

CIVIL SERVICE COMMISSION MEETING

CITY OF DAVENPORT, IOWA

WEDNESDAY, OCTOBER 11, 2017; 9:00 AM

CITY HALL COUNCIL CHAMBERS

I. Call to Order

II. Approval of today's Agenda

III. Approval of Minutes for September 13, 2017

IV. New Business

A. New Classifications: Assistant Chief Fire Marshall and Assistant Chief Operations

B. Upcoming Fire Chief Recruitment

V. Old Business

A. Chief Washburn Jurisdictional Issue

B. DCSC Rule 2.6 - Second Reading - Certifications-Fire Promotional Lists

C. Commissioner Training

VI. Certification Lists

A. Network Desktop Support Technician

VII. Adjournment

VIII. Next Meeting Date: November 8, 2017

City of Davenport
Civil Service Commission

Department: Human Resources Department
Contact Info: Dawn Sherman

Date
10/11/2017

Subject:
New Classifications: Assistant Chief Fire Marshall and Assistant Chief Operations

ATTACHMENTS:

Type	Description
▣ Cover Memo	Fire AC Packet

REVIEWERS:

Department	Reviewer	Action	Date
City Clerk	Reagan, Barb	Approved	10/5/2017 - 12:37 PM



DATE: October 4, 2017

TO: Davenport Civil Service Commission

FROM: Corri Spiegel, City Administrator

RE: Fire Department | Assistant Chiefs Positions Recruitment

Background | Upcoming Recruitments

In early 2019, both of the Fire Department's long-tenured Assistant Chief positions will be vacated. The succession planning of the Davenport Fire Department, including the hiring of these positions and the recruitment of a Chief, is one of my key strategic goals for the next twelve months. This memo outlines and summarizes my requested modifications to the positions and to the hiring process.

Requested Modifications | Outline

To accurately reflect the specialization within each of the Assistant Chief positions and to ensure the long-term sustainability of departmental operations, I would request several modifications to these two recruitments which are outlined below.

1. **Separate Job Classes:** Currently, the two Assistant Chiefs have the same classification but manage two separate functional areas. One Assistant Chief oversees all department operations, including the management of suppression personnel and budget; the other Assistant Chief serves as the City's Fire Marshal and oversees all fire inspections and investigations. I would request that these two positions accurately reflect their existing duties and create two separate job classes: Assistant Chief – Operations and Assistant Chief – Fire Marshal.
2. **Education Requirement:** To ensure the most representative and diverse talent pool for these recruitments, I would ask that the formal education requirement be waived and be replaced with a requirement of having served five years as a Fire Officer within the Davenport Fire Department.
3. **Qualifications Presentation/Panel:** While acknowledging the importance of formal education, specialized training within the field of service should also be recognized. All interviewees would be required to make a formal qualifications presentation to executive staff that demonstrates the applicant's competency for each position based on formal education, training, or a combination of both.
4. **Successive Rank Provision:** As was discussed at the September Civil Service Commission meeting (memo submitted is also attached), I would request your approval to waive 2.2B, the successive rank provision, and allow Fire Officer's with five years of service or more to apply for either of these positions.

Recruitment Process | Explained

The attached packet includes the proposed recruitment process for each position, which are similar in nature and closely mirror the processes for peer positions city-wide. A brief outline is provided below:

- Application
- In-basket memorandum project



- Formal Interview with multiple panels
 - o Qualifications Panel | City executive staff
 - o Trade Panel | City-wide and outside partners
 - o Senior Management Panel / Peer Position Panel | City-wide

Conclusion | Next Steps & Timeline

I would respectfully request your approval of the above items including the creation of two separate job classes with separate job descriptions, replacing an education requirement with five years of service as a Fire Officer at Davenport Fire, and waiving the successive rank provision discussed at the September Civil Service meeting.

A handwritten signature in black ink, reading "Corri Spiegel", is written over a horizontal line.

Corri Spiegel
City Administrator

(563) 888-3384

cspiegel@ci.davenport.ia.us



Class Title FIRE ASSISTANT CHIEF – FIRE MARSHAL
Bargaining Unit Fire
Class Code TBD

RECRUITMENT PROCESS OUTLINE

General Application

In-Basket Assessment for Finalists (45%)

Formal Interview (3 Panels / 55% Total)

- Qualifications Panel **(5%)**
 - Prepare and present a formal presentation on qualifications for the position including training and education
- Professional Panel **(25%)**
 - General Interview Questions
- Senior Management Peer Panel **(25%)**
 - General Interview Questions

TIMELINE

Civil Service Review of Job Descriptions & Process	October 11, 2017
Job Posting	October 16, 2017
Job Closing	November 10, 2017
Review of Applications & Questionnaires	November 13 - November 20, 2017
Selection and Notification of Finalists	November 20, 2017
In-Basket Assessments	November 20 - December 1, 2017
Review of In-Basket Assessments	December 4 - December 6, 2017
Notification of Interviews	December 6, 2017
Interviews	December 14 & December 15, 2017
Civil Service List Certification	January 10, 2018



Fire Assistant Chief – Fire Marshal

Class Code:
~~3232~~TBD

Bargaining Unit: Management

CITY OF DAVENPORT
Revision Date: May 9, 2017

SALARY RANGE

\$42.42 - \$55.66 Hourly
\$3,393.91 - \$4,452.70 Biweekly
\$7,353.48 - \$9,647.53 Monthly
\$88,241.71 - \$115,770.30 Annually

DEFINITION:

Serves as second in command of the Fire Department and coordinates over-all fire prevention and firefighting activities.

EXAMPLES OF DUTIES:

Reports directly to the Fire Chief and oversees the Fire Prevention Bureau.

Provides administrative support to the Fire Chief in the development, implementation, and monitoring of policies and procedures relating to emergency service delivery.

May aAssume management of the department in the absence of the Fire Chief.

Prepares and monitors division budgets in coordination with other Fire Department Management Staff

Supervises investigations.⁷

Investigates origin and circumstances of fires which involve loss of life, injury to any person or persons, or damage or destruction of property.

Supervises all inspections including final occupancy issuances, fireworks, routine annual inspections, mobile food vending inspections, etc. and delegates inspections as necessary.

~~a~~Acts as liaison to the State Fire Marshal's Office on numerous issues.

Regularly coordinates and communicates with the Scott County Attorney's Office.

~~-enforces all fire and life safety codes.~~

Reviews and approves site and building plans to assure compliance with all relevant codes and standards and routinely coordinates with the Chief Building Official.

Enforces all fire and life safety codes codes including inspecting sprinkler systems, alarm systems, fixed fire extinguishing systems, and other elements of fire prevention or protection systems.

Enforces all fire and life safety Investigates both internal and external complaints including serving as the Internal Affairs Officer.

Conducts internal affairs investigations.

Manages facility, apparatus, and equipment programs.

Manages the capital improvement plan budget and supervises all related projects.

Assists the Fire Chief in determining matters of policy for the operation of the department.

Supervises, schedules, trains, and directs the work of employees; participates in the interview and selection processes and may make employment decisions; evaluates employee performance, and recommends corrective action s when necessary.

Assists with other duties within the Fire Prevention Bureau as necessary.

Participate in local, regional, state, and national seminars and continuing education opportunities on fire prevention, investigation, emergency medical first responder, and suppression to maintain a continuing level of professional and technical competence;

Respond to emergency scenes when necessary

Serves as incident commander when necessary.

QUALIFICATIONS:

Presently serving as a member and an Officer within the Davenport Fire Department with at least five years of experience as a Fire Officer. ~~Must have knowledge of all Davenport streets, Fire Officer 1 certification, Instructor 1 certification, advanced training in incident command, Fire Officer 2 certification, a four year degree in a fire related field or equivalent college level courses relevant to the position or National Fire Academy Executive Fire Officer certification.~~

Requires an Iowa Chauffeur's Driver's License Class D-2 and must maintain throughout duration of employment.

Must meet state and city residency requirements throughout duration of employment.

Must be accepted, attend, and complete the Iowa Law Enforcement Academy within 18 months of appointment

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KNOWLEDGE AND SKILLS:

Comprehensive Knowledge of:

Modern methods of Fire Department administration.
Principles and practices of fire prevention and suppression.
Use and maintenance of firefighting equipment and apparatus.

Considerable Knowledge of:

Departmental rules and regulations.
City geography, fire hazards, and firefighting resources.

Good Knowledge of:

First aid.
Modern training methods.

Comprehensive Skill in:

Applying modern fire suppression and prevention techniques.
Evaluating tactical and operational requirements of conflagration situations.
Planning and directing fire suppression and prevention activities and in assuming leadership.
Exercising judgment in evaluating situations and making sound decisions.

Considerable Skill in:

Applying administrative and management methods and procedures to department activities.
Operating all types of firefighting equipment and apparatus and instructing others in such operation.
Selecting, assigning, training, and leading subordinates in planning, scheduling, and directing their work.
Maintaining effective discipline and morale.

Working Skill in:

Keeping records and preparing reports.



Class Title FIRE ASSISTANT CHIEF – OPERATIONS
Bargaining Unit Fire
Class Code TBD

RECRUITMENT PROCESS OUTLINE

General Application

Complete Questionnaire With Application

In-Basket Assessment for Finalists (25%)

- Prepare a series of memorandums

Formal Interview (4 Panels / 75% Total)

- Qualifications Panel **(5%)**
 - Prepare and present a formal presentation on qualifications for the position including training and education
- Professional Panel **(20%)**
 - General Interview Questions
- Senior Management Peer Panel **(20%)**
 - General Interview Questions
- Exec Team Panel **(30%)**
 - 2 City Administrator assigned projects (presentation-based)

TIMELINE

Civil Service Review of Job Descriptions & Process	October 11, 2017
Job Posting	November 13, 2017
Job Closing	December 8, 2017
Review of Applications & Questionnaires	December 11 - December 15, 2017
Selection and Notification of Finalists	December 18, 2017
In-Basket Assessments	December 18 - January 5, 2018
Review of In-Basket Assessments	January 8 - January 12, 2018
Notification of Interviews	January 15, 2018
Interviews	January 31 & February 1, 2018
Civil Service List Certification	February 14, 2018



Fire Assistant Chief - Operations

Class Code:
3232TBD

Bargaining Unit: Management

CITY OF DAVENPORT
Revision Date: May 9, 2017

SALARY RANGE

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\$88,241.71 - \$115,770.30 Annually

DEFINITION:

Serves as second in command of the Fire Department and coordinates over-all fire prevention and firefighting activities.

EXAMPLES OF DUTIES:

Reports directly to the Fire Chief and oversees departmental suppression personnel and the daily operations of the department.

Provides administrative support to the Fire Chief in the development, implementation, and monitoring of policies and procedures relating to emergency service delivery.

May Assume management of the department in the absence of the Fire Chief.

Responsible for overall budget preparation and submission of budget requests to Finance as part of the annual budget process.

Responsible for oversight of fleet maintenance and facilities programs including purchasing, inspecting, repairs, and preparation of specs.

Responsible for oversight of Fire Department related capital improvement projects in coordination with Public Works.

Prepares and monitors division budgets in coordination with other Fire Department Management Staff.

Assists the Chief with strategic planning including the development of both long- and short-term goals.

~~Supervises investigations, acts as liaison to the State Fire Marshal's Office, enforces all fire and life safety codes.~~

~~Review and approves building plans.~~

~~Conducts internal affairs investigations.~~

~~Manages facility, apparatus, and equipment programs.~~

~~Manages the capital improvement plan budget and supervises all related projects.~~

~~Assists the Fire Chief in determining matters of policy for the operation of the department.~~

Supervises, schedules, trains, and directs the work of employees; participates in the interview and selection processes and may make employment decisions; evaluates employee performance, and recommends corrective action.

Assists with other duties within the Fire Department as necessary.

Acts as the department liaison to many City departments.

Participate in local, regional, state, and national seminars and continuing education opportunities on fire prevention, investigation, emergency medical first responder, and suppression to maintain a continuing level of professional and technical competence.

Respond to emergency scenes when necessary.

Serves as incident commander when necessary.

QUALIFICATIONS:

Presently serving as a member and an Officer within the Davenport Fire Department with at least five years of experience as a Fire Officer. ~~Must have knowledge of all Davenport streets, Fire Officer 1 certification, Instructor 1 certification, advanced training in incident command, Fire Officer 2 certification, a four year degree in a fire related field or equivalent college level courses relevant to the position or National Fire Academy Executive Fire Officer certification.~~

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Must meet state and city residency requirements throughout duration of employment.

KNOWLEDGE AND SKILLS:

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Considerable Knowledge of:

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City geography, fire hazards, and firefighting resources.

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Modern training methods.

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Planning and directing fire suppression and prevention activities and in assuming leadership.

Exercising judgment in evaluating situations and making sound decisions.

Considerable Skill in:

Applying administrative and management methods and procedures to department activities.

Operating all types of firefighting equipment and apparatus and instructing others in such operation.

Selecting, assigning, training, and leading subordinates in planning, scheduling, and directing their work.

Maintaining effective discipline and morale.

Working Skill in:

Keeping records and preparing reports.



DAVENPORT FIRE DEPARTMENT

331 Scott Street, Davenport, Iowa 52801
Tel 563.326.7906 Fax 563.328.7232

September 12, 2017

Davenport Civil Service Commission
226 West Fourth Street
Davenport, Iowa | 52801

RE: Rule 2.2 / Subsection B

Davenport Civil Service Commissioners:

We are jointly requesting the promotional testing requirements regarding one year in grade of the successively lower classification (Rule 2.2 / Subsection B) for the upcoming Assistant Fire Chiefs position recruitments be waived and replaced with a requirement of five years as a Fire Officer. Fire Officer is defined as a Lieutenant rank or above.

By waiving this provision, it will allow for a competitive and optimized hiring process and succession strategy for both of the aforementioned positions.

We appreciate your consideration of this request.

Regards,


Corri Spiegel, City Administrator
James Bickford, Interim Fire Chief

City of Davenport
Civil Service Commission

Department: Human Resources
Contact Info: Dawn Sherman

Date
10/11/2017

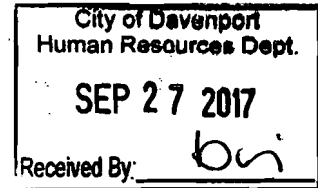
Subject:
Chief Washburn Jurisdictional Issue

ATTACHMENTS:

Type	Description
▣ Cover Memo	Jurisdictional Issue Heyer
▣ Cover Memo	Jurisdictional Issue Carroll

REVIEWERS:

Department	Reviewer	Action	Date
City Clerk	Reagan, Barb	Approved	10/5/2017 - 12:17 PM



CIVIL SERVICE COMMISSION
CITY OF DAVENPORT

IN RE: LYNN WASHBURN-LIVINGSTON, CIVIL SERVICE APPEAL –
JURISDICTIONAL ISSUE

CITY OF DAVENPORT BRIEF

COMES NOW the City of Davenport, by and through its attorneys, and as requested by the Davenport Civil Service Commission, hereby submits its Brief to the Commission on the issue presented during the September 13, 2017 meeting regarding the August 9, 2017, Notice of Civil Service Appeal filed by Lynn Washburn-Livingston.

UNDER IOWA CIVIL SERVICE LAW THE COMMISSION DOES NOT HAVE JURISDICTION BECAUSE CHIEF WASHBURN HAS NO CIVIL SERVICE RIGHT TO RETAIN HER POSITION AND MAY BE DISCHARGED WITHOUT RESORT TO CIVIL SERVICE PROCEDURES.

Washburn-Livingston filed notice of civil service appeal on August 9, 2017, challenging the action taken by the City of Davenport in *discharging her from employment*. See, Exhibit 1 – Notice of Civil Service Appeal, attached hereto and by this reference made a part hereof.

Iowa Code §400.6 provides that Chapter 400 – Civil Service – *does not apply* to the “head and principal assistant of each department and the head of each division . . . However, sections 400.13 and 400.14 apply to police

and fire chiefs." Regarding Washburn-Livingston's appeal of her discharge from the position of fire chief, Iowa Code §400.14 states:

" . . . nothing herein shall be deemed to extend to such individual any civil service right upon which the individual may retain the position of chief."

This statutory language provides the answer to the single issue before this Commission concerning whether it has jurisdiction to hear an appeal from the fire chief concerning her discharge. Does Washburn-Livingston have a right under civil service law to appeal her discharge from employment? The clear and unambiguous language of Iowa Code §400.14 tells us the answer to that question is "no, she does not have a civil service right to appeal her discharge."

The civil service commission only has jurisdiction to hear and determine matters involving the rights of civil service employees under this chapter. . . ." The statutory language of §400.6 and §400.14 of the Iowa Code make clear that a fire chief is not a civil service position and thus the fire chief does not have a right under civil service to challenge her discharge from employment.

The Iowa Supreme Court has previously examined this issue. In that case the Court held, "In that the city police chief did not have any civil service right to retain his position, police chief could be discharged without resort to civil service procedure." See, LaPeters v. City of Cedar Rapids, 263 N.W.2d 734, 736 (Iowa 1978). A more thorough examination of the

LaPeters decision will provide even more clarity to the Commission in its consideration. In its *LaPeters* decision the Supreme Court wrote:

"We start from the point that while no one has a constitutional right to public employment the state may not regulate it arbitrarily." Redmond v. Carter, 247 N.W. 2d 268 (Iowa 1976). Nevertheless, an appointing power has removal authority unless the law provides otherwise. Healdsburg Police Officer's Ass'n v. Healdsburg, 57 Cal.App. 444 (1976); 4 McQuillin, *Municipal Corporations*, §12.229(b). Similarly, civil service procedures may be made applicable to selection of a public employee, or for other purposes, but inapplicable to discharge. The issue is dependent on the effect of applicable statutes. O.Field, *Civil Service Law*, p. 18, 67 (1939). Here the statutes are clear. A chief is appointed in accordance with civil service procedures. See, §400.13. If he is appointed from the ranks he does not lose the civil service rights he already has. However, he does not acquire 'any civil service right upon which he may retain the position of chief.' See, §400.14. This is consistent with the general provision excepting the police chief from civil service status. See, §400.6. Removal procedures dictated in civil service chapter are applicable only to persons who hold civil service status for retention purposes. See, §400.18. The civil service commission has jurisdiction only of those cases. See, §400.18-§400.27. Because LaPeters did not have a civil service right to retain his position as chief, the civil service commission lacked jurisdiction of his case."

Thus, the Iowa Supreme Court's *LaPeters* decision answers the question pending before the Civil Service Commission by stating unambiguously that Washburn-Livingston does not have a civil service right to appeal her discharge to the Davenport Civil Service Commission. Stated otherwise, the Davenport Civil Service Commission does not have jurisdiction to hear Washburn-Livingston's appeal of her discharge because she does not hold civil service status for retention purposes.

Additional information offering further support for the position that Washburn-Livingston has no civil service right to appeal her discharge is witnessed by the fact that the city administrator is the appointing authority for the positions of fire chief and chief of police. Thus, the city administrator, as the appointing authority, has removal authority for those positions. Davenport Municipal Code §2.36.020 states, "The chief of the fire department shall be appointed and removed in the same manner as other department directors as set forth in the city code section 2.30.080." The pertinent language from Davenport Municipal Code §2.30.080 states, "... Said assistant city administrator, department heads or directors shall be appointed by the city administrator. Any assistant city administrator, department head or director so appointed, and not covered by civil service, can be dismissed at any time by the city administrator. A person so dismissed should be entitled to a name-clearing hearing as required by Iowa Code §372.15." Not coincidentally, the *LaPeters* Court held that the firing or discharge of LePeters was governed by Iowa Code §372.15, not Chapter 400. See, LaPeters, p. 736.

Washburn-Livingston's removal by the city administrator was wholly within the administrator's authority as set out above, and Washburn-Livingston has no civil service right to appeal her removal (discharge) under Iowa law; her removal is governed by Iowa Code §372.15, which, by the way, she has invoked.

Thus, it was perplexing listening to Washburn-Livingston's attorney's nonsensical remarks in arguing her position on her behalf during the September 13th meeting of the Davenport Civil Service Commission on this jurisdictional issue. Perplexing and nonsensical because, he had presumably met with Washburn-Livingston, his client, discussed the issues with her, and thereafter performed research, if necessary, prior to offering his commentary. As an attorney he should know that the city's attorneys cannot ethically communicate with Washburn-Livingston once they have knowledge that she is represented by an attorney. Thus, his criticism of the city's attorneys for not communicating with his client was uncalled for and puzzling. His claim that Washburn-Livingston had an employment contract with the City of Davenport was nonsensical because in meeting with his client he should have been made aware that the October 14, 2011 letter of employment made to Washburn-Livingston opened with the following words:

"This letter will restate the City of Davenport's offer of at-will employment as Fire Chief. . . Your employment status will be a full time, exempt, at-will employee. You acknowledge that you are an at-will employee who may be disciplined or terminated by the City Administrator. You acknowledge that this letter of appointment and its contents do not create, and should not be construed to create, a contract for any specific period of time or term." A copy of Lynn Washburn-Livingston's letter of appointment is attached hereto and by this reference made a part hereof.

This employment letter was signed by Washburn-Livingston herself on October 14, 2011, by which she sealed her personal acknowledgment that she was an at-will employee who may be disciplined or terminated

by the city administrator and did not have an employment contract with the city.

There was one other case in Iowa that touched on this question; however, that case – *Dennis v. Bennet*, 140 N.W.2d 123 (Iowa 1966) – has been rendered moot by the holding of the *LaPeters* Court; meaning it is no longer valid law. The *LaPeters* Court overruled the decision in *Dennis v. Bennet* saying, “. . . the civil service status of a fire chief in relation to discharge was not defined then [at the time of *Dennis v. Bennet*] as it is now in §400.14.” I include this point in case Washburn-Livingston’s attorney elects to include this argument in his brief to the commission. *Dennis v. Bennet* does not support a claim that a police or fire chief has civil service rights because of Iowa’s current statutory law.

In conclusion, all of the foregoing demonstrates that Washburn-Livingston does not have a right under civil service to appeal her discharge from employment as the chief of the fire department and the Davenport Civil Service Commission has no jurisdiction to hear her appeal.

**EVEN IF WASHBURN-LIVINGSTON HAD CIVIL SERVICE RIGHTS
– WHICH SHE DOES NOT UNDER THE STATUTORY SCHEME –
SHE DID NOT TIMELY RAISE THE §400.13 ISSUE OF WHETHER
SHE WAS ENTITLED TO REMAIN IN THE DEPARTMENT AND
THEREFORE SHE IS BARRED FROM RAISING IT NOW.**

The only paperwork Washburn-Livingston filed – in addition to her request for a name-clearing hearing pursuant to Iowa Code §372.15 – was her notice of appeal of her discharge from employment. She never raised

her claim that she was entitled to relief under Iowa Code §400.13 in any document filed with the Clerk of the Civil Service Commission. She first raised this issue through the argument of her attorney during the September 13, 2017 meeting of the Civil Service Commission. It was improperly raised under the agenda item concerning whether the Commission had jurisdiction to hear the appeal of her discharge because her discharge is the subject matter of the document she filed with the Clerk of the Civil Service Commission.

The time for filing her §400.13 claim that she should have been allowed to remain in the department at a position commensurate with her civil service status expired on September 10, 2017. A person with civil service rights has fourteen days' time to raise an issue with the Commission regarding an adverse action affecting their employment. Because Washburn-Livingston did not raise a §400.13 issue prior to September 10, 2017, she is time-barred from raising it thereafter.

EVEN IF WASHBURN-LIVINGSTON HAD TIMELY RAISED A §400.13 CLAIM, THE STATUTORY PROVISIONS OF §400.13 DO NOT AFFORD HER RELIEF BECAUSE PRIOR TO HER APPOINTMENT AS FIRE CHIEF SHE HAD NOT HELD ANY OTHER POSITION HAVING CIVIL SERVICE STATUS OR RIGHTS WITHIN THE DAVENPORT FIRE DEPARTMENT.

§400.13 reads, in part:

" . . . If a chief of police or fire department is relieved of that position, the person shall be entitled to remain in the department for which the person was chief at a position *commensurate* with the person's civil service status, even if this

means the city must create a position for the person to fill until a regular position becomes vacant." (emphasis added)

Commensurate means equal in extent or corresponding. This provision of the Iowa Code must be read in conjunction with Iowa Code

§400.14 which says:

"A police officer under civil service may be appointed chief of police and a fire fighter may be appointed chief of the fire department without losing civil service status, and shall retain, while holding the office of chief, the same civil service rights that the officer or fire fighter may have had immediately previous to appointment as chief, but nothing herein shall be deemed to extend to such individual any civil service right upon which the individual may retain the position of chief."

The specific language adopted by the legislature in enacting this law is limited to promotions to the position of chief that occur from within an organization; it does not include the appointment of a chief from outside the organization. The validity of this statement of fact is shown from the following.

First, as the Court stated in *LaPeters*, the hiring of a chief may be covered by the civil service process, but the termination need not be. Let's examine the hiring of chief procedure set forth in Iowa Code §400.13.

- The chief shall be appointed from the chiefs' civil service eligible list.
- Such lists shall be determined by original examination open to all persons applying, whether or not members of the employing city.¹

¹This language acknowledges that applicants may come from outside the organization.

- The chief of a fire department shall have a minimum of 5 years' experience in a fire department, or three years' experience in a fire department and two years of comparable experience or educational training.²

§400.13 thereafter says, "A chief of a police department or fire department shall maintain civil service rights as determined by section 400.12". Iowa Code §400.12 covers how seniority rights of civil service employees are computed. "Seniority shall be computed, beginning with the date of appointment to or employment in any positions for which they were certified or otherwise qualified and established . . . In the event that an employee has been promoted from one classification or grade to another, the employee's civil service seniority rights shall be continuous in any department grade or classification that the employee formerly held." The phrase in that language, "beginning with the date of appointment to or employment in" indicates that we are looking at prior civil service positions held within the organization as seniority cannot carry over from one organization to another. The beginning date and only position Washburn-Livingston held within the City of Davenport was October 14, 2011 as Fire Chief; prior to that date, she never held a civil service position within the Davenport Fire Department. She was not promoted to fire chief from another classification or grade as an employee from within the Davenport

² The use of the indefinite article 'a' in front of fire department affirms that the applicant may come from outside the organization.

Fire Department. Under the language of §400.12, if she had been promoted to chief as an employee who held another classification or grade within the department her civil service seniority status in that other grade or classification would have remained continuous while she served as fire chief.

Now, going back to the rest of the language in §400.13, "Any person who becomes chief of the fire department shall be allowed to transfer all rights the person may have acquired under Chapter 410 or 411, including employer contributions during the person's years of service in a city, employee contributions, and interest, to the retirement system of the city that hires the person as chief." This language contemplates and allows the transfer of retirement benefits from the retirement benefit program of one city to another city's retirement benefits program – both cities being within the State of Iowa because cities outside of Iowa would not be covered by the retirement benefits contemplated in Chapters 410 and 411 of the Iowa Code – for a person who is appointed fire chief in a different city from the one in which he or she worked as a fire fighter prior to his or her appointment as chief.

Next the language of §400.13 provides, "Such person shall also transfer the number of years served as seniority toward other benefits provided by the city which hires the person." The legislature's inclusion of the phrase "seniority toward other benefits" limits the scope and applicability of this language. By that I mean, if the legislature wanted to, it could have

stated that such person shall also transfer the number of years served as seniority. Had the legislature not included the limiting language "seniority toward other benefits" Washburn-Livingston might have a plausible argument; but the legislature did include that limiting language. I say she might have a plausible argument, because again the legislature seems to have limited this provision to employees who move from one city in Iowa to another city in Iowa. Washburn-Livingston moved from Rockford, Illinois to Davenport, Iowa; in Rockford, Illinois and thus had no prior Chapter 410 or 411 retirement benefits.

Toward the end of §400.13 we get to the language that is the crux of the untimely argument Washburn-Livingston raised during the September 13th meeting: "If a chief of a police or fire department is relieved of that position, the person shall be entitled to remain in the department for which the person was chief at a position commensurate with the person's civil service status, even if this means that the city must create a position for the person to fill until a regular position becomes vacant."

In order to interpret the statutory language in §400.13, we are compelled to examine the opening language of §400.14, "A police officer under civil service may be appointed chief of police and a fire fighter under civil service may be appointed chief of the fire department without losing civil service status, and shall retain, while holding the office of chief, the same civil service rights that the officer or fire fighter may have had

immediately previous to appointment as chief, but nothing herein shall be deemed to extend to such individual any civil service right upon which the individual may retain the position of chief." Read together, it becomes clear that the only civil service rights that a person appointed chief retains while serving as chief are those rights that the person had immediately previous to their appointment as chief.

Let's parse the language of §400.13. "At a position commensurate with the person's civil service status," means at a position equal in extent or corresponding with the person's prior civil service status (i.e., rank or grade). In spite of the fact that Washburn-Livingston was appointed the fire chief pursuant to the provisions set out in the opening paragraph of §400.13, she had no prior civil service status within the State of Iowa or the Davenport Fire Department before her appointment as Davenport Fire Chief. Having had no prior civil service status within the Davenport Fire Department, she had no position commensurate within the Davenport Fire Department wherein she had any civil service status. Having held no position within the Davenport Fire Department wherein she had any civil service status, she had no position in which she was entitled to remain upon her termination as the chief. This reasoning accords with the language of §400.14 that provides that she retains those rights she had had immediately previous to her appointment as chief.

Second, in an Attorney General opinion issued on the question of police and fire chief civil service status, the opinion states, "They [chiefs] do not hold civil service rights as chiefs, but only those under §400.12 and previously held." See, 1977-78 Op. Atty Gen. Iowa 514.

Finally, the legal interpretation and argument presented herein based upon the actual language of the statutes and the attorney general's opinion was affirmed in the *LaPeters* holding wherein the Court stated "If he is appointed from the ranks he does not lose the civil service rights he already has." Washburn-Livingston was not appointed from within the ranks and as a result she does not have any previously existing civil service rights that were retained by her when she was appointed fire chief.

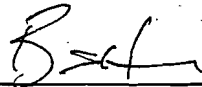
CONCLUSION

The Davenport Civil Service Commission does not have jurisdiction to hear an appeal raised by Washburn-Livingston regarding her discharge from employment because Washburn-Livingston does not have civil service status for job retention purposes. The procedure available to her is set forth in Iowa Code §372.15, not Chapter 400.

Because Washburn-Livingston was appointed from outside the Davenport Fire Department she had no prior civil service rights within the department which she was entitled to retain during her service as fire chief. Upon her discharge from the position of fire chief Washburn-Livingston was only entitled to remain in the department at a position commensurate with

her civil service status immediately previous to her appointment as fire chief. Since she had held no other civil service position within the Davenport Fire Department immediately previous to her appointment as fire chief she is not entitled to remain in the department at any position and the Davenport Fire Department is not required to create a position for her under §400.13.

City of Davenport



Brian Heyer, Assistant City Attorney
226 West Fourth Street
Davenport, IA 52801
(563) 326-7735
Fax (563) 328-6767
beh@ci.davenport.ia.us

NOTICE OF CIVIL SERVICE APPEAL

I, LYNN WASHBURN-LIVINGSTON hereby appeal to the Davenport Civil

Service Commission, action taken by the City of Davenport, on the 9TH day of

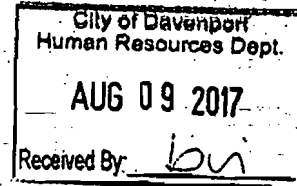
AUGUST, 2017 for my:

* Discharge

Demotion

Suspension

* Other (please specify) NOTIFIED OF ACTION PUTATIVELY
TAKEN ON JULY 27, 2017.



Signed

Date

Lynn Washburn-Livingston
AUGUST 9TH, 2017

*** Form must be filed with Civil Service Clerk ***

For Office Use Only

Date Action Effective:

7-27-2017

Has Appellant Completed Probationary Period: YES NO

Appeal Required:

8-10-2017

Filed

8-9-2017

(Within 14 days of Affirmation)

Specifications Required:

8-23-2017

Filed

(Within 14 days of Appeal)

Hearing Date Set, Required:

Set On

(Within 10 days of Filing of Specifications)

Hearing Date:

Required:

Set On

(Not less than 5 or more than 20 days after setting date)

Appellant Notified:

(Specifications of Charges & Notice of Hearing Date)

cc: to be sent to Legal Department immediately upon appeal



City of Davenport

City Administration
226 West Fourth Street – Davenport, Iowa 52801
Telephone: 563-326-7763 Fax: 563-326-7736
www.cityofdavenportiowa.com

October 14, 2011

Lynn Washburn – Livingston
1178 Bears Paw Drive
Rockford, IL. 61103

Dear Lynn:

This letter will restate the City of Davenport's offer of at-will employment as Fire Chief, subsequent to your decision to opt out of MFPRSI. The position is offered pursuant to the following:

1. Your employment status will be a full time, exempt, at-will employee. You acknowledge that you are an at-will employee who may be disciplined or terminated by the City Administrator. You acknowledge that this letter of appointment and its contents do not create, and should not be construed to create, a contract for any specific period of time or term.
2. Your starting salary will be \$115,260, with a 2% deferred compensation match, and a monthly business allowance of \$125. To continue receipt of the business allowance, you are required to keep an e-mail enabled pda / cell phone that facilitates communication at all times. You will be provided a take home vehicle, and are expected to maintain 24 hour availability, except while on approved leave.

Owing to your decision to opt out of the MFPRSI pension program, the City will provide the rolling average (i.e. adjusted annually) of the City's contribution rate to the MFPRSI and IPERS pension systems, to a 457 plan. Should this contribution exceed annual IRS limits for 457 plan contributions, the difference will be paid as a taxable bonus.

3. You will be eligible for annual salary adjustments and merit increases generally available to Department Directors, based on an annual performance evaluation.
4. The City's Administrative Policies apply to your position, including benefits available to Department Directors including health, dental, prescription, long term disability, life insurance and vacation and sick leave. You will be granted a starting bank of 40 hours of sick leave and 40 hours of vacation leave, and will earn vacation time starting at the rate of an exempt employee in their 6th year of employment (i.e. starting at 20 vacation days per year).

14570

5. You will be required to live within the City of Davenport throughout your tenure as an employee reporting to the City Administrator. You will have one year to establish residency from your start date. The City will either provide direct payment to a moving company for the lowest of three bids for moving expenses or pay this amount directly to you, in either case not to exceed \$5,000.
6. In the event of involuntary separation, you will be given ninety (90) calendar days severance pay, including, life, health, and pension benefits.
7. You will be granted necessary time off and expenses shall be budgeted in connection with your continued professional development. You will be recommended for acceptance to the Kennedy School's Senior Executive in State and Local Government Program. Should you leave Davenport service voluntarily within two years of attendance of this program, you will be required to pay back the tuition for the program on a prorated basis (i.e. stipend x (months of remaining service to two years ÷ twenty-four)).
8. As the City Administrator shall reasonably determine, health insurance premium percentage contributions shall be consistent with Department Director positions, contributing 1% premium for each \$10,000 of salary.

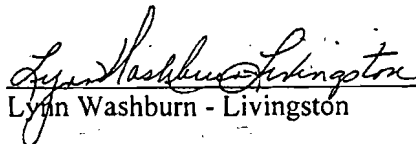
Lynn, it is a pleasure to offer you this position, restated to accommodate your decision to opt out of MFPRSI. I look forward to your contributions as a member of Davenport's team of leaders.

Sincerely,



Craig Malin
City Administrator

I hereby accept the position of Fire Chief of the City of Davenport, subject to the above conditions.

 10-14-11
Lynn Washburn - Livingston Date

CIVIL SERVICE DIVISION
CITY OF DAVENPORT

**In Re: LYNN WASHBURN-LIVINGSTON CIVIL SERVICE APPEAL –
JURISDICTIONAL ISSUE**

BRIEF OF APPELLANT LYNN WASHBURN-LIVINGSTON

COMES NOW Lynn Washburn-Livingston (“the Chief”) and for her written argument in favor of the Civil service commission finding that it has jurisdiction to hear her appeal in this matter states as follows.

I. The Iowa Code grants the Davenport Civil Service Commission jurisdiction to hear matters related to the Chief’s dismissal.

There is no question that Chief Washburn-Livingston was appointed through procedures adopted by the City of Davenport and mandated by the Iowa Code, namely pursuant to Civil Service Rules and law. There is no question that the City of Davenport had to select Chief Washburn-Livingston off a certified civil service list. There is also no question that the Chief was terminated pursuant to Iowa Code Chapter 400. Therefore, on its face, the City’s argument that the Chief has no rights to a hearing to discuss either her termination or reappointment benefits rights are incorrect. Given an opportunity to be heard, the Chief will argue why her discharge was improper but she will also argue the Commission should force the City to comply with Section 400.13 and reappoint her.

The City relies principally on the case *La Peters v. Cedar Rapids*, 263 N.W.2d 734 (Iowa 1978) in support of its argument.

More specifically, the City urges the Civil Service Commission to find that a clause in Iowa Code Section 400.14 controls in this case. That section states:

“A police officer under civil service may be appointed Chief of Police and a fire fighter under civil service may be appointed Chief of the Fire Department without losing civil service status, and shall retain, while holding the office of Chief, the same civil service rights that the officer or fire fighter may have had immediately previous to the appointment as Chief, *but nothing herein shall be deemed to extend to such individual in civil service right upon which the individual may retain the position of Chief.*”

Iowa Code Section 400.14 (emphasis added).

In the *La Peters* case, the former Chief of Police for the City of Cedar Rapids attempted an appeal to the City’s Civil Service Commission after being discharged from employment. The Court in the *La Peter’s* case held that a Chief appointed in accordance with Iowa Code Section 400.13 does not lose her civil service rights. *La Peters*, 263 N.W.2d at 734. The Court found because a chief does not have a “retention” right, she may not have the right to have a hearing on her discharge (*Id*). However, nothing in *La Peters* suggests that the Chief loses civil service rights other than the right to have a hearing with the Civil Service Commission regarding her right to reappointment under Section 400.13. The Civil Service Commission should find it has such jurisdiction and if it determines a hearing is necessary, hold a hearing, and then it should order the Chief’s reappointment.

The Civil Service Commission has the power under Iowa Code Section 400.13 to make the City place the Chief in a position commensurate with her service status before she was Chief, even if that means the City must create a position for her to fill until a regular position becomes vacant.

II. The Chief filed a notice of appeal because she was provided nothing in writing explaining the City’s decision or her rights to respond to that action.

The Chief filed an appeal on August 9, 2017. The appeal form does not give the Chief the right to elect a hearing on reappointment to a different position pursuant to Iowa Code Section 400.13. Any argument by the City stating that the Chief waived rights to assert that section for failing to note it in her appeal form should be found by the Commission to be unavailing.

Nothing in the Code, nothing in the City rules, nothing in City policies, nothing in the Notice of Civil Service Appeal Form suggests that she must identify her rights under Iowa Code Section 400.13 in the appeal form. Further, given the methods of notice and communications between City decision makers and the Chief regarding the termination of her position, she should not be penalized for failing to identify specific code sections upon which she based an appeal in this case given that she still has not received formal notice of why it is that she was terminated or what rights were being afforded her under Iowa Code or City ordinances, rules, or policies.

For these reasons the Commission should find that it has jurisdiction of the appeal and find the Chief has rights to be reappointed to another position within the City as required by Iowa Code Section 400.13.

III. Conclusion

For all of the reasons stated above, the Civil Service Commission should find that it has jurisdiction of the matter and grant a hearing to Chief Washburn-Livingston to determine her rights under the Iowa Civil Service Statute and, more specifically, whether she has rights to reappointment to a position commensurate to her prior civil service status under Iowa Code Section 400.13. As an aside, it is my understanding that the lack of communication from the City I referenced at the last meeting of the Civil Service Commission was a result of the City Attorney observing what he believed were his duties to not communicate with a person he understood to be represented by counsel. Because he did not know I was Ms. Washburn-Livingston's lawyer, the City Attorney did not know how to reach me and therefore could not reach me. I accept that explanation. Having said that, the tone of the Assistant City Attorney's arguments at the last meeting of the Civil Service Commission and in his written arguments referring to my remarks as "non-sensical" among other things, are beneath a city as great as the city of Davenport.

Respectfully submitted,

/s/ Michael J. Carroll

MICHAEL J. CARROLL – AT0001311
COPPOLA, McCONVILLE, COPPOLA,
CARROLL, HOCKENBERG & SCALISE, P.C.
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Telephone: (515) 453-1055: Fax: (515) 453-1059
Email: Michael@wdmlawyers.com
ATTORNEYS FOR THE APPELLANT

Copy to:

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City Attorney
tdw@ci.davenport.ia.us

Brian Heyer
Assistant City Attorney
beh@ci.davenport.ia.us

Dawn Sherman
dmm@ci.davenport.ia.us

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause or to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on September 27, 2017 by email.

Signature: /s/ Jennifer Huber

400.13 Chief of police and chief of fire department.

The chief of the fire department and the chief of the police department shall be appointed from the chiefs' civil service eligible lists. Such lists shall be determined by original examination open to all persons applying, whether or not members of the employing city. The chief of a fire department shall have had a minimum of five years' experience in a fire department, or three years experience in a fire department and two years of comparable experience or educational training. The chief of a police department shall have had a minimum of five years experience in a public law enforcement agency, or three years experience in a public law enforcement agency and two years of comparable experience or educational training. A chief of a police department or fire department shall maintain civil service rights as determined by [section 400.12](#).

Any person who becomes chief of police or chief of the fire department shall be allowed to transfer all rights the person may have acquired under [chapter 410](#) or [411](#), including employer contributions during the person's years of service in a city, employee contributions, and interest, to the retirement system of the city that hires the person as chief. Such person shall also transfer the number of years served as seniority toward other benefits provided by the city which hires the person. If a chief of a police or fire department is relieved of that position, the person shall be entitled to remain in the department for which the person was chief at a position commensurate with the person's civil service status, even if this means that the city must create a position for the person to fill until a regular position becomes vacant.

In cities under the commission plan of government the superintendent of public safety, with the approval of the city council, shall appoint the chief of the fire department and the chief of the police department. In cities under a council-manager form of government the city manager shall make the appointments with the approval of the city council, and in all other cities the appointments shall be made as provided by city ordinance or city charter.

[C24, 27, 31, 35, 39, §5699; C46, 50, 54, 58, 62, 66, 71, 73, §365.13; C75, 77, 79, 81, §400.13]

[86 Acts, ch 1171, §1](#)

Referred to in [§372.4, §400.6](#)

400.14 Civil service status of chiefs.

A police officer under civil service may be appointed chief of police and a fire fighter under civil service may be appointed chief of the fire department without losing civil service status, and shall retain, while holding the office of chief, the same civil service rights that the officer or fire fighter may have had immediately previous to appointment as chief, but nothing herein shall be deemed to extend to such individual any civil service right upon which the individual may retain the position of chief.

[C27, 31, 35, §5699-a1; C39, §5699.1; C46, 50, 54, 58, 62, 66, 71, 73, §365.14; C75, 77, 79, 81, §400.14]

Referred to in §400.6

City of Davenport
Civil Service Commission

Department: Human Resources Department
Contact Info: Dawn Sherman

Date
10/11/2017

Subject:
DCSC Rule 2.6 - Second Reading - Certifications-Fire Promotional Lists

ATTACHMENTS:

Type	Description
▯ Cover Memo	DCSC Rule 2.6

REVIEWERS:

Department	Reviewer	Action	Date
City Clerk	Reagan, Barb	Approved	10/5/2017 - 12:23 PM

DCSC Rule 2.6
Certification

A. General: The Commission shall establish all eligible lists in compliance with qualifications established, these rules and Iowa Code Section 400.11.

B. Entry Level Lists: An entry level list shall be established when an entry level position needs to be filled or when no City employee applied for or passed a promotional test pursuant to Iowa Code Section 400.9 and these rules. If a promotional list is considered exhausted pursuant to this rule subsection (D)(4), said employee may request placement on the entry level list. Entry level lists shall be considered valid for one year from the date of certification; except Firefighter, which shall be for two years from the date of certification.

C. Promotional lists: Civil Service lists for promotions shall be considered valid for two years following the date of certification.

D. Removal from Entry Level or Promotional lists:

1. A person may request in writing to have their name removed from a certified list.
2. Persons on promotional lists who resign from City employment shall automatically be dropped from the promotional list.
3. Any person discharged for cause from the City shall be dropped from any and all lists.
4. A current full time city employee may have the option to decline an offered appointment and remain on the list, unless they are the last name on the list in which case the list shall be considered exhausted. All non-employees shall be removed upon their declination of an offered appointment. The failure of a non-employee to respond to written notification of offered appointment within 5 days of notification to last known address shall be considered declination.

E. Decertification: Upon request by the City, the Commission may remove a person from a certified list for cause, including but not limited to a violation of DCSC Rule 2.4. The City shall notify the individual of the request to decertify in writing at least seven days prior to the Civil Service Hearing. The Commission shall conduct a hearing in compliance with Chapter 3 of its rules. The Commission shall take into consideration any relevant evidence that occurred or became known after the initial certification of the list. A decertification of an individual will not automatically disqualify them from future promotional opportunities (but see DCSC Rule 2.1(A))

Approved by Davenport Civil Service Commission on the ____ day of _____, 20__;
_____, Chairperson

City of Davenport
Civil Service Commission

Department: Human Resources Department
Contact Info: Dawn Sherman

Date
10/11/2017

Subject:
Network Desktop Support Technician

ATTACHMENTS:

Type	Description
▣ Cover Memo	Network and Desktop Support Technician

REVIEWERS:

Department	Reviewer	Action	Date
City Clerk	Reagan, Barb	Approved	10/10/2017 - 11:10 AM

City of Davenport

CIVIL SERVICE COMMISSION—CERTIFICATION ROSTER

POSITION Network & Desktop Support Tech
TYPE OF LIST: Entry
CERTIFICATION DATE: October 11, 2017
EXPIRATION DATE: October 10, 2016

JOB CODE: 967 EXAM
To be completed by Hiring Department. Please enter the appropriate code from the list below for each candidate on each job opening. Please return this form to the Human Resources Department. Thank you.

LIGIBLE CANDIDATES		RESULT CODE	DATE OF APPOINTMENT
Ryan Fisher			

Chair _____ Date _____

Commissioner _____

Commissioner _____

Commissioner _____

Commissioner _____

RESULT CODES:

1. Appointed
2. Hired other candidate
3. Disqualified (Attach Documentation)
4. Not interested in this position, retain on list
5. No longer interested, remove from list
6. Not contacted
7. Unable to contact at given location
8. Failed to report for interview

PREFERENCE CODE:

P—Eligible for preference
See Iowa Code 400.28

INITIAL OF
APPOINTING
AUTHORITY