

REQUESTED BY: CITY MANAGER: BILL KOCHER

DATE OF FIRST READING:

8-17-2021

WAIVE RULES?

YES ☒ NO

FINAL ACTION DATE:

9-7-2021

VOTE:

YES ☒ NO

SUSPENSION OF TWO
READING RULE:

YES

NO

☒ ☒

DENISE LINGO
JENNIFER MOODY
ROBERT PARSONS
JOE ROETTING
KISHA DOSA
CORDEL GEORGE
CINDY SCHEETS

TOTALS

21-1957

ORDINANCE NO.

ADOPTION OF
ORDINANCE:

YES

NO

☒ ☒

**AN ORDINANCE AMENDING AND UPDATING THE EXISTING
CITY OF MT. HEALTHY CIVIL SERVICE RULES AND REGULATIONS**

WHEREAS, the existing Mt. Healthy Civil Service Rules and Regulations need to be updated, and

WHEREAS, from time to time as conditions and caselaw change it becomes necessary to update, delete, amend, and/or add language to the Civil Service Rules and Regulations, and

WHEREAS, City Council agrees that comprehensive and clearly defined policies are essential to the success of City operations, and

WHEREAS, the City Manager recognizes the need to edit the current Mt. Healthy Civil Service Rules and Regulations.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MT. HEALTHY, STATE OF OHIO:

Section 1. That the City of Mt. Healthy Civil Service Rules and Regulations are hereby amended to read as provided in Exhibit "A" attached hereto, and the City of Mt. Healthy Civil Service Rules and Regulations as provided in Exhibit "A" are hereby readopted as amended.

Section 2. That the existing City of Mt. Healthy Civil Service Rules and Regulations are hereby repealed to the extent that they conflict with what is attached as Exhibit "A".

Section 3. That Council finds and determines that all formal actions relative to the passage of this Ordinance/Resolution were taken in an open meeting and that all deliberations of Council which resulted in the passage of this Ordinance were taken in meetings open to the public, in full compliance with all legal requirements including Section 121.22 of the Ohio Revised Code. That this Resolution/Ordinance shall be in full force and effect from and after the first date provided by law.

Passed this 7 day of September, 2021.

Ron Bether
President of Council

Attest: Melanie BWC
Clerk of Council

Approved this 7 day of September, 2021.

[Signature]
Mayor

Approved as to form:

[Signature]

Scott A. Sollmann (0081476)
5300 Socialville Foster Rd., Suite 200
Mason, OH 45040
(513) 707-4249
City of Mt. Healthy Law Director

CIVIL SERVICE COMMISSION
OF
CITY OF MT. HEALTHY, OHIO
RULES AND REGULATIONS



Adopted by Civil Service Commission:

Updated July 2021

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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 Mt. Healthy, Ohio ("the City"), under the authority of Articles XV and XVIII and other provisions of the Constitution of the State of Ohio, the Ordinances of the City of Mt. Healthy, Ohio, and Chapter 124 and other provisions of the Ohio Revised Code.

Inquiries regarding Civil Service matters or rules should be addressed to the Mt. Healthy Civil Service Commission, 7700 Perry Street, Mt. Healthy, Ohio 45231.

CIVIL SERVICE COMMISSION

Terry Todd, Chair
Gary Conner
Mary Ann Schenk

CHAPTER ONE APPLICABILITY OF RULES

1.01 Scope of the Rules and Jurisdiction of the Commission

- A. These Rules shall be applicable to all Civil Service matters, except to the extent these Rules have been superseded by a collective bargaining agreement between the City and a public employee collective bargaining representative, or by ordinance. Except as otherwise provided herein, these Rules shall apply to all positions and employees in the Classified Service of the City. Certain of these Rules will also apply to the Unclassified Service, as the rule or context indicates, for example where it is necessary to identify who is in the Unclassified Service, as opposed to the Classified Service. A reference to the “classified service” in certain instances in these Rules shall not indicate intent to apply the remaining Rules to the Unclassified Service. 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 federal legislation and/or guidelines. Where the federal legislation and/or guidelines 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 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, military personnel retain certain rights under R.C. 4117.10 and 5923.05; 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 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 City 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, the existing rules shall be rescinded, and these Rules shall supersede and replace the same as the Rules and Regulations of the Commission.

1.06 Saving 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 Safety/Service;
 - 3. City Auditor;
 - 4. 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 Mt. Healthy, Ohio.
- F. **"Civil Service"** includes all offices and positions of trust or employment in the service of the City.
- G. **"Classified Service"** means those persons, in the employ of the City who are in competitive classified civil service status due to their job positions pertinent to the local situation. All other positions and employees shall be "unclassified." Classified status may be determined as provided for in R.C. 124.11(A) or (C) or other Revised Code provisions, or by local ordinance. 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 calendars 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, 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 6.02 types of examinations). The type of examination may depend on the position to be filled.
- N. **"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 individual.
- O. **"Position Classification" or "Classification"** refers to the arrangement of positions into classifications. Positions shall be classified in accordance with the duties and responsibilities of the position.
- P. **"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.
- Q. **"Revised Code" or "R.C."** means the Ohio Revised Code.
- R. **"Rules"** means the Rules and Regulations of the Municipal Civil Service Commission of the City.
- S. **"Secretary"** means the Secretary of the Civil Service Commission of the City.
- T. **"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.
- U. **"They" "Them" or "Their"** may be used as a plural pronoun and may be used in place of pronouns associated with gender.

- 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 the affected employee are determined accordingly.

CHAPTER THREE GENERAL PROVISIONS

3.01 Appointments to the Commission

The Mayor shall appoint 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. Each alternate year thereafter 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 for and resignations from positions; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements to those positions; and for standardizing positions and maintaining efficiency;
- B. classify positions in the service of the City;
- C. prepare, conduct, and grade or assign a person to prepare, conduct, and grade all Examinations for positions in the Classified Service;
- D. prepare and maintain Eligible Lists containing the names, scores, and rankings of all persons qualified for positions in the Classified Service;
- E. maintain a journal, which shall be open to the public for inspection, in which the Commission shall keep a record of its proceedings and of the vote of each of its members upon every action taken by it, 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;
 - 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 Civil Service paid directly by warrant of the City, containing the information specified in Rule 3.07;
- G. hear appeals provided for by law, including: appeals of 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, 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 from a decision of the Commission that resulted from an appeal in the first place – although, the Commission may allow motions for reconsideration;
- H. subpoena and require the attendance and testimony of witnesses and/or the production of books, papers, records, and other documentary evidence pertinent to any matter that the Commission has the authority to investigate, into which it has the authority to inquire, or that it has the authority to hear;
- I. furnish to the Mayor any special reports that the Mayor requests and prepare and submit to the Mayor an annual report showing the Commission's actions, rules, exceptions thereto in force, and any recommendations for the more effectual operation of the Commission; the Commission shall also make reports from time to time as the State Personnel Board of Review (SPBR) requests of the manner in which the law and the rules and regulations of the Commission have been and are being administered in the City; the Commission shall file its rules and an annual report with the SPBR (the annual report may be the same as that submitted to the Mayor);
- J. 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 City Council has properly approved and appropriated the funds for the expense associated with the foregoing; furthermore, the Commission may delegate any functions it performs as the City equivalent of the Ohio Director of Administrative Services to any other City administrative office, or make use of such personnel or services as the City shall provide to assist the Commission;

- L. exercise all other powers and perform all other duties with respect to the Civil Service of the City, as prescribed in R.C. Chapter 124 and conferred upon the Director of Administrative Services and the State Personnel Board of Review of the State of Ohio with respect to the civil service of the State of Ohio, except any powers or duties proscribed or superseded by Home Rule or a collective bargaining agreement.

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 City Council.

3.04 Removal from the Commission

Upon the receipt of a report from the State Personnel Board 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 their 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 Commission for inefficiency, neglect of duty, or malfeasance in office, having first given the member a copy of the charges against them, and an opportunity to be publicly heard in person or by counsel in their 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 their 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. Notice of emergency meetings and other meetings shall be as provided in Chapter 38 of the City Code, which can be found on the City's web-site.
- G. An executive session may be held only after a majority 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 municipal Employee, unless such Employee requests a public hearing. The motion and vote to hold the executive session shall state which one or more of these purposes are the purposes for which the executive session is being held, but need not name the person who is to be considered during the session. Executive session may also be held for other reasons enumerated in R.C. 121.22 and the other laws and regulations incorporated therein. Minutes of any executive session shall be appropriate to the nature of such executive session.
- H. 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 they serve as being in the Classified or the Unclassified Service of the City.

In the case of an Employee and/or position that is designated as being in the Unclassified Service, the service list shall include an indication of reason and justification for such designation approved by the Mayor.
- 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.

3.08 Delegation

The Commission, pursuant to Rule 3.02 (K) above, has delegated all duties and responsibilities regarding Job Classification, Reclassification and Auditing of Job Classifications, and Record Maintenance to the Appointing Authority and the City Administration.

CHAPTER FOUR

CLASSIFIED AND UNCLASSIFIED SERVICE

4.01 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:

4.02 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 appointed by the Mayor; City Manager; and the heads of departments appointed by the City Manager; including the Chief of Police or the Fire Chief (if any);
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, one of whom shall be the Administrative Assistant to Council;
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 Commission.
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. Part-time employees and employees who receive intermittent or temporary 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 within the meaning of R.C. 124.34;
13. Persons in the Fire Department who are unclassified per Ordinance No. 95-1150; and
14. Other positions designated as unclassified by ordinance or other law.

- B. Omission of any such 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. Within sixty calendar days after taking office, 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 4.02(A)(4) and (5). If, at the expiration of sixty calendar days after taking office, R.C. 124.11 (A)(8) exemptions have not been designated by the appointing officer, board, or commission as herein provided, the R.C. 124.11 (A)(8) exemptions already designated and in effect will be continued in effect.

At any time the appointing officer, board, or commission determines to change a designation of a position as unclassified under paragraph R.C. 124.11 (A)(8) or has not used all of the allowable R.C. 124.11 (A)(8) exemptions, the officer, board, or commission may designate one or more additional positions as exempt under R.C. 124.11 (A)(8), as long as the total number do not exceed the maximum number allowed under R.C. 124.11 (A)(8). The selection of exempted positions may be reconsidered by an Appointing Authority if a reorganization of their agency occurs during their term of office as a result of legislative action. The designations of the Administrative Assistant to Council may only be changed by Council (See Ordinance 30.06).

- 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 Service, or the mere late filing of such a statement, does not prevent the Employee from being in the Unclassified Service.

4.03 Classified Service

The Classified Service shall comprise all persons in the employ of the City 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 service of the City 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 labor class shall be filled by appointment from lists of applicants registered by the Commission. 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; residence; 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. 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.

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 applicant receives the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

CHAPTER FIVE APPLICATIONS

5.01 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.

5.02 Forms for Applications

Application forms shall be provided by the Commission and shall be available during normal operating hours in the office of the Mayor or at other locations as announced by the Commission.

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 Service position shall be retained by the Commission during the tenure of said Employee.

5.03 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 their 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 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.

5.04 Residency and/or Citizenship Requirements

Every applicant for a position in the Classified Service must be a citizen of the United States or must legally declare and signify in writing their intention to become, upon appointment, a citizen of the United States.

5.05 Age Restrictions: Police and Fire

Applicants for original appointment Examination to the Police Department must have attained the age of twenty-one (21) years on or before the date of the written Examination; furthermore, no person may apply for or receive an original appointment as a police officer if that person has attained the age of thirty-five (35) years or older, and no person can be declared disqualified as over age prior to that time. Applicants for original appointment Examination to the Fire Department must have attained the age of eighteen (18) years on or before the date of the written Examination; furthermore, no person may apply for or receive an original appointment as a firefighter if that person has attained the age of forty-one (41) years, and no person can be declared disqualified as over age prior to attaining that age.

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

5.06 Licenses, Certifications, Education, and Training

Every applicant shall have, and shall be able to demonstrate that they possess, 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 Rule 6.02 regarding educational requirements as a condition for Examination.)

5.07 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 they, in relation to the application process, have 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.

5.08 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 their 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 they have 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 failed to meet 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.

5.09 Fraud or False Statements in Application or Examination

Fraudulent conduct or false statements by the applicant, or by others with their connivance, in any application or Examination shall be deemed cause for exclusion of an applicant from any Examination, or for removal of their 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 SIX EXAMINATIONS

6.01 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 City and a public employee collective bargaining representative, or by ordinance (See Rule 1.02: Construction).

- A. All applicants for positions in the Classified 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 veterans' preference, and to the requirement that each applicant be able, with or without reasonable accommodation, to perform the essential functions of the position for which they have made application.

6.02 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. Vacancies in positions in the Classified Service shall be filled insofar as practicable by 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; 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 they 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 them, because it would not matter what they 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.

6.03 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, neither Examinations for the Police Department nor Fire Department shall be combined with Examinations for other departments.

B. Separate Examinations for Police and Fire

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

6.04 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. In this case, "sufficient" means that not enough qualified people apply or are eligible to compete to allow the Commission to certify the number of names to the Appointing Authority for a normal discretionary selection (e.g. 10 candidates for an original appointment, or 2 candidates for a promotion). If the Commission elects to conduct a competitive-type Examination anyway to test the capacity and capability of the applicants, the Commission may do so.

6.05 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. If the Commission certifies the person as qualified, the Appointing Authority may then appoint that person, who shall be designated as "appointed without competitive Examination".

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 months of continuous service, whichever is longer, shall become a permanent appointee in the Classified Service at the conclusion of that period. This provision shall not apply to temporary appointments or to promotional positions in the Police or Fire Department.

6.06 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. 124.30:

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 or Fire Department under this rule shall not achieve permanent status merely by serving in the position.

6.07 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 of each competitive Examination for original appointment in the Classified Service shall be placed in a newspaper of general circulation in the City on one (1) occasion, and conspicuously posted by the Secretary of the Commission at City Hall, in the offices of the Commission, and in other places as may be advisable, 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 posted electronically and may be distributed to such persons or organizations as may be interested in the position(s) to be filled.
- 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.

6.08 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 6.08[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, and City Ordinance 37.02 re CDL jobs.

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 they have 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 or Fire Department as a police officer or firefighter, under the Civil Service laws, unless they have, 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 they meet the physical requirements necessary to perform the essential functions of a police officer or firefighter 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 City 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 Police or Fire Department 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.

6.09 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 their work and left the examination room, whichever shall occur earlier, except by special permission of the person in charge, who, in their 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 6.11.

6.10 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 8.05).

6.11 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.

6.12 Visitors at Examinations

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

6.13 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.

6.14 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.

6.15 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 their 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 them 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 their 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 them in answering the questions, shall have their examination papers taken up and filed with a "0" marking, when the circumstances justify such action.

CHAPTER SEVEN

GRADING EXAMINATIONS AND ADDITIONAL CREDIT

7.01 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 City and a public employee collective bargaining representative, or by ordinance (See Rule 1.02: Construction).

7.02 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 service credit for part-time Patrol Officers testing for full-time). 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.

7.03 Original Appointment Uniformed and Safety-Services Credit

- A. Any requests for credit under this Section shall be submitted to the Commission along with the application for examination and must, at that time, be accompanied by proof of entitlement.
- B. **Uniformed Service Credit** - Any applicant for original appointment, who has completed service in the uniformed services as described in R.C. 124.23, who was honorably discharged, medically 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 applicant must submit proof of by the application deadline. Form DD214 is the standard form, which proves honorable service or discharge from the Armed Forces of the United States. The Commission shall grant additional credit of twenty percent (20%) of the total grade given in the regular Examination to any applicant who files for the extra credit and qualifies, provided that they have first received a passing grade on the Examination.

Applicants Eligible for veterans credit on original Examination shall receive a priority in ranking over non-veterans who obtain an identical grade.

- C. **Safety-Services Credit** - In Examinations for full-time Patrol Officer or Firefighter, credit for education and credit for service as either a part-time Patrol Officer or part-time Firefighter, respectively, with the City of Mt. Healthy shall be added to the Examination grade in addition to any applicable veteran or uniformed service credit.
1. Credit for education: for completion of an associate's degree, ten percent (10%) additional credit shall be added to the total grade attained in the Examination. For completion of a bachelor's degree, twenty percent (20%) additional credit shall be added to the total grade attained in the Examination. The applicant must submit proof of completed degree by the application deadline.
 2. Credit for service as a part-time Patrol Officer or part-time Firefighter with the City of Mt. Healthy: for each of the first five (5) years of service, three percent (3%) additional credit shall be added to the total grade attained in the Examination.
 3. Fire Department Original Appointment Credits: Any applicant for original appointment to the City Fire Department who possesses a paramedic certification, as granted by the State of Ohio Emergency Medical Services, may file with the Commission proof of such certification for extra credit. An applicant with a paramedic certification will be entitled to credit in the amount of ten percent (10%).

The total amount of combined additional credit for veteran or uniformed service status, education/certification, and/or service as a part-time Patrol Officer or part-time Firefighter with the City of Mt. Healthy may not exceed twenty-five percent (25%) of the total grade attained in the Examination.

7.04 Promotional Seniority and Efficiency Credit

- A. In promotional Examinations, additional credit for seniority in the Civil Service of the City, the state, or any other political subdivision shall be added to the Examination grade. Efficiency credit may be added if the records of the department(s) where eligible candidates are employed maintain sufficient records. Notwithstanding the foregoing provisions, 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 or a fire department will receive seniority credit for service prior to such resignation. Furthermore, any person who has either been convicted of a felony within the meaning of R.C. 124.34, or removed from their 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. Credit for seniority shall equal, for each of the first four (4) years of service, one percent (1%) of the total grade attained in the promotion Examination; and, for each of the fifth (5th) through fourteenth (14th) years of service, six-tenths (.6) of one percent (1%) of the total grade attained.
- C. An approved leave of absence is not a separation of service; therefore, seniority service credit for purposes of promotion will continue to accrue during such leave. Furthermore, if an Employee meets the requirements for preserving or accumulating seniority under the Uniformed Services Employment and Reemployment Rights Act (USERRA), or a comparable Ohio statute, the Commission will honor the requirements of USERRA or the Ohio statute.

7.05 Addition of Credits

- A. Applicants for original appointment shall be entitled to only such additional credit as is set forth in Rule 7.03 (relating to uniformed and safety services credit).
- B. Applicants for promotional appointments shall be entitled to only such additional credit as is set forth in Rule 7.04 (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 EIGHT ELIGIBLE LISTS

8.01 Preparation of Eligible Lists

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. Whenever it becomes necessary to hold a subsequent Examination in order to obtain additional eligible candidates, the Commission may consolidate existing lists for the same class by rearranging the names of those Eligible therein according to their scores. All those persons whose names appear on an existing list that is to be merged with a new list shall have an opportunity to compete in the second Examination, with the understanding that the person's score on the second Examination shall be the score considered in the preparation of the new Eligible List.

8.02 Term of Eligible Lists

The term of eligibility of each list shall be one (1) year, unless extended by the Commission at their discretion for no more than one (1) additional year. The Commission may at any time, abolish an Eligible List when the number of Eligible persons therein is reduced to zero (0) for a promotional list, or less than ten (10) persons for other lists.

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 they have already made the number of appointments they 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 9.02(A).

8.03 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 shall determine the order in which their names shall be placed on the Eligible List; provided that applicants eligible for veterans preference under R.C. 124.23 shall receive priority in rank on the Eligible List over non-veterans on the list with a rating equal to that of the veterans. Ties among veterans shall be decided by priority of the filing of the application.

Regarding Eligible Lists for Promotion, in the event that two (2) or more applicants receive the same ratings on a promotional Examination after adding any applicable extra credit, seniority shall determine the order in which names shall be placed on the Eligible List.

8.04 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, they will be so certified.

8.05 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 their 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 their 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, their name shall be removed from such Eligible List.

8.06 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 8.05).

8.07 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 their name to the appointing authorities for future appointment. (See also Rule 8.05: Disqualification from Eligible List.)

8.08 Revocation of Eligible List

An 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 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.

8.09 Separate Lists for Police and Fire Department

Notwithstanding Rule 8.01 above, separate Eligible Lists shall be maintained for appointments in the Police Department and Fire Department (and separate from each other). No person may be transferred from a Police Department list or a Fire Department list to one outside the department or from a list outside the department to a list for the Police Department or a list for the Fire 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; and appointments and promotions outside the Fire Department shall not be made from the Eligible Lists maintained for the Fire Department, nor shall appointments and promotions for the Fire Department be made from a list not maintained for the Fire Department.

CHAPTER NINE APPOINTMENTS AND PROMOTIONS

9.01 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 City 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 are certified to the Appointing Authority.

9.02 Appointment Procedure and Number of Names Certified

A. Certification of Names for Appointment

The Appointing Authority of a department in which a position in the Classified Service is to be filled shall notify the Commission of the classification title and the number of positions to be filled. Except as otherwise provided in R.C. 124.30 (See Rule 9.06: Temporary or Exceptional Appointments), R.C. 124.31 (relating to promotions), R.C. 124.27, and these Rules, upon the receipt of the notice, the Commission shall certify to the Appointing Authority the names and addresses of the ten (10) candidates standing highest on the Eligible List for the class or grade to which the position belongs. The Commission may certify less than ten (10) names if ten (10) names are not available. When less than ten (10) names are certified to an Appointing Authority, appointment from that list shall not be mandatory. (The Commission shall certify names in double the amount of vacancies to be filled when certifying names for the unskilled labor class.)

The Appointing Authority, having notified the Commission of the position to be filled, and having received such list, may then appoint. The Appointing Authority shall fill such position by appointment of one (1) of the ten (10) persons certified to them. If more than one position is to be filled, the Commission may certify a group of names from the Eligible List, and the Appointing Authority shall appoint in the following manner: Beginning at the top of the list, each time a selection is made, it must be from one of the first ten (10) candidates on the list who is willing to accept consideration for the position.

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 9.06: 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, or the Fire Department and subject to R.C. 124.45, the Commission shall certify the name highest on the eligibility list. Where appropriate, the Commission may approve a temporary or exceptional appointment.

9.03 Probationary Periods

- A. All non-temporary original and promotional appointments to the Classified Service, including appointments made pursuant to R.C. 124.30, shall be for a probationary period of one (1) year or as otherwise established by the Commission. An Appointing Authority may request, and the Commission may approve, an extension allowing no more than one (1) year total for a probationary period. The probationary period for the Police Department and the Fire Department shall be one (1) year.
- B. No Promotion shall be final until the appointee has satisfactorily served their 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.
- D. At the end of the probationary period, the Appointing Authority shall transmit to the Commission, or the Secretary of the Commission, indication of the appointee's successful completion of the probationary period.

9.04 Removal or Reduction During Probation

If the service of a probationary Employee is unsatisfactory, they may be removed or returned to their 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. Such notification shall be in writing and state the reasons therefor. A failure to notify the Commission or state the reasons shall not confer any tenure rights on the Employee.

9.05 Promotions

All Examinations for Promotion shall be competitive and may be conducted in the same manner as Examinations for original appointment. 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.

Promotions in the Police Department shall be conducted and persons certified for appointment as provided in R.C. 124.44 and other applicable provisions of the Revised Code. Promotions in the Fire Department shall be conducted and persons certified for appointment as provided in R.C. 124.45 and other applicable provisions of the Revised Code.

9.06 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. A person appointed to a promotional position in the Police or Fire 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 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 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 Days of continuous service in the position, whichever is longer.

9.07 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 months of continuous service, whichever is longer, shall become a permanent appointee in the Classified Service at the conclusion of that period. Once an Employee achieves permanent status, that Employee may not be displaced from their position due to the Certification of another person from an Eligible List.

CHAPTER TEN
TENURE, REDUCTION, SUSPENSION, FINES
REMOVAL, AND DEMOTION

10.01 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 City 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, 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, 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. 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, R.C. 2921.42, or R.C. 2921.43 may constitute grounds for dismissal.
- D. Failure to file a statement or falsely filing a statement required by R.C. 102.02 may also constitute grounds for dismissal.

10.02 Procedure in General

- A. In any case of reduction, suspension of forty (40) or more work hours for an overtime-exempt Employee or twenty-four (24) or more work hours for an Employee required to be paid overtime, fine of forty (40) or more work hours for an overtime-exempt Employee or twenty-four (24) or more work hours for an Employee required to be paid overtime, or removal, the Appointing Authority shall serve the affected Employee with a copy of the order of reduction, suspension, fine, and/or removal. Such order shall state the reason(s) therefore. Probationary Employees who are removed or reduced must be notified, but need not be served an "order."

- B. Within ten (10) Days following the date on which the order is served, a classified Employee may file a written appeal with the Commission, unless the Employee was removed for a felony within meaning of R.C. 124.34 (or was removed or reduced during the probationary period). For purposes 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 order 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 order 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 hearing officer 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.
- D. Notwithstanding the above, the tenure and the grounds and procedures for reductions, suspensions, fines, demotions, or removals of members of the Police and Fire Departments 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. Except to the extent these provisions have been superseded by ordinance, the Commission will take those procedures into account when hearing appeals regarding same.

10.03 Procedure 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.

10.04 Felony Convictions

Conviction of a felony is a separate basis for reducing in pay or position, suspending, or removing an Employee, even if the Employee has already been reduced in pay or position, suspended, or removed for the same conduct that is the basis of the felony. If an Employee removed under this section is reinstated as a result of an appeal of the removal, any conviction of a felony that occurs during the pendency of the appeal is a basis for further disciplinary action under this section upon the Employee's reinstatement. A person convicted of a felony immediately forfeits their 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.

10.05 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 ELEVEN

HEARING PROCEDURE

11.01 Time of Hearing; Notifications; Reclassification Appeals

Upon receipt from an Employee in the Classified Service of the City of a timely appeal allowed under these Rules or City policy, or from an order of removal, reduction in pay or position, of forty (40) or more work hours for an overtime-exempt Employee or twenty-four (24) or more work hours for an Employee required to be paid overtime, or fine of forty (40) or more work hours for an overtime-exempt Employee or twenty-four (24) or more work hours for an Employee required to be paid overtime, 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 their 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.

Appeals of reclassifications shall be filed, in writing, within thirty 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.

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 Service, or the mere late filing of such a statement, does not prevent the Commission from determining that the Employee is in the Unclassified Service. In determining whether an Employee is in the Unclassified 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.

11.02 Amendments to Orders

Amendments to appealable orders may be made by the Appointing Authority at any time, provided the Employee and their 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 of the order; 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 order may be made at any time prior to the ultimate determination of the appeal by the Commission.

11.03 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. After determining whether it has jurisdiction, then the Commission shall proceed with the appeal.

Except as otherwise set out herein, 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 such appeals, 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 forming the basis of the order from which the appeal has been made.
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 forming the basis of the order from which the appeal has been made.
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.

11.04 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 be represented by independent legal counsel and the cost of such representation will be paid by the City.

11.05 Burden of Proof

The Appointing Authority shall prove, by a preponderance of the evidence, the factual allegations contained in the disciplinary order or reclassification. 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.).

11.06 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.

11.07 Discovery

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

11.08 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.

11.09 Witnesses

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

11.10 Motions

- A. All motions shall state, with particularity, both the 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.

11.11 Record of Hearings

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

11.12 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.

11.13 Hearing Officer

The Commission may appoint a hearing officer to hear an appeal as provided in Rule 3.02. 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. The Commission shall provide copies of the report to all necessary parties, including the employee and Appointing Authority.
- B. No objection may be made to the Commission regarding any decision of a hearing officer prior to the submission of the hearing officer's report and recommendation. Written objections to reports and recommendations shall be filed within ten (10) calendar days after receipt of the report and recommendation(s). Written replies to objections shall be filed within ten (10) Days after the opposing party's objection has been filed.
 - 1. If a report and recommendation is refused, unclaimed, or sent to the wrong address due to a party's failure to notify the Commission of a change of address, it shall be deemed received by the party three (3) calendar days after such mailing. A certificate of mailing shall be considered sufficient proof of mailing.
 - 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.

11.14 Last Chance Agreements

In an appeal of a removal order based upon a violation of a last chance agreement, the Commission 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 their report accordingly.

CHAPTER TWELVE LAYOFFS AND TRANSFERS

12.01 Layoffs or Reductions: Non-Uniform

When any permanent office or position in the Classified Service, except in the Police Department or Fire Department, is abolished or made unnecessary, or the person holding such office or position is laid off, the procedure outlined in R.C. 124.321 through 124.328 shall be followed.

12.02 Retention Points

- A. An Employee's total retention points shall be the sum of the base points plus the retention points assigned for continuous service.
- B. The Appointing Authority shall compute the total retention points for each Employee in the classifications affected by a layoff or position abolishment, including the classifications in which displacement may occur.
- C. The Appointing Authority shall submit the required information to the Commission for verification. Notification by appointing authorities to affected Employees shall not occur prior to the Commission's verification of retention points.
- D. Employees shall be assigned a base of one hundred retention points. Computation of retention points for continuous service shall be made by crediting each Employee with one (1) retention point for each biweekly pay period of continuous service.

12.03 Layoffs or Reductions in the Police or Fire Department

Layoffs or reductions in the Police or Fire Departments for causes other than those outlined in R.C. 124.34 shall be made in accordance with the provisions of R.C. 124.37. and the applicable provisions of R.C. 124.321 through 124.328. In consideration that those enumerated Sections of the Revised Code conflict on their face, in some respects, and it is clear that R.C. 124.37 applies to police and fire personnel and not to other City Employees, the intent of this Rule is that an Appointing Authority may abolish positions and/or lay off Employees in the Police or Fire Department for the reasons set forth in R.C. 124.321, and R.C. 124.37 shall control the resulting reduction in force. As may be noted above, the recall period for Employees laid off or displaced under R.C. 124.37 shall be three (3) years.

12.04 Temporary Transfers

- A. An Employee holding a position in the Classified Service may be temporarily transferred from their original position to a similar position, for a period not to exceed thirty (30) Days, unless the employee and the Appointing Authority agree to a longer temporary transfer that may not exceed ninety (90) 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.

12.05 Permanent Transfers

- A. Subject to the other provisions of these Rules, an Appointing Authority may permanently transfer an Employee in the Classified Service from their position to a similar position in another office, department, or division in the service of the City, 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 City 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 THIRTEEN REINSTATEMENTS AND LEAVES OF ABSENCE

13.01 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 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.

Seniority credit shall accumulate only if the leave of absence is related to law enforcement education or service.

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.

13.02 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 their part, and other than for disability, may, upon recommendation of the Appointing Authority and with the consent of the Commission, be reinstated within one (1) year from the date of such separation to a vacancy in the same office or position in the same department. Such reinstatement may be predicated upon the person passing a physical examination made by a licensed physician and showing the person can perform the essential functions of the job.

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

13.03 Reinstatements/Disability Retirement for Police or Fire

- A. Any person holding an office or position under the Classified Service in the Police Department or Fire Department who is separated therefrom: (a) due to injury or physical disability incurred in the performance of duty shall be reinstated immediately, or (b) due to injury or physical disability incurred other than in the performance of duty may be reinstated, upon filing with the Chief of the Police Department or Fire 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 they 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 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 or Fire Department, and who resigns therefrom, may be reinstated to the rank of police officer or firefighter, respectively, upon (a) filing a written application for reinstatement with the Commission (and a copy with the Chief of Police or Chief of Fire) 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 police officer or firefighter. Any person reinstated pursuant to the authority of this Paragraph (B) shall not receive credit for seniority earned prior to resignation and reinstatement and shall not be entitled to reinstatement to a position above the rank of police officer (aka "patrol officer") or firefighter, respectively, regardless of the position the person may have held at the time of the resignation.

CHAPTER FOURTEEN PROHIBITIONS

14.01 Political Activity Prohibited

- A. No officer or Employee in the Classified Service of the City shall engage in partisan political activity and shall not to that extent:
 - 1. directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution to any political party or for any candidate for public office;
 - 2. nor shall any such person solicit, directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or Employee in such Classified Service;
 - 3. nor shall any such officer or Employee be an officer in a political organization or take part in politics other than to vote as they please, and to express freely their 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.

14.02 Payment for Appointment or Promotion Prohibited

No applicant for appointment or Promotion in the Classified Service shall, directly or indirectly, pay or promise to pay any money or other valuable thing, nor shall they 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 their appointment or Promotion, or proposed appointment or Promotion.

14.03 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.

14.04 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 of the City, 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 their position, or to waive their right to Certification, appointment or Promotion.

14.05 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.

14.06 Prosecutions

Prosecutions for violations under these Rules and/or R.C. Chapter 124 in relation to the Civil Service of the City, 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.