

County Council of Cuyahoga County, Ohio

Ordinance No. O2011-0043

Sponsored by: County Executive FitzGerald/Human Resource Commission	An Ordinance providing for adoption of the Cuyahoga County Civil Service Pay Equity Plan, and declaring the necessity that this Ordinance become immediately effective.
----------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

WHEREAS, Section 9.01 of the Charter of Cuyahoga County states that the Human Resource Commission shall be responsible for administering, for and in cooperation with the officers, agencies, boards and commissions of the County, an efficient and economical system for the employment of persons in the public service according to merit and fitness (the “Civil Service System”); and,

WHEREAS, Section 9.02 of the Charter of Cuyahoga County states that the Human Resource Commission shall have authority to ensure pay equity for like positions; and,

WHEREAS, Section 9.01 of the Charter of Cuyahoga County states that the County’s human resources policies and systems shall be established by ordinance and shall be administered in such a manner as will eliminate unnecessary expense and duplication of effort, while ensuring that persons will be employed in the public service without discrimination on the basis of race, color, religion, sex, national origin, sexual orientation, disability, age or ancestry; and,

WHEREAS, the County’s current Civil Service System is codified in Chapter 124 of the Ohio Revised Code, Chapter 123:1 of the Ohio Administrative Code, the Cuyahoga County Administrative Rules and the Policies and Procedures Manual; and,

WHEREAS, Section 2.10 of the Cuyahoga County Personnel Policies and Procedures Manual (Ordinance Nos. O2011-0015 and O2011-0028) states that the employment of all classified County employees is subject to the provisions of the Ohio Revised Code (Chapter 124), the Ohio Administrative Code (Chapter 123:1), the Cuyahoga County Administrative Rules and the Policies and Procedures Manual; and,

WHEREAS, Section 301.23 of the Ohio Revised Code authorizes a charter-created county civil service commission to create a new system for employment with the county on the basis of merit and fitness, as ascertained by competitive examination; and,

WHEREAS, on August 17, 2011, the Human Resource Commission adopted a motion recommending certain amendments to the County’s current Civil Service

System as codified in Chapter 124 of the Ohio Revised Code, Chapter 123:1 of the Ohio Administrative Code, the Cuyahoga County Administrative Rules and the Policies and Procedures Manual (the “Cuyahoga County Civil Service Pay Equity Plan”); and,

WHEREAS, the amendments proposed by the Human Resource Commission are designed to create pay equity for County employees performing similar duties; and,

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County agency.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Council hereby adopts the following changes to the County’s current Civil Service System as codified in Chapter 124 of the Ohio Revised Code, Chapter 123:1 of the Ohio Administrative Code, the Cuyahoga County Administrative Rules and the Policies and Procedures Manual (the “Cuyahoga County Civil Service Pay Equity Plan”) (added language underlined; deleted language in ~~strikethrough~~; sub-sections that are either deleted or remain in their entirety are noted in *italics* and parentheses):

The Cuyahoga County Pay Equity Plan

A. **OHIO REVISED CODE:** The following sections of Chapter 124 of the Ohio Revised Code are hereby amended as they apply to County employees. All sections in Chapter 124 that are not specifically identified in bold below remain in full effect in their entirety.

124.14 - Job Classification - Pay Ranges.

(A)(1) The Director of Human Resources shall establish, and may modify or rescind, subject to approval by the Human Resource Commission, the County Executive, and County Council, a job classification plan in accordance with the requirements of Section 9.04 of the Cuyahoga County Charter. The Director shall group jobs within a classification so that the positions are similar enough in duties and responsibilities to be described by the same title, to have the same pay assigned with equity, and to have the same qualifications for selection applied. The Director shall assign a classification title to each classification within the classification plan. However, the Director shall consider in establishing classifications, including classifications with parenthetical titles, and assigning pay ranges such factors as duties performed only on one shift, special skills in short supply in the labor market, recruitment problems, separation rates, comparative salary rates, the amount of training required, and other conditions affecting employment. The Director shall describe the duties and responsibilities of the class, and establish the qualifications for being employed in each position in the class.

The Director shall assign each classification to an equitable pay range.

(2) The Director may reassign to a proper classification those positions and/or employees that have been assigned to an improper classification. The Director may also assign a proper classification to a County employee who qualifies for classification but has not previously been assigned to one. If a reassignment or new assignment occurs, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification.

(3) *(Deleted in its entirety)*

(4) The Director shall, subject to approval by the Human Resource Commission, the County Executive, and County Council, assign related classifications, which form a career progression, to a classification series. The Director shall, subject to approval by the Human Resource Commission, the County Executive and County Council, assign each classification in the classification plan a five-digit number, the first four digits of which shall denote the classification series to which the classification is assigned. When a career progression encompasses more than ten classifications, the Director shall, subject to approval by the Human Resource Commission, the County Executive and County Council, identify the additional classifications belonging to a classification series. The additional classifications shall be part of the classification series, notwithstanding the fact that the first four digits of the number assigned to the additional classifications do not correspond to the first four digits of the numbers assigned to other classifications in the classification series.

(5) *(Deleted in its entirety)*

(B) Division (A) of this section only applies to those positions identified in Section 9.03 of the Charter. (1) *(Deleted in its entirety)*

(2) *(Deleted in its entirety)*

(3) *(Deleted in its entirety)*

(4) *(Deleted in its entirety)*

(5) *(Deleted in its entirety)*

(C) *(Retained in its entirety)*

(D)(1) When the Director proposes to modify a classification or the assignment of classes to appropriate pay ranges, the Director shall send written notice of the proposed rule to the Human Resource Commission. The Human Resource Commission shall review the proposed action in an open meeting. If the Human Resource Commission approves of the proposed action, it shall submit the proposed action to County Council.

(2) When the Director proposes to reassign any employee or reclassify any position so that an employee is adversely affected, the Director shall give to the employee affected and to the employee's appointing authority a written notice setting forth the proposed new classification, pay range and step, and salary. If the reclassification results in a reduction in salary, the employee shall be offered an opportunity to meet with the Director or designee to dispute the proposed change. Subsequent to this meeting, or the employee's waiver of this meeting, the Director shall provide the employee written notice of the final decision regarding the proposed reduction. The employee may then file an appeal of the Director's final decision to the Human Resource Commission in accordance with the process described below.

Upon the request of any classified employee who is not serving in a probationary period, the Director shall perform a job audit to review the classification of the employee's position to determine whether the position is properly classified. The Director shall give to the employee affected and to the employee's appointing authority a written notice of the Director's determination whether or not to reclassify the position or to reassign the employee to another classification. An employee desiring a hearing shall file a written request for the hearing with the Human Resource Commission within the timeframe as set forth in the Human Resource Commission's Rules. The Commission shall set the matter for a hearing and notify the employee and appointing authority of the time and place of the hearing. The employee, the appointing authority, or any authorized representative of the employee who wishes to submit facts for the consideration of the board shall be afforded reasonable opportunity to do so. After the hearing, the Commission shall consider anew the reclassification and may order the reclassification of the employee and require the Director to assign the employee to such appropriate classification as the facts and evidence warrant. As provided in division (A)(1) of section 124.03 of the Revised Code, the Commission may determine the most appropriate classification for the position of any employee coming before the board, with or without a job audit. The Commission shall disallow any reclassification or reassignment classification of any employee when it finds that changes have been made in the duties and responsibilities of any particular employee for political, religious, or other unjust reasons.

(E) *(Deleted in its entirety)*

(F) *(Deleted in its entirety)*

(G) *(Retained in its entirety)*

(H) *(Deleted in its entirety)*

(I) The Director shall set the rate of compensation for all intermittent, seasonal, temporary, emergency, and casual employees in the service of the County who are not considered public employees under section 4117.01 of the Revised Code.

124.34 - Reduction in Pay or Position - Suspension - Removal.

(A) The tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts of the state, holding a position under this chapter, shall be during good behavior and efficient service. No officer or employee shall be reduced in pay or position, fined, suspended, or removed except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. The denial of a one-time pay supplement or a bonus to an officer or employee is not a reduction in pay for purposes of this section.

This section does not apply to any modifications or reductions in pay authorized by division (A)(2) of Section 124.14, division (O) of section 124.181 or section 124.392 or 124.393 of the Revised Code.

An appointing authority may require an employee who is suspended to report to work to serve the suspension. An employee serving a suspension in this manner shall continue to be compensated at the employee's regular rate of pay for hours worked. The disciplinary action shall be recorded in the employee's personnel file in the same manner as other disciplinary actions and has the same effect as a suspension without pay for the purpose of recording disciplinary actions.

A finding by the appropriate ethics commission, based upon a preponderance of the evidence, that the facts alleged in a complaint under section 102.06 of the Revised Code constitute a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code may constitute grounds for dismissal. Failure to file a statement or falsely filing a statement required by section 102.02 of the Revised Code may also constitute grounds for dismissal. The tenure of an employee in the career professional service of the department of transportation is subject to section 5501.20 of the Revised Code.

Conviction of a felony is a separate basis for reducing in pay or position, suspending, or removing an officer or employee, even if the officer or employee has already been reduced in pay or position, suspended, or removed for the same conduct that is the basis of the felony. An officer or employee may not appeal to the state personnel board of review or the commission any disciplinary action taken by an appointing authority as a result of the officer's or employee's conviction of a felony. If an officer or employee removed under this section is reinstated as a result of an appeal of the removal, any conviction of a felony that occurs during the pendency of the appeal is a basis for further disciplinary action under this section upon the officer's or employee's reinstatement.

A person convicted of a felony immediately forfeits the person's status as a classified employee in any public employment on and after the date of the conviction for the felony. If an officer or employee is removed under this section as a result of being convicted of a felony or is subsequently convicted of a felony that involves the same conduct that was the basis for the removal, the officer or employee is barred from receiving any compensation after the removal notwithstanding any modification or disaffirmance of the removal, unless the conviction for the felony is subsequently reversed or annulled.

Any person removed for conviction of a felony is entitled to a cash payment for any accrued but unused sick, personal, and vacation leave as authorized by law. If subsequently reemployed in the public sector, the person shall qualify for and accrue these forms of leave in the manner specified by law for a newly appointed employee and shall not be credited with prior public service for the purpose of receiving these forms of leave.

As used in this division, "felony" means any of the following:

- (1) A felony that is an offense of violence as defined in section 2901.01 of the Revised Code;
- (2) A felony that is a felony drug abuse offense as defined in section 2925.01 of the Revised Code;
- (3) A felony under the laws of this or any other state or the United States that is a crime of moral turpitude;
- (4) A felony involving dishonesty, fraud, or theft;
- (5) A felony that is a violation of section 2921.05, 2921.32, or 2921.42 of the Revised Code.

(B) In case of a reduction, a suspension of more than forty work hours in the case of an employee exempt from the payment of overtime compensation, a suspension of more than twenty-four work hours in the case of an employee required to be paid overtime compensation, a fine of more than forty hours' pay in the case of an employee exempt from the payment of overtime compensation, a fine of more than twenty-four hours' pay in the case of an employee required to be paid overtime compensation, or removal, except for the reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action.

An employee may appeal such order in accordance with the Rules set forth by the Human Resource Commission. If an appeal is filed, the Human Resource Commission shall forthwith notify the appointing authority and shall hear, or appoint a hearing officer to hear, the appeal. The Human Resource Commission may affirm, disaffirm, or modify the judgment of the appointing authority. However, in an appeal

of a removal order based upon a violation of a last chance agreement, the Human Resource Commission may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority.

Either the employee or the appointing authority may appeal the decision of the Human Resource Commission to the Cuyahoga County Court of Common Pleas in accordance with general law.(C) *(Deleted in its entirety)*

(D) A violation of division (A)(7) of section 2907.03 of the Revised Code is grounds for termination of employment of a nonteaching employee under this section.

(E) As used in this section, “last chance agreement” means an agreement signed by both an appointing authority and an officer or employee of the appointing authority that describes the type of behavior or circumstances that, if it occurs, will automatically lead to removal of the officer or employee without the right of appeal to the state personnel board of review or the appropriate commission.

B. OHIO ADMINISTRATIVE CODE - The following section of Chapter 123:1 of the Ohio Administrative Code is hereby amended as it applies to County employees. All sections in Chapter 123:1 that are not specifically identified in bold below remain in full effect in their entirety.

123:1-7-22 – Reassignments by the Director of Human Resources

The Director may reassign to a proper classification those positions and/or employees that have been assigned to an improper classification. The Director may also assign a proper classification to a County employee who qualifies for classification but has not previously been assigned to one. If a reassignment or new assignment occurs, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee’s relative skill level, education and experience as compared to the employees currently existing in the classification. Such placement may result in the employee maintaining their current salary, or may result in an increase or reduction in salary.

If the reclassification results in a reduction in salary, the employee shall be offered an opportunity to meet with the Director or designee to dispute the proposed change. Subsequent to this meeting, or the employee’s waiver of this meeting, the Director shall provide the employee written notice of the final decision regarding the proposed reduction. The employee may then file an appeal of the Director’s final decision to the Human Resource Commission in accordance with the Commission’s rules.

(B) *(Deleted in its entirety)*

(C) *(Deleted in its entirety)*

C. CUYAHOGA COUNTY ADMINISTRATIVE RULES - The following section of the Cuyahoga County Administrative Rules is hereby amended. All sections in the Cuyahoga County Administrative Rules that are not specifically identified in bold below remain in full effect in their entirety.

Rule No. 3 – Position Audits

The Director of Human Resources may initiate a position audit and reassign to a proper classification those positions and/or employees that have been assigned to an improper classification. The Director may also assign a proper classification to a County employee who qualifies for classification but has not previously been assigned to one.

Non-probationary, non-bargaining, classified employees who believe that their duties have changed significantly and feel that their classification is no longer appropriate may request a position audit. An employee wishing to initiate a position audit shall submit their request in writing to the Director of Human Resources. Upon receipt of the employee's request, or upon request of the Director of Human Resources, Human Resources shall forward a Comprehensive Position Questionnaire (CPQ) to the employee for completion. The CPQ will be accompanied by a cover letter and instructions for completing the CPQ. The cover letter will also be sent to the employee's Department Director.

The employee shall return the completed CPQ forms to Human Resources within thirty (30) days of receipt. The employee may request in writing to the Director of Human Resources a **onetime** extension of time in which to complete the CPQ. The deadline, however, may not be extended beyond thirty (30) days after the original due date.

Human Resources will review all submitted information and will make a determination as to the appropriate classification. To meet the classification criteria, an employee must perform the mandatory duties stated in the classification function at least 20% of the time. Prior to rendering a decision on the position audit request, Human Resources reserves the right to conduct an on-site audit. Upon completion of their review, Human Resources will provide written notice of the position audit to the employee with a copy to the Department Director. If the reclassification results in a reduction in salary, the employee shall be offered an opportunity to meet with the Director or designee to dispute the proposed change. Subsequent to this meeting, or the employee's waiver of this meeting, the Director shall provide the employee written notice of the final decision regarding the proposed reduction.

The employee has the right to appeal the decision rendered by Human Resources. This must be done in writing to the Cuyahoga County Human Resources Commission (HRC) within the time frame set forth in the Human Resource Commission's Rules

If a reassignment or new assignment occurs, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification.

Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification.

If the position audit results in no change in the employee's classification, but a change in the pay range assignment of the classification, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification.

If the position audit results in the employee receiving a higher salary, any salary adjustment will be computed retroactive to the beginning of the first pay period following the date that the written request for the position audit was received by Human Resources. If the position audit results in the employee receiving a lower salary, any salary adjustment will begin the first day of the first pay period following the date of the final decision by the Director of Human Resources. If the position audit results in the creation of a new classification and/or pay range, any salary adjustment will be effective the first pay period following approval of the new classification and/or pay range by the County (i.e., not retroactive)

If, after conducting a position audit on an employee, Human Resources becomes aware of similarly situated employees, it will reassign the other employees, effective the beginning of the first pay period following the date that the decision was rendered on behalf of the employee that had requested the audit. For purposes of this section, a "similarly situated employee" is an employee that performs the same essential job functions and responsibilities as the audited employee. Similarly situated employees will not be entitled to retroactive pay increases.

D. CUYAHOGA COUNTY PERSONNEL POLICIES AND PROCEDURES MANUAL - The following section the Cuyahoga County Personnel Policies and Procedures Manual is hereby amended. All sections in the Cuyahoga County Personnel Policies and Procedures Manual that are not specifically identified in bold below remain in full effect in their entirety.

Section 5.09 – Non-Bargaining Position Audits

The Director of Human Resources may initiate a position audit and reassign to a proper classification those positions and/or employees that have been assigned to an improper classification. The Director may also assign a proper classification to a County employee who qualifies for classification but has not previously been assigned to one.

Non-probationary, non-bargaining, classified employees who believe that their duties have changed significantly and feel that their classification is no longer appropriate may request a position audit.

An employee wishing to initiate a position audit shall submit their request in writing to the Director of Human Resources. Upon receipt of the employee's request, or upon request of the Director of Human Resources, Human Resources shall forward a Comprehensive Position Questionnaire (CPQ) to the employee for completion. The CPQ will be accompanied by a cover letter and instructions for completing the CPQ. The cover letter will also be sent to the employee's Department Director.

The employee shall return the completed CPQ forms to Human Resources within thirty (30) days of receipt. The employee may request in writing to the Director of Human Resources a **onetime** extension of time in which to complete the CPQ. The deadline, however, may not be extended beyond thirty (30) days after the original due date.

Human Resources will review all submitted information and will make a determination as to the appropriate classification. To meet the classification criteria, an employee must perform the mandatory duties stated in the classification function at least 20% of the time. Prior to rendering a decision on the position audit request, Human Resources reserves the right to conduct an on-site audit. Upon completion of their review, Human Resources will provide written notice of the position audit to the employee with a copy to the Department Director. If the reclassification results in a reduction in salary, the employee shall be offered an opportunity to meet with the Director or designee to dispute the proposed change. Subsequent to this meeting, or the employee's waiver of this meeting, the Director shall provide the employee written notice of the final decision regarding the proposed reduction.

The employee has the right to appeal the decision rendered by Human Resources. This must be done in writing to the Cuyahoga County Human Resource Commission (HRC) within the time frame set forth in the Human Resource Commission's Rules.

NOTE: Employees may lose their appeal rights if their own negligence caused them to fail to receive the position audit decision from Human Resources (i.e., failure to list correct mailing address on Request for Position Audit Form or failure to sign for the certified letter).

If a reassignment or new assignment occurs, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification.

If the position audit results in no change in the employee's classification, but a change in the pay range assignment of the classification, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification.

If the position audit results in the employee receiving a higher salary, any salary adjustment will be computed retroactive to the beginning of the first pay period following the date that the written request for the position audit was received by Human Resources. If the position audit results in the employee receiving a lower salary, any salary adjustment will begin the first day of the first pay period following the date of the final decision by the Director of Human Resources. If the position audit results in the creation of a new classification and/or pay range, any salary adjustment will be effective the first pay period following approval of the new classification and/or pay range by the County (i.e., not retroactive).

If, after conducting a position audit on an employee, Human Resources becomes aware of similarly situated employees, it will reassign the other employees, effective the beginning of the first pay period following the date that the decision was rendered on behalf of the employee that had requested the audit. For purposes of this section, a “similarly situated employee” is an employee that performs the same essential job functions and responsibilities as the audited employee. Similarly situated employees will not be entitled to retroactive pay increases.

An employee may not request a position audit more than once in a twelve-month (12) rolling period unless documentation acceptable to the Director of Human Resources is provided at the time of the second request that the job has substantially changed since the date of the completion of the previous audit.

An employee who has received a classification change pursuant to this Section is not required to serve a new probationary period.

NOTE: Bargaining unit employees should refer to their collective bargaining agreement for information on position audits.

SECTION 2. It is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue, and to continue the usual and daily operation of a County agency. Provided that this Ordinance receives the affirmative vote of eight members of Council, this Ordinance shall become immediately effective upon the signature of the County Executive.

SECTION 3. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Rogers, seconded by Mr. Gallagher, the foregoing Ordinance was duly enacted.

Yeas: Miller, Brady, Germana, Gallagher, Schron, Conwell, Jones, Rogers, Simon, Greenspan and Connally

Nays: None

_____	_____
County Council President	Date
_____	_____
County Executive	Date
_____	_____
Clerk of Council	Date

First Reading/Referred to Committee: August 23, 2011
Committee(s) Assigned: Human Resources, Appointments & Equity

Second Reading/Referred to Committee: September 13, 2011
Committee(s) Assigned: Human Resources, Appointments & Equity

Journal CC004
October 11, 2011