

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
6/5/2018

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| SUBJECT: | SUBMITTED BY: |
| Ordinance amending provisions of the Board of Fire and Police Commissioners | Enza Petrarca Village Attorney |

SYNOPSIS

An ordinance amending the provisions of the Board of Fire and Police Commissioners.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Exceptional Municipal Services* and *Continual Innovation*

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the June 12, 2018 active agenda.

BACKGROUND

The proposed ordinance provides updates to accurately reflect the role and responsibilities of the Board of Fire and Police Commissioners. The proposed amendments eliminate any inconsistencies between State law, Village ordinance, Board rules and regulations and collective bargaining agreements. It also clarifies that through the exercise of the Village's home rule powers any discrepancies between State law and Village ordinance shall be governed by Village ordinance. The amendments are consistent with current State law and reflect the Village's current practice.

ATTACHMENTS

Ordinance

Board of F&P

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE BOARD OF
FIRE AND POLICE COMMISSIONERS PROVISIONS**

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by ~~shading~~/underline; deletions by ~~strikeout~~):

Section 1. That Section 2.53.1. is hereby amended to read as follows:**2.53.1. Removal of boards and commissions members.**

- (a) Members of any board or commission serve at the pleasure of the appointing authority and may be removed as provided in this section.
- (b) Unless otherwise specified, ~~W~~where removal from a board or commission is governed by statute, such statute shall control.
- (c) The Mayor shall have the authority to remove any member of a board or commission where such member is appointed by the Mayor, or appointed jointly by the Mayor and Village Manager.
- (d) The Village Council, by a vote of not less than four (4) members, shall have the authority to remove any member of a board or commission where such member is appointed by the Village Council; appointed by the Mayor with concurrence of the Village Council, or appointed by the Village Manager with the concurrence of the Village Council.
- (e) The Village Manager shall have the authority to remove any member of a board or commission where such member is appointed by the Village Manager. (Ord. No. 4011, 3/9/98; Ord. No. 4582, 4/20/04; Ord. No. 4877, 6/5/07)

Section 2. That Section 2.68.DIV. is hereby amended to read as follows:**2.68.DIV. Division 9. Board of Fire and Police Commissioners**

(Ord. No. 3704, 12/5/94)

Section 3. That Section 2.69. is hereby amended to read as follows:**2.69. Created; composition; terms of office.**

- (a) There shall be hereby established a Board of Fire and Police Commissioners ~~as provided and established by this ordinance and state law~~, which shall consist of three (3) members appointed for staggered terms of three (3) years each. The personnel, duties, tenure of office, powers, and qualifications shall be such as are established by ordinance or ~~s~~State law.
- (b) A secretary for the Board shall be selected by the Board from among its members, and shall hold office as secretary until expiration of the member's term.
- (c) Members of the Board shall be appointed by the Mayor, subject to confirmation by the Village Council. Provided, no appointment to the Board shall be made by the Mayor within thirty (30) days before expiration of the Mayor's term of office.
- (d) Qualifications for membership on the Board shall be as provided by ordinance or ~~s~~State law. No person holding a lucrative office under the United States, the State of Illinois or any political subdivision thereof shall be eligible to be a member of the board. No person shall be appointed a member of the board who is related, either by blood or marriage up to the degree of first cousin, to any elected official of the Village.
- (e) Members of the board shall ~~not~~ be subject to removal in accordance with Section 2.53.1 of the Downers Grove Municipal Code, ~~except for cause, upon written charges, and after opportunity to be heard~~

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~~within thirty days of the date of filing of such charges, before a regular meeting of the Village Council. A majority vote of the members of the Village Council shall be required to remove any member of the board from office.~~

~~(f) Not later than August 1, in each year, the Board shall submit to the Village Council a report of the Board's activities for the preceding year and of the rules then in force, and the practical effect thereof. (Ord. No. 2036, § 2; Ord. No. 2641, § 9; Ord. No. 2737, § 1; Ord. No. 3266, § 34; Ord. No. 3704, 12/5/94)~~

Section 4. That Section 2.70. is hereby amended to read as follows:

2.70. Governing Law.

~~Except as otherwise provided by ordinance of the Village, the Board of Fire and Police Commissioners of the Village of Downers Grove derives its power and authority from the Board of Fire and Police Commissioners Act of the Illinois Municipal Code, Chapter 65 Illinois Compiled Statutes, Section 5/10-2.1-1 et seq. and from the home rule powers of the Village of Downers Grove, as provided in Article VII, Section 6 and 10(a) of the Constitution of the State of Illinois of 1970. Article 10, Division 2.1 of the Illinois Compiled Statutes (65 ILCS Sections 10-2.1-1 et seq.), is applicable to the Board of Fire and Police Commissioners of the Village of Downers Grove. Should a conflict exist between State statute and any Village ordinance, pursuant to home rule powers of the Village. When any ordinance of the Village conflicts with the state law, the ordinance shall take precedents and prevail over the statutory provision, unless specifically preempted by State statute. (Ord. No. 3704, 12/5/94)~~

Section 5. That Section 2.72. is hereby amended to read as follows:

2.72. Powers and duties.

(a) ~~The powers and duties of the Board shall be as follows: such as are established by this ordinance or state law, including the following:~~

(1) ~~To conduct examinations for and appoint all firefighters and police officers in the Village's Fire and Police Departments, except the Fire Chief, the Chief of Police, the deputy or assistant chiefs of each department, battalion chiefs, division chiefs, auxiliary police officers, and civilian employees of the respective departments. The Village Manager shall have full authority to appoint and remove the Fire Chief and Chief of Police. Subject to the approval of the Village Manager, the Fire Chief and Police Chief shall have full authority to appoint and remove their deputy or assistant chiefs, battalion chiefs, division chiefs, auxiliary police officers and civilian employees.~~

(2) ~~To conduct examinations and certify candidates for promotion in the Village's fire and police departments as provided by law.~~

(3) ~~To conduct hearings and impose discipline, including demotions.~~

(4) ~~To adopt, enforce, administer and amend the Rules and Regulations of the Board of Fire and Police Commissioners not inconsistent with this ordinance or state law. Notice of amendments to the Rules and Regulations shall be published on the Village's website and in accordance with the Open Meetings Act. Amendments shall go into effect ten (10) days subsequent to adoption~~

(5) ~~To take such other action as the Village Council may from time to time expressly authorize or direct.~~

(b) ~~The Board shall not have the power or authority to make any rule to govern the operation of the police or fire department or the conduct of its members. (Ord. No. 2036, § 2; Ord. No. 2641, § 9; Ord. No. 2849, § 2; Ord. No. 3266, § 34; Ord. No. 3704, 12/5/94; Ord. No. 4000, 1/19/98)~~

Section 6. That Section 2.73. is hereby amended to read as follows:

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2.73. Transition.

Any decision, appointment, promotion or other action taken by the Board prior to the effective date of this ordinance shall be valid and effective to the same extent as if, and as though, made under the provisions of this ordinance and state law. (Ord. No. 2036, § 2; Ord. No. 2641, § 9; Ord. No. 3266, § 34, Ord. No. 3704, 12/5/94)

Section 7. That Section 17.28ART. is hereby amended to read as follows:**17.28ART. Article III. Board of Fire and Police Commissioners**

NOTE: For state law as to Board of Fire and Police Commissioners, see Ill. Comp. Stat., ch. 65, §§65 ILCS 5/10-2.1-1 et seq.

Section 8. That Section 17.29. is hereby amended to read as follows:**17.29. Application of article.**

(a) The provisions set forth in this ordinance and state law shall govern the functioning of the Board of Fire and Police Commissioners of the Village (the "Board"), referred to in this Article III and in Article IV, Division 9 of Chapter 2 of this Code as the "Board". The Board of Fire and Police Commissioners of the Village of Downers Grove derives its power and authority from the Board of Fire and Police Commissioners Act of the Illinois Municipal Code, Chapter 65, Illinois Compiled Statutes, Section 5/10-2.1-1 et. seq and from the home rule powers of the Village of Downers Grove, as provided in Article VII, Section 6 and 10(a) of the Constitution of the State of Illinois of 1970. Should a conflict exist between State statute and any Village ordinance, pursuant to home rule powers of the Village, the ordinance shall take precedents and prevail over the statutory provision, unless specifically preempted by State statute. Unless otherwise provided herein, the term "firefighter", or its equivalent, shall include all employment positions within the fire department subject to the jurisdiction of the Board, including but not limited to firefighter/paramedics; and the terms "police", "police officer", or their equivalent, shall include all employment positions within the police department subject to the jurisdiction of the Board. The term "officer" shall mean a person holding a classified position in either the Fire or Police Departments of the Village of Downers Grove. (Ord. No. 2036, § 3; Ord. No. 2849, § 4; Ord. No. 3266, § 36.)

Section 9. That Section 17.30. is hereby amended to read as follows:**17.30. Examination and qualification of applicants.**

(a) Examinations. Examinations shall be conducted for the appointment of all firefighters and police officers in the Village's Fire and Police Departments, except the Fire Chief, the Chief of Police, the deputy or assistant chiefs of each department, battalion chiefs, division chiefs, auxiliary police officers and civilian employees of the respective departments. Except as provided in Section 2-72(a)(1) of this Code, each applicant for employment in a position as a fireman or police officer in the fire or police departments of the Village shall be no less than twenty one years of age, a citizen of the United States, and shall be otherwise qualified as provided by law. The examination procedures shall be public, competitive, and shall be subject to reasonable and uniform (within each department) requirements as to health, habits, moral character, physical condition, experience and any other qualifications that the Board deems appropriate for the proper and competent performance of the duties and responsibilities of the position applied for. The Village may, at its discretion, charge an applicant a fee to cover the costs of said examination. If the position requires special qualifications, the Board may require evidence of special training or practical experience. Appropriate notice of the time and place of the examination and procedures shall be given by the Board as it deems appropriate.

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~~_____ (b) Applications. Applications must be filed with the Board in a form approved by the Board within the period specified in the announcement of the examination. Applications for either the police or the fire department shall be filed on blank forms furnished by the Board, and applicants must comply with all requirements specified therein. Any person making an untruthful or incomplete answer to any application question shall be rejected by the Board and the applicant shall be notified of such action. The Board shall remove any person appointed to a position in the fire or police department upon learning that a false statement has been made or any material fact has been omitted or misrepresented to the Board by the applicant. The Board may make such investigation as it deems necessary to verify that the applicant has met all required qualification standards. An applicant may be rejected by the Board before or after a written examination if his/her application or the investigation indicates a failure to meet the qualifications for the position.~~

~~_____ (c) Notice of examination. Notice of the time and place of each examination testing procedure shall be given as provided by law. In addition, the Board may provide such additional notice as it deems appropriate.~~

~~_____ (d) Standards and scoring of examinations. The Board shall establish minimum standards for successfully passing each segment of the examination testing procedure and shall determine the weight to be assigned to the separate tests or qualification categories within any examination testing procedure. Standing on the eligible lists hereinafter referred to shall be determined by the aggregate score earned by the applicant for the entire examination testing procedure. Failure by the applicant to pass any discreet test or meet the minimum requirements of any qualification category within an examination testing procedure shall disqualify the applicant for the position applied for. The military and cadet preference credit provisions of the state law shall not apply and there shall be no preference credits given for examination based upon military or cadet service.~~

~~_____ (e) Notice of results. Each applicant will be notified within a reasonable time of the results of his/her examination testing procedure. If an applicant has failed to pass, the notice shall so state; if an applicant has passed the examination testing procedure, the applicant shall receive notice that his/her name has been placed on the eligible list. (Ord. No. 2036, § 3; Ord. No. 2849, § 5; Ord. No. 3266, § 37.)~~

Section 10. That Section 17.31. is hereby amended to read as follows:

17.31. Eligibility for appointment.

(a) Eligible lists. The Board shall prepare and maintain lists, referred to in this Article as "eligible list(s)", of applicants who have successfully passed an examination testing procedure, and who are otherwise eligible for a position in the fire or police departments. ~~Separate lists shall be maintained for each position under the jurisdiction of the Board within the fire and police departments. An eligible applicant shall take rank on an eligible list as a candidate for appointment to the tested position in the order of such applicant's relative excellence, in relation to all other eligible applicants and previously listed eligible candidates, as determined by the aggregate score earned by such applicant for the entire examination testing procedure, without reference to priority of the time of such examination testing procedure. The eligible lists shall be modified by the Board from time to time, in no event later than sixty (60) days after the completion of each examination testing procedure, so as to include all persons successfully passing each subsequent examination testing procedure. The eligible lists shall at all times be posted in a suitable public place or places designated by the Board.~~

~~_____ (b) Order of appointment. Except as provided in Section 2-72(a)(1) of this Code, each appointment to a position on the fire or police department shall be made by the Board from among the three candidates then standing highest on the eligible list, provided that at the time of such appointment the candidate is physically and psychologically fit. The military and cadet preference credit provisions of the state law shall not apply and there shall be no preference credits given for appointment based upon military or cadet service.~~

~~_____ (c) Striking or removal of names and eligible lists. The Board may at any time strike from the eligible list the names of all (but not less than all) candidates that have been on the eligible list for one year or~~

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~~longer. Names placed on the eligible list shall remain thereon until so stricken or until removed for cause. Regardless of the length of time the name of a candidate has remained on the eligible list, it may be removed for cause by the Board for physical disability, conviction for a misdemeanor or felony, fraud or misrepresentation in obtaining standing on the eligible list, or for other reasonable cause determined by the Board.~~

~~(d) Waiver, refusal or failure to accept appointment. A candidate may, when entitled to an appointment from the eligible list, waive his/her right to the appointment and submit a written statement of the reasons therefor. If the Board approves the reasons for such waiver, the candidate shall retain his/her position on the eligible list, but the Board shall not approve more than one waiver by any candidate. Except in cases where the Board approves such waiver, a candidate who refuses or fails to accept an appointment within ten days after notice of such appointment is given by the Board shall be removed from the eligible list. If within thirty (30) days thereafter the candidate so removed furnishes to the Board good and sufficient reasons for failure to accept such appointment, the Board may, in its discretion, restore such candidate to his/her former position on the eligible list, subject to any appointment actually made in the interim period.~~

~~(eb) Eligibility for reemployment.~~

~~(i) If any officer has been removed from a position because of a reduction in forces in the department or displacement or abolition of the position, such person shall be notified by the Board as promptly as practicable if such position is thereafter reinstated and shall have prior right to such position if such person then remains otherwise qualified. Written application for reinstatement to such position must be made within thirty (30) days after notice is given by the Board advising such person of his/her eligibility for reinstatement to such position. Upon filing of such application, such person's name shall be ranked first on the eligible list for such position. In the event there should be two or more persons eligible for reemployment for any reinstated position, their names shall be entered on the eligible list in the order determined by the Board on the basis of the relative excellence of their prior service in such position.~~

~~(ii) An officer who has been on leave of absence and who wishes to return to active duty in his/her former position shall not be credited with seniority for the period of such leave. Such officer shall notify the Board of his/her request to return to active duty, and if such officer is otherwise qualified and if the position formerly held by such officer has not otherwise been filled or abolished, such officer shall be reinstated to his/her former position at the rank or grade held at the time the leave of absence commenced. Such reinstatement shall occur not later than sixty (60) days after filing with the Board the request for reinstatement. If such former position has been abolished or otherwise filled, reemployment of an officer requesting reinstatement shall follow the procedures set forth in subparagraph (i), paragraph (eb) of this Section 17-31.~~

~~(fc) Temporary appointment. In order to prevent a stoppage of public business, to meet extraordinary situations, or to prevent material impairment of either the police or fire service to the public, the Board may make temporary appointments to remain in force until regular appointments may be made under the provisions of paragraph (b) of this Section 17-31. Provided, no person shall be temporarily appointed within the police department unless such person is certified as a police officer. No temporary appointment shall be for a period in excess of twelve (12) consecutive months, and no one person shall receive more than one temporary appointment in any single period of twenty-four (24) consecutive months. Service under any temporary appointment may not be considered or given any weight in any examination testing procedure for a permanent appointment under this Article.~~

~~(gd) Probationary period. Each new police officer or firefighter and each police officer or firefighter who was not previously employed by the Village and was hired initially for a position above the first line supervisory ranks, shall be on probation for a period of twelve (12) months or as otherwise provided for by collective bargaining agreement; provided, however, that such probationary period shall not include time spent on such formal training courses as may be required or time taken, by permission, for sick leave or leaves of absence. A probationary employee may be discharged from employment with the Village by the chief of the appropriate department, subject to approval by the Village Manager, with or without cause, and without hearing, at any time during the probationary period. Except for firefighters appointed to the lowest~~

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rank, the Board, upon recommendation of the department chief such chief, may extend such probationary period for any employee for an additional period not to exceed twelve (12) months. Unless such actions are taken by the chief or the Board, respectively, as stated herein, upon completion of the probationary period, an employee shall receive full status as a permanent firefighter or police officer of the Village and be subject to the provisions of this Article. (Ord. No. 2036, § 3; Ord. No. 2701, § 1; Ord. No. 2849, § 6; Ord. No. 3266, § 37.)

Section 11. That Section 17.32. is hereby amended to read as follows:

17.32. Promotions.

(a) Promotional examinations. Except as provided in Section 2-72(a)(1) of this Code, in all cases where practicable, vacancies in the fire and police departments shall be filled by promotion on the basis of promotional selection standards and procedures as established, and from time to time amended, by the Board pursuant to law. All promotional testing procedures shall be competitive and open to all officers who qualify under criteria determined by the Board. Promotions shall in every case involve a material change in duties and an increase in responsibilities, and shall not be made merely for the purpose of effecting an increase in compensation or granting a higher title or honor. The Board shall establish in advance and publicize minimum standards for each promotional selection procedure. The Board shall determine the weight to be assigned to the separate procedures, tests or qualification categories within any promotional selection procedure. An applicant for promotion who fails to pass any discreet test or meet the minimum requirements of any qualification category within the promotional selection procedure shall disqualify the applicant for that position. Appropriate Notice of the time and place of each promotional selection procedure shall be given by the Board as it deems appropriate, as provided in Section 17-30(c), ~~except that notice may be waived in writing by all officers of the department eligible to apply for such promotion.~~

(b) Promotional lists. The Board shall maintain promotional lists comprised of those applicants for promotion successfully passing the promotional selection procedure, and who are otherwise eligible for the promotion applied for, showing the aggregate score of each applicant. ~~An eligible applicant shall take rank on such promotional list as a candidate for appointment to such promotion in the order of such applicant's relative excellence, in relation to all other eligible applicants and previously listed eligible candidates, as determined by the aggregate score earned by such applicant for the entire promotional selection procedure, without reference to priority of the time of such selection procedure. Each promotional list shall be modified by the Board from time to time (in no event later than sixty days after the completion of each promotional selection procedure) so as to include persons successfully passing each subsequent promotional selection procedure. Promotional lists shall at all times be posted in a suitable public place or places designated by the Board. From time to time the Board shall review all promotional lists and may at any time strike from such promotional lists the names of all (but not less than all) applicants that have been on such promotional list for one year or longer.~~

~~(c) Promotional appointment. The Board shall from time to time certify to the chiefs of the fire and police departments, respectively, the names of the three candidates then standing highest on each promotional list. Each promotion to a higher position within the police or fire department shall be made from among the candidates so certified for such promotion, and each such appointment shall be made by the chief of the fire or police department, whichever is applicable, subject to approval by the Village Manager. In appointing such candidate for promotion, the chief shall be guided by the requirements of the position to be filled and shall impartially determine which of the three candidates will, in his/her opinion, best serve the interests of the Village. The military and cadet preference credit provisions of the state law shall not apply and there shall be no preference credits given for promotion based upon military or cadet service.~~

~~(d)~~ (e) Any officer promoted shall be on probation for a period of six (6) months after the date of promotion; The Chief of the appropriate department may demote and such officer may be demoted to the previous rank held by the chief of the appropriate department, for unsatisfactory performance or other justifiable reasons, at any time during such probationary period, subject to the approval of the Village

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Manager. Such officer shall be entitled to an appeal of such action to the Village Manager, and following such appeal, the Village Manager may affirm or reverse the determination of the chief or may extend the probationary period for an additional period not to exceed six (6) months. Unless the employee is demoted by the chief, or the probationary period is extended as provided herein, the employee shall receive full status in the promoted position and be subject to the provisions of this Article.

(ed) Demotion. Any officer may, at the joint request or consent of the employee, department chief and Village Manager be placed in a lower rank.

(fe) Notwithstanding any other provision contained in this Code, the chiefs of the police and fire departments, with the approval of the Village Manager, may make administrative appointments within those departments by the assignment of special duties and compensation therefor, to members of such departments. Appointments made under this section may be without regard to and shall have no effect upon the rank or grade of the person so appointed. Such appointments shall in no event be construed as being a promotion, a creation of a new rank or grade or any other act subject to any other requirement of this Code. (Ord. No. 1810, § 1; Ord. No. 1924, § 1; Ord. No. 1953, § 1; Ord. No. 1987, § 1; Ord. No. 2036, §§ 1, 3; Ord. No. 2173, § 1; Ord. No. 2449, § 1; Ord. No. 2518, § 1; Ord. No. 2849, §§ 1, 7; Ord. No. 2976, § 1; Ord. No. 3266, § 37.)

Section 12. That Section 17.33. is hereby amended to read as follows:

17.33. Disciplinary actions.

The Board and the department chiefs shall have the power to conduct hearings and impose discipline for cause, including demotion, suspension or discharge, as provided by sState law, Village Ordinance and Board Rules and Regulations.

(a) Suspension. Following written charges and a hearing as provided by law, the Board may suspend an officer for cause. The chief of the fire department or the chief of the police department may suspend an officer as provided by law. Provided, the chief shall notify the Board in writing of any suspension and the officer so suspended may appeal to the Board for a review of the suspension as provided by sState law.

(b) Demotion. Following written charges and a hearing as provided by law, the Board may, for cause, but only at the request of the department chief, demote to any lower grade or rank, officers of the police and fire departments. Such disciplinary demotion may be in lieu of discharge and in addition to any suspension that may be also be imposed.

(c) Discharge. Following written charges and a hearing as provided by law, the Board may order an officer discharged for cause. (Ord. No. 2036, § 3; Ord. No. 2849, § 8; Ord. No. 3118, § 19; Ord. No. 3197, § 2; Ord. No. 3266, § 37; Ord. No. 3346, § 9.)

Section 13. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 14. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk