

**CIVIL SERVICE COMMISSION**

**OF**

**CITY OF NEW FRANKLIN, OHIO**

**RULES AND REGULATIONS**

**2015**

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## **PREAMBLE**

The following rules and regulations are adopted in accordance with the authority conferred upon the Municipal Civil Service Commission of the City of New Franklin, Ohio (“Commission” and “City” respectively), under the authority of Articles XV and XVIII and other provisions of the Constitution of the State of Ohio, the Charter and Ordinances of the City, and Chapter 124 and other provisions of the Ohio Revised Code (“Revised Code” or “R.C.”).

These rules and regulations will become effective upon adoption by New Franklin City Council

**CHAPTER ONE  
APPLICABILITY OF RULES**

**1.01 Scope of the Rules and Jurisdiction of the Commission**

- A. These rules shall be applicable to all civil service matters, except to the extent these rules have been superseded by a collective bargaining agreement between the employer and a public employee collective bargaining representative, or by charter or ordinance. Except as otherwise provided herein, these rules shall apply to all positions and employees in the classified service of the City. Certain of these rules will also apply to the unclassified service, as the rule or context indicates, for example where it is necessary to identify who is in the unclassified service, as opposed to the classified service. A reference to the “classified service” in certain instances in these rules shall not indicate intent to apply the remaining rules to the unclassified service.
- B. No person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted, or reduced as an officer or employee in the civil service of the City in any manner or by any means other than those prescribed in these rules.

**1.02 Construction**

These rules should be construed so as to carry out their purposes as determined from both the literal reading of the rules and their context. The rules should be construed and applied in a manner that is consistent with the laws of the State of Ohio, except to the extent that the letter or context of the City charter or ordinances indicates that the City intended to supersede, preempt, or otherwise override state law through a valid exercise of Home Rule. The rules should not be construed so as to limit the City’s power to exercise Home Rule or its other lawful authority. Nor should the rules be construed in a way that limits the Commission’s power to interpret and apply the rules within the scope of the Commission’s lawful authority.

Applicable federal laws and regulations shall prevail over any and all of the above. Citations in these rules to state and federal laws and regulations and City charter or ordinances are meant to incorporate amendments to same as they are made from time to time.

For the convenience of the Commission and the public, certain of these rules may indicate instances where the City has elected to supersede state law.

**1.03 Adoption, Amendment, Rescission**

Unless otherwise indicated, these rules and any amendment, revision, or rescission of the same shall be in full force and effect from and after their publication and adoption by both the Commission and New Franklin City Council.

**1.04 Publication**

No action of the Commission adopting a rule or regulation, or amendment, revision, or rescission of the same shall be effective until notice of the same with summary of its content has been prominently displayed in the places of employment of the City that are frequented on a regular basis by classified employees and officers of the City in the discharge of their

official duties, and until the content of the same has been made available for public review. No change is effective without approval of New Franklin City Council.

### 1.05 Savings Clause

If any section or part of a section of these rules is held by a court of competent jurisdiction to be unconstitutional, or to be invalid for any other reason, said action shall not invalidate or impair the validity, force, or effect of any other section or part of a section of these rules, unless it clearly appears that such other section or part of a section of these rules is wholly or necessarily dependent for its operation on the section or part of a section that has been held invalid.

## CHAPTER TWO DEFINITIONS

As used in these Rules and Regulations, or in the administration of the civil service laws, the following definitions shall apply:

- A. **"Appointing Authority"** means the Mayor of the City.
- B. **"Available Vacancy"** means an existing, funded position not currently filled by an incumbent that the appointing authority desires to fill. The existence of vacant positions on City's table of organization or roster of positions shall not mean that a position is an available vacancy.
- C. **"Certification"** means the process of providing to an appointing authority the names on an eligible list or layoff list.
- D. **"Certified Eligible List"** means a list issued to an appointing authority of individuals available for employment from an eligible list.
- E. **"City"** means the City of New Franklin, Ohio.
- F. **"Council"** means the New Franklin City Council.
- G. **"Civil Service"** includes all employees and offices in the service of the City.
- H. **"Classified Service"** means those persons, in the employ of the City that are in competitive classified civil service status due to their job positions. City charter shall determine those positions that are unclassified.  
  
In any situation in which the status of an employee, as being either classified or unclassified, is in issue, the burden shall be upon the appointing authority to establish such status by a preponderance of evidence.
- I. **"Commission"** means the Municipal Civil Service Commission of the City as established by the New Franklin Charter.
- J. **"Days"** means calendar days unless specified otherwise.

- K. **"Eligible"** means an applicant for appointment or promotion to a classification who has passed an examination and met other requirements for the classification, and who is willing to accept appointment.
- L. **"Eligible List"** means a list of names and test scores of individuals who, through examination, have been found qualified for the same, and each of whom has been afforded a specific competitive rank in relation thereto by arrangement based on total scores achieved.
- M. **"Employee"** means any person holding a position subject to appointment, removal, promotion, or reduction by an appointing authority.
- N. **"Examination"** means an evaluation of one (1) or more applicants' suitability for employment in a particular position and/or classification in accordance with these rules. Examinations may consist of an evaluation of training and experience or a written, oral, or other test (see Rule 7.02 types of examinations). The type of examination may depend on the position to be filled.
- O. **"He"** is a masculine pronoun that, whenever it or its derivatives are mentioned, includes the feminine pronoun "she" and its derivatives.
- P. **"Position,"** when used by itself, refers to any specified office, employment, or job, calling for the performance of certain duties, either full time or part time, and for the exercise of certain responsibilities by one (1) individual.
- Q. **"Position Classification"** refers to the arrangement of positions into classifications. Positions shall be classified in accordance with the duties and responsibilities of the position.
- R. **"Promotion"** means the act of placing an employee in a position, the classification for which carries a higher salary range or rate than the classification of the position previously held by the employee.
- S. **"Revised Code"** means the Ohio Revised Code (or "R.C.").
- T. **"Rules"** means the Rules and Regulations of the Commission as adopted by the New Franklin City Council..
- U. **"Secretary"** means the Secretary of the Commission.
- V. **"Specification"** means a general description of a job classification specifying or giving examples of the kinds of tasks expected to be performed by employees holding positions allocated to that classification; which may include a classification title and a number, a statement of job functions, a grouping of task statements by job duties (ranked by importance), approximate percentages of total job time required for the performance of each duty, worker characteristics or behaviors required for successful completion of all tasks within each duty, and minimum qualifications for competition for employment in the classification.
- W. **"Unclassified Service"** means all offices and positions that are exempt from civil service examination and that provide no civil service tenure under the law. Unclassified status is determined by New Franklin Charter Provision 7.03(C).



**CHAPTER THREE  
GENERAL PROVISIONS**

**3.01 Appointments to the Commission**

The Civil Service Commission shall consist of three (3) members, appointed for staggered terms of six (6) years, or until their successors have been appointed.

The Mayor shall appoint the members of the Civil Service Commission, with majority approval of Council.

**3.02 General Duties of the Commission**

The Commission shall:

- A. prescribe, amend, and enforce rules for the classification of positions in the civil service of the City; for examinations and registrations, and resignations from positions; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements to those positions; and for standardizing positions and maintaining efficiency;
- B. classify positions in the service of the City;
- C. prepare, conduct, and grade or assign a person to prepare, conduct, and grade all examinations for positions in the classified service;
- D. prepare and maintain eligible lists containing the names, scores, and rankings of all persons qualified for positions in the classified service;
- E. maintain a journal, which shall be open to the public for inspection, in which the Commission shall keep a record of its proceedings and of the vote of each of its members upon every action taken by it;
- F. keep and maintain the following records:
  - 1. a compilation and listing of all of the current and existing authorized positions within the civil service of the City;
  - 2. a current description as to the duties and responsibilities of the same; and retain on file documents and records related to job and employment actions as to each such position;
  - 3. a record of all applications and all examinations conducted by the Commission;
  - 4. service lists (rosters) of all persons in the classified civil service paid directly by warrant of the City containing the information specified in Rule 3.07;
- G. hear appeals provided for by law, including: appeals of employees in the classified service from final decisions of the employee's appointing authority relative to reduction in pay or position,<sup>1</sup> job abolishment, layoff, suspension, fine, or discharge,

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<sup>1</sup> Prohibitions against reductions in pay or position do not apply to modifications or reductions in pay or work week

or final decisions of the appointing authority or the Commission relative to assignment or reassignment to a new or different position classification or a refusal to reclassify the employee's position; however, adverse actions based on certain felony convictions may not be appealed, per R.C. 124.34 (A); furthermore a party may not file a second appeal from a decision of the Commission that resulted from an appeal in the first place – although, the Commission may allow motions for reconsideration;

- H. subpoena and require the attendance and testimony of witnesses and/or the production of books, papers, records, and other documentary evidence pertinent to any matter that the Commission has the authority to investigate, into which it has the authority to inquire, or that it has the authority to hear;
- I. furnish to the Mayor any special reports that the Mayor requests and prepare and submit to the Mayor an annual report showing the Commission's actions, rules, exceptions thereto in force, and any recommendations for the more effectual operation of the Commission; the Commission shall also make reports from time to time as the State Personnel Board of Review ("SPBR") requests of the manner in which the law and the rules and regulations of the Commission have been and are being administered in the City; the Commission shall file its rules and an annual report with the SPBR (the annual report may be the same as that submitted to the Mayor);
- J. appoint such additional referees (including hearing officers), inspectors, examiners, clerks, and/or assistants, as are necessary to assist and serve the Commission in its exercise of its duties, powers, functions, and responsibilities and/or contract for such services (e.g. consulting services to assist with classification of positions per R.C. 124.14), provided that Council has properly approved and appropriated the funds for the expense associated with the foregoing; furthermore, the Commission may delegate any functions it performs as the City equivalent of the Ohio Director of Administrative Services to any other City administrative office, or make use of such personnel or services as the City shall provide to assist the Commission;
- L. exercise all other powers and perform all other duties with respect to the civil service of the City as prescribed in R.C. Chapter 124 and conferred upon the Director of Administrative Services and the State Personnel Board of Review of the State of Ohio with respect to the civil service of the State of Ohio, except any powers or duties proscribed or superseded by Home Rule or an overriding collective bargaining agreement.
- M. The Commission may permit electronic posting, filing, and serving of documents. However applicants, employees filing appeals, and other interested parties may not rely on this rule alone. If the Commission determines to allow the use of electronic posting, or service, for a particular purpose, the Commission will announce it through a web-site posting, exam notice, procedural order, or similar means. If a person is unsure if it is allowed, he or she should contact the Commission's Secretary.

### **3.03 Officers, Agents, Expenses, and Salaries of the Commission**

#### **A. Election and Duties of the Chair and Vice Chair**

The Commission shall elect one of its members as Chair of the Commission, and one as Vice Chair, who shall each serve until their successors are elected, which election shall occur when a new member is appointed and qualified. It shall be the duty of the Chair:

1. to call such meetings of the Commission as are necessary to transact the business and affairs of the Commission;
2. to sign the minutes of all actions taken by the Commission;
3. to preside at all meetings of the Commission;
4. to work with the Secretary and the City Finance Director regarding the payment of money from the accounts and funds of the Commission;
5. to ensure that the annual report to the State Personnel Board of Review required by R.C. 124.40 and the annual report to the Mayor are assembled and transmitted in a timely manner.

In the absence of the Chair, the Vice Chair shall act as Chair of the Commission.

#### **B. Appointment and Duties of the Civil Service Commission Secretary**

The Commission shall appoint a suitable person to act as Secretary to the Commission, who shall also act as its Clerk. In the absence of the Secretary, the Commission may appoint a member of the Commission or another person to act as the temporary Secretary of the Commission in the place of the Secretary. The Secretary shall perform the following duties:

1. attend all meetings of the Commission and keep the minutes thereof;
2. keep in the form of minutes a record of the official actions of the Commission;
3. receive calls, accept service of filings, and provide access to Commission records;
4. process all applications;
5. accurately and properly maintain all of the records of the Commission;
6. keep all files in proper order;
7. prepare and deliver, or cause to be delivered, notices, and other communications ordered by the Commission;
8. properly furnish appointing authorities with eligibility lists;
9. maintain an official roster and service lists;
10. handle such correspondence as the Commission shall determine, including the annual report;
11. work with the Finance Director regarding the payment of money on behalf of the Commission;
12. make available to the public those documents deemed to be public records under the terms of R.C. 149.43;
13. perform other duties as assigned by the Commission.

#### **D. Expenses and Salaries of the Commission**

The stipend paid to members of the Commission shall be determined by Council.

### **3.04 Removal from the Commission**

Upon the receipt of a report from the State Personnel Board of Review, charging a member of the Commission with violating or failing to perform the duties imposed by law, or willfully or through culpable negligence violating the law by failure to perform his or her duties as a member of said Commission, along with the evidence on which the report is based, the Mayor shall forthwith remove the member. In all cases of removal, an appeal may be had if and as provided by law. The Mayor may at any time remove any member of the Civil Service Commission for inefficiency, neglect of duty, or malfeasance in office, having first given the member a copy of the charges against him or her, and an opportunity to be publicly heard in person or by counsel in his or her defense.

### **3.05 Meetings of the Commission**

- A. The first annual meeting of the Commission shall be its organizational meeting. The Commission shall hold such other meetings as may be called by the Chair of the Commission, or by two (2) members thereof.
- B. All meetings of the Commission are open to the public, except as set forth in R.C. 121.22, other applicable provisions of the Revised Code, and this rule.
- C. General minutes shall be taken at all Commission meetings and shall be open to public inspection.
- D. The Chair of the Commission may, on his or her own initiative, and shall, upon the request of the other two (2) members of the Commission, call a special meeting of the Commission to be held not later than ten (10) days from the date of notice of such meeting. Two (2) members of the Commission shall constitute a quorum at any meeting of the Commission. It shall require the affirmative vote of at least two (2) members to adopt any motion or resolution.
- E. Twenty-four (24) hours advance notice of any special meeting of the Commission must be given to the local news media and to other media that have requested notification, except in the event of an emergency requiring immediate official action.
- F. An executive session may be held only after a majority of a quorum of the members, by roll call vote, have approved such action. Such executive session may be convened to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a City employee coming under the jurisdiction of the Commission, unless such employee requests a public hearing. The motion and vote to hold the executive session shall state which one or more of these purposes are the purposes for which the executive session is being held, but need not name the person who is to be considered during the session. Executive session may also be held for other reasons enumerated in R.C. 121.22 and the other laws and regulations incorporated therein. Minutes of any executive session shall be appropriate to the nature of such executive session.

G. The order of business for meetings of the Commission shall be:

1. roll call;
2. disposition of unapproved minutes;
3. reports;
4. unfinished business;
5. new business;
6. adjournment.

### **3.06 Procedure for the Adoption, Amendment, or Rescission of Rules**

- A. Public notice as to the adoption, amendment, or rescission of any rule of the Commission must be given to the local news media at least fourteen (14) days prior to the date set for hearing and consideration of the rule. Revisions following the initial notification are not subject to the fourteen (14) day notice requirement.
- B. The public notice must contain a statement of the Commission's intention to alter or adopt a rule, and a statement as to the subject matter of the rule to be affected. In addition, the notice must contain the date, time, and place set for the consideration of the rule change.
- C. A copy of the full text of any proposed rule or rule change shall be submitted to the Mayor at least ten (10) days prior to the date set for consideration. Revisions following the initial submission are not subject to the ten (10) day requirement, but substantial revisions should be submitted reasonably in advance of adoption.
- D. Sections A through C above do not apply to an emergency rule, amendment, or rescission or to any rule, amendment, or rescission required by state or federal law or regulation.
- E. Commission rules shall be adopted at an open meeting by a majority vote and entered into the minutes. Interested parties may provide input in writing preferably in advance, or offer written or oral input at the meeting(s) called to consider the rules or rule changes. Copies of the rules or rule changes, together with the minutes of the Commission adopting the change, will be kept by the designee of the Commission and made available to any person upon request. Due notice of the contents of such rules and of all changes shall be given to appointing authorities affected by such rules, and such rules shall also be printed for public distribution.
- F. Once the Commission approves the rules they will be submitted to New Franklin Council for adoption in accordance with Council's home rule authority. The Rules become effective upon adoption by New Franklin Council.

### **3.07 Service Lists**

- A. Separate rosters, known as "service lists," of the City, shall contain the following:
  1. the name of every person employed by the City;
  2. the date of appointment;
  3. the title of the position;

4. the date of termination of employment or separation therefrom, if any;
  5. the designation of said employee and the position in which he or she serves as being in the classified or the unclassified service.
- B. In the case of rosters of classified positions, the rosters shall also show the following:
1. the dates of promotions, if any;
  2. the dates of suspension, if any; and
  3. in the case of termination of employment or separation therefrom, if any, the cause for same.
- C. Service lists shall be filed with the Commission and kept by the Secretary, and the lists shall be updated and revised periodically by written notice from the respective appointing authorities.

## **CHAPTER FOUR CLASSIFICATION**

### **4.01 Job Classification Plan**

- A. The Commission shall establish and may modify or rescind, by rule, a job classification plan for all positions, officers, and employment situations in the employ of the City whose positions the Commission is authorized to classify.
- B. Positions in the civil service shall be classified in accordance with the classification plan, which shall provide that any and all positions whose duties, responsibilities, and necessary qualifications are sufficiently alike as to so warrant, shall be allocated to the same class with a title that shall be descriptive of the duties performed, and that will allow for the assignment of pay ranges with equity.

The Commission has authority to classify jobs so pay may be assigned with equity, but the Commission will not set pay ranges or rates for any classification or for an employee seeking to have his or her classification assigned to a higher pay range.

- C. The Mayor, in conjunction with the applicable City Directors will supply the Commission with a classification specification for each job classification setting forth a class title, salary range, typical duties and responsibilities, and the necessary qualifications. The Commission shall also, by rule, assign related classifications that form a career progression to a classification series. The Commission shall, by rule, 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.
- D. Where particular licenses or attributes, such as insurability, are essential characteristics or functions of a position, the class series specification may be amended to so reflect. Such amendments may be requested by the appointing authority or may be made independently by the Commission, and must be reflected on the minutes of the Commission.

#### **4.02 Job Reclassification and Job Audits**

When the Commission proposes to reclassify any employee so that the employee is adversely affected, the Commission shall give the employee and the Mayor a written notice setting forth the proposed new classification.

Upon the request of any classified employee who is not serving a probationary period, the Commission shall perform a job audit to review the classification of the employee's position to determine whether the position is properly classified. The Commission shall give to the employee affected and to the Mayor a written notice of the Commission's determination whether or not to reclassify the position or to reassign the employee to another classification. The Commission may also determine the most appropriate classification for a position on its own volition, or at the request of an appointing authority.

### **CHAPTER FIVE CLASSIFIED AND UNCLASSIFIED SERVICE**

#### **5.01 Division of the Civil Service into Classified and Unclassified Service**

The civil service of the City shall be divided into the classified service and the unclassified service.

#### **5.02 Unclassified Service**

- A. The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required under these rules:
1. The Mayor and Members of Council;
  2. All directors and division heads, including the Chief of Police and the Fire Chief
  3. Members of all Municipality boards and commissions;
  4. Members of any reserve or part-time police force or unit and volunteer or part-time members of any fire force or division;
  5. Consultants and other engaged to provide services as independent contractors;
  6. Temporary employees who are not employed for more than one hundred eighty (180) days continuously, nor more than one hundred eighty ((180) days in a twelve (12) month period; and
  7. The Clerk of Council, other employees of Council, and the secretary of each Municipality board or commission established by the Charter or by ordinance, provided that if such clerk, employee or secretary shall hold other employment within the classified service of the Municipality, this section shall not exempt such person from the requirement of competitive examination to hold such other employment; and
  8. Any other administrative position determined to be unclassified by Council.  
**(Charter Provision 7.03)**

### **5.03 Classified Service**

The classified service shall comprise all persons in the civil service not specifically included in the unclassified service. Appointments shall be made to, or employment may be given in all positions in the classified service, except as may be filled by reinstatement, transfer, or reduction, as provided by ordinance, charter, or other law, and these rules, pursuant to competitive examination and appointment from those certified to the appointing officer in accordance with these rules. (**Charter Provision 7.03(C)**)

## **CHAPTER SIX APPLICATIONS**

### **6.01 Applications Generally**

All applications, whether for employment or for examination, must be submitted upon forms prescribed by the City of New Franklin and shall require the applicant to personally certify the truth and accuracy of the information contained in the application. All application forms must be completed in their entirety and must be typewritten or legibly printed in ink and submitted to the Commission in a timely manner. The Commission will provide a reasonable accommodation, if necessary, to assist an applicant in completing the form.

No applications shall be accepted after the date for filing has passed.

### **6.02 Forms for Applications**

Application forms shall be provided by the City and shall be available during normal operating hours in the City's Administration Office.

To the extent that references are reasonably necessary in the application process, the Commission may require of applicants such references as to the character of the applicant provided by persons having knowledge of the same as the Commission may require.

The application forms of individuals who successfully complete applications, and are placed on eligible lists, shall be retained by the Commission during the effective period of the eligible list. The application forms of individuals who are appointed to or employed in any classified civil service position shall be retained by the Commission during the tenure of said employee. These retention periods are minimums, however, and are subject to any applicable longer record retention periods required by the rules of the City Records Commission.

### **6.03 Method of Filing Applications**

Fully completed applications containing or accompanied by all of the information and accompanied by all of the documentation solicited by the application or the job notice, and executed by the applicant or his or her properly authorized agent, shall be filed with the Secretary of the Commission or with such other employee or agent of the appointing authority as is indicated in the job notice. The date and time of the receipt of each application shall be noted on the same. The Secretary of the Commission shall maintain registers that contain the name of each applicant, the date of the receipt of the application thereof, and the documents that accompany the same.



#### **6.04 Residency and/or Citizenship Requirements**

Every applicant for a position in the classified service must be a citizen of the United States or have a valid permanent resident card.

#### **6.05 Age Restrictions: Police and Fire**

Applicants for original appointment examination to the Police Department must have attained the age of twenty-one (21) years on or before the date of the written examination; furthermore, no person may apply for or receive an original appointment as a police officer if that person has attained the age of thirty-five (35) years or older, and no person can be declared disqualified as over age prior to that time. Applicants for original appointment examination to the Fire Department must have attained the age of eighteen (18) years on or before the date of the written examination; furthermore, no person may apply for or receive an original appointment as a firefighter if that person has attained the age of thirty-one (31) years or older (or any greater age up to thirty-six [36] that is established by a City Ordinance), and no person can be declared disqualified as over age prior to attaining the age of thirty-one (31) (or the greater age, not to exceed thirty-six [36] established by City Ordinance).

However, this rule does not prevent the City from establishing a police or fire cadet program and employing persons as police or fire cadets at age eighteen (18) for the purposes of training them to become police officers or firefighters.

#### **6.06 Licenses, Certifications, Education, and Training**

Every applicant shall have, and shall be able to demonstrate that he or she possesses, the required licenses and certifications, and the educational, training, or equivalent qualifications required of the position for which application is made. A candidate shall provide the Commission with reasonable and adequate proof thereof when the Commission requests such information from all candidates for a position, or when the Commission has sufficient reason to believe that the applicant may not possess such qualifications.

The Commission shall not establish educational prerequisites, in particular, unless they are necessary to the performance of the position for which the examination is conducted. (See also Regulation 7.02 regarding educational requirements as a condition for examination.)

#### **6.07 Character and Fitness**

Satisfactory information produced at any time to the Commission, either before or after examination, that an applicant has a pattern of poor work habits and performance with previous employers; has been previously dismissed from the civil service for good cause, including delinquency; has been convicted of a felony; currently illegally uses drugs; has been guilty of infamous or notoriously disgraceful conduct; or that he or she, in relation to the application process, has made false statements of any material fact; or that, in relation to application or examination, in establishing eligibility, and/or in securing appointment, the applicant has practiced, or attempted to practice any deception or fraud shall justify the Commission, before an examination, in refusing to permit the examination of an applicant, or, after examination, in refusing to certify the applicant as eligible for employment or

appointment. In relation to such inquiries the Commission may require such certificates of persons having knowledge of the applicant as the good of the civil service may require.

#### **6.08 Acceptance or Rejection of Applications and Notice to Applicants**

Information showing that an applicant meets all of the minimum qualifications as stated in an examination announcement must appear on the application itself. No additional information will be accepted from the applicant or on behalf of the applicant after the application filing deadline. The Commission shall make reasonable accommodations available to otherwise qualified disabled persons to afford them access to the examination process.

Failure of an applicant to indicate on his or her application the necessary qualifications as to certification, licensing, or education and training (or equivalent), or any other requirement shall be sufficient cause to exclude an applicant from examination.

Whenever an application shows that an applicant is not qualified under these rules for consideration for a position for which he or she has made application, or that the application is not in reasonable and substantial compliance with the same, the Secretary of the Commission or the Commission shall reject the application, and the Secretary, forthwith thereafter, shall notify the applicant in writing of that action and of the reason for the same. A defective or incomplete application may be corrected by the applicant, and resubmitted by the filing deadline.

Certification of an individual to an eligible list who has not met all of the requirements of these rules shall not be considered a waiver of any requirements of the same, and shall not bar removal of the applicant from an eligible list by the Commission as a result of the failure.

#### **6.09 Fraud or False Statements in Application or Examination**

Fraudulent conduct or false statements by the applicant, or by others with his or her connivance, in any application or examination shall be deemed cause for exclusion of an applicant from any examination, or for removal of his or her name from an eligible list, or for discharge from service after appointment or employment, provided that the name of no person shall be removed from an eligible list, and no person shall be dismissed from service under this provision without an opportunity to be heard by the Commission.

### **CHAPTER SEVEN EXAMINATIONS**

#### **7.01 Examinations Generally**

The following are the rules for examinations, except to the extent these rules have been superseded by a collective bargaining agreement between the employer and a public employee collective bargaining representative, or by charter or ordinance.

- A. All applicants for positions in the classified civil service shall be subject to examination. However, where the Commission determines that the best interests of the civil service will be served by filling a vacancy through reduction, transfer, reinstatement, or promotion without competition, the vacancy will be filled by one of

those methods, at the discretion of the Commission, rather than by examination and certification of names from a list of eligibles. The reduction, transfer, reinstatement, or promotion will be subject to the rules governing those actions.

- B. Examinations shall be public and subject to all limitations set forth by charter, ordinance, other applicable law, these rules, or determination of the Commission within their authority as to citizenship, age, experience, education, license, certification, health, habit, moral character, and veterans' preference, and to the requirement that each applicant be able, with or without reasonable accommodation, to perform the essential functions of the position for which he or she has made application.

## **7.02 Types of Examinations**

There shall be two basic types of examinations administered by the Commission in accordance with these rules:

1. examinations for original appointments;
2. examinations for promotions.

Examinations for original appointments shall be open to all individuals who otherwise qualify for appointment to or employment in a position under these rules. The Commission shall decide whether a position will be filled by promotional examination, rather than open-competitive examination. The Commission shall consult with the appointing authority when making the determination.

If the examination is promotional, the Commission shall decide which classes of employees may take the examination, whether the employees must be certified in their current positions, and whether they must have completed their probationary periods in order to compete. The Commission may also determine that other persons in the classified service are eligible to compete in a promotional examination, if they otherwise meet the minimum qualifications for the promotional position.

Examinations may include an evaluation of such factors as education, training, capacity, knowledge, manual dexterity, and physical or psychological fitness. Examinations may consist of one test or of more than one test in combination. Tests may be written, oral, physical, demonstration of ability to perform essential functions, or an evaluation of training and experience, and shall be designed to fairly test the relative capacity of the persons examined to discharge the particular duties of the position or classification for which appointment is sought. Tests may include structured interviews, assessment centers, work simulations, examination of knowledge, skills, and abilities, and any other acceptable testing methods. Where minimum or maximum requirements are established for any examination, the same shall be specified in the examination announcement.

The Commission shall prescribe the subjects of each examination and the relative weights to be assigned thereto, if any; provided that any such determination must have been made prior to the date of such examination. If the Commission assigns a score or weight to more than one component, the Commission must grade all such components for an applicant in order to determine whether he or she passed.

On the other hand, if an applicant cannot meet a minimum qualification for the job (e.g., a required license, certification, etc.) the Commission need not conduct an examination for him or her, because it would not matter what he or she scored.

Educational requirements for examination shall only apply to positions for which educational requirements are expressly imposed by the Ohio Revised Code or federal requirements or to positions for which the Commission determines that the educational requirements are job-related.

### **7.03 Single or Separate Examinations**

#### **A. Generally**

The Commission may use a single examination or separate examinations to evaluate applicants for similar positions or classifications in the service of appointing authorities under the jurisdiction of the Commission. However, examinations for the Police Department or Fire Department shall not be combined with examinations for other departments.

#### **B. Separate Examinations for Police and Fire**

As noted above, separate examinations shall be given in the Police Department and the Fire Department (and separate from each other), and separate rules may apply. Moreover resulting eligibility lists will only be used within the Police Department and Fire Department, respectively, and each will not be combined with eligibility lists from other departments (See Rule 9.09: Separate Lists for Police and Fire Departments). In addition, within the Police Department and the Fire Department, different tests will be given for original and promotional appointments.

### **7.04 Competitive Examinations and Required Number of Candidates**

No competitive examination will normally be administered unless there are at least three (3) applicants eligible to compete. Furthermore, if fewer than a sufficient number of people apply or are eligible to compete in a competitive examination, the appointing authority may request approval of an appointment without competitive examination.

### **7.05 Notices and Sites for Competitive Examinations**

A. Examinations for original or promotional appointments shall be held at such times and in such places as the Commission deems appropriate, and shall be administered in accordance with the applicable sections of R.C. Chapter 124 and these regulations.

B. Printed public notice of each competitive examination for original appointment in the classified service shall be conspicuously posted by the Secretary of the Commission on the City's web-site, and in other places as may be advisable such as City Hall, for at least two (2) weeks preceding the examination. All notices shall include the time, place, and general scope of the competitive examination. Notice may also be advertised by newspaper, or distributed to such persons or organizations as may be interested in the position(s) to be filled. RC 124.23(G).

- C. Notice of competitive promotional examinations shall be posted by the Secretary of the Commission in conspicuous places in each department in which employees would be eligible to compete for such promotion for at least two (2) weeks preceding the examination, and may be electronically posted or individually distributed to interested employees. Such notices shall include the time, place, and general scope of the competitive examination.
- D. The Commission may take such additional steps as it deems appropriate and advisable to effect notice of an examination, and to secure qualified applicants for same.

#### **7.06 Physical, Psychological, Medical, or Drug Testing**

##### **A. General**

Whenever physical or psychological qualifications are of special importance, the applicants may be required to pass a physical or psychological examination and be certified as qualified in such respect, whether before admission to the examination, or before being placed on the appropriate eligible list, or before certification for appointment. Medical examinations will only be conducted after a prospective appointee has received a conditional offer of employment; except that the City may require that an applicant be medically examined prior to any test (e.g., a physical agility test) to determine the applicant's ability to participate safely in the test. When asking for such a medical opinion, the City will describe the agility or fitness test, and ask "Can this person safely perform this test?" (See also Rule 7.06[F] below).

Examinations must be job related and based on business necessity.

##### **B. Drug Testing**

Drug testing examinations shall include a screening for the use of controlled substances, and will be conducted in accordance with any applicable state or federal laws and regulations regarding same (for example federal regulation of drug testing for jobs requiring a Commercial Driver's License).

##### **C. By Whom Conducted**

Physical, psychological, or drug screening examinations, whenever required by the Commission, shall be made by a licensed or certified professional designated by the Commission or its designee, who shall furnish a certificate as to the applicant's fitness for duty, with or without reasonable accommodation.

##### **D. Medical Records Confidential**

The results of any medical examinations shall be treated as confidential medical records to the extent provided by law.

E. Reasonable Accommodation

Any otherwise qualified applicant with a disability who feels that he or she has been or may be adversely affected by an examination on account of that disability may request that a "reasonable accommodation" be investigated by the appointing authority. Requests for such accommodation must be filed as soon as reasonably possible, must be in writing, and must outline the accommodation requested.

Such requests must be filed with the Commission and with the Appointing Authority. The Commission will then schedule an informal fact-finding meeting to discuss the issue of accommodation and will release its finding within five (5) working days of the conclusion of the informal fact-finding. Such meetings will be held in executive session.

F. Special Provisions Regarding Examinations for the Police and Fire Pension Fund

The Commission, or the Police or Fire Department as applicable, will conduct any testing required by the Police and Fire Pension Fund, under the requirements of R.C. 742.38 and O.A.C. 742-1-02 Member Minimum Medical Testing and Diagnostic Procedures.

**7.07 Admission of Applicants to Examinations**

- A. No applicant shall be admitted to any assembled examination more than twenty (20) minutes after the advertised time of beginning such examination, nor after any applicant competing in any such examination has completed his or her work and left the examination room, whichever shall occur earlier, except by special permission of the person in charge, who, in his or her discretion, may admit the applicant conditionally, subject to the final approval or disapproval of such admission by the Commission.
- B. Any applicant admitted to an assembled examination after its advertised time of beginning must complete the examination at the advertised ending time, and shall receive no extension of time, except as set forth in Rule 7.09.

**7.08 Identity of Entrance Examinees Concealed**

The Commission may use appropriate means to ensure that the identity of person(s) taking competitive assembled written examinations, computer proficiency examinations, or other examinations so designated by the Commission are not known to the grader while the exam is being graded. In such cases, if the Commission determines that the integrity of the examination has been compromised by any examination bearing the name of the applicant or any other identification mark, the Commission may reject the examination, using the same procedures that apply to disqualifications under Rule 9.05). However, such measures may not be practical or even possible in certain types of assessment center examinations.

**7.09 Extension of Time in Examinations**

No applicant shall be given a longer time on any subject than has been prescribed by the Commission for the completion of an examination.

Separate time limits may be established as a reasonable accommodation to a handicapped or disabled applicant. Requests for additional time, or accommodation, must be submitted with supporting documentation at the time of filing application for the examination.

#### **7.10 Visitors at Examinations**

No visitors shall be admitted to the examination room during any examination except by special permission of the person in charge.

#### **7.11 Postponement or Cancellation of Examinations**

Unless postponed, an examination must be held on the date fixed by the Commission. A scheduled examination may be canceled or postponed by order of the Commission for any adequate reason.

#### **7.12 Waiver**

In the event an individual who has not met the requirements of these rules is permitted to take an examination, the same shall not be deemed to be a waiver of any requirements established by these rules.

#### **7.13 Frauds in Examinations Prohibited**

Frauds in examinations are prohibited. No person or officer shall:

- A. Willfully or corruptly by himself or herself or in cooperation with one or more persons defeat, deceive, or obstruct any person in respect to his or her right of examination, appointment, or employment arising under the civil service laws or any rules and regulations prescribed pursuant thereto;
- B. Willfully or corruptly, falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified pursuant to the provisions of the civil service law, or aid in so doing, or willfully or corruptly make any false representations concerning the same or concerning any person examined;
- D. Willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered, or certified, or to be examined, registered, or certified;
- E. Willfully or corruptly personate any other person or permit or aid in any manner any other person to personate him or her in connection with any examination, registration, appointment, application, or request to be examined, registered, or appointed;
- F. Furnish any false information about himself or herself or any other person, in connection with any examination, registration, appointment, application, or request to be examined, registered, or appointed;
- G. Make known, or assist in making known to any applicant for examination, any questions to be asked on such examination;

- H. (For any applicant taking an examination) Assist any other applicant in any manner whatsoever; or
- I. Personally solicit a favor from any member of the Commission or appointing officer, or have any person in his or her behalf solicit a favor.

Any applicant in any examination found to be using any means of unauthorized information, other than that provided in the examination itself, such as memoranda, pamphlets, electronic aides, or books of any kind to assist him or her in answering the questions, shall have his or her examination papers taken up and filed with a "0" marking, when the circumstances justify such action.

## **CHAPTER EIGHT GRADING EXAMINATIONS AND ADDITIONAL CREDIT**

### **8.01 Grading Examinations and Additional Credit Generally**

The following are the rules for grading examinations and granting extra credit.

### **8.02 Minimum Passing Score**

- A. The Commission shall endeavor to ascertain the minimum passing grade, as determined by the compiler of any professionally prepared civil service test. When available in advance, this information will be included on all test notices.
- B. Where such minimum passing score is unavailable from the professional testing service, and if the Commission has not established another minimum passing score, the minimum passing score will be 70.

If the test includes multiple portions, for example, the use of a written test plus an oral test, the Commission will score all portions of the test before determining that an applicant can receive extra credit that can only be granted to those achieving the minimum overall passing score (for example, seniority credit on a promotional exam or uniform services credit on an entry level exam). Applicants must achieve the minimum overall passing score, excluding any additional credits provided by these rules, as a prerequisite for further consideration for employment or appointment in the classification tested, and for certification to an eligible list.

### **8.03 Original Appointment Additional Credit and Veterans Preference**

The following additional credit will be given to each applicant as it applies to that applicant's test if he or she attains a passing overall score (without counting additional credit). However, only one (1) additional grade credit may be applied and the credit with the highest percentage will be the one applied if the applicant has complied with the requirement. Such requests for credit must be submitted to the Commission at the time of application for the examination and must, at that time, be accompanied by proof of entitlement. Credit requested after the deadline for application for the examination will not be honored.



**A. Uniformed Service Credit**

Any applicant for original appointment who is a resident of Ohio, who has completed service in the uniformed services as described in R.C. 124.23, who was honorably discharged or transferred to reserve duty with evidence of satisfactory service, and who otherwise meets the qualifications of that section, may file with the Commission a certificate of service or honorable discharge for extra credit for such service. The Commission shall grant additional credit of five percent (5%) of the total grade achieved in the examination to any applicant who files for the extra credit and qualifies, provided that he or she has first received a passing grade on the examination.

As noted above, such requests for uniformed service credit must be submitted to the Commission at the time of application and must, at that time, be accompanied by proof of uniformed service as described above. Uniformed service credit requested after the start of participation in the examination will not be honored.

**B. Other Credit**

1. Service Credit. Any applicant for original appointment who has completed satisfactory service with the City of New Franklin may file with the Commission proof of meeting the qualification for such extra credit. If the Commission is satisfied that the applicant is entitled to such extra credit, the Commission shall award that credit according to the following:

- a. One-half of one percent (0.05%) point shall be added for each of the first two (2) years of service with the City of New Franklin, and one-quarter of one percent (0.025%) shall be added for each additional year of service with the City for the next eight (8) years of service. (Maximum 3%)
- b. An additional one half of one percent (0.05%) shall be added for each year of service with the City of New Franklin in that position for which the applicant is applying for up to two (2) years. (Maximum 2%).

The credit for prior service as stated above may be cumulative to a maximum of five percent (5%). In computing the credit for prior service, half of the credit specified in this paragraph shall be given for a half year of service.

2. Residency Credit. Any applicant for original appointment who has been a resident of the City of New Franklin for two continuous years immediately prior to the date of examination may file with the Commission proof of meeting the qualification for such extra credit. If the Commission is satisfied that the applicant is entitled to such extra credit, the Commission shall award that credit in the amount of five percent (5%).

3. Educational Credit – Police and Fire. Any applicant for original appointment as a police officer or fire fighter, who at the time of application for examination possesses an Associate Degree or higher from an accredited

college or university, may file with the Commission acceptable certification of such degree. The Commission shall grant additional credit of three percent (3 %) of the total grade achieved in the examination to any applicant who files for the extra credit and qualifies, provided that he or she has first received a passing grade on the examination.

Any applicant for original appointment as a police officer or fire fighter, who at the time of application for examination possesses a Bachelors Degree from an accredited college or university, may file with the Commission acceptable certification of such degree. The Commission shall grant additional credit of five percent (5%) of the total grade achieved in the examination to any applicant who files for the extra credit and qualifies, provided that he or she has first received a passing grade on the examination.

Educational credit is non-cumulative in nature and cannot be compounded based on multiple degrees of any type. A candidate is only entitled to a single credit for highest degree recognized and submitted to the Commission prior to the examination date and must, at that time, be accompanied by proof as described above.

**C. Maximum Additional Credit**

A candidate is entitled to up to a maximum aggregate total of ten percent (10%) of the grade achieved by the applicant on the written exam in additional credit.

**8.04 Promotional Seniority Credit**

As noted above, in promotional examinations for employees covered by a collective bargaining agreement that contains final and binding arbitrations, the bargaining agreement's provisions, if any, shall control the addition of credit for seniority or efficiency credits in promotions. For other employees, or to the extent the applicable collective bargaining agreement leaves examination to the discretion of the Commission, the following shall apply:

- A. In promotional examinations, the Commission may allow additional credit for seniority in the civil service of the City of New Franklin. No credit for seniority shall be added to an examination grade unless the applicant achieves at least the minimum passing score on the examination, absent any extra credit.

Notwithstanding the previous paragraph, no person who has resigned a classified position in a police department or a fire department will receive seniority credit for service prior to such resignation. Furthermore, any person who has either been convicted of a felony within the meaning of R.C. 124.34, or removed from his or her position in connection with such a conviction or the underlying facts, is barred from receiving seniority credit, to the extent the Commission may disallow credit under that section. This paragraph is not meant to imply any other limitations on the Commission's authority regarding such person.

- B. Those persons who compete in a promotional examination for the fire department in accordance with the rules of the Commission shall have added to their grade credit for seniority. Credit for seniority shall be given as follows: one (1) point shall be

added for each of the first four (4) years of service, and six-tenths (0.6) of a point shall be added for each year for the next ten (10) years of service. In computing the credit for seniority, half of the credit specified in this paragraph shall be given for a half year of service. Credit for seniority shall be based only on service in the City of New Franklin fire department and the service provided for in the next succeeding paragraph.

When service in the fire department is interrupted by service in the armed forces of the United States, seniority credit shall be granted in promotional examinations for the time so served. No additional credit for military service shall be allowed in promotional examinations.

- C. An approved leave of absence is not a separation of service; therefore, seniority service credit for purposes of promotion will continue to accrue during such leave. Furthermore, if an employee meets the requirements for preserving or accumulating seniority under the Uniformed Services Employment and Reemployment Rights Act (USERRA), or a comparable Ohio statute, the Commission will honor the requirements of USERRA or the Ohio statute.

#### **8.05 Addition of Credits**

- A. Applicants for original appointment shall be entitled to only such additional credit as is set forth in 8.03 (relating to additional credit and veterans preference), up to a maximum of ten percent (10%) of the grade achieved by the applicant on the written exam.
- B. Applicants for promotional appointments shall be entitled to only such additional credit, if any, as is permitted by the Commission as set forth in 8.04 (relating to seniority and efficiency credit).
- C. In scoring all original and promotional examinations, no additional credit shall be given to any applicant, unless such applicant has achieved the minimum overall passing grade without the addition of any additional credit.

### **CHAPTER NINE ELIGIBLE LISTS**

#### **9.01 Eligible Lists Generally and the Preparation of Eligible Lists**

The following are the rules for eligible lists, except to the extent these rules have been superseded by collective bargaining agreements between the employer and a public employee collective bargaining representative, or by charter or ordinance (See Rule 1.02: Construction).

The Commission shall prepare and keep open to public inspection, from the results of each examination, an eligible list of those persons whose general average score in the examination is not less than the minimum passing grade, and who are otherwise eligible for appointment. Such persons shall be ranked upon the eligible list as candidates in the order of their relative excellence as determined by the examination without reference to priority of the time of examination.

## **9.02 Term of Eligible Lists**

An eligible list expires upon the filling or closing of the position, except a fire promotional list (see next paragraph). An expired eligible list may be used to fill a position of the same classification within the same appointing authority for which the list was created. But, in no event shall an expired list be used more than one (1) year past its expiration date. The decision of whether to use an expired list shall be made by the Commission in consultation with the appointing authority.

An eligible promotional list for service within the fire department shall continue for two (2) years. If a vacancy occurs prior to the expiration of the two (2) year period, the list shall continue for the purpose of filling the vacancy until the vacancy has been filled.

The expiration of an eligible list shall not cause a list of names then-certified from that list to expire. The certification list shall continue in force until:

- A. the appointing authority elects not to appoint from the list because the position is closed or the appointing authority has already made the number of appointments he or she intended when requesting the list;
- B. one or more persons on the list have declined appointment or failed to report and the appointing authority elects to use a new eligibility list created by the Commission for the classification;
- C. the appointing authority elects not to use the list under Rule 10.02(A).

## **9.03 Resolving Ties on Eligible Lists**

In the event that two (2) or more applicants receive the same score in an original appointment examination after adding any applicable extra credit, the candidates will be given the same rank on the eligibility list and certified as one (1).

## **9.04 Military Service – Effect on Eligible List**

Any person on an eligible list who fails to report to the Appointing Authority when so notified to do so or is unable to accept an appointment when offered by reason of being in uniformed service, shall not by reason of such failure be removed from the eligible list. If and to the extent the employee is entitled to be certified under USERRA or a comparable Ohio law, he will be so certified.

## **9.05 Disqualification from Eligible List**

- A. The name of any person appearing on an eligible list who:
  - 1. fails to report, or arrange to report, or arrange within a reasonable time for an interview with an appointing authority; or,
  - 2. fails to respond to a notice from the Commission; or,
  - 3. provides incorrect or incomplete information to the Commission; or,
  - 4. fails to respond to request for information during background checks; or,

5. declines an appointment without reason satisfactory to the Commission; or,
6. who cannot be located by the postal authorities;

shall not thereafter be certified to any appointing authority as eligible for appointment. The potentially disqualified person shall be notified concerning the application of this rule unless his or her whereabouts are unknown. The disqualified candidate's name may again be certified from the eligible list only where a thoroughly satisfactory explanation of the circumstances is made to the Commission. In the event of the refusal of an appointment by an eligible candidate, the appointing authority shall so notify the Commission.

- B. In case an eligible person's name appears on more than one list, appointment to a position in one class shall be considered a waiver for appointment from eligible lists for classes in which the salary is equal or lower.
- C. If, at any time after the creation of an eligible list, the Commission has reason to believe that any person whose name appears on any list is disqualified from appointment because of false statements made on his or her application, inability to perform the job duties, lack of a necessary license, lack of insurability, or for other comparable reasons; such person shall be notified and given an opportunity to be heard. If such person shall fail to appear for hearing, or upon being heard, fail to satisfy the Commission, his or her name shall be removed from such eligible list.

#### **9.06 Removal from Eligible List**

Names may be removed from an eligible list by the Commission in accordance with these rules, for the following reasons:

1. The written request of the eligible;
2. The expiration or revocation of the list;
3. Failure of the person listed on the eligible list to fulfill all of the requirements and qualifications set out by or under these rules;
4. The refusal or neglect of the eligible within three (3) days after notice of appointment to accept appointment upon certification, unless a waiver of such appointment is sought by the eligible and approved by the Commission;
5. The death of the eligible;
6. Fraud or false statements in application or examination.

#### **9.07 Duty of Eligibles to Update Address**

Each person on an eligible list shall file with the Commission written notice of any change of address, and failure to do so may be considered sufficient reason for not certifying his or her name to the appointing authorities for future appointment.

#### **9.08 Revocation of Eligible List**

An unexpired eligible list may be revoked and another examination ordered only when, in the judgment of the Commission, such action is deemed advisable by reason of errors, fraud, or obviously inappropriate standards prescribed in connection with any examination. All competitors in the first examination shall be notified and shall be eligible to compete in the

rescheduled examination without filing a separate application or payment of an additional fee. No unexpired eligible list shall be altered or revoked, except upon written notice to all persons whose standing may be affected and upon an entry in the minutes of the Commission of the reasons for such alteration or revocation.

## **9.09 Separate Lists for Police Department and Fire Department**

Notwithstanding 9.01, separate eligible lists shall be maintained for appointments in the Police Department and Fire Department (and separate from each other). No person may be transferred from a Police Department list or a Fire Department list to one outside that department or from a list outside the department to a list for the Police Department or a list for the Fire Department.

# **CHAPTER TEN APPOINTMENTS AND PROMOTIONS**

## **10.01 Appointments Generally**

The following are the rules for appointments and promotions. Other than positions that are filled by reduction, as provided in the rules and regulations of the Commission appointments to all positions in the classified service shall be made only from those persons whose names take rank order on an eligible list.

## **10.02 Appointment Procedure and Number of Names Certified**

### **A. Certification of Names for Appointment**

Except as otherwise provided in these rules regarding Temporary Appointments and Promotions, the appointing authority shall appoint in the following manner: each time a selection is made, it shall be from one of the names that ranks in the top twenty-five percent (25%) of the eligible list. But in the event that ten (10) or fewer names are on the eligible list, the appointing authority may select any of the listed candidates.

If an eligible list becomes exhausted and until a new list can be created, or when no eligible list for such position exists, names may be certified from eligible lists most appropriate for the group or class in which the position to be filled is classified. The Commission may also approve a temporary appointment.

### **B. Certification of Names for Promotional Appointment**

When vacancies are to be filled by promotion, the Commission shall certify to the Mayor only the names of the three (3) persons having the highest ratings on the eligible list. Where appropriate, the Commission may approve a temporary appointment.

### **C. Notification of Unclassified Appointment and Information to Be Provided to the Appointee**

1. Within ninety (90) days after the Mayor appoints an employee to an unclassified position in the City, the Mayor shall notify the Commission of that appointment.
2. On the date the Mayor appoints an employee to an unclassified position in the City, the Mayor shall provide the employee with written information

describing the nature of employment in the unclassified civil service. Within thirty (30) days after the date an the Mayor appoints an employee to an unclassified position in the City, the Mayor shall provide the employee with written information describing the duties of that position. Failure of the Mayor to provide the written information described in this division to the employee does not confer any additional rights upon the employee in any appellate body with jurisdiction over an appeal of the employee.

### **10.03 Probationary Periods**

- A. All non-temporary original and promotional appointments to the classified service, shall be for a probationary period of one (1) year; but in the case of an original appointment as either a police officer in the police department or as a firefighter in the fire department, the probationary period shall be for one (1) year; and in the case of a promotion in the fire department, for a probationary period of six (6) months. An appointing authority may request, and the Commission may approve, an extension allowing no more than six (6) months additional a probationary period.
- B. No promotion shall be final until the appointee has satisfactorily served his or her probationary period.
- C. Temporary service shall not count toward the probationary period.

### **10.04 Removal or Reduction during Probation**

If the service of a probationary employee is unsatisfactory, he or she may be removed or returned to his or her prior position without right of appeal at any time during the probationary period. In the case of the removal of a probationary appointee, the appointing authority shall immediately notify the Commission when the appointment is to be terminated. A failure to notify the Commission or state the reasons shall not confer any tenure rights on the employee.

### **10.05 Promotions**

- A. Promotions shall be based on merit and conduct and capacity in office. The method of examination for promotions, the manner of giving notice of the examination, and the rules governing it shall be the same as those provided for original appointments, except as specified elsewhere in these Rules.

- B. Police Department Promotions

No positions above the rank of patrol officer in the police department, except for the position of Chief of Police as division head, shall be filled by original appointment. Vacancies in positions above the rank of patrol officer in a police department shall be filled by promotion from among persons holding positions in a rank lower than the position to be filled.

When a vacancy occurs in the promoted rank immediately above the rank of regular patrol officer, no person shall be eligible to take the examination unless the person has served thirty-six (36) months, in the rank of regular patrol officer, provided that,



in those cases when there are less than three (3) persons in the rank of regular patrol officer who have served thirty-six (36) months, in that rank and who are willing to take the examination, this service requirement does not apply.

When a vacancy occurs in a promoted rank, other than the promoted rank immediately above the rank of regular patrol officer, no person shall be eligible to take the examination unless the person has served twelve (12) months in the rank from which the promotion is to be made, provided that, in those cases when there are less than three (3) persons in that next lower rank who have served twelve (12) months in that rank and who are willing to take the examination, the twelve-month service requirement shall not apply. If the non-application of the twelve-month service requirement to persons in the next lower rank does not produce three (3) persons eligible and willing to compete, the same method shall be followed by going to successively lower ranks until three (3) or more persons are eligible and willing to compete in an examination for the vacancy. If this process of searching successively lower ranks reaches the rank of regular patrol officer, the thirty-six-month service requirement applies, provided that, in those cases when that application still fails to produce three (3) persons who are eligible and willing to compete, the thirty-six-month service requirement does not apply. If three (3) persons are unwilling to compete for the examination, the appointing authority shall select and appoint from those persons who are willing after they have passed a qualifying examination.

No competitive promotional examination shall be held unless there are at least three (3) persons eligible, qualified and willing to fill the promotional vacancy. Whenever the Commission determines that there are less than three (3) persons holding positions in the rank next lower than the position to be filled, who are eligible and willing to compete, the Commission shall allow the persons holding positions in the then next lower rank who are eligible, to compete with the persons holding positions in the rank lower than the position to be filled.

An increase in the salary or other compensation of anyone holding a position in a police department, beyond that fixed for the rank in which that position is classified, shall be deemed a promotion, except as provided in R.C. 124.491 (which concerns educational achievement).

If a vacancy occurs in a position above the rank of patrol officer in a police department, and there is no eligible list for such rank, the Commission shall, within sixty (60) days of that vacancy, hold a competitive promotional examination. After the examination has been held and an eligible list established, the Commission shall forthwith certify to the appointing officer only the names of the three (3) persons having the highest ratings on the eligible list. Upon the certification, the appointing officer shall select and appoint one of the persons so certified within thirty (30) days from the date of the certification. If there is a list, the Commission shall, when there is a vacancy, immediately certify the names of the three (3) persons on the list having the highest ratings, and the appointing authority shall select and appoint one of those persons within thirty (30) days from the date of the certification.

No credit for seniority or any other reason shall be added to an applicant's examination grade unless the applicant achieves at least the minimum passing grade on the examination without counting that extra credit.

### C. Fire Department Promotions

No positions above the rank of fire-fighter in the fire department, except for the position of Fire Chief as division head, shall be filled by original appointment. Vacancies in positions above the rank of Fire Fighter shall be filled by promotion from among persons holding positions in a rank lower than the position to be filled.

Whenever a vacancy occurs in a promoted rank in a fire department and no eligible list for that rank exists, the appointing authority shall certify the fact to the Commission. The Commission, within sixty (60) days of the vacancy, shall conduct a competitive promotional examination. After the examination has been held and an eligible list established, the Commission shall forthwith certify to the appointing officer only the names of the three (3) persons having the highest ratings on the eligible list. Upon the certification, the appointing officer shall select and appoint one of the persons so certified within thirty (30) days from the date of the certification. If there is a list, the Commission shall, when there is a vacancy, immediately certify the names of the three (3) persons on the list having the highest ratings, and the appointing authority shall select and appoint one of those persons within thirty (30) days from the date of the certification.

When a vacancy occurs in the promoted rank immediately above the rank of regular fire fighter, no person shall be eligible to take the examination unless the person has served forty-eight (48) months, not including the person's probationary period, in the rank of regular fire fighter, provided that, in those cases when there are less than three (3) persons in the rank of regular fire fighter who have served forty-eight (48) months, not including the person's probationary period, in that rank and who are willing to take the examination, this service requirement does not apply.

When a vacancy occurs in a promoted rank, other than the promoted rank immediately above the rank of regular fire fighter, no person shall be eligible to take the examination unless the person has served twelve (12) months in the rank from which the promotion is to be made, provided that, in those cases when there are less than three (3) persons in that next lower rank who have served twelve (12) months in that rank and who are willing to take the examination, the twelve-month service requirement shall not apply. If the non-application of the twelve-month service requirement to persons in the next lower rank does not produce three (3) persons eligible and willing to compete, the same method shall be followed by going to successively lower ranks until three (3) or more persons are eligible and willing to compete in an examination for the vacancy. If this process of searching successively lower ranks reaches the rank of regular fire fighter, the forty-eight-month service requirement applies, provided that, in those cases when that application still fails to produce three (3) persons who are eligible and willing to compete, the forty-eight-month service requirement does not apply. If three (3) persons are unwilling to compete for the examination, the appointing authority shall select and appoint from those persons who are willing after they have passed a qualifying examination.

Promotional examinations for positions within a fire department shall relate to those matters that test the ability of the person examined to discharge the particular duties of the position sought, shall include a written testing component, and, in

examinations for positions requiring the operation of machines or equipment, may include practical demonstration tests of the operation of those machines or equipment as a part of the examination.

After the grading of examination papers, any participant in the examination who considers the participant's examination papers to have been erroneously graded shall have the right to appeal to the Commission, and the appeal shall be heard by the Commission.

The names of the examinees who have passed the examination shall be placed on the eligible list in accordance with their grades. The examinee receiving the highest grade shall be placed first on the list. If two (2) or more examinees receive the same grade, seniority in the fire department service shall determine the order of their names. The person having the highest position on the list shall be appointed in the case of a vacancy. Eligible lists established as provided in this section shall continue for two (2) years. If a vacancy occurs prior to the expiration of the two-year period, the list shall continue for the purpose of filling the vacancy until the vacancy has been filled.

If an eligible list exists and a vacancy occurs that may be filled from that list, the vacancy shall be filled within a period of not more than ten (10) days from the date of the vacancy.

#### **10.06 Temporary Appointments**

Positions in the classified service may be filled without competition through Temporary Employment.

A temporary appointment may be made without regard to these Rules. The temporary appointment may not continue longer than one hundred and eighty (180) days, continuously, nor more than one hundred eighty (180) days in a twelve month period.

Successive temporary appointments to the same position shall not be made under this rule. The acceptance or refusal by an eligible of a temporary appointment shall not affect the person's standing on the register for permanent employment; nor shall the period of temporary service be counted as a part of the probationary service in case of subsequent appointment to a permanent position. All temporary appointments shall be promptly reported to the Commission.

Persons who receive temporary appointments are in the unclassified service and shall serve at the pleasure of their appointing authority.

#### **10.07 Appointments to the Police and Fire Department**

No person shall be eligible to receive an original appointment as a police officer in the Police Department or as a firefighter in the Fire Department unless he or she meets the physical examination requirements set forth in RC 124.41 and 124.42, respectively.

**CHAPTER ELEVEN  
TENURE, REDUCTION, SUSPENSION, FINES  
REMOVAL, AND DEMOTION**

**11.01 Tenure of Office**

- A. The following are the rules for tenure in office for employees in the classified service.
- B. The tenure of every officer or employee in the classified service of the City, holding a position in the classified service, shall be during good behavior and efficient service. Except in case of layoff or abolishment or as otherwise provided by the Ohio Revised Code, no such officer or employee shall be reduced in pay or position, fined, suspended, or removed, or have the officer's or employee's longevity reduced or eliminated, except for:
  - 1. incompetency
  - 2. inefficiency
  - 3. dishonesty
  - 4. working while under the influence of alcohol or drugs
  - 5. immoral conduct
  - 6. insubordination
  - 7. discourteous treatment of the public
  - 8. neglect of duty
  - 9. violation of any policy or work rule of the officer's or employee's appointing authority
  - 10. violation of R.C. Chapter 124 or the Rules of the Commission
  - 11. any other failure of good behavior
  - 12. any other acts of misfeasance, malfeasance, or nonfeasance in office
  - 13. conviction of a felony

The denial of a one-time pay supplement or a bonus to an officer or an employee is not a reduction for purposes of this rule. This rule is meant to reflect R.C. 124.34, and not to expand or limit the tenure rights conferred by it.

- C. A finding of the Ohio Ethics Commission, based upon a preponderance of the evidence that the facts alleged in a complaint under R.C. 102.06 constitute a violation of R.C. Chapter 102 (ethics), R.C. 2921.42 (unlawful interest in a public contract), or R.C. 2921.43 (soliciting or accepting improper compensation) may constitute grounds for dismissal.
- D. Failure to file a statement or falsely filing a statement required by R.C. 102.02 (financial disclosure to ethics commission) may also constitute grounds for dismissal.

**11.02 Procedure in General**

- A. In any case of reduction, suspension of more than forty (40) work hours for an overtime-exempt employee or more than twenty-four (24) work hours for an employee required to be paid overtime, fine of more than forty (40) hours' pay for an overtime-exempt employee or more than twenty-four (24) hours' pay for an employee required to be paid overtime, or removal, the appointing authority shall

serve the affected employee with a copy of the order of reduction, suspension, fine, and/or removal. Such order shall state the reason(s) therefore. Probationary employees who are removed or reduced must be notified, but need not be served an “order.”

- B. Within ten (10) days following the date on which the order is served, a classified employee may file a written appeal with the Commission, unless the employee was removed for a felony within meaning of R.C. 124.34 (or was removed or reduced during the probationary period). The date on which an order is served is the date of hand delivery of the order or the date of delivery of the order by certified United States mail, whichever occurs first. Regarding service on the employee, the Mayor may also leave a copy of the charges and specifications at the employee’s usual place of residence with an adult residing therein, or the employee’s address of record, with an adult residing therein. If the service by certified mail is returned with an endorsement showing the service was refused or unclaimed, then the charges and specifications or the order of involuntary disability separation may be sent by ordinary mail, evidenced by a certificate of mailing, and the same shall be deemed served on the third calendar day after the order is mailed.
- C. In the event such an appeal is filed, the Commission shall forthwith notify the Mayor and shall hear, or appoint a trial board to hear, such appeal within thirty (30) days from the filing of the appeal with the Commission. The Commission or trial board may affirm, disaffirm, or modify the judgment of the appointing authority. However, in an appeal of a removal based upon a violation of a last chance agreement, the Commission or trial board may only determine if the employee violated the agreement and affirm or disaffirm.
- D. Notwithstanding the above, the tenure and the grounds and procedures for reductions, suspensions, fines, demotions, or removals of members of the Police and Fire Departments that are not subject to a collective bargaining agreement are governed by the Ohio Revised Code and City charter and ordinances, including, but not necessarily limited to R.C. 124.34(C), 124.40, 737.052, and/or 737.12. Except to the extent those enumerated provisions have been superseded by charter or ordinance, the Commission will take those procedures into account when hearing appeals regarding same.
- E. Special provisions in 124.40 establish tenure and the grounds for suspension and/or removal of the Chief of Police and the Fire Chief, and shall apply unless superseded by charter or ordinance.

### **11.03 Procedures for Employees Covered by Collective Bargaining Agreements**

The procedures for discipline or removal of employees covered by a collective bargaining agreement are governed by that agreement, or are governed by these rules where the agreement makes no provision. The Commission will not take jurisdiction of appeals over subjects governed by a collective bargaining agreement that provides for binding arbitration of grievances.

#### **11.04 Felony Convictions**

Conviction of a felony is a separate basis for reducing in pay or position, suspending, or removing an employee, even if the employee has already been reduced in pay or position, suspended, or removed for the same conduct that is the basis of the felony. If an 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 employee's reinstatement. A person convicted of a felony immediately forfeits his or her status as a classified employee on and after the date of conviction for the felony. If an 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 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.

#### **11.05 Absence without Leave**

Absence from duty without leave or the failure to report for duty after leave has expired shall be considered "neglect of duty" and a cause for removal.

### **CHAPTER TWELVE HEARING PROCEDURE**

#### **12.01 Time of Hearing; Notifications; Reclassification Appeals; Layoff Appeals; Prehearing Orders, Briefs, Etc.**

Upon receipt from an employee or officer in the classified service of the City of a timely appeal from an order of removal, reduction in pay or position, suspension of more than forty (40) work hours for an overtime-exempt employee or more than twenty-four (24) work hours for an employee required to be paid overtime, or fine of more than forty (40) hours' pay for an overtime-exempt employee or more than twenty-four (24) hours' pay for an employee required to be paid overtime, or other appealable order, the Commission shall set a time and place to hear such appeal and shall notify the appropriate appointing authority, as well as the employee and his or her attorney, if known, of the time and place of the hearing. Such notice must be in writing and mailed to the last known post office address of each party no less than ten (10) calendar days prior to the hearing date; however, this time limit may be waived by the Commission at the employee's request.

An appeal of reclassification shall be filed, in writing, within thirty (30) calendar days after receiving the notice of the results of the audit. A copy of the audit decision letter shall be attached to the appeal. An appeal from layoff or displacement resulting from a layoff shall be filed or postmarked no later than ten (10) calendar days after receipt of the layoff notice or after the date the employee is displaced

The Commission may, in its discretion, issue prehearing orders, determine the order of presentation of evidence in non-disciplinary cases, hear arguments and request submission of briefs, memoranda or other written materials.

## **12.02 Amendments to Orders**

Amendments to appealable orders may be made by the appointing authority at any time, provided the employee and his or her attorney, if any, receive copies of the amended order prior to ten (10) calendar days before the time set for the hearing as provided herein. The Appointing Authority may also completely rescind the order on or before the effective date; and if the Appointing Authority does so, the rescission will not bar the filing of another order, even if based on the same allegations.

Non-material changes, amendments or supplements to the charges and specifications may be made at any time prior to the ultimate determination by the Commission.

## **12.03 Hearing Procedure**

The Commission shall first determine whether it has jurisdiction. The Commission may, for example, dismiss a case where the Commission's jurisdiction has been negated by an applicable collective bargaining agreement. In disciplinary cases, the Commission shall review the order of discipline or inquire what other action was taken by the appointing authority that generated the appeal, determine whether the order or action entitles the employee to a right to appeal, inquire whether and how the employee was served with the order of discipline, if any; and if the Commission determines that it appears that it does have jurisdiction.

Hearings before the Commission may be public except when the nature of the charge may be offensive to public morality and decency. In such cases, the Commission may order the hearings closed to the general public, unless the employee requests that the hearing be public. By agreement of the parties, or if the discussion of any issue or item would violate any person's right to privacy, other than an employee requesting a public hearing, the Commission may conduct an *in camera* review of that matter.

In the hearing of appeals, once jurisdiction is established, the order of procedure shall be as follows:

1. The appointing authority taking action affecting the employee shall present evidence in support of the charges and specifications or other action.
2. The employee affected shall then produce such evidence as the employee may wish to present to refute such charges or to contest the action.
3. The appointing authority may offer evidence in rebuttal. The Commission may, in its discretion, hear final arguments.
4. Either party may call the other, or agents, officers or employees of the same as on cross-examination.
5. In a case where the appointing authority contests that it took the "appealable" action alleged by the employee, the employee must first present evidence that the action occurred. The appointing authority may refute that evidence, and the employee may then rebut.

## **12.04 Rules of Evidence; Representation by Counsel**

The Rules of Evidence prevailing in civil actions in the Ohio courts of general jurisdiction are to be used as evidentiary guidelines in hearings before the Commission. The

Commission may permit the introduction of evidence otherwise excludable under such rules where a foundation, establishing the reliability and credibility of the evidence, its relevance and materiality, and its necessity, has been established.

The appellee and appellant may be represented by legal counsel. The Commission may also be represented by legal counsel.

#### **12.05 Burden of Proof**

The appointing authority shall prove, by a preponderance of the evidence, the factual allegations contained in the disciplinary order. Failure to prove each of the allegations contained in the order does not require disaffirmance or annulment of the appointing authority's order by the Commission. The employee shall prove, by a preponderance of evidence, that an employer took an appealable action (e.g., that the employee was reduced, reclassified, etc.).

#### **12.06 Hearsay**

The Commission may permit the introduction of evidence otherwise excludable as hearsay provided there is established some foundation as to its reliability and its necessity.

#### **12.07 Discovery**

The Commission may allow either party to conduct discovery upon notice to the Commission.

#### **12.08 Subpoenas**

Either party may request that a subpoena be issued by the Commission. Such requests shall be submitted no later than seven (7) days prior to the hearing. Such request must be accompanied by a completed subpoena form. It is the responsibility of the requesting party to serve the subpoena. The Commission may call witnesses other than those requested by the parties.

#### **12.09 Witnesses**

All witnesses must testify under oath or affirmation. The Commission may limit the number of witnesses to avoid repetitive or unnecessary testimony.

#### **12.10 Motions**

- A. All motions shall state, with particularity, both relief sought by the moving party and the basis for granting such relief.
  - 1. All motions, together with supporting documentation, if any, shall be served on the opposing party.
  - 2. Motions to dismiss an appeal shall be supported by affidavits, made on personal knowledge, setting forth facts as would be admissible in evidence. Affidavits shall show affirmatively that the affiant is competent to testify to



the matter stated therein. Sworn or certified copies of all papers referred to in an affidavit shall be attached thereto. When a motion is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials. An adverse party's response, by affidavit or otherwise, shall set forth specific facts showing there is a genuine issue in dispute.

- B. Procedural motions, not determinative of the final outcome of the appeal, may be acted upon any time after receipt by the Commission without awaiting a response from the opposing party. The party adversely affected by such action of the Commission may move for appropriate relief.

### **12.11 Record of Hearings**

The Commission may record hearings either by the use of a stenographer, magnetic tape, or other recording technology.

### **12.12 Resignation before Final Action**

The acceptance by the Mayor of the resignation of a person discharged, before the final action by the Commission, will be considered a withdrawal of the charges. Notice of such resignation shall be submitted immediately to the Commission. The separation of the employee thus resigning shall be entered upon the records of the Commission and the proceedings dismissed without judgment.

### **12.13 Hearing Officer**

The Commission may appoint a hearing officer to hear an appeal.<sup>2</sup> When the Commission exercises its discretion to do so, the following procedure shall apply before the Commission takes final action on the appeal.

- A. The hearing officer shall submit a report to the Commission in each appeal considered by the hearing officer for the Commission.
- B. No objection may be made to the Commission regarding any decision of a hearing officer prior to the submission of the hearing officer's report and recommendation. Written objections to reports and recommendations shall be filed within ten (10) calendar days after receipt of the report and recommendation(s). Written replies to objections shall be filed within ten (10) days after the opposing party's objection has been filed.
  - 1. If a report and recommendation is refused, unclaimed or sent to the wrong address due to a party's failure to notify the Commission of a change of address, it shall be deemed received by the party three (3) calendar days after such mailing. A certificate of mailing shall be considered sufficient proof of mailing.

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<sup>2</sup> Whereas a trial board may actually affirm, disaffirm, or modify an order of an appointing authority under Rule 11.02(C) and R.C. 124.34(B), a hearing officer makes a recommendation for action by the Commission.

2. The Commission may extend the time to file objections or responses to the report and recommendation.
  3. Objections to reports and recommendations should include a brief statement of the case and a concise statement of each area of disagreement with supporting arguments and memoranda. All parties' objections or responses must be limited to evidence presented at the hearing. Objections and responses to objections containing arguments based on evidence not already in the record may be stricken.
  4. No objection without a certificate of service may be considered by the Commission.
- C. The Commission may accept, reject, or modify, in whole or in part, any report and recommendation of the hearing officer. The Commission may also receive additional evidence, hear arguments, or remand an appeal to a hearing officer for further consideration or hearing.
- D. Final orders shall be signed by the Chair or other member of the Commission. The original order shall be journalized and a copy of the order placed in the case file. Copies of final orders of the Commission shall be sent by certified mail to the affected employee and by regular mail to the other parties and their representatives.
1. Copies of orders returned to the Commission or unclaimed or refused shall be reissued by regular United States mail.
  2. Copies of final orders returned to the Commission as undeliverable shall be placed in the case file and the opposing party shall be notified.

#### **12.14 Last Chance Agreements**

In an appeal of a removal order based upon a violation of a last chance agreement, the Commission or trial board may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority. Any Hearing Officer assigned by the Commission shall conduct the hearing and make his or her report accordingly.

### **CHAPTER THIRTEEN LAYOFFS AND TRANSFERS**

#### **13.01 Layoffs or Reductions: Non-Police or Fire**

Whenever it becomes necessary to reduce the working force in any classification, the appointing authority shall lay off classified employees or abolish their positions in accordance with this Chapter of these Rules.

The appointing authority shall decide in which classification or classifications the layoff or layoffs will occur and the number of employees to be laid off within each affected classification. In a case of job abolishment, the appointing authority shall determine which position(s) shall be abolished.

The appointing authority shall submit the retention point calculations and other layoff documents to the Commission. The Commission shall verify retention point calculations. The Mayor abolishing any position shall file a statement of rationale and supporting documentation with the Commission prior to sending the notice of abolishment.

A. Reasons for Layoff, Determination of Lack of Work or Lack of Funds, and Reasons for Abolishment.

Employees may be laid off for lack of work or lack of funds.

“Lack of work” means an appointing authority has a current or projected decrease in workload that requires a reduction of current or projected staffing levels in its organizational structure. The appointing authority shall determine whether a lack of work exists.

“Lack of funds” means an appointing authority has a current or projected deficiency of funding to maintain current, or to sustain projected, levels of staffing and operations. This section does not require any transfer of money between funds in order to offset a deficiency or projected deficiency of funding for programs funded by the federal government, special revenue accounts, or proprietary accounts. Whenever a program receives funding through a grant or similar mechanism, a lack of funds shall be presumed for the positions assigned to and the employees who work under the grant or similar mechanism if, for any reason, the funding is reduced or withdrawn. The appointing authority shall determine whether a lack of funds exists.

An employee whose position is abolished may also be laid off. As used in this Chapter of the Rules, “abolishment” means that the deletion of a position or positions from the organization or structure of the appointing authority, and an appointing authority may abolish positions for any one or any combination of the following reasons: as a result of reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work. *However*, “reasons of economy” are specifically defined in R.C. 124.321 and that section should be reviewed in the event of an abolishment for that reason.

B. Displacement or Disposition Rights of an Employee Whose Position Has Been Abolished:

If an abolishment results in a reduction of the workforce, the appointing authority shall follow the procedures for laying off employees, subject to the following modifications:

1. the employee whose position has been abolished shall have the right to fill an available vacancy within the employee’s classification;
2. if the employee whose position has been abolished has more retention points than any other employee serving in the same classification, the employee with the fewest retention points shall be displaced;

3. if the employee whose position has been abolished has the fewest retention points in the classification, the employee shall have the right to fill an available vacancy in a lower classification in the classification series;
4. if the employee whose position has been abolished has the fewest retention points in the classification, the employee shall displace the employee with the fewest retention points in the next or successively lower classification in the classification series.

C. Order of Layoff

For purposes of this Chapter of the Rules, the appointment categories and order of layoff of employees are as follows: part-time probationary, part-time permanent, full-time probationary, and full-time permanent.

Layoffs shall be based upon retention point order beginning with the employee having the fewest retention points and continuing to the employee with the most retention points. Retention point lists shall be compiled in descending retention point order.

In the classification(s) selected for layoff, the appointing authority shall lay off employees and employees shall displace employees using the following "order of layoff":

1. Part-time probationary employees in the same classification who have not completed their probationary period or six months of continuous service in the position, whichever is longer.
2. Part-time permanent employees in the same classification who have completed their probationary period or six months of continuous service in the position, whichever is longer.
3. Full-time probationary employees in the same classification who have not completed their probationary period or six months of continuous service in the position, whichever is longer.
4. Full-time permanent employees in the same classification who have completed their probationary period or six months of continuous service in the position, whichever is longer.

D. Displacement

1. A laid off employee has the right to displace the employee with fewest retention points in the following order:
  - a. within the classification from which the employee was laid off;
  - b. within the classification series from which the employee was laid off;

- c. within the classification the employee held immediately prior to holding the classification from which the employee was laid off, except that the employee may not displace employees in a classification if the employee does not meet the minimum qualifications of the classification or if the employee last held the classification more than three (3) years prior to the date on which the employee was laid off.

If, after exercising displacement rights, an employee is subject to further layoff action, the employee's displacement rights shall be in accordance with the classification from which the employee was first laid off.

2. Following the order of layoff, an employee laid off in the classified civil service shall displace another employee within the same appointing authority in the following manner:
  - a. each laid off employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series;
  - b. any employee displaced by an employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series. This process shall continue, if necessary, until the employee with the fewest retention points in the lowest classification of the classification series of the same appointing authority has been reached and, if necessary, laid off.
3. No employee shall displace an employee for whose position or classification there are certain position-specific minimum qualifications, as established by the appointing authority and reviewed for validity by the Civil Service Commission, or as established by bona fide occupational qualification, unless the employee desiring to displace another employee possesses the requisite position-specific minimum qualifications for the position or classification.

#### E. Notice of Layoff

Each employee to be laid off shall be given advance written notice by the appointing authority. The notice shall require the employee to notify the appointing authority if the employee desires to exercise any displacement rights he or she has. The notice shall state that the employee must notify the appointing authority of the employee's intention to exercise his or displacement rights within five days after receiving the notice of layoff or displacement. An employee that does not notify the appointing authority within that five-day period that the employee intends to exercise such displacement rights shall forfeit those displacement rights.

F. Paper Layoff

The appointing authority may require employees who are to be laid off or displaced to preselect their options for displacing other employees, so that all or part(s) of the effective dates of layoff or displacement may occur simultaneously, rather than serially.

G. Calculation of Retention Points

The appointing authority shall make the initial determination of retention points. The Commission shall verify those retention points. Retention points shall reflect the length of continuous service for all employees affected by a layoff.

For purpose of this rule, retention points shall be based solely on years of continuous full-time service with the City of New Franklin. An employee's total retention points shall be reflective of the date that the employee was appointed to full-time status, irrespective of whether or not the employee was in active pay status during a pay period or not or on an approved leave of absence. The retention point calculation reflects that an employee having an earlier full-time appointment date with the City of New Franklin will stand higher on the retention point list than an employee appointed to full-time status later.

H. Establishment of "Layoff" Lists

The appointing authority shall place laid off employees and employees who have exercised their displacement rights to a lower or different classification on layoff lists. Those employees with the most retention points within each category of order of layoff, as established in Rule 13.01(C), shall be placed at the top of the layoff list to be followed by employees ranked in descending order of total retention order. Laid off employees shall be placed on layoff lists for each classification in the classification series equal to or lower than the classification in which the employee was employed at the time of layoff. Reinstatement rights continue for one (1) year from the date of layoff. During the one (1) year period, the laid off employee's appointing authority shall not hire or promote anyone into a position within that classification until all laid off persons on a layoff list for that classification that are qualified to perform the duties of the position are reinstated or decline the position when it is offered. The recall period for employees laid off or displaced under R.C. 124.37 (police and fire) shall be three (3) years.

An employee that does not exercise his or her option to displace into another or a lower classification shall only be entitled to reinstatement in the classification from which he or she was displaced or laid off.

An employee that declines reinstatement that is offered shall be subject to a change in his or her reinstatement rights in accordance with RC 124.327 (D), (F), and (G). Any employee reinstated from a layoff list shall not serve a probationary period upon reinstatement, except that an employee laid off during an original or promotional probationary period shall begin a new probationary period.

### **13.02 Layoffs or Reductions in the Police or Fire Department**

Layoffs or reductions in the Police or Fire Departments for causes other than those outlined in R.C. 124.34 shall be made in accordance with the provisions of R.C. 124.37 and the applicable provisions of R.C. 124.321 through 124.328. In consideration that those enumerated Sections of the Revised Code conflict on their face, in some respects, and it is clear that R.C. 124.37 applies to police and fire personnel and not to other City employees, the intent of this Rule is that an appointing authority may abolish positions and/or lay off employees in the Police or Fire Department for the reasons set forth in R.C. 124.321, and R.C. 124.37 shall control the resulting reduction in force. As noted above, the recall period for employees laid off or displaced under R.C. 124.37 shall be three (3) years. (But See Rule 1.02: Construction, as well, especially to the effect that a collective bargaining agreement may override this rule by establishing a different basis or method for layoff or abolishment).

### **13.03 Temporary Transfers**

- A. An employee holding a position in the classified civil service may be temporarily transferred from his or her original position to a similar position, for a period not to exceed thirty (30) days. No employee shall be transferred to a position under another appointing authority, unless that appointing authority agrees.
- B. No employee shall be temporarily transferred more than once during any six (6) month period without the approval of the Commission.
- C. If the Commission approves a second temporary transfer within any six (6) month period, and the employee objects to the transfer because the temporary transfer is not necessary for the efficient operation of the office, the employee may appeal the temporary transfer to the Commission. If the Commission finds that the appeal of the employee is well taken, the Commission shall not approve the temporary transfer. If the Commission finds that the appeal is not well taken, the Commission shall approve the temporary transfer.

### **13.04 Permanent Transfers**

- A. Subject to the other provisions of these rules, the Mayor may permanently transfer an employee in the classified service from his or her position to a similar position in another office or department, with the consent of the Commission and the employee to be transferred. No employee shall be transferred to a position under another appointing authority, unless that appointing authority agrees. Furthermore, no transfer shall be made:
  - 1. from an office or position in one class to an office or position in another class; or
  - 2. to an office or position for original entrance to which there is required by these rules an examination involving essential tests or qualifications or carrying a salary different from or higher than those required for original entrance to an office or position held by the person proposed to be transferred.

- B. For the purposes of this rule, a "permanent transfer" is any transfer in excess of thirty (30) days unless the employee and the employer have agreed to a temporary transfer of a longer period, not to exceed ninety (90) days.
- C. The appointing authority requesting the permanent transfer shall notify the employee and the Commission in writing of the request to transfer.
- D. If the Commission determines that the transfer is not necessary for the efficient operation of the office, department, or division, the Commission shall not approve the transfer and shall notify the appointing authority and the employee in writing that the transfer is not approved. If the Commission determines that the transfer is necessary for the efficient operation of the office, department, or division, the Commission shall notify the appointing authority and the employee involved in writing that the transfer is approved.

## **CHAPTER FOURTEEN REINSTATEMENTS AND LEAVES OF ABSENCE**

### **14.01 Leaves of Absence**

The Mayor may grant a leave of absence to an employee in the classified service for a period not to exceed six (6) months. Upon the expiration of such leave of absence, such officer or employee shall be reinstated. All such leaves of absence granted by the appointing authority shall be referred to the Commission promptly in order that the civil service status of such absentees may be protected.

Notwithstanding the other provisions of this rule, if an employee meets the requirements for preserving or accumulating seniority or other rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), or a comparable Ohio statute, the Commission will honor the requirements of USERRA or the Ohio statute when applying these rules.

### **14.02 Reinstatements Generally**

This rule applies to persons who are separated from service, not to persons who are on an approved leave of absence. Any person holding an office or position under the classified service who has been separated from the service without delinquency or misconduct on his or her part, and other than for disability, may, upon recommendation of the appointing authority and with the consent of the Commission, be reinstated within one (1) year from the date of such separation to a vacancy in the same office or position in the same department. Such reinstatement may be predicated upon the person passing a physical examination made by a licensed physician and showing the person can perform the essential functions of the job.

If such separation is due to injury or physical or psychiatric disability, the person shall be reinstated in the same office held or in a similar position to that held at the time of separation, within thirty (30) days after written application for reinstatement if (a) the person passes a physical or psychiatric examination made by a licensed physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife showing



that the person has recovered sufficiently from the injury or physical or psychiatric disability to perform the essential functions of the position to which he or she would be reinstated and (b) if the application for reinstatement is filed within two (2) years from the date of separation, and (c) if the application is not filed after the date of service eligibility retirement. The physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife shall be designated by the appointing authority and shall complete any written documentation of the physical examination.

The Appointing Authority must report the reinstatement to the Commission, so the Commission may certify that person's proper employment for payroll purposes.

#### **14.03 Reinstatements/Disability Retirement for Police or Fire**

- A. Any person holding an office or position under the classified service in the Police Department or Fire Department who is separated therefrom due to injury or physical disability incurred in the performance of duty shall be reinstated immediately, or one suffering injury or physical disability incurred other than in the performance of duty may be reinstated, upon filing with the Chief of the Police Department or the Chief of the Fire Department, respectively, a written application for reinstatement, to the office or position held at the time of such separation, after passing a physical examination showing that the person has recovered sufficiently from the injury or other physical disability to perform the essential functions of the position to which he or she would be reinstated. The physical examination shall be made by a licensed physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife within two (2) weeks after application for reinstatement has been made, provided such application for reinstatement is filed within five (5) years from the date of separation from the department, and further provided that such application shall not be filed after the date of service eligibility retirement. The physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife shall be designated by the Police and Fire Pension Board and shall complete any written documentation of the physical examination.
  
- B. Any person who holds an office or position under the classified service in the Police Department or Fire Department, and who resigns therefrom, may be eligible to be reinstated to the rank of policeman or firefighter, respectively, upon (a) filing a written application for reinstatement with the Commission (and a copy with the Chief of Police or Chief of Fire, respectively) within one (1) year from the date of resignation, and (b) passing a physical examination disclosing that the person is physically fit to perform the essential functions of the office of police officer. The appointing authority shall make the final decision regarding reinstatement. Any person reinstated pursuant to the authority of this Paragraph (B) shall not receive credit for seniority earned prior to resignation and reinstatement and shall not be entitled to reinstatement to a position above the rank of police officer (aka "patrol officer") or firefighter, respectively, regardless of the position the person may have held at the time of the resignation.

## **CHAPTER FIFTEEN PROHIBITIONS**

### **15.01 Political Activity Prohibited**

- A. No officer or employee in the classified service of the City shall engage in partisan political activity and shall not to that extent:
  - 1. directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution to any political party or for any candidate for public office;
  - 2. nor shall any such person solicit, directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in such classified service;
  - 3. nor shall any such officer or employee be an officer in a political organization or take part in politics other than to vote as he or she pleases, and to express freely his or her political opinions.
  
- B. This provision shall not prohibit officers or employees of the City from serving as a precinct election official under R.C. 3501.22 or from making personal political contributions.

### **15.02 Payment for Appointment or Promotion Prohibited**

No applicant for appointment or promotion in the classified civil service shall, directly or indirectly, pay or promise to pay any money or other valuable thing, nor shall he or she ask or receive any recommendation or assistance from any person, upon the consideration of any political service to be rendered, for or on account of his or her appointment or promotion, or proposed appointment or promotion.

### **15.03 Abuse of Official Power for Political Reasons Prohibited**

No officer or employee of the City shall appoint, promote, reduce, suspend, lay off, discharge, or in any manner change the official rank or compensation of any officer or employee in the classified service, or promise or threaten to do so, or harass, or discipline, or coerce any such officer or employee, for giving, withholding, or refusing to support any party.

### **15.04 Abuse of Political Influence**

No person who holds any public office, or who has been nominated for, or who seeks nomination or appointment to any public office, shall corruptly use or promise to use, either directly or indirectly, any official authority or influence in order to secure or to aid any person in securing for himself or herself, or for another any office or employment in the classified service, or any promotion or increase in salary therein, as a reward for political influence or service. No person, by means of threats or coercion, shall induce or seek to induce anyone in the said classified service to resign his or her position, or to waive his or her right to certification, appointment or promotion.

### **15.05 Violations**

After a rule hereunder has been established and published by the Commission, no person shall make an appointment to office or select a person for employment contrary to such rule, or willfully refuse or neglect to comply with or to conform to the sections of these rules, and, to the extent that the same are applicable, provisions of R.C. Chapter 124, or willfully violate any section of the same. If any person who is convicted of a violation described herein holds any public office or place of public employment, such position shall be rendered vacant by reason of said conviction.

### **15.06 Prosecutions**

Prosecutions for violations under these rules and/or R.C. Chapter 124 in relation to the civil service, or by any officer or employee of the same, shall be instituted by the Commission through the legal department of the City or by the Commission through special counsel.