

ORDINANCE NO.

20-0-04

SPONSOR:

Mayor Adamson

INTRODUCED:

October 7, 2020

**AN ORDINANCE ADOPTING RULES AND REGULATIONS FOR THE NEW FRANKLIN PERSONNEL ADVISORY AND APPEALS BOARD.**

**WHEREAS**, On November 26, 2019 following a City Referendum Vote, the New Franklin Charter was amended to replace the Civil Service Commission with a Personnel Advisory and Appeals Board (PAAB); and

**WHEREAS**, Section 7.03(C) of the Amended City Charter requires the Mayor to propose Rules to the PAAB to be recommended to Council for adoption; and

**WHEREAS**, on September 29, 2020 the Mayor proposed Rules and Regulations for the Personnel Advisory and Appeals Board to the Board, and the Board unanimously voted to recommend to Council the adoption of the Rules and Regulations, a copy of which is attached hereto as Exhibit A.

**NOW, THEREFORE, BE IT ORDAINED, BY THE COUNCIL OF THE CITY OF NEW FRANKLIN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:**

**SECTION ONE:**

The New Franklin City Council approves the recommendation of the Personnel Advisory and Appeals Board and hereby adopts the Rules and Regulations of the Personnel Advisory and Appeals Board, attached hereto as Exhibit A and incorporated by reference herein.

**SECTION TWO:**

The City of New Franklin finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any deliberation of this Council and any other Committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

**SECTION THREE:**

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of New Franklin. Provided that this legislation receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED:

October 7, 2020

Kelly Kepler, Clerk

David Stock, President  
20-0-04

APPROVED:

October 7, 2020

Paul F. Adamson, Mayor

ENACTED EFFECTIVE:

October 7, 2020

ON ROLL CALL:

Cotts  
Fetterman  
Norris

Yes  
Yes  
Yes

Jones Absent  
Stock Yes Harget  
Hawk

Yes  
Yes

Publications on

October 16, 2020

and

October 23, 2020

Kelly Kepler, Clerk

**NEW FRANKLIN PERSONNEL  
ADVISORY AND APPEALS BOARD**

**RULES AND REGULATIONS**

**2020**

Adopted by Personnel Advisory and Appeals Board: September 29, 2020

Adopted by City Council:

*October 7, 2020*

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## **I. INTRODUCTION**

On November 26, 2019, following a City Referendum Vote, the New Franklin Charter was amended to replace the Civil Service Commission with a Personnel Advisory and Appeals Board.

Pursuant to the Charter Amendment New Franklin Council is charged with appointing three (3) disinterested qualified voters of the City to the Board to serve without compensation for a term of six (6) years. Each member shall have been a resident of the Municipality or territory annexed thereto for a period of two (2) years preceding the appointment and shall continue to remain a resident during the member's term. In the event of a vacancy, Council shall appoint a qualified elector to complete the unexpired term. Members shall serve no more than two (2) consecutive full six (6) year terms.  
New Franklin City Charter, Section 7.03(A)

## **II. JURISDICTION AND POWERS**

As set forth below, the Personnel Advisory and Appeals Board shall have jurisdiction over personnel matters for Municipal employees, other than the Mayor and the Directors of Finance, Law, Service and Safety, except provisions covered by collective bargaining agreements, and shall not be required to extend its jurisdiction to any other city, or school district or political subdivision of the State or their employees. Any employee, except for Department Managers and other similarly situated employees as designated by Council, shall have the right to appeal grievances involving dismissals or suspensions for periods of longer than three (3) days or eligibility rulings, to successively higher levels of the Municipal management until satisfied, or until heard and decided by the Personnel Advisory and Appeals Board; provided, however, that such aggrieved employee presents the grievance to the Board within thirty (30) days of final determination of the grievance by the Mayor.

Any Department Manager or similarly situated employee as designated by Council aggrieved by the final determination of the Mayor may appeal grievances involving dismissals or suspensions for periods of longer than three (3) days or eligibility rulings to the Personnel Advisory and Appeals Board within thirty (30) days of the final determination of the Mayor.

New Franklin City Charter, Section 7.03(B)

### III. PERSONNEL PRINCIPLES AND RULES

#### A. Appointments and Promotions

All appointments and promotions of Municipal employees shall be made solely on the basis of merit and fitness demonstrated by examination, demonstrated job performance or other evidence of competence. Department Managers, Division Heads, and other similarly situated employees as designated by Council shall serve at the pleasure of the Mayor, subject to the City's standard performance evaluation process by the Mayor, with right of appeal as provided in Section 7.03(B) of the City of New Franklin Charter.

#### B. Personnel Rules

The Mayor shall propose such personnel rules to the Personnel Advisory and Appeals Board which assure compliance with the principles and policies referenced above, as well as all constitutional and Federal/State mandates. The Personnel Advisory and Appeals Board shall report to Council its recommendations thereon, and Council may by ordinance adopt such rules and amendments consistent herewith.

New Franklin City Charter, Section 7.03(C)

### IV. ELECTION AND DUTIES OF OFFICERS

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

The Board shall elect one of its members as Chair of the Board 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 Board as are necessary to transact the business and affairs of the Board;
2. To sign the minutes of all actions taken by the Board;
3. To preside at all the meetings of the Board;
4. To ensure that all reports 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 Board.

#### B. Appointments and Duties of Board Secretary

The New Franklin Human Resources Director shall act as Secretary to the Board and shall also act as its Clerk. In the absence of the Secretary, the Board may appoint a member of the Board or another person to act as the temporary Secretary of the Board in the place of the Secretary. The Secretary shall perform the following duties:

1. Attend all meetings of the Board and keep the minutes thereof;
2. Keep in the form of minutes a record of the official actions of the Board;
3. Receive calls, accept service of filings, and provide access to Board records;
4. Process all applications and appeals;
5. Accurately and properly maintain all of the records of the Board;
6. Keep all files in proper order;
7. Prepare and deliver, or cause to be delivered, notices, and other communications ordered by the Board;
8. Handle such correspondence as the Commission shall determine, including any required reports;
9. Work with the Finance Director regarding the payment of money on behalf of the Board;
10. Make available to the public those documents deemed to be public records under the terms of R.C. 149.43;
11. Maintain a journal, which shall be open to the public for inspection, in which the Board shall keep a record of its proceedings and of the vote of each of its members upon every action taken by it;
12. Perform other duties as assigned by the Board.

## **V. MEETING AND ORDER OF BUSINESS**

### **A. Organizational and Regular Meetings**

The first meeting of the Board shall be its organizational meeting. The Board shall hold such other meetings as may be called by the Chair of the Board, or by two (2) members thereof.

All meetings of the Board are open to the public, except as set forth in R.C. 121.22, other applicable provisions of the Revised Code, the provisions of the New Franklin Personnel Policy and Procedures Manual, and this rule. Notice of regular meetings shall be provided by publication in a newspaper of general circulation and to other media or individuals who have requested notification at least five (5) days prior to the dates set for the meeting.

General minutes shall be taken at all Board meetings and shall be open to public inspection.

### **B. Special Meetings**

The Chair of the Board may, on his or her own initiative, and shall, upon the request of the other two (2) members of the Board, call a special meeting of the Board to be held not later than ten (10) days from the date of notice of such meeting. Two (2) members of the Board shall constitute a quorum at any meeting of the Board. It

shall require the affirmative vote of at least two (2) members to adopt any motion or resolution.

Twenty-four (24) hours advance notice of any special meeting of the Board must be given to the local news media and to other media or individuals who have requested notification, except in the event of an emergency requiring immediate official action.

**C. Order of Business**

The order of business for meetings of the Board shall be:

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

**D. Executive Session**

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 Board, 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.

**VI. ADOPTION, AMENDMENT, RESCISSION OF RULES**

**A. Proposed Rules**

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.



**B. Emergency Rules**

Section A above does not apply to an emergency rule, amendment, or rescission or to any rule, amendment, or rescission required by state or federal law or regulation.

**C. Adoption of Rules**

Board 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 Board adopting the change, will be kept by the designee of the Board 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.

**D. Submission to Council**

Once the Board 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.

**VII. GENERAL DUTIES OF THE BOARD**

**A. Appeals**

The Board shall hear appeals as provided for in the New Franklin Personnel Policy and Procedures Manual, (The Manual), including but not limited to:

1. Appeals from eligibility rulings on vacancies/promotions as provided for in Section 3.04(E)(12) of the Manual;
2. Unresolved disputes regarding requests for special accommodations for testing, as provided in Section 3.05(C)(3) of the Manual;
3. Appeals from Demotions as provided for in section 3.15(D) of the Manual;
4. Unresolved disputes regarding selection of a physician for examination regarding injury leave as provided for in Section 5.15(A)(5) of the Manual;
5. Appeals regarding Disability Leave/Separation as provided for in Section 5.17(C)(5) of the Manual;
6. Appeals regarding reinstatement following Disability as provided for in Section 5.15(D)(9) of the Manual;
7. Appeals from suspensions of more than three (3) days, demotions or terminations as provided for in Section 7.04 of the Manual;
8. Appeals from Layoffs and/or Reductions in Force as provided for in Section 8.00 (C) of the Manual.

9. Any and all other matters referred to the Board by virtue of the Manual or as specifically referred for consideration and determination by the Mayor, or by operation of law.

**B. Hearing Procedures**

The Board shall conduct all Hearings and Appeals pursuant to the procedures set forth in section 7.05 of the Manual which provides as follows:

**PERSONNEL ADVISORY APPEALS BOARD HEARING PROCEDURE SECTION 7.05**

- A. In determination of appeals to the PAAB regarding special testing accommodations, demotions, physical examinations, disability leave/ separation/reinstatement, disciplinary actions, layoffs or appointment/promotion eligibility decisions, the following rules shall apply:

1. The PAAB shall set a time and place to hear such appeal and shall provide sufficient notice of same to all parties and designated representatives by Certified U.S. Mail no less than ten (10) calendar days prior to the date set for hearing. This time limit may be waived by the parties. Attendance at the hearing without objection as to notice shall constitute waiver as to any defects in the time, manner or method of service.
2. Both parties are entitled but are not required to be represented by a third party of their choice.
3. The Ohio Rules of Evidence and Rules of Civil Procedure shall be used as general procedural guidelines but the Board may permit the introduction of evidence otherwise excludable, including hearsay, where a sufficient foundation establishing reliability, credibility, relevance and materiality has been established.
4. The Board may, in its discretion, issue prehearing orders, permit discovery, permit motions, issue subpoenas on forms provided by the parties, determine the order of presentation of evidence, call witnesses other than those called by the parties, hear arguments and request submission of briefs, memoranda or other written materials. The filing, response and determination of motions shall generally conform to the Ohio Rules of Civil Procedure.
5. Hearings before the Board shall be closed. If the appellant requests a public hearing, the Board shall consider and rule on that request.
6. Hearings shall be recorded either stenographically or by another reliable recording process.

**B. At the hearing, the following procedure shall apply:**

1. The Board shall first confirm jurisdiction (right to appeal, stages of appeal, conformity with procedure for appeal, etc.) and proper notice or waiver of same by the parties, and thereafter proceed as follows:
2. All witnesses must testify under oath or affirmation. The Board may limit the number of witnesses to avoid cumulative, repetitive or unnecessary testimony.

3. The City shall be required to establish by a preponderance of the evidence sufficient factual allegations which support the disciplinary action, layoff decision or employment eligibility action;
4. The employee shall then produce such evidence as he/she may wish to present to refute such charges or contest the action;
5. The City may then offer evidence in rebuttal;
6. Either party may call the opposing party, agents, officers or others as witnesses and question them as if on cross-examination;
7. The Board may then request or permit closing arguments or submission of written arguments;
8. Within thirty (30) days following conclusion of the hearing or submission of post-hearing written arguments, the Board shall issue a written decision and final orders signed by the Chair and the other Board members.
9. In discipline actions, the acceptance by the Mayor of the resignation of the employee/ complainant/appellant prior to the conclusion of the Hearing shall be considered a withdrawal of the charges and the appeal. The separation of the employee shall be entered upon the records of the Board and the proceedings shall be dismissed without judgement

**C. Appointment of Hearing Officer:**

1. The Board may appoint a Hearing Officer to hear an appeal. If so, the Hearing Officer shall follow the procedure set forth above for management of the hearing, and within thirty (30) days following the conclusion of the hearing or the submission of post-hearing written arguments shall submit and serve upon the parties by Certified U.S. Mail a written Report and Recommendations.
2. Either party may object to the Hearing Officer's Report and Recommendations by filing with the Board written objections within ten (10) days after receipt of the Report and Recommendations. The other party may file a written response within ten (10) days after the filing of the opposing party's objections. The Board may extend the time for filing of objections and/or responses.
3. Within thirty (30) days following receipt of the Hearing Officer's Report and Recommendations, and any objections/responses thereto, the Board shall issue a Final Order either adopting, modifying, amending, or rejecting the recommendations.

- D. Decisions of the Personal Policy and Appeals Board are final. Final Orders shall be signed by the Chair and the other members of the Board. Copies of the final Order shall be forwarded by Certified U.S. Mail to all parties. If the copies are returned as unclaimed or refused, they shall be reissued by regular U.S. Mail.

New Franklin Personnel Policy and Procedures Manual, Section 7.05(A), (B) and (C)