



# THE MERIT SYSTEM

Personnel Board of Jefferson County

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## BOARD ITEM – CITY OF BIRMINGHAM RESOLUTION NUMBER 1578-10

**DATE OF**

**REQUEST:**       October 21, 2010

**SUBJECT:**    The Council of the City of Birmingham, on October 19, 2010, passed Resolution Number: 1578-10, which now comes before the Board for approval.

**RATIONALE:**   In late July 2010, the Personnel Board learned that the City of Birmingham was not paying fire and rescue personnel at pay rates approved and published by the PBJC.<sup>1</sup> The PBJC was also advised that fire and rescue personnel were working 2600 hours per year not 2704 hours upon which fire and rescue rates of pay were calculated.<sup>2</sup> Effective August 28, 2010, the City of Birmingham modified its pay practices and began paying fire and rescue personnel a modified rate which was not submitted to the PBJC prior to implementation. On September 16, 2010, in correspondence to Mayor Bell and the Birmingham City Council, the Personnel Board requested clarification as to the average number of hours worked and proper rates of pay to be applied to its firefighters. This clarification was needed in order for the Board to fulfill its statutory obligations to ensure that merit system employees are paid according to approved salary schedules.

**RECOMMENDATION:**   It is recommended that the 3-Member Board approve Resolution Number: 1578-10.

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<sup>1</sup> According to the City of Birmingham, it began using an incorrect rate in July 2008.

<sup>2</sup> According to the City of Birmingham, hours were reduced in September 2008.

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# CITY OF BIRMINGHAM

## OFFICE OF PERSONNEL

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ADMINISTRATIVE

WILLIAM A. BELL, SR.  
MAYOR

October 20, 2010

### VIA HAND DELIVERY AND U.S. MAIL

Lorren Oliver, Director  
Personnel Board of Jefferson County  
2121 Eighth Avenue North  
Birmingham, AL 35203

**RE: Council Resolution No. 1578-10, Confirming Pay Rates and Ratifying Work Hours for Partially Exempt Firefighters of the City of Birmingham Fire and Rescue Service Department**

Dear Mr. Oliver:

Enclosed is a certified copy of the City Council Resolution No. 1578-10, confirming the annual pay rates contained on the 2008 Fire and Rescue Salary Schedule created by the Personnel Board after the Council passed Resolution 838-08 in July 2008, and after the Personnel Board acknowledged said resolution on August 12, 2008. Council Resolution No. 1578-10 also ratifies that the number of work hours for partially exempt firefighters shall be 2600 hours annually, which shall be used as the divisor for the annual compensation rates contained in the referenced schedule.

Transmittal of this letter and the enclosed certified copy of said resolution is the formal response of the City of Birmingham to your letter request dated September 16, 2010.

Personnel Board approval of the resolution is requested. Such approval is requested to be effective retroactively to August 28, 2010.

Sincerely,



Peggy Polk

### Enclosure

cc: Mayor William A. Bell, Sr.  
Erskine R. Faush, Jr., Chief of Staff  
Jarvis E. Patton, Sr., Chief of Operations

Recommended by: Mayor and Public Safety Committee

Submitted by: Acting Director of Personnel

**RESOLUTION NO. 1578-10**

**A RESOLUTION TO CONFIRM THE PAY RATES AND TO RATIFY THE WORK HOURS FOR PARTIALLY EXEMPT FIREFIGHTERS OF THE CITY OF BIRMINGHAM FIRE AND RESCUE SERVICE DEPARTMENT**

WHEREAS, the Personnel Board of Jefferson County administers payroll procedures for those jurisdictions under its umbrella;

WHEREAS, the Personnel Board has requested clarification from the City of Birmingham regarding the number of scheduled hours to be worked by Birmingham Fire and Rescue Service personnel annually, and the rate at which the City intends they be paid going forward;

WHEREAS, the Council of the City of Birmingham last granted a one-percent (1%) pay raise for all employees of the City of Birmingham pursuant to Resolution No. 838-08, and caused said resolution to be submitted to the Personnel Board of Jefferson County, Alabama ("Personnel Board") for its approval pursuant to Section 12 of the Enabling Act and the Rules and Regulations of the Personnel Board of Jefferson County;

WHEREAS, the salary schedule for classified employees of the City of Birmingham Fire and Rescue Service Department prepared by the Personnel Board pursuant to Resolution No. 838-08 (hereinafter 2008 F&R Salary Schedule) contains maximum annual salaries for each step and grade of Birmingham Fire and Rescue Service personnel;

WHEREAS, the number of hours Birmingham firefighters are scheduled to work annually was reduced from 2704 hours annually to 2600 hours annually by supervisory personnel in the Birmingham Fire and Rescue Department in October 2008;

WHEREAS, the City of Birmingham desires to clarify these issues for the Personnel Board;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Birmingham, that clarification is made as follows:



1. The Council of the City of Birmingham confirms that Birmingham Fire and Rescue Service personnel shall be paid in accordance with the annual compensation for each grade and step in the 2008 F&R Salary Schedule issued by the Personnel Board in connection with Resolution No. 838-08.

2. The Council of the City of Birmingham confirms that Birmingham firefighters will continue to work 2600 scheduled hours per year<sup>1</sup> going forward.

3. The Council of the City of Birmingham intends that going forward partially exempt firefighters of the Birmingham Fire and Rescue Department shall be paid in such a way that these employees' bi-weekly paychecks for scheduled hours are equalized to the extent reasonably practicable, taking advantage of the provisions of section 7(k) of the Fair Labor Standards Act ("FLSA") and its associated regulations and consistent with the requirements of the FLSA and the regulations promulgated pursuant to it, and that such a system of payment be implemented as quickly as is reasonably practicable.

ADOPTED AND APPROVED this 19<sup>th</sup> day of October, 2010.

Adopted by the Council of the City of Birmingham October 19, 2010 and Approved by the Mayor October 19, 2010

  
Paula R. Smith  
City Clerk 

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<sup>1</sup> The Council acknowledges that the 2600-hour figure is a three year average figure and that scheduled hours for each shift will vary slightly from year to year because of the manner in which the work schedule for fire and rescue personnel is prepared. Consequently, pay for scheduled hours may be slightly above or below the annual salary figures set forth in the 2008 F&R Salary Schedule.



# THE MERIT SYSTEM

Personnel Board of Jefferson County

BY HAND DELIVERY AND U.S. POST

September 16, 2010

Honorable William A. Bell, Sr.  
Mayor of the City of Birmingham  
Birmingham City Hall  
710 20th Street North  
Birmingham, Alabama 35203-2216

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Birmingham City Council President  
Birmingham City Hall – Third Floor  
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James Roberson, Jr.  
Birmingham City Councilor  
Birmingham City Hall – Third Floor  
Office of the City Council  
710 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203-2216

Dear Sirs and Madams:

I write to you seeking your immediate assistance in resolving issues related to the rate of pay for Birmingham Fire and Rescue employees. In doing so, I neither question the authority of either the Mayor or the City Council to modify the rate of pay for employees of the City of Birmingham, nor do I intend to take a position on the correctness of the decisions made or allegedly made by current or former mayors and council members. My intent is to obtain clarification regarding the annual hours worked by City fire and rescue employees and the rate of the pay the City has been paying and intends to pay City fire and rescue employees. This information is required by the Personnel Board of Jefferson County so that it may fulfill its statutory obligations to ensure that merit system employees are paid according to approved salary schedules.

The Personnel Board is statutorily required to develop a pay plan establishing the rates of pay for merit system employees and to certify that the salary paid by the City to merit system employees is the rate of pay to which those employees are entitled under the Personnel Board salary schedules. (See Sections 12 and 24 of the *Enabling Act*). The City of Birmingham may change the established rate of pay for City employees by presenting a resolution from the governing body to the Personnel Board for consideration. It is unlawful for the City to pay a salary that is different from the salary approved by the Personnel Board.

The salary schedule for the City of Birmingham is made up of four parts: the base salary schedule, the public safety salary schedule, the firefighter rate sheet, and the medical rate sheet. All parts of the salary schedule are posted on the website of the Personnel Board.<sup>1</sup> The hourly rates of pay reflected on the base salary schedule and the public safety salary schedule are based on the assumption that the employee works 2080 hours per year. The hourly rates of pay for fire and rescue personnel are calculated on the assumption that those employees work 2704 hours per year.<sup>2</sup>

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<sup>1</sup> [www.pbjcal.org](http://www.pbjcal.org); Classification and Compensation; salary schedules

<sup>2</sup> At all times since at least 1991, the hourly rates for City of Birmingham fire personnel have been computed on the assumption that those employees work 2704 hours per year. The Personnel Board has received no request from the City since 1991 to modify the annual hours of work for fire personnel.

As you may know, the issue of the proper salary for this group of employees has surfaced on more than one occasion. From the Board's perspective, the genesis of the current issue goes back to 2007. I provide the following brief summary of the history of this issue so that you have the benefit of information that prompts my request for your assistance.

On October 19, 2006, the City forwarded Resolution 2013-06 to the Board. This resolution made a three-step adjustment for public safety employees and specifically rescinded a \$200 uniform allowance previously paid to certain public safety employees. The Board approved this resolution on November 16, 2006. On January 12, 2007, the City forwarded Resolution 2851-06 to the Board. This resolution, which relates back to Resolution 2013-06, clarified that the effective date of Resolution 2013-06 was the fiscal 2008 budget. The Board approved this resolution on January 23, 2007.<sup>3</sup>

In July 2007, the City passed Resolution 1170-07, awarding a four percent salary increase to all employees. This resolution was forwarded to the Personnel Board in early August 2007. When transmitting this resolution for Board consideration, the City attached a proposed salary schedule that improperly rolled the uniform allowance into the base pay for public safety employees. The Personnel Board sought clarification from the City regarding the City's intent with respect to the uniform allowance and advised the City that a resolution would be required in order to approve a salary schedule that included the uniform allowance in the base pay. No such resolution was ever provided. In November 2007, the Personnel Board acknowledged 1170-07 and approved 2013-06, specifically stating, however, that the City's proposed salary schedule attached to the resolution was not approved. Consistent with the Board's long-standing practice, the Personnel Board generated salary schedules that were to be used by the City of Birmingham.

In November 2007, I began communicating with then Mayor Langford and other City officials expressing concern about the discrepancy between the pay rates approved by the Personnel Board and the pay practices of the City.

On July 31, 2008, the City forwarded to the Personnel Board Resolution 838-08, which awarded a one percent across-the-board salary increase to City employees. The effective date of this salary change was June 21, 2008. The resolution stated, in part, as follows:

BE IT RESOLVED by the Council of the City of Birmingham that the schedule of salaries entitled "Standard Salary Schedule, City of Birmingham, One Percent" consisting of 7 consecutive pages showing

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<sup>3</sup> The City subsequently advised the Board that the effective date for implementation of Resolution 2013-06 was May 10, 2008.

the amounts for pay grades 1 through 132 inclusive, be and the same is hereby approved and established as the pay plan for all applicable employees of the city effective June 21, 2008, said salary schedule being on file in the Office of the City Clerk and presently before the Council."

The Personnel Board acknowledged this resolution on August 12, 2008. On August 14, 2008, I advised the former Director of Personnel for the City of Birmingham that the Board acknowledged the one percent increase and that resolutions regarding salary changes should state the percentage change in the rate of pay, not a percentage as reflected on a proposed salary schedule. The Board again generated modified salary schedules for City employees. Resolution 838-08 is the last resolution the City has presented to the Personnel Board regarding salaries to be paid to City employees.

According to the Board's salary schedules which implement the above-described resolutions, a City of Birmingham employee who works 2080 hours per year who holds a Grade 17, step 1 position was to be paid an annual salary of \$35,609.60 with an hourly rate of pay of \$17.12. A firefighter for the City of Birmingham who works 2704 hours per year who holds a Grade 17, step 1 position was to be paid an annual salary of \$35,609.60 with an hourly rate of pay of \$13.1692.

In late July of this year, the Personnel Board learned, for the first time, that the City of Birmingham had not been paying firefighters at the Board approved pay rates for City firefighters. The Personnel Board also learned for the first time that, sometime in 2008, the City changed the annual hours of work for firefighters from 2704 to 2600.<sup>4</sup> The City, through counsel, was advised that the City's salary schedule would have to be adjusted and was referred to the process to be used by the City to initiate a change in the salary schedule. To date, the Personnel Board has not received a resolution from the governing body seeking to adjust the salary schedule for any City employees.

At the September 14, 2010 meeting of the Personnel Board, firefighters spoke to the three-member Board regarding the difficulties they face due to the uncertainty of their compensation. They presented pay stubs reflecting payment based upon the hourly rate reflected on the public safety salary schedule, not the firefighter rate. (In other words, using the example above, a firefighter was paid \$17.12 per hour not \$13.1692). They confirmed that sometime in 2008, the annual hours worked for firefighters was reduced from 2704 hours to 2600 hours. The firefighters maintained that in 2008 the City's actions were intended to and resulted in a change in the

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<sup>4</sup>Because of various issues preventing the electronic transfer of data from the City of Birmingham to the Personnel Board and the City of Birmingham's refusal until January 10, 2010 to send payroll information to the Board, the Personnel Board has not been in a position to certify payroll and was thus unaware of the City's change in pay practices.

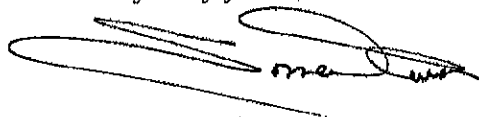
manner of compensation for fire and rescue personnel such that firefighters were to be paid for hours worked at the hourly rate of pay reflected on the public safety salary schedule. The firefighters stated that in the past several days they made inquiries within the City regarding what, if any, changes would be made to their salary and were told that no changes had been implemented.

On September 15, 2010, the Personnel Board was advised by employees of the City of Birmingham that the City would, effective August 28, 2008, change the hourly rate to be paid to firefighters. Thus, it appears that the City intends to no longer pay fire personnel at the hourly rates reflected on the public safety salary schedule. It also appears that the City will pay a rate based upon 2600 hours of work annually.

It is unclear to the Personnel Board the rate of the pay at which the City intends to compensate fire and rescue personnel. Although the Personnel Board of Jefferson County received nothing in 2008 or at any time since to indicate that the City intended to change decades of practice with respect to the manner in which fire and rescue personnel were to be compensated, it appears that the City, intentionally or unintentionally, compensated those employees at a rate of pay reflected on the public safety salary schedule not the firefighter rate. This matter is of critical importance to hundreds of merit system employees and needs an expeditious resolution. The Personnel Board requests that the governing body of the City of Birmingham send a resolution to the Personnel Board stating the annual hours of work for fire and rescue personnel, and whether those personnel are to be compensated at the hourly rates reflected in the Personnel Board's Public Safety Salary Schedule for the City of Birmingham or the firefighter rates for the City of Birmingham.<sup>5</sup> Should such a resolution be submitted, the Personnel Board would consider the resolution as soon as possible.

My staff and I are available to discuss this matter with you further and welcome the opportunity to work with you to resolve this matter as quickly as possible. Please do not hesitate to call upon us.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lorren O. Oliver", is written over a horizontal line.

Lorren O. Oliver

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<sup>5</sup> If the City utilizes firefighter rates, the annual salary would be divided by the annual hours worked to determine the hourly rate. For example, the hourly rate of pay for a Grade 17, Step 1 employee who worked 2600 hours per year would be \$13.70 per hour (\$35,609.60 divided by 2600).