together with any pay grade recommendations associated with
27 the position. Upon approval by the council of the proposed

1 changes, any non-exempt regular employee currently serving in
2 a position being eliminated or modified in which the
3 elimination or modification results in the non-exempt
4 employee's termination or demotion, shall have all rights of
5 appeal afforded employees solely as to the question of whether
6 the elimination or modification was arbitrary and capricious.
7 In the event a modification of a non-exempt employee position
8 results in additional duties, the affected employee may
9 request, in writing, a pay grade review by the council, which
10 may, in its sole discretion, modify the pay grade
11 classification.

12 Section 9. (a) EMPLOYEE HANDBOOK. The city, after
13 recommendation of the mayor and resolution of the council,
14 shall promulgate rules, policies, and procedures for employees
15 and compile same in an employee handbook, which may be amended
16 from time to time in the discretion of the city. At a minimum,
17 the employee rules, policies, and procedures shall contain all
18 of the following:

19 (1) The policy and rules for the accrual and use of
20 sick leave by employees. However, sick leave of any employee
21 in the regular service already accrued as of the date of the
22 adoption of this act shall in no wise be diminished.

23 (2) The policy and procedures in regard to overtime
24 and compensation not inconsistent with this act or state and
25 federal law.

26 (3) The policy and procedures for the accrual and
27 use of vacation time. However, vacation time of any employee

1 in the regular service already accrued as of the date of the
2 adoption of this act shall in no way be diminished.

3 (4) The policy and procedures concerning military
4 leave of absence, including temporary leave for National Guard
5 and armed forces reserve training not inconsistent with this
6 act and state and federal law.

7 (5) The policy and procedures for employees summoned
8 for jury duty or as a witness in court not inconsistent with
9 this act and state and federal law.

10 (6) The policy and procedures for periods of a
11 permitted absence without leave not inconsistent with this act
12 and federal and state law.

13 (7) The policy and procedures for employment outside
14 of the regular service and conflicts of interest related
15 thereto.

16 (8) The policy and procedures for open position
17 posting, applicant recruitment, applicant testing, and
18 eligibility determination.

19 (9) The policy and procedures for resignation and
20 retirement from the regular service not inconsistent with this
21 act or federal law.

22 (10) The policy and procedures for annual and
23 intermittent reviews of employee performance.

24 (11) The policy and procedures for loss of required
25 certifications and other requirements for continued
26 performance in the class.

1 (12) The policy and procedures for reporting
2 conflicts of interest.

3 (13) The policy and procedures for handling
4 grievances between and among employees that do not rise to the
5 level of disciplinary actions.

6 (14) The policy and procedures for the proper
7 certification of payroll such that payroll compensation is
8 timely and accurately kept.

9 (15) The establishment of procedures governing
10 layoff, reduction in force, and reinstatement.

11 (16) The establishment of policy and procedures
12 regarding disciplinary causes and actions for employees in the
13 public service.

14 (b) Each and every employee shall follow the rules,
15 regulations, and codes of conduct set out in the rules,
16 regulations, policies, and procedures adopted by the city, an
17 infraction of which the city may impose disciplinary action.

18 (c) Nothing herein shall prohibit the police, fire
19 department, and utility department from instituting standard
20 operating procedures, rules, and regulations for departmental
21 operations enforceable upon employees in that department that
22 are in addition to and not otherwise inconsistent with the
23 rules, policies, and procedures of the city, the infraction of
24 which the city may impose disciplinary action.

25 Section 10. EMPLOYEE PAY PLAN. (a) The city council,
26 with the aid of the director, mayor or city manager, and other
27 city personnel it deems necessary, shall adopt by resolution a

1 pay plan as the basis of compensation for employees in the
2 service of the city. The plan shall be constructed to provide
3 fair compensation for all classes in the classification plan
4 with due regard to such factors as the following:

5 (1) Varying degrees of difficulty and responsibility
6 among the several classes of work.

7 (2) Prevailing rates of pay and fringe benefits for
8 similar employment in private establishments and other public
9 jurisdictions in the area.

10 (3) Recruiting experience for the several classes of
11 work.

12 (4) Financial conditions of the city.

13 (5) The pay plan shall contain all of the following:

14 a. Special and specific provisions for administering
15 the plan.

16 b. A basic salary grade for each position class in
17 the classification plan.

18 c. A basic salary schedule containing the minimum
19 rate, maximum rate, and intermediate rate of pay for each
20 salary grade; and a conversion of rates for basis of payment.

21 d. The basis of pay indicating the number of weekly
22 work hours in general application to the classified service or
23 exceptions thereto.

24 (b) Upon final adoption by the council, the plan
25 shall be certified by the director and disseminated to all
26 employees. The plan shall become effective within 30 days
27 after its adoption by the council.

1 (c) The pay plan shall be amended in accordance with
2 the following procedures:

3 (1) When the mayor and the council by resolution add
4 a new position to the classification plan and fix the salary
5 grade, the job description shall assign the position to the
6 appropriate pay grade.

7 (2) In the case of a proposed pay plan amendment
8 directly affecting the pay of more than three regular
9 employees, prior to amending the pay plan, the mayor and the
10 council shall provide an opportunity for employees to present
11 their views.

12 (d) The council shall fix by resolution the holidays
13 that employees shall observe. Employees on nonpay status, such
14 as a leave of absence or on paid military leave, shall not
15 earn additional time for holidays. All regular employees of
16 the city shall receive the same number of holidays. Employees
17 who are required to work on an observed holiday shall be
18 compensated in accordance with this act and federal law.

19 (e) Any pay plan previously adopted by the city on
20 the effective date of this act shall remain in force and
21 effect until and unless amended or replaced as provided in
22 this section.

23 (f) Each employee in the regular service shall be
24 paid at a rate set forth in the pay plan for the
25 classification in which he or she serves, in accordance with
26 the provisions for administering the pay plan.

1 (1) New appointments to the regular service shall be
2 made at the beginning rate of the salary range for the
3 classification to which the appointment is made, unless in the
4 discretion of the appointing authority circumstances, skills,
5 or experience dictate a different rate.

6 (2) Salary advancement within established salary
7 ranges shall be based on meritorious performance on the job as
8 set out in the employee handbook and shall be in accordance
9 with the provisions for administering the pay plan. An
10 efficiency rating reflecting satisfactory performance shall be
11 required for advancement. An employee with continued
12 satisfactory service shall be eligible for future annual
13 increases until such time as the maximum rate for the range is
14 reached.

15 (3) In the event a regular employee is promoted,
16 transferred, or demoted, his or her rate of pay for the new
17 position shall be determined as follows:

18 a. Upon promotion, the employee's regular base pay
19 shall determine the new rate in the promotional class. The new
20 rate shall be the larger of either of the following:

- 21 1. A one step increase above the former rate.
- 22 2. The entrance rate for the promotional class.

23 b. When an employee is demoted, compensation shall
24 be reduced to the salary prescribed for the class or grade to
25 which demoted, or the step rate reduced if the employee
26 remains in the position. In no event shall the pay grade
27 exceed the maximum approved rate of the new classification.

1 c. When an employee is transferred from one
2 department to another, the step in the pay range shall be in
3 accord with the approved job description of the position to be
4 occupied by the employee. All transfers shall be approved by
5 the appointing authority.

6 (4) In the event the rate of pay of a supervisor is
7 less than or equal to the base rate of pay of subordinates
8 directly supervised in lower related classes, the rate may be
9 advanced in grade by the council.

10 Section 11. EMPLOYEE APPOINTMENT AND RETENTION.

11 (a) (1) Vacancies and newly created positions in the
12 regular service shall be filled either by open-competitive,
13 transfer, promotion, appointment, reappointment, or demotion
14 as determined by the appointing authority.

15 (2) When a vacancy exists for a regular position
16 that is not otherwise exempt from this act, the appointing
17 authority shall inform the director of the vacancy and whether
18 the position is a promotional or open position. The director
19 shall then certify to the appointing authority, eligibles from
20 the appropriate list in the manner and pursuant to the
21 procedures as set forth in the employee handbook. The
22 appointing authority shall then make an appointment from the
23 names certified to him or her.

24 (b) Appointments to the regular service shall be one
25 of the following types:

26 (1) An appointment to a full-time regularly budgeted
27 position made from a certified eligible register shall be a

1 probationary period. The probationary period shall be an
2 integral part of the examination process, and shall be
3 utilized to evaluate the employee's performance on the job and
4 for dismissing any employee who does not meet the required
5 standards of performance. The probationary period shall be one
6 year from the date of appointment with no interruptions in
7 service.

8 a. An employee in probationary status may be
9 discharged without the right of appeal.

10 b. A promotional probationer who is demoted for
11 unsatisfactory service may return to the position held prior
12 to appointment, if still vacant, without right of appeal. In
13 the event the position is filled, the mayor or city manager
14 shall determine the manner in which the employee shall be
15 retained in the service, being closely guided by the
16 provisions governing layoffs and reductions in force. The
17 demoted employee may elect to separate from the service and
18 have his or her name retained on the layoff list for the
19 classification of the former position for a period not to
20 exceed two years.

21 (2) Employment of an eligible from an eligible
22 register in a full-time regularly budgeted position, after the
23 satisfactory completion of a probationary period, shall be a
24 regular appointment, the suspension, demotion, or termination
25 of which shall be subject to all rights of appeal as set forth
26 in the act.

1 (3) In the absence of an eligible register, or until
2 such register is available, the mayor or city manager may, for
3 urgent need, authorize the filling of a vacancy by provisional
4 appointment. Any candidate for provisional appointment shall
5 meet educational, experience, and related requirements set by
6 the appointing authority. Provisional appointment shall be for
7 a period of not more than nine months. Any provisional
8 employee failing to qualify by examination shall be separated
9 from the position after the appropriate eligible register is
10 certified and the replacement appointed, or earlier at the
11 direction of the mayor or city manager. The provisional
12 appointment of an individual shall not confer on the appointee
13 any rights of status, appeal, or related rights set forth
14 under this act.

15 (c) No officer or employee of any department of the
16 city shall make or approve any payment for personal services
17 to any person holding a position in the regular service not
18 otherwise exempt from this act unless the position was filled
19 from a certified list of eligibles approved by the director.
20 The director may refuse to certify the payroll, voucher, or
21 account of any ineligible person found to be performing the
22 duties of a position.

23 (d) The appointing authority shall not be bound by
24 the list of eligibles to fill any vacancy set forth for
25 positions in the exempt service. Further, an appointment to
26 the exempt service shall not confer any right of status,
27 appeal, or any related right under this act.

1 (e) Vacancies in positions above the lowest rank in
2 any category in the classified service shall be filled as far
3 as practical by the promotion of employees in the service
4 unless otherwise determined by the appointing authority. In
5 each case, the appointing authority shall determine whether an
6 open-competitive or promotional examination will serve the
7 best interests of the service in attracting well-qualified
8 candidates. Promotions in every case must involve a definite
9 increase in duties and responsibility. The change of an
10 employee from a position in a class to a position in another
11 related occupational class for which the maximum rate is
12 higher shall be deemed a promotion.

13 (f) (1) An employee may be demoted to a position of a
14 lower grade or pay for which he or she is qualified for any of
15 the following reasons:

16 a. The employee would otherwise be laid off because
17 the position is being abolished or reclassified to a different
18 grade, there is a lack of work or funds, or another employee
19 returns to the position from an authorized leave.

20 b. The employee does not possess the necessary
21 qualifications to render satisfactory service in the position.

22 c. The employee is removed during probation.

23 d. The employee voluntarily requests the demotion.

24 e. The employee is demoted for disciplinary reasons.

25 (2) All demotions shall be approved by the
26 appointing authority and pursuant to the rules adopted by the
27 city. If a nonprobationary employee is demoted against his or

1 her will, he or she may appeal to the board as provided in
2 this act.

3 (3) The involuntary change of an employee from a
4 position in a class or job to another class or job for which
5 the maximum rate is lower shall be deemed a demotion and shall
6 be effected in accordance with this act.

7 (g) The appointing authority may, at any time,
8 assign an employee in the regular service under his or her
9 jurisdiction from one position to another in the same class
10 regardless of the shift, location, hours of work, or other
11 consideration as long as the workweek basis remains the same.
12 Any transfer made pursuant to this subsection shall be made
13 with the retention of all rights of seniority, vacation, sick
14 leave, and overtime as the employee may have accrued.

15 (h) An appointing authority may assign any employee
16 in the regular service under his or her jurisdiction any
17 duties as long as the duties are within the same
18 classification. No employee in the regular service may be
19 assigned duties of a different class for a period in excess of
20 one year. Any and all assignments outside the classification
21 shall be immediately reported to the director and the mayor or
22 city manager.

23 Section 12. DISCIPLINARY ACTIONS. (a) The tenure of
24 every employee in the regular service shall be conditioned on
25 the satisfactory conduct of the employee and the continued
26 efficient performance of assigned duties and responsibilities.
27 A regular employee may be dismissed, demoted, or suspended for

1 cause or for any reason deemed to be in the best interest of
2 the public service and shall have the right of appeal as set
3 forth in Section 13. The reasons for the action shall be
4 furnished in writing to the employee and the director.

5 (b) The following are among the causes which are
6 sufficient for dismissal, demotion, or suspension:

7 (1) Absence without leave.

8 (2) The commission of any criminal act involving
9 drugs, alcohol, violence against a person, theft,
10 embezzlement, or any crime charged as a felony.

11 (3) Conduct unbecoming an employee in the public
12 service.

13 (4) Conviction of a criminal offense or of a
14 misdemeanor involving moral turpitude.

15 (5) Disorderly or immoral conduct.

16 (6) Failure to pay or make proper provision for the
17 liquidation of just debts.

18 (7) Incapacity due to mental or physical disability
19 of a permanent nature.

20 (8) Incompetency or inefficiency.

21 (9) Insubordination.

22 (10) Intoxication while on duty or public
23 intoxication while off duty.

24 (11) Neglect of duty.

25 (12) Negligence or willful damage to public property
26 or waste of public supplies or equipment.

1 (13) Violation of any regulations or orders
2 published, made, or given by a superior officer.

3 (14) Willful violation of any provision of this act.

4 (15) Use of paid time for personal or business
5 reasons other than the purposes for which hired.

6 (16) Failure to maintain required objective
7 certifications and other requirements necessary to perform the
8 duties of employment.

9 (17) For any other reason deemed to be in the best
10 interest of the public service.

11 (c) (1) Notice of suspension, dismissal, or demotion
12 shall be in writing and shall set forth the following:

13 a. The cause of action.

14 b. The discipline imposed.

15 c. The dates suspension, dismissal, or demotion are
16 to become effective.

17 d. Any other information deemed appropriate.

18 (2) A copy of the notice shall be delivered to the
19 director on the same day that the notice is served on the
20 employee. Notification shall be made prior to or on the date
21 the dismissal or demotion is to be effected, or as soon as
22 practicable.

23 (d) The appointing authority may suspend without pay
24 any employee under his or her supervision. In the event the
25 suspension or suspensions do not exceed an aggregate of 40
26 working hours as a singular offense or 80 working hours
27 cumulative in any year of service, the employee shall not have

1 the right of a hearing. If the suspension or suspensions
2 exceed the 40 working hour limitation for a single offense or
3 80 working hour cumulative limitation, a regular employee may
4 appeal as provided in Section 13. The suspension shall be
5 effected by service upon the employee by the appointing
6 authority of a written statement of the delinquency for which
7 suspension was made with a copy delivered to the director. The
8 suspended employee may file an answer with the board and the
9 department head.

10 (e) An employee serving a probationary period may be
11 disciplined, demoted, or dismissed by an appointing authority
12 without right of appeal.

13 (f) Any employee suspended without right to a
14 hearing may obtain a review of the suspension by the
15 appointing authority by filing with the mayor or city manager,
16 not more than two business days thereafter, a written answer
17 to the charges and a request for the review.

18 Section 13. APPEALS. (a) An employee with regular
19 status may appeal disciplinary action of dismissal, demotion,
20 or suspension. The discipline imposed shall not be otherwise
21 set aside during the pendency of the appeal. An employee
22 desiring to appeal shall, within 10 calendar days after notice
23 of disciplinary action, file with the director and the mayor
24 or city manager a written answer to the charges and request a
25 hearing. The answer shall contain the following:

26 (1) The reason of dismissal, demotion, or
27 suspension.

1 (2) An admission or denial of guilt.

2 (3) Reasons why the dismissal, demotion, or
3 suspension should not take effect.

4 (b) (1) Upon timely appeal, the board shall forthwith
5 order a hearing of the charges before a hearing officer
6 appointed pursuant to board rules and this act. The hearing
7 shall be solely for the purpose of determining whether
8 substantial evidence supports the disciplinary action, and
9 whether the employee, by reason of his or her act or acts as
10 charged and his or her record of service, merits retention in
11 the service or should be removed therefrom or otherwise
12 disciplined. To that end, the hearing officer appointed shall
13 not be bound by the technical rules of evidence but shall
14 diligently seek all the information bearing on the merits of
15 the case. The hearing officer appointed by the board shall be
16 a practicing attorney licensed in this state who shall take
17 testimony offered in support and denial of the charges and
18 therefrom, and shall submit to the board and the parties,
19 within 15 days, a finding of facts involved, interpretation of
20 law and policy, and a recommended decision. Either party at
21 interest may be represented by counsel.

22 (2) The hearing officer shall have authority to
23 permit discovery by any party in the hearing officer's
24 discretion, but shall, in all instances, hold the hearing
25 within 30 calendar days of his or her appointment by the board
26 unless otherwise continued by consent of the parties. As
27 allowed by the hearing officer in his or her discretion,

1 discovery may be obtained by one or more of the methods
2 provided under the Alabama Rules of Civil Procedure,
3 including, but not limited to, written interrogatories,
4 depositions, requests for production of documents or things
5 for inspection or copying, and requests for admissions
6 addressed to parties, the time for response to which shall be
7 set by the hearing officer. The Alabama Rules of Civil
8 Procedure may be used as a general guide for discovery
9 practices and proceedings. However, the Alabama Rules of Civil
10 Procedure shall be deemed instructive rather than controlling.

11 (3) When a request for discovery is directed to an
12 officer or employee of the city, the city shall make the
13 officer or employee available on official time for the purpose
14 of responding to the request, and shall assist the officer or
15 employee as necessary in providing relevant information that
16 is available to the city. A party seeking discovery from a
17 nonparty officer or employee of the city shall initiate the
18 process by serving a request for discovery, signed by the
19 hearing officer, on the nonparty officer or employee.

20 Discovery from other nonparties may be initiated by serving a
21 request for discovery signed by the hearing officer on the
22 nonparty directly. Absent a request or upon failure to obtain
23 voluntary cooperation with discovery from a nonparty the
24 hearing officer appointed by the board shall have the right to
25 issue subpoenas for production and attendance enforceable by
26 the Circuit Court of Shelby County, Alabama. Further, the
27 hearing officer may subpoena witnesses, other than character

1 witnesses, for or against the employee upon written request.
2 Employees in the regular service shall be required to attend
3 and testify without subpoena.

4 (4) The parties shall be present at next regular or
5 special meeting held by the board, who shall consider the
6 report and may set aside the report and order a new hearing,
7 or may rescind, modify, or increase the penalty imposed by the
8 appointing authority as warranted by the facts adduced at the
9 hearing, or affirm the report as written and certify its
10 findings to the appointing authority who shall forthwith put
11 the same into effect. At the meeting, the board may ask
12 summation statements from the parties, not to exceed 15
13 minutes per party, as to the recommended disciplinary
14 recommendation of the hearing officer. The summation shall be
15 limited to the finding of facts contained in the report of the
16 hearing officer. The board shall render its decision at the
17 meeting, unless by affirmative vote of the board, it continues
18 the hearing to a date certain, notifying all parties of the
19 continuation date.

20 (5) The decision of the board shall be final and may
21 be appealed by either party to the circuit court to review
22 questions of law and whether or not the decision or order of
23 the board is supported by substantial and legal evidence. On
24 the appeal, the circuit court shall not reverse the finding of
25 the board unless it finds the decision was arbitrary and
26 capricious, against the great weight of evidence, or otherwise
27 invalid for reasons of fraud, and shall thereafter affirm,

1 reverse, remand, or render the cause. The decision of the
2 board shall be controlling until reversed on appeal as
3 provided for herein.

4 (6) The appeal to circuit court shall be perfected
5 by filing a notice of appeal with the Circuit Court of Shelby
6 County, signed by the party appealing, to the effect that the
7 party appeals from the decision or order of the board to the
8 circuit court and the reasons therefor, and same shall confer
9 jurisdiction upon the court. The statement of appeal shall be
10 filed within 10 calendar days from the announcement of the
11 decision or order of the board, and the appeal shall be served
12 on the director within two days of filing in the Circuit Court
13 of Shelby County.

14 Section 14. PROHIBITIONS. (a) Activities prohibited
15 shall include the following:

16 (1) No person shall be appointed or promoted to, or
17 dismissed from any position, or in any way favored or
18 discriminated against with respect to employment on the basis
19 of gender, race, national origin, political activity, or age.

20 (2) No person shall seek or attempt to use any
21 political endorsement in connection with any appointment to a
22 position.

23 (3) No person shall use, directly or indirectly, any
24 official authority to influence, whether possessed or
25 anticipated, to secure or attempt to secure for any person an
26 appointment or advantage in appointment to a position, an
27 increase in pay, or any other advantage in employment in a

1 position, for the purpose of influencing the vote or political
2 action of any person, or for any consideration.

3 (4) No person in the employment of the city, whether
4 regular or otherwise, shall be denied the right to participate
5 in city, county, and state political activities to the same
6 extent as any other citizen of this state, including endorsing
7 candidates and contributing to campaigns.

8 (5) Persons in the employment of the city may join
9 local political clubs and organizations and state or national
10 political parties.

11 (6) Persons in the employment of the city may
12 publicly support issues of public welfare, circulate petitions
13 calling for, or in support of, referendums and the right to
14 contribute freely to those of his or her choosing.

15 (7) No persons shall engage in political activity
16 while on duty, or in uniform.

17 (8) No person shall attempt to use political
18 authority or position for the purpose of influencing the vote
19 or political action of any person. Any person who violates
20 this subdivision shall be guilty of a felony punishable by a
21 fine not to exceed ten thousand dollars (\$10,000) or
22 imprisonment in the state penitentiary for a period not to
23 exceed two years, or both.

24 (b) Candidacy for a public office in the city by a
25 regular employee of the city shall be as follows:

26 (1) An employee shall resign his or her position for
27 the purpose of becoming a candidate for nomination or election

1 to a public office in the city, but he or she shall be
2 eligible for a leave of absence without pay if the following
3 conditions are met:

4 a. A written resignation is submitted to the
5 appointing authority stating the purpose of the resignation
6 with a copy forwarded to the director.

7 b. Within the six-month period next succeeding the
8 day of resignation, he or she requests to be reinstated to the
9 eligible register for the position.

10 c. The position has not been filled between the day
11 of resignation and the day of the appointment.

12 d. He or she is reappointed to the position within
13 the six-month period next succeeding the day of resignation.

14 (2) If each of the foregoing conditions are met, the
15 employee shall be considered as having been on a leave of
16 absence.

17 Section 15. Act 93-493, 1993 Regular Session (Acts
18 1993, p. 789) and Act 96-504, 1996 Regular Session (Acts 1996,
19 p. 640), are hereby repealed.

20 Section 16. The provisions of this act are
21 severable. If any part of this act is declared invalid or
22 unconstitutional, that declaration shall not affect the part
23 which remains.

24 Section 17. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.