

**CIVIL SERVICE COMMISSION**  
**OF**  
**CITY OF JACKSON, OHIO**  
**RULES AND REGULATIONS**  
**2022**

Adopted by Civil Service Commission: May 18, 2022

Revised by Civil Service Commission: May 18, 2022

*Cheryl J. Browning Warner*  
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**PREAMBLE**

**Preamble**

The following rules and regulations are adopted in accordance with the authority conferred upon the Municipal Civil Service Commission of the City of Jackson, 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 Ordinances of the City, and Chapter 124 and other provisions of the Ohio Revised Code ("Revised Code" or "R.C.").

Inquiries regarding civil service matters or rules should be addressed to the City of Jackson Civil Service Commission, Jackson, Ohio 45640.

**CIVIL SERVICE COMMISSION**

\_\_\_\_\_, Chair  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member  
\_\_\_\_\_, Secretary

**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- A. These rules shall be applicable to all civil service matters, except to the extent these rules have been superseded by ordinance or a collective bargaining agreement between the employer and a public employee collective bargaining representative. 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. Classified employees appointed to, and classified positions created by any program developed and funded by federal legislation shall be covered by these rules if these rules are not in conflict with applicable federal legislation and/or regulations. Where the federal legislation and/or regulations require that these rules be extended to unclassified employees or positions where the rules would not normally apply, the rules will be so extended only to the extent necessary to ensure the receipt of the funding or to comply with the federal mandate.
- 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, except as provided in A above or Rule 1.02.

**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 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.

An ordinance or Council resolution will prevail over any conflicting rule. Any collective bargaining agreement that provides for binding arbitration of grievances and that conflicts with an ordinance, a resolution, or these rules will prevail over the ordinance, resolution or rule, pursuant to R.C. Chapter 4117, unless the subject matter is unlawful, or is not a proper subject for collective bargaining (for example, certain public records provisions), or is a matter that is not enforceable through the override provisions of R.C. Chapter 4117 (for example, families of military personnel retain certain rights under R.C. 4117.10 and 5906.02; and employees convicted of felonies can lose certain rights pursuant to R.C.

124.34; all notwithstanding any collective bargaining agreement). 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 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.

The term “ordinance” in these rules is meant to include formal ordinances, resolutions, or any other actions of City Council (“Council”) that are sufficient to carry out exercises of Home Rule or other powers of Council. References to “rules” and “regulations” are interchangeable, unless indicated otherwise.

### **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 the Commission; provided that any rules that supersede State law and require an action of Council for their effect will take effect in accordance with the action of 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.

### **1.05 New Rules**

The present rules of the Commission shall continue in full force and effect until the amendments set forth in these rules have been properly adopted. Upon the adoption of these amendments, these rules shall supersede and replace the same as the Rules and Regulations of the Civil Service Commission.

### **1.06 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 officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, or board, and shall include but not be limited to the following:
1. Mayor of the City;
  2. Director of Service;
  3. Director of Safety;
  4. City Auditor;
  5. Director of Law.
- 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 an appointing authority'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 Jackson, Ohio.
- F. **"Civil Service"** includes all offices and positions of trust or employment in the service of the City or as otherwise provided for by law.
- G. **"Classified Service"** means those persons, in the employ of the City or as otherwise provided for by law, that are in competitive classified civil service status due to their job positions pertinent to the local situation. City ordinance, or in the absence of controlling ordinance, state law, shall determine those positions that are unclassified, and the rights of the affected employees shall be determined accordingly. See Rule 1.02 Construction.
- 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.
- H. **"Commission"** means the Municipal Civil Service Commission of the City.
- I. **"Days"** means calendar days unless specified otherwise.

- J. **"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.
- K. **"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.
- L. **"Employee"** means any person holding a position subject to appointment, removal, promotion, or reduction by an appointing authority.
- M. **"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.
- N. **"He"** is a masculine pronoun that, whenever it or its derivatives are mentioned, includes the feminine pronoun "she" and its derivatives.
- O. **"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.
- P. **"Position Classification"** refers to the arrangement of positions into classifications. Positions shall be classified in accordance with the duties and responsibilities of the position.
- Q. **"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.
- R. **"Revised Code"** means the Ohio Revised Code (or "R.C.").
- S. **"Rules"** means the Rules and Regulations of the Commission.
- T. **"Secretary"** means the Secretary of the Commission.
- U. **"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.

V. **"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 may be determined as provided for in R.C. 124.11(A) or (C), 124.34, or other Revised Code provisions, or by local ordinance; and the rights of affected employees are determined accordingly. See Rule 1.02 Construction.

W. **"Unsatisfactory Performance"** means the failure of an employee to complete one or more job of his or her job duties:

1. in a way; or
2. to a standard; or
3. within a timeframe

that is not arbitrary or capricious and:

4. that the employee's supervisor or someone else in authority has communicated to the employee; or
5. that any reasonable person in the employee's position should understand. "Unsatisfactory Performance" – the failure of an employee to complete one or more job of his or her job duties:

### **CHAPTER THREE GENERAL PROVISIONS**

#### **3.01 Appointments to the Commission**

The Mayor shall have appointed three persons, one for a term of two years, one for a term of four years, and one for a term of six years, who shall constitute the Commission. As the terms of the current Commission members expire, the Mayor shall appoint one person, as successor of the member whose term expires, to serve six years. A vacancy shall be filled by the Mayor for the unexpired term. At the time of appointment, not more than two members of the Commission shall be adherents of the same political party.

#### **3.02 General Duties of the Commission**

The Commission shall:

- A. prescribe, amend, and enforce rules not inconsistent with R.C. Chapter 124 (except to the extent inconsistencies have been adopted by Home Rule) 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 or as otherwise provided for by law;
- 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, along with a record of the Commission's final decisions pertaining to classification or reclassification of positions in classified service of the City and the assignment or reassignment of employees to specific position classifications;
- 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 or as otherwise provided for by law;
  - 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 or as otherwise provided for by law, containing the information specified in Rule 3.07;
- G. hear appeals provided for by law, including: appeals of appointing authorities from decisions of the Commission relative to classification or reclassification of any position in the classified service under the jurisdiction of that appointing authority; 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, 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

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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 authorized by R.C. 124.393 and 124.394.

from a decision of the Commission that resulted from an appeal in the first place – although, the Commission may allow motions for reconsideration;

- II. 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. prepare and submit to the Mayor an annual budget and request for appropriations for the next fiscal year of the City that the Commission deems appropriate and sufficient to defray the costs and expenses of its operations;
- K. appoint such additional referees (including hearing officers), inspectors, examiners, clerks, assistants, and/or other employees 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 subject to the Commission's review and control;
- L. exercise all other powers and perform all other duties with respect to the civil service of the City or as otherwise provided for by law 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 website 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 City Auditor 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 Secretary**

The Commission shall appoint and employ 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 preparation of the budget and annual report;
11. on authorization from the Chair, work with the Auditor 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.

**C. Appointment of Special Hearing Officers, Examiners, Etc.**

The Commission may appoint hearing officers, special examiners, and additional clerks, assistants, and other employees, contract for services necessary to assist the Commission in carrying out its functions, or make use of services of the City, as provided in Rule 3.02(K) above.

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

The expenses and salaries, if any, 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, or for other reasons permitted by law. 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.

### **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 a job classification plan for all positions, officers, and employment situations in the employ of the City and/or 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 Commission shall prepare a class specification for each job classification setting forth a class title, salary range, typical duties and responsibilities, and the necessary qualifications. The Commission shall also assign related classifications that form a career progression to a classification series. The Commission shall 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.
- E. An employee may be assigned duties that are not specifically set forth in his or her job description or classification specification – however, an employee should be assigned duties such that, if that employee’s job were audited, the classification that most accurately describes the employee’s duties should be the current classification.

#### **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 employee’s appointing authority a written notice setting forth the proposed new classification, pay range, and salary, and the Commission and the appointing authority shall issue the additional notices required in R.C. 124.14(D).

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 employee’s appointing authority 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. all officers elected by popular vote, or persons appointed to fill vacancies in such offices;
2. the members of all boards and commissions, and the heads of departments appointed by the Mayor of the City; except that this rule does not exempt the Chief of Police;
3. employees of the City Council, who are engaged in legislative duties;
4. up to four (4) clerical and administrative support employees for the City Council of the City;
5. up to four (4) clerical and administrative support employees for each of the principal appointive executive officers, boards, or commissions of the City authorized to appoint the same, except the Civil Service Commission of the City;
6. assistants to the Law Director of the City;
7. such students in normal schools, colleges, and universities of the State of Ohio who are employed by the City in student or intern classifications;
8. such unskilled labor positions as the Commission may find it impracticable to include in the competitive classified service; provided such exemptions shall be by order of the Commission, duly entered on the record of the Commission with the reasons for each such exemption;
9. deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals or holding a fiduciary relation to their principals;
10. employees who receive temporary or intermittent appointments, per R.C. 124.30;
11. employees appointed to administrative staff positions for which the appointing authority is given specific statutory authority to set compensation;
12. persons who lose their classified status due to a conviction of a felony as provided in R.C. 124.34;
13. part-time seasonal employees;
14. volunteer firefighters, regardless of rank within the volunteer fire department; and/or

15. other positions designated as unclassified by ordinance or other law.

- B. Omission of any unclassified position or person from the foregoing specific list of unclassifieds shall not be construed as an intention to render that person or position classified.
- C. Each elective officer and each principal appointive officer, board, commission, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution, shall designate each position for which exemption from the competitive classified service is claimed under the provisions of R.C. 124.11(A)(8) and Rules 5.02(A)(4) and (5).

At any time, the appointing officer, board, or commission determines to change a designation of a position as unclassified under paragraph (A)(8) or has not used all of the allowable (A)(8) exemptions, the officer, board, or commission may designate one or more additional positions as exempt under (A)(8), as long as the total number do not exceed the maximum number allowed under (A)(8). The selection of exempted positions may be reconsidered by an appointing authority if a reorganization of his/her agency occurs during his/her term of office as a result of legislative action.

- D. The mere failure of an employee's appointing authority to file a statement with the Commission indicating that the employee is in the unclassified civil service, or the mere late filing of such a statement, does not prevent the employee from being in the unclassified service.

### 5.03 Classified Service

The classified service shall comprise all persons in the civil service not specifically included in the unclassified service. The classified service shall consist of two (2) classes, which shall be designated as the competitive class and the unskilled labor class.

#### A. Competitive Class

The competitive class shall include all positions and employments in the civil service for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment may be given in all positions in the competitive class that are not filled by promotion, reinstatement, transfer, or reduction, as provided by ordinance, law, and these rules, by appointment from those certified to the appointing officer in accordance with these rules.

#### B. Unskilled Labor Class

The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the unskilled labor class shall be filled as described in this Subsection 5.03(B) by appointment from lists of applicants registered by the Commission:

1. The Commission shall require applicants for registration in the labor class to furnish such evidence or take such tests as the Commission considers proper with respect to the following: age; physical and mental ability to perform the essential functions of the position applied for, with or without reasonable accommodations, honesty, sobriety, capacity, industry, and experience in the work or employment for which application is made.<sup>2</sup> Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought, and preference shall be given in employment in accordance with the rating received from such evidence or in such tests.
2. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the Commission shall certify from the highest on the list double the number to be employed; from this number the appointing officer shall appoint the number actually needed for the particular work. If more than one (1) applicant receives the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

## **CHAPTER SIX APPLICATIONS**

### **6.01 Applications Generally**

All applications, whether for employment or for examination, must be submitted upon forms prescribed by the Commission 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 Commission and shall be available during normal operating hours in the office of the Commission or Mayor or at other locations as announced by the Commission or made electronically available as decided by the Commission.

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<sup>2</sup> The Commission's determination of these qualifications is subject to applicable state or federal law and regulation.

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 applicable Records Commission (e.g., City Records Commission, School District 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**

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.

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

### **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 said 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 ordinance (See Rule 1.02: Construction).

- 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 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 veteran/reserve component 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, except to the extent eligibility for promotion is mandated by law (for example, regarding police promotions). The Commission may 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 shall not be combined with examinations for other departments.

**B. Separate Examinations for Police**

As noted above, separate examinations shall be given in the Police Department and separate rules may apply. Moreover, resulting eligibility lists will only be used within the Police Department, respectively, and each will not be combined with eligibility lists from other departments (See Rule 9.09: Separate Lists for Police. In addition, within the Police 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 two (2) 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 Examinations for Appointment without Competitive Examination**

Whenever there are urgent reasons that an appointing authority must fill a vacancy, and the Commission cannot certify a sufficient list of eligibles, the appointing authority may submit the nominee's name and qualifications, along with any required supporting documentation, to the Commission, so the Commission may conduct an examination and determine whether to certify the nominee as qualified. Supporting documentation would include an explanation of how and why the appointing authority selected that candidate over other interested applicants. If the Commission certifies the person as qualified, the appointing authority may then appoint that person, who shall be designated as "a non-temporary appointment under R.C. 124.30(A)(1) and/or 124.23(E)

Any employee in the classified service who is appointed to a position under Section 124.30 of the Ohio Revised Code, and either demonstrates merit and fitness for the position by successfully completing the probationary period for the position or remains in the position for a period of six (6) months of continuous service, whichever is longer, shall become a permanent appointee in the classified service at the conclusion of that period – except that this provision shall not apply to appointments in the Police. See Rule 10.07.

**7.06 Examinations for Promotion without Competitive Examination**

Under the following conditions, the Commission may authorize the appointing authority to nominate a qualified person for promotion without competitive examination under R.C. 124.23 and/or 124.30(A)(1)(non-temporary):

1. a promotional vacancy exists in the classified service;
2. there are urgent reasons for filling the vacancy;
3. no sufficient eligibility list is in effect for that position;
4. no other applicable law or ordinance prohibits promotion without competition; and
5. the Commission decides that it is not necessary or practicable to conduct a competitive examination.

The Commission must approve the person's qualifications for the position, considering the requirements for the class, before the appointment is made. A person appointed to a promotional position in the Police under this rule shall not achieve permanent status merely by serving in the position.

#### **7.07 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 (or the electronic equivalent) 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 website, 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.

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

- A. General

Whenever physical or psychological qualifications are of especial 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, as the Commission may deem advisable. Medical examinations will only be conducted after a prospective appointee has received a conditional offer of employment; except that the Commission may require that an applicant may 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 Commission will describe the agility or fitness test, and ask "Can this person safely perform this test?" (See also Rule 7.08[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 their 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**

In addition to any other examination of employees under these rules, no person will be eligible to receive an original appointment to the Police Department as a police officer, under the civil service laws, unless he or she has, not more than one hundred and twenty (120) days prior to appointment, passed a physical examination, given by a licensed physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife certifying that the applicant is free of cardiovascular and pulmonary diseases, and showing that he or she meets the physical requirements necessary to perform the essential functions of a police officer, as applicable, and as established by the Commission.

The Commission will only have such an examination conducted after the prospective appointee has received a conditional offer of employment. The Employer will pay the fee for the physical examination. Prior to making the appointment, the appointing authority shall file the report or findings of the licensed physician (or other practitioner listed above) with the Police and Fire Pension Fund.

The Commission, or the Police 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.

#### **7.09 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 7.11.

#### **7.10 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.

#### **7.11 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.

**7.12 Visitors at Examinations**

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

**7.13 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.

**7.14 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.

**7.15 Frauds in Examinations Prohibited**

Frauds in examinations are prohibited. In accordance with R.C. 124.58, and the authority of the Commission to control examinations, 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, 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 ordinance (See Rule 1.02: Construction).

### **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 one standard deviation below the mean.

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 Veterans Preference or 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 twenty percent (20%) of the total grade given in the examination to any applicant who files for the extra credit and qualifies, provided that grade was a passing grade.

An applicant who receives an additional credit under the immediately preceding paragraph shall not receive additional credit under this paragraph. A member in good standing of a reserve component of the armed forces of the United States, including the Ohio National Guard, who successfully completes the member's initial entry-level training shall receive a credit of fifteen per cent (15%) of the person's total grade given in the examination, if that grade was a passing grade.

As noted above, such requests for uniformed service credit must be submitted to the Commission prior to participation in the examination 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.

Applicants eligible for veterans or reserve component credit on original examination shall receive a priority in ranking over other applicants that do not receive such credit but who obtain an identical grade.

### **8.04 Promotional Seniority and Efficiency 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, the state, or any other political subdivision. Efficiency credit may be added if the records of the department(s) where eligible



candidates are employed maintain sufficient records. No credit for seniority or efficiency 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 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. 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/reserve preference).
- 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 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. 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.

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**

Regarding eligible lists for original appointment, in the event that two (2) or more applicants receive the same score in an original appointment examination after adding any applicable extra credit, priority in the time of filing the application with the Commission or their designee shall determine the order in which their names shall be placed on the eligible list; provided that an applicant eligible for veterans/reserve preference under R.C. 124.23 shall receive priority in rank on the eligible list over any other candidates on the list with an equal score that did not receive such credit. Ties among veterans shall be decided by priority of the filing of the application. A tie between a veteran and a non-veteran reserve component member shall be decided in favor of the veteran.

#### **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 (See Rule 9.05).

### **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. (See also Rule 9.05: Disqualification from Eligible List.)

### **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**

Notwithstanding 9.01, separate eligible lists shall be maintained for appointments in the Police Department. No person may be transferred from a Police Department list to one outside that department or from a list outside the department to a list for the Police Department. Furthermore, appointments and promotions outside the Police Department shall not be made from the eligible lists maintained for the Police Department, nor shall appointments and promotions for the Police Department be made from a list not maintained for the Police Department.

## **CHAPTER TEN APPOINTMENTS AND PROMOTIONS**

### **10.01 Appointments Generally**

The following are the rules for appointments and promotions, 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 ordinance (See Rule 1.02: Construction). Other than positions that are filled by exempt promotion, transfer, or reduction, as provided in R.C. 124.01 to 124.64, and the rules and regulations of the Commission prescribed under such sections, 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 R.C. 124.30 (See Rule 10.06: Temporary or Exceptional Appointments), R.C. 124.31 (relating to promotions), R.C. 124.27, and these Rules, 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 or exceptional appointment (See Rule 10.06: Temporary and Exceptional Appointments).

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

When vacancies are to be filled by promotion, the Commission shall certify to the appointing authority only the names of the three (3) persons having the highest ratings on the eligible list. When the promotion is within the Police Department and subject to R.C. 124.44, the Commission shall certify the name highest on the eligibility list. Where appropriate, the Commission may approve a temporary or exceptional appointment.

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

1. Within ninety (90) days after an appointing authority appoints an employee to an unclassified position in the City, the appointing authority shall notify the Commission of that appointment.
2. On the date an appointing authority appoints an employee to an unclassified position in the City, the appointing authority 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 appointing authority appoints an employee to an unclassified position in the City, the appointing authority shall provide the employee with written information describing the duties of that position. Failure of the appointing authority 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.
3. The Commission shall develop and provide each appointing authority in the City with a general written description of the nature of employment in the unclassified civil service that shall be provided to employees under Rule 10.02(C)(2).

### **10.03 Probationary Periods**

- A. All non-temporary original and promotional appointments to the classified service, including appointments made pursuant to R.C. 124.30, but not intermittent appointments, shall be for a probationary period six (6) months or as otherwise established by the Commission; but in the case of an original appointment as a police officer in the police department, the probationary period shall be for one (1) year; and in the case of a promotion, for a probationary period of six (6) months. An appointing authority may request, and the Commission may approve, an extension allowing no more than one (1) year total for a probationary period (including the original period and the extension).
- B. No promotion shall be final until the appointee has satisfactorily served his or her probationary period.
- C. Service after an appointment to the classified service made under R.C. 124.30 shall be included in the probationary period, except for temporary service. 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 or R.C. 124.01 – 124.64.

- B. **Police Department Promotions**

No positions above the rank of patrol officer in the police department 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. No position above the rank of patrol officer in a police department shall be filled by any person unless the person has first passed a competitive promotional examination. Promotion shall be by successive ranks insofar as practicable, and no person in a police department shall be promoted to a position in a higher rank who has not served at least twelve (12) months in the next lower rank.

No competitive promotional examination shall be held unless there are at least two (2) persons eligible to compete. Whenever the Commission determines that there are less than two (2) 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 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 the name of the person on the list receiving the highest rating. Upon the certification, the appointing officer shall appoint the person 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 name of the person on the list having the highest rating, and the appointing authority shall appoint that person within thirty (30) days from the date of the certification.

No credit for seniority, efficiency, 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.

#### **10.06 Temporary or Exceptional Appointments**

Positions in the classified service may be filled without competition as follows:

##### **A. Appointments without Competitive Examination**

Whenever there are urgent reasons for filling a vacancy in any position in the classified service and the Commission is unable to certify names to the appointing authority from an eligible list compiled after a competitive examination, the appointing authority may nominate a person to the Commission for non-competitive examination. If such nominee is certified by the Commission as qualified after such non-competitive examination, that person may be appointed to fill such vacancy. The appointment shall not become permanent until the person shall have successfully completed the probationary period or served continuously in the position for six (6) months, whichever is longer. See Rule 10.07. A person

appointed to a promotional position in the Police Department under this rule shall not achieve permanent status merely by serving in the position.

B. Temporary Appointments

A temporary appointment may be made without regard to the rules of R.C. 124.01 to 124.64. Except as otherwise provided in R.C. 124.30(A), the temporary appointment may not continue longer than one hundred and twenty (120) days. Where a position is vacant for a temporary period by reason of sickness, disability, or other approved leave of absence of a regular employee a temporary appointment may be made for a period longer than one hundred and twenty (120) days and may continue during the period of sickness, disability, or other approved leave of absence.

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.

C. Temporary and Intermittent Employees Unclassified

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

D. Suspension of Rules

In case of a vacancy in a position in the classified service where peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character are required, and upon satisfactory evidence that for specified reasons competition in such special case is impracticable, and that the position can best be filled by a selection of some designated person of high and recognized attainments in such qualities, the Commission may suspend the provisions of R.C. 124.01 to 124.64 and these rules requiring competition in such case, but no such suspension shall be general in its application.

All such cases of suspension shall be reported in the annual report of the Commission with the reasons for this suspension of the rules. Employees appointed under this rule shall achieve permanent status, upon satisfactory completion of the required probationary period or completion of one hundred and eighty (180) days of continuous service in the position, whichever is longer.



#### **10.07 Eligibility for Permanent Classified Status**

Any employee in the classified service who is appointed to a position under Section 124.30 of the Ohio Revised Code, and either demonstrates merit and fitness for the position by successfully completing the probationary period for the position or remains in the position for a period of six (6) months of continuous service, whichever is longer, shall become a permanent appointee in the classified service at the conclusion of that period (except a person appointed to a promotional position in the Police Department under Rule 10.06[A]). Once an employee achieves permanent status, that employee may not be displaced from his or her position due to the certification of another person from an eligible list. This Rule 10.07 shall not apply to intermittent appointees.

#### **10.08 Appointments to the Police Department**

No person shall be eligible to receive an original appointment as a police officer in the Police 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, 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 ordinance (See Rule 1.02: Construction).
- B. The tenure of every officer or employee in the classified service of the City or as otherwise provided for by law, holding a position under R.C. Chapter 124, 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 incompetency, inefficiency, unsatisfactory performance, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of R.C. Chapter 124 or the Rules of the Commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony while employed in the civil service. 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. Special provisions in 124.40 establish tenure and the grounds for suspension and/or removal of the Chief of Police and shall apply unless superseded by ordinance.
- D. 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.
- E. 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." (See Rules 11.02(D) and (E) regarding reductions, fines, suspensions, and removals in the Police Departments).
- 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). For purposes of R.C. 124.34, 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 Appointing Authority 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 appointing authority 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 (See Rule 12.14).

- D. Notwithstanding the above, the tenure and the grounds and procedures for reductions, suspensions, fines, demotions, or removals of members of the Police Department who are not subject to a collective bargaining agreement are governed by the Ohio Revised Code and City Ordinances, including, but not necessarily limited to R.C. 124.34(C), 124.40, 737.052, and/or 737.12 as applicable. Except to the extent those enumerated provisions have been superseded by 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 shall apply unless superseded by 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 while employed in the civil service 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 while employed in the civil service **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 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 mere failure of an employee's appointing authority to file a statement with the department of administrative services indicating that the employee is in the unclassified civil service, or the mere late filing of such a statement, does not prevent the board from determining that the employee is in the unclassified civil service. In determining whether an employee is in the unclassified civil service, the board shall consider the inherent nature of the duties of the employee's classification during the two-year period immediately preceding the appointing authority's appealable action relating to the employee.

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.

The Mayor has the exclusive right to suspend the Police Chief for incompetence, gross neglect of duty, gross immorality, habitual drunkenness, failure to obey orders given him or her by the proper authority, or any other reasonable and just cause. If the Chief is so suspended, the Mayor shall certify such fact, together with the cause of the suspension to the Commission. If the Police Chief is so suspended, the Commission shall proceed to hear such charges within five (5) days from the date of receipt of the notice and render judgment thereon, which judgment may affirm, disaffirm, or modify the judgment of the Mayor.

## **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 an appointing authority 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>3</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)

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<sup>3</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.

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.
  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**

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 applicable provisions in Sections 124.321-124.327 of the Ohio Revised Code and 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. An appointing authority 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 department of administrative services, 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.

An employee's total retention points shall be the sum of one hundred (100) base points plus one (1) additional retention point for each biweekly pay period of full-time continuous service, plus credit for less than full-time service as provided in the next paragraph.

Retention points for continuous service for other than full-time service shall be calculated on the basis of one half (0.50) point for each bi-weekly pay period of continuous service. However, this service must be continuous with the full-time service to count.

#### 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 R.C. 124.323, and 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) 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

Layoffs or reductions in the Police Department 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 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 Department for the reasons set forth in R.C. 124.321, and R.C. 124.37 shall control the resulting reduction in force. As may be noted above, the recall period for employees laid off or displaced under R.C. 124.37 shall be three (3) years. (But See Rule 102: 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, an appointing authority 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 or R.C. 124.01 to 124.64 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**

An appointing authority may, with the consent of the Commission, 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 for approval, 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 sixty (60) 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**

- A. Any person holding an office or position under the classified service in the Police 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, 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, and who resigns therefrom, may be reinstated to the rank of police officer, upon (a) filing a written application for reinstatement with the Commission (and a copy with the Chief of Police) 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. 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"), 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 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.