

PERSONNEL RULES AND REGULATIONS*

CODE OF ORDINANCES

Chapter 19

PERSONNEL RULES AND REGULATIONS*

* **Cross reference(s)**--Administration and legislation, Ch. 2; conflicts of interest, §
2-16.

Art. I. Civil Service Commission, §§ 19-1--19-9

Art. II. Civil Service Rules for Personnel Administration, §§ 19-10--19-19

Art. III. Bureau of Personnel, §§ 19-20--19-22

ARTICLE I. CIVIL SERVICE COMMISSION**Sec. 19-1. Commission established.**

There is hereby established a civil service commission which shall consist of seven (7) members appointed by the city council, all of whom shall be residents of the City of South Portland, one from each of the five (5) voting districts of the city who shall be a resident of the district for which he or she is appointed and two (2) members from the city at large, who will serve for a period of five (5) years without pay. Before entering upon their duties, the commissioners shall take the oath of office before the city clerk. The commissioners presently serving shall continue to serve for the remainder of their terms, and shall be subject to reappointment.

- (a) Vacancies. Appointments to fill vacancies shall be for the unexpired term. Vacancies shall be governed by Code of Ordinances Sec. 2-121.
- (b) Chair and secretary. The commission shall in June of each year elect by majority vote one of its members to serve as chair and one of its members as secretary who shall hold office until their successors are elected. The commission may by rules establish such other offices as it shall deem necessary and appropriate.
- (c) Meetings. The commission shall establish, by vote, a time and place for its regular meetings and shall meet each alternate month. Special meetings may be called at any time by the chairman and a special meeting, must be called upon request from a majority of the commissioners.

The commission shall forward a tentative agenda to the City Clerk's office including the date, time and location of the meeting of the commission by no later than 9:00 a.m. on the Friday preceding the meeting date, but no event less than three days before the meeting.

- (d) Quorum. Four (4) commissioners shall constitute a quorum for all purposes except a disciplinary hearing under Rule 7, in which case five (5) commissioners constitute a quorum. Any matter that may properly come before the commission may be acted upon without prior notice.
- (e) Expenses. All expenses incident to the operation of the commission shall be paid by the city.
- (f) Retaining outside legal counsel. Legal questions raised by the Civil Service Commission should be directed to the City's Corporation Counsel. In the event of a conflict of interest, an independent counsel will be hired for the Commission at the City's expense. Additionally, there may be times when a particular question will require an extensive time commitment or specialized knowledge and experience and the Commission may request or the City may choose to hire independent additional counsel.

If the commission believes there is a need for independent or additional counsel, it shall notify the City Manager in writing. Independent or additional counsel will be authorized by order of the City Council in consultation with the Commission as to who the independent or additional counsel may be, the duration of the authorization, and the amount of money that may be expended.

Independent or additional counsel for the Commission shall be a reputable firm or attorney with experience in municipal, administrative, and/or personnel and labor law. Both the Commission and the Council shall consent to the choice of an attorney or firm. Such consent shall not be unreasonably withheld. The

procurement process for independent or additional counsel shall conform to the requirements of the City's purchasing ordinance, section 2-169.

Once the independent or additional counsel has been selected, an agreement as to the subject matter, duration and fees has been reached, and the City Council has authorized the representation, the commission shall directly contact its counsel, and vice versa, on all representation within the scope of this section. Bills for such authorized services will be the responsibility of the City.

- (g) Removal of commissioners from office. Commissioners may be removed from office by the City Council for failure to attend at least 75% of the commission's meetings over a 12-month period; for being convicted of a crime involving moral turpitude; or for intentionally and knowingly violating any provision of this chapter. A commissioner who violates the confidentiality required by this chapter shall be removed from office by the City Council.

(Ord. No. 20-17/18, 5/1/18 [Fiscal Note: Less than \$1000])

Sec. 19-2. Purpose of commission.

The commission shall adopt a system of rules, subject to the approval of the city council, based on merit principles, and shall administer those rules, on all matters relating to the appointment, promotion, demotion, layoff, reinstatement, suspension and removal of members of the police and fire departments, for the purpose of representing the public interest in the improvement of personnel administration in such departments.

Sec. 19-3. Disciplinary action.

It shall be the duty of the commission to represent the public interest by reviewing upon appeal disciplinary action involving demotion, suspension, or dismissal of employees subject to this chapter. During such review, both the disciplined employee and the person who disciplined the employee shall have the right to be heard, to be represented by a person of his or her choice and to present evidentiary facts. At the hearing, technical rules of evidence shall not apply, and the burden shall be upon the person who has taken the action to justify such action. In conducting the hearing, the commission shall have the power to administer oaths, issue subpoenas, receive relevant evidence, compel the production of books and papers relevant to the hearing and to question witnesses. The commission shall rule only on the basis of the evidence presented at the hearing, and the findings and decisions of the commission shall be final and binding. Final decisions of the commission may be subject to arbitration if requested by either party within ten calendar days of the commission's decision.

Sec. 19-4. Penalties.

Whoever violates any of the provisions of this chapter, or any of the rules established pursuant to this chapter, shall, upon conviction, pay a fine not to exceed one hundred dollars (\$100.00), for each such offense. Any applicant violating the provisions of this chapter or rules established pursuant to this chapter shall be excluded from further consideration of employment. Any candidate on an eligible list violating the provisions of this chapter or rules established pursuant to this chapter shall be excluded from the eligible list.

Any officer, commissioner, or employee of the City who violates the provisions of this chapter, or any rules established pursuant to this chapter shall be disciplined, up to and including removal from office. It shall be the responsibility of the city council to determine whether any officer, commissioner

or employee has violated this ordinance; and if necessary, the appropriate discipline and remedy.

(Ord. No. 20-17/18, 5/1/18 [Fiscal Note: Less than \$1000] Ord. No. 10-22/23, 10/18/2022 [Fiscal Note: Less than \$1000])

Sec. 19-5. Repealing clause.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed and superseded.

Secs. 19-6--19-9. Reserved.

ARTICLE II. CIVIL SERVICE RULES FOR PERSONNEL ADMINISTRATION**Sec. 19-10. Use by civil service commission; rules of construction.**

- (a) The following civil service rules are hereby adopted by the city council for use of the civil service commission in the administration of personnel activities in the appointment, promotion, demotion, layoff, reinstatement, suspension and dismissal of members of the police and fire departments and for such other activities as provided in the civil service ordinance.
- (b) These rules shall be liberally construed consistent with merit principles and male pronoun wherever used shall be deemed to include the female pronoun.
- (c) Definitions.
 - (1) Appointing Authority: the city manager.
 - (2) Eligibility List or Eligible List: A list of all active and qualified applicants sent to the city manager (appointing authority), or his/her designee, for consideration when a specific vacancy or vacancies occur. In the case of police department appointments it is all qualified Non-Certified Police Department and all Certified Law Enforcement Officer applicants. In the case of fire department appointments, it is all Non-Certified Paramedic applicants and all Certified Paramedic applicants.
 - (3) Certified Law Enforcement Officer: An individual who has graduated from the Maine Criminal Justice Academy's basic law enforcement training program and is certified by the Maine Criminal Justice Academy to work as a full-time police officer in Maine, or an individual who has graduated from an equivalent basic law enforcement training program, and is eligible for certification as a police officer in Maine after waiver of basic training, as determined by the Maine Criminal Justice Academy Board of Trustees.
 - (4) Certified Paramedic: An individual who has graduated from an approved Maine Emergency Medical Services paramedic program and currently holds a valid Maine Paramedic License, or an individual who has graduated from an equivalent paramedic program and is eligible for licensure as a Maine Paramedic as determined by Maine Emergency Medical Services.
 - (5) Recall List: The names of previously laid-off employees.
 - (6) Non-certified Police Department Applicant: An applicant for employment with the police department who is not a Certified Law Enforcement Officer.
 - (7) Non-certified paramedic Applicant: An applicant for employment with the fire department who is not a Certified Paramedic.

(Ord. No. 20-17/18, 5/1/18 [Fiscal Note: Less than \$1000])

Sec. 19-11. Rules.**RULE 1--APPLICATION.**

- (a) Vacancies - Original Appointment. Whenever the city manager or his/her designee shall be advised of a vacancy, existing or pending, in either the police or fire department, and there are not sufficient names remaining on the eligible list in order to fill such vacancy on a competitive basis, the City Manager or his/her designee shall so inform the civil service commission. The City's Human Resources Department, under the direction of the civil service commission shall duly advertise the vacancy.
- (b) Advertisement - Original Appointment. The character of the advertisements may vary as deemed necessary by the City's Human Resources Department in collaboration with the civil service commission to provide sufficient notice to all interested persons that applications are being accepted. Methods of advertising may include, but not be limited to: Advertising by public notice, to include posting on appropriate internet sites, the City's web site and/or public cable access television station, advertising in news media, or journals and other periodicals, or by advertising through governmental and private employment agencies. Advertisements shall state a preference for Certified Law Enforcement Officers for the police department candidates and a requirement of persons with Maine State or nationally registered EMT-Basic licenses for fire department candidates. All advertisements shall include the phrase, "Equal Opportunity Employer, and may include the minimum eligibility requirements and anticipated hiring process.
- (c) Applications. Applications shall be made on standard forms provided or made available by electronic means, as established by the Human Resources Department, with any supplemental information collected, as each department may request relevant to the applicant's qualifications, including but not limited to a motor vehicle operator's license, evidence of high school graduation or its equivalency, copies of certificates or licenses that are relevant to the position for which application is made. The applications shall not include any questions either directly or indirectly relating to the applicant's age, gender, ancestry or national origin, color, race, religion, sex, sexual orientation gender expression, gender identity, genetic information, marital status, physical or mental disability (except where such disability manifestly disqualifies an individual for the particular position), worker's compensation history, whistleblower status, veteran status, or any other legally protected category unless a bona fide occupational qualification. The Human Resources Department, shall send a hard or electronic date and time stamped copy of the cover page of every application to the Chair of the civil service commission within five (5) business days of receipt.
- (1) Police. Non-Certified Law Enforcement Officer applicants for original appointment to the police department must provide written proof of successful completion of the Maine Criminal Justice Academy's ALERT or other entrance examination, as well as proof that the applicant has passed the Maine Criminal Justice Academy's Physical Fitness Test (PFT) within the immediate (6) six months preceding the application date. These requirements are waived for Certified Law Enforcement Officer applicants, who must submit proof of their eligible law enforcement certification.

(2) Fire. Non-Certified Fire Department applicants must provide written proof of successful completion of and current Emergency Medical Services (EMS) certification, as well as proof that the applicant has passed the standardized Candidates' Physical Abilities Test (CPAT) as outlined in Rule 2(b).

- (d) Eligibility for Promotion. Members of the police and fire department may apply for promotion to the next senior rank only, except in the fire department, where both captains and lieutenants may apply for chief level positions. No person shall be examined for promotion to sergeant in the police department or lieutenant in the fire department without having completed five (5) years in the lower grade, or for any other grade at least one (1) year in the lower grade. To be eligible for a police department sergeant promotional examination (or Assessment Center) or a fire department lieutenant promotional examination (or Assessment Center), at least two (2) years of the required five (5) years in the lower grade must have been with South Portland Police or Fire Department and will be per the Collective Bargaining Agreement. In addition, no person may be examined for promotion to lieutenant in the fire department unless the employee has completed the department's Officer Candidate Program.
- (e) An applicant shall not be further considered for employment or promotion and his or her name will not be added to any eligible list if the minimum qualifications of the position are not met.

(Ord. No. 18-21/22, 4/19/2022 [Fiscal Note: Less than \$1000])

RULE 2--EXAMINATIONS FOR ALL APPOINTMENTS.

- (a) Qualifying examination - Police Original Appointment. In order to be considered for Original Appointment, an applicant must provide evidence of having taken and passed the written examination for admission to the Basic Law Enforcement Training Program (BLETP) or its equivalent administered by the Maine Criminal Justice Academy (M.C.J.A.). A passing grade on the examination is one that is satisfactory to justify admission to the BLETP or equivalent program, as adjudged by M.C.J.A. This requirement is waived for Certified Law Enforcement Officer applicants, who must, instead, show proof of eligible law enforcement certification.

In order to be considered for Original Appointment an applicant must also provide evidence of having taken and passed the physical fitness test (PFT) within six (6) months of application. All applicants must hold a valid motor vehicle driver's license, be a high school graduate or equivalent, and be lawfully permitted to work in the United States.

- (b) Qualifying examination - Fire Original Appointment. In order to be considered for Original Appointment, an applicant must provide evidence of having a currently valid passing grade on the Candidate Physical Abilities Test (CPAT) developed by the IAFF/IAFC Wellness-Fitness Task Force, and have at least EMT basic certification. All applicants must hold a valid motor vehicle driver's license, be a high school graduate or its equivalent, and be lawfully permitted to work in the United States.
- (c) Promotional Appointment - Police and Fire. The civil service commission or Human Resources Department, under the direction of the civil service commission, shall establish specific dates, times and locations for the administration of applicable written examinations, which shall be a professionally developed, standardized, job-related, and, so far as practicable, validated examination. The Human Resources Department under the direction of the civil service commission shall see that all applicants are given timely written notice or communications of the date, time and

place of the examination. Such written notice and any other requested credentials shall serve to identify the candidates at the time of taking the written examination. Candidates for promotion will also be given a scored oral interview.

(d) Medical Examination - All Appointments.

- (1) Original Appointment. After an original appointment from the Eligible List, and before the appointee begins his or her employment duties, the appointee must undergo a comprehensive medical examination, including but not limited to drug testing. The medical examination shall be conducted by a physician or licensed healthcare provider (PLHCP), licensed in the State of Maine and selected by the Human Resources Department according to the City's purchasing ordinance. The appointing authority or his/her designee shall arrange the medical examination for the candidate and shall condition the appointment of that person on the merits of such examination. All appointees upon original appointment shall be subject to such a medical examination regardless of disability. Appointees shall meet minimum standards for health, vision, hearing and physical performance that are job-related and consistent with business necessity. All candidates must meet OSHA Standard 1910.120 as amended.
 - (i) If the physician's or licensed healthcare provider's report indicates that the appointee is qualified, the appointee shall begin his or her employment duties.
 - (ii) If the physician's or licensed healthcare provider's report indicates that the appointee has a disability, the appointing authority, in consultation with the physician or licensed healthcare provider, as applicable, and the chief of the appropriate department, shall determine whether the appointee's performance of the essential job functions can be accomplished with reasonable accommodation; if so, then the appointee shall begin his or her employment duties, but if not, the appointment shall be withdrawn.
- (2) Promotional Appointment. After a promotional appointment and before the promotional employee begins his or her employment duties, the employee must undergo a comprehensive medical examination that is job-related and consistent with business necessity to ensure that the employee is capable of performing the essential duties of the position to which promotion is sought. The medical examination shall be conducted by a physician or licensed healthcare provider, licensed in the State of Maine and selected by the Human Resources Department according to the City's purchasing ordinance. The appointing authority or his/her designee shall arrange the medical examination for the candidate and shall condition the appointment of that person on the merits of such examination. This medical examination may be waived for fire department employees who annually meet the requisite hazardous material physical standards (OSHA Standard 1910.120).
 - (i) If the physician's or licensed healthcare provider's report indicates that the employee is qualified, the employee shall begin his or her new employment duties.
 - (ii) If the physician's or licensed healthcare provider's report indicates that the employee has a disability, the appointing authority, in consultation with the physician or licensed healthcare provider, as applicable, and the chief of the appropriate department, shall determine whether the appointee's performance of

the essential job functions can be accomplished with reasonable accommodation; if so, then the appointee shall begin his or her employment duties, but if not, the appointment shall be withdrawn.

- (e) Background Investigation. As a condition of employment, the appointing authority or his/her designee will ensure that each candidate for listing on the eligible list, is subject to a background check to include criminal history and fingerprinting.
- (d) The fingerprints and records of each such candidate shall be checked against local, county, state and federal law enforcement files in order to determine whether the candidate has been convicted of a class E crime, or its equivalent within the five-year period prior to his application or has been convicted of a class A, B, C or D crime or their equivalent. The police department shall also attempt to determine whether the candidate is a habitual user of intoxicating liquors or regulated drugs which may inhibit the candidate's job performance and endanger the public. The civil service commission may, upon the basis of evidence acquired during the background examination, and upon the request of the department chief or the chief's designee, cause a candidate to be not listed or removed from the eligible list when it is found that:
- (1) There is a criminal or civil conviction related to drug use or abuse, or indications of use of illegal drugs beyond what may constitute experimentation, or excessive use of intoxicating liquors;
 - (2) There is conviction for murder or a class A, B, C crime (i.e. any crimes with a maximum term of imprisonment of one year or more) or a Class D crime, or its equivalent, or a crime involving moral turpitude at any time, or a conviction of a Class E crime or its equivalent within the five-year period preceding application;
 - (3) There is a false statement of material fact on the application or during the examination, background or polygraph processing; or
 - (4) There are other verified facts which demonstrate unfitness or lack of qualification for duty, including consideration of a work history or performance, or any conviction conduct or court order that would disqualify a candidate from employment or attendance at the Maine Criminal Justice Academy.
- (f) Polygraphic Examination. The Chief of Police or his/her designee shall arrange for a polygraphic examination of any candidate for original appointment to the police department. The polygraphic examination shall be administered by a trained and qualified polygraph operator. The report of a qualified polygraph examiner that the polygraphic examination had disclosed evidence which would otherwise disqualify a candidate or that a polygraphic examination has revealed deception in response to questions relating to matters which would disqualify a candidate, shall be cause for removing the candidate's name from the eligible list. The report of polygraphic examination shall be furnished to the Police Chief or his/her designee.
- (g) Qualification Standards' Test Administration. Qualifications standards, employment tests and other selection criteria used under these Rules in the appointment process shall not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities,

on the basis of disability, unless the standard, test or other selection criteria are job related for the position in question and are consistent with business necessity. Tests concerning employment shall be selected and administered in the most effective manner to ensure that, when a test is administered to an applicant or employee who has a disability, the test results accurately reflect the skills, aptitude or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the effects of the applicant's or employee's disability (except where such skills are the factors that the test purports to measure).

- (h) Access to Confidential Reports. Whenever the results of tests and examinations are deemed confidential under these Rules, an employee or former employee shall have the right to review the same to the extent provided by 30-A M.R.S.A. §2702(2), as may be amended from time to time.

RULE 3—ELIGIBLE LIST FOR PROMOTIONAL APPOINTMENTS AND ELIGIBLE LIST FOR ORIGINAL APPOINTMENTS.

- (a) Making of the Eligible List - Original Appointments. The civil service commission shall make and keep separate eligible lists for each department of its qualified applicants for original appointments. Such eligible lists shall contain the name of each qualified candidate, and whether or not they are a Certified or Non-Certified Law Enforcement Officer or Paramedic candidate, arranged in order of the date in which their application was received. Each qualified candidate whose name appears on the eligible list shall remain on the eligible list for one (1) year after the date on which their application was received. If in the city manager's sole judgment the public interest requires the expeditious filling of any vacancy, and there are no currently eligible qualified candidates on the eligible list, the city manager may request in writing from the civil service commission a list of previously eligible qualified candidates starting with the most recently eligible qualified candidate. All eligible lists shall be published and retained by the Human Resources Department and copied to the Civil Service Commission, and be available for public inspection. At the request of the appointing authority or his/her designee, the civil service commission shall prepare and transmit to the city manager (with a copy to the chief of the respective department) the full eligible list from which appointments shall be made.
- (b) Making of the Eligible list - Promotional Appointments. After the grading of the written examination and all other examinations required or permitted by this rule, the civil service commission shall make and keep separate eligible list for its qualified candidates achieving a passing grade on the written or assessment center examination for promotional appointment. Such eligible list shall contain the name and final score obtained in the written or assessment center examinations of each successful candidate arranged in order of such final score. Each candidate whose name appears on the eligible list shall remain on the eligible list for one (1) year after the date on which that candidate passed the written or assessment center examination. If in the city manager's sole judgment the public interest requires the expeditious filling of any vacancy, and there are currently no eligible and qualified candidates on the eligible list, the city manager may request in writing from the civil service commission a list of previously eligible qualified candidates starting with the most recently eligible qualified candidate. All eligible list shall be published and retained by the Human Resources Department and copied to the Civil Service Commission, and shall be available for public inspection.
- (c) Eligible List - Promotional Appointments. At the request of the appointing authority or his/her designee, the civil service commission shall prepare and transmit to the city manager (with a copy to the chief of the respective

department) an eligible list from which appointments shall be made. This eligible list will include 1) those names remaining on the eligible list but not selected at the time of the previous vacancies; 2) the top three (3) additional names on the eligible list for the first vacancy, and 3) the top two (2) additional names on the eligible list shall be added for each additional vacancy; provided, however, that if not enough names remain on the eligible list to fulfill these requirements then the eligible list will be as many names as validly remain on the eligible list at that time. Subject to the requirements contained herein, the names on the eligible list shall be rank-ordered highest to lowest based on the scores on the written examination or assessment center score, seniority points and interview points.

RULE 4—ORIGINAL APPOINTMENT

- (a) Appointing authority. All original appointments to the police and fire departments shall be made by the city manager, upon the recommendation of the chief of police and the chief of the fire department, respectively, and only from the eligible list(s), at the city manager's discretion. The appointing authority or his/her designee shall advise the commission of the appointments made from the eligible list(s).
- (b) Qualifications. Appointment shall be based upon individual merit in competition, reflecting the qualification of the person appointed as shown by the candidate's prior experience or service, special skills and education, and his physical and mental fitness for duty.
- (c) Oral interview. The appointing authority or his/her designee, shall conduct an oral interview of the candidates whose names appear on the eligible list(s) for the purpose of determining how each candidate's education, employment experience, prior service, manual or technical skills, and other relevant personal factors bear on the candidates overall qualification in comparison with the other candidates on the eligible list(s) and the particular needs of the department and the duties to which the candidate may be assigned. The appointing authority or his/her designee may request or utilize as many others as available and deemed appropriate, but must include no less than two (2) and no more than four (4) members of the civil service commission during this interview process. Oral interviews shall be scored by the interview team. Scores shall be averaged. Recognition shall be given for the following qualifications:

FIRE DEPARTMENT

- 1) Maine State Fire Fighter I Academy Completion Certificate;
- 2) Maine State Fire Fighter II Academy Completion Certificate;
- 3) Fire Science Degree from an Accredited College;
- 4) South Portland Call Company or any full-time firefighter experience within the past five years, from the date of application;
- 5) Prior Active Military Duty; and
- 6) Applicants who can demonstrate "proficient" use of an additional language.

POLICE DEPARTMENT

- 1) Bachelor Degree-Law Enforcement/Related field;
 - 2) Associates Degree-Law Enforcement/Related field;
 - 3) Full-time police experience within the past 5 years from the date of application;
 - 4) Applicants who can demonstrate "proficient" use of an additional language; and
 - 5) Prior Active Military Duty.
- (d) Job Performance Assessment. The Human Resources Department shall arrange for a job performance assessment for all original appointees in either department by a qualified licensed psychologist. The results of the job performance assessment will be furnished to the appointing authority, to the Chief and/or his/her designee of the respective department. If the appointing authority or his/her designee determines that the job performance assessment reveals that the appointee is mentally, emotionally or temperamentally unsuited for the position, that candidate's name shall be removed from the eligible list.
- (e) Working test. Every person receiving an original appointment in the Fire Department shall be tested by a working test while occupying such position; the period of such working test shall begin immediately upon appointment and shall continue for twelve (12) months. The working test in the Police Department shall be for a period of one year after graduation from the BLETP at the Maine Criminal Justice Academy or the date that the Maine Criminal Justice Academy certifies the person as a Maine Law Enforcement Officer. The appointing authority may, at any time during such period, reject for reasons which shall be stated in writing, any person appointed to such position in either department. Any person rejected during the working test period following appointment shall have no right of review under the provisions of Rule 7.
- (f) Permanent appointment. Within thirty (30) days preceding the end of the working test period for any original appointee in either department, the appointing authority shall receive from the chief of the department a written report stating whether the employee's work has been such as to indicate that the employee is able and willing to perform the assigned duties in a satisfactory manner. Upon completion of the working test period, and upon receipt of a report which in the appointing authority's judgment is favorable to the employee, the appointing authority shall notify the civil service commission when the appointment has been made permanent.

RULE 5--PROMOTIONAL APPOINTMENTS.

- (a) Appointing authority. All promotional appointments to the police and fire departments shall be made by the city manager upon the recommendation of the chief of police and the chief of the fire department, respectively, and only from the eligible list for the particular position.

The commission shall maintain an eligible list for promotion based on the standards articulated in Rule 3(b) and, upon request of the city manager, shall submit to the city manager an eligible list from which

the appointment shall be made pursuant to Rule 3(c). Annually, by October 15th, the civil service commission shall publish an active, up to date eligibility list for fire department lieutenants. This list will be available for any current or future vacancies, as well as for appointing acting fire lieutenants per the working agreement with Local 1476. Upon the transmission of an eligible list by the civil service commission to the appointing authority or his/her designee pursuant to Rule 3(c), the following process shall be followed to make a promotional appointment. The appointing authority shall advise the commission of the appointments made from the eligible list. If the appointing authority does not appoint the highest ranking candidate(s) on the eligible list, then the appointing authority shall submit in writing to the Civil Service Commission and the candidate(s) passed over the reasons for passing over such person or persons within ten (10) days of the appointment. If the commission finds that the reasons stated by the appointing authority are sufficient to disqualify the candidate, then the name shall be removed from the eligible list. In all other cases, the candidate's name shall be restored to the eligible list in the order in which it originally appeared.

- (b) Qualifications. Promotion shall be based upon individual merit in competition, reflecting the qualifications of the person promoted as shown by the employee's rating upon examination, his prior experience and service, seniority, and oral promotional examination as follows:

(1) Written examination or assessment center exam (as approved by the civil service commission): One-half ($\frac{1}{2}$) of the raw score received on a one hundred-question standardized multiple choice test designed for and administered by the Commission to include questions on local and State of Maine laws and procedures for each department (provided the commission shall be required to identify in writing the sources for the local and state law and procedure questions when the promotional exam is first posted), for a maximum total of fifty (50) points.

(2) Seniority: One-half ($\frac{1}{2}$) point per year for each year completed beyond the initial five (5) years of service in the applicable department for a maximum of ten (10) points; and

(3) Oral examination: The commission shall conduct an oral examination of the top 12 candidates based on written or assessment center score, or more if needed pursuant to Rule 3(c). The candidate will be scored based on knowledge in the field, interest in the department, comprehension and judgment, not to exceed twenty (20) points.

(4) Educational Degrees: Points will be awarded to candidates who have educational degrees from accredited institutions. Points will only be awarded for the highest degree; no combining of degrees for additional points will be allowed. Points are as follows: Two (2) points for Associates degree, or Four (4) points for Bachelors degree, or Six (6) points for Masters degree.

- (c) Oral interviews. The appointing authority or his/her designee, shall conduct an oral interview of candidates whose names appear on the eligible list for the purpose of determining how his education, employment experience, prior service, manual or technical skills, and other relevant personal factors bear on the overall qualifications of that candidate in comparison with the other candidates on the eligible list and the particular needs of the department and the duties to which that candidate may be assigned. The chief of the candidate's department may participate

in the oral interviews. At least two (2) and up to four (4) members of the civil service commission must be in attendance for those oral interviews.

- (d) Working test. Every person receiving a promotional appointment in either department shall be tested by a working test while occupying the position to which that person has been promoted. The period of such working test shall begin immediately upon promotion and shall continue for one year. The appointing authority may at any time during such period, reject for reasons which shall be stated in writing, any person promoted to such position in either department. Any person rejected during the working test shall revert to the rank and pay status from which he was promoted. The appointing authority may extend the working test for a period not to exceed an additional six months if extenuating circumstances, such as injury or illness, has prevented a fair evaluation of the employee.
- (e) Permanent appointment. The appointing authority shall notify in writing the civil service commission and the employee that the appointment has become permanent.

RULE 6--REINSTATEMENTS; VOLUNTARY DEMOTIONS.

- (a) Reinstatement following resignation. Any employee who has resigned from either department while in good standing may, within two (2) years following the date of the resignation, request reinstatement. If the appointing authority certifies that there is a need for the employee's services and the chief of the applicable department recommends in writing that the employee be reinstated, the city manager after having received a written recommendation from the Civil Service Commission on the reinstatement, may reinstate the employee to a position at or below the same pay and grade rank previously held and so notify the civil service commission in writing; provided, however, in no event may the former employee's new rank exceed that of senior patrol officer/firefighter. The employee's seniority shall commence as of the effective date of the reinstatement, and the employee shall not receive credit for time previously spent in the department or in any grade.
- (b) Reinstatement after layoff. If an employee of either department is laid off due to a reduction in force, that person's name shall be placed at the top of the applicable recall list. If more than one employee's name is thus added to the recall list, they shall be placed thereon in the order of their departmental seniority. The City shall hire from the recall list before considering new applicants from the eligible list.
- (c) Voluntary demotion. Any employee of either department may, in writing, request to be demoted to a lower grade in rank. Such a request shall state the specific reasons for the request. Upon the recommendation of the chief of the department, the appointing authority may consider the request. If the appointing authority finds that it is in the best interest of the employee, the department and the public, the City Manager, after providing the Civil Service Commission with an opportunity to submit a written recommendation on the voluntary demotion, may grant the request and the civil service commission shall be so notified, subject to the following conditions:
 - (1) The employee's seniority in the department shall not be affected; and
 - (2) The employee's seniority in grade shall reflect time previously spent in that grade but he shall not receive credit for the time spent in the higher grade between the dates of promotion and demotion.

RULE 7--DISCIPLINARY ACTION.

- (a) Suspension. The chief of the police department and the chief of the fire department may, for disciplinary purposes, suspend without pay any member of their respective departments from the performance of all duties, for one offense, for a period of not more than seven (7) consecutive days, and for periods aggregating not more than fourteen (14) days in a calendar year for more than one offense, on account of violation of departmental rules, incompetence, misconduct, negligence, insubordination or other sufficient cause. The chief of the department shall immediately upon such suspension forward a written statement of the reasons for such suspension to the member concerned, or shall be mailed to the employee's last and usual place of residence.
- (b) Suspension, demotion and dismissal. Upon the recommendation of the chief of the department, the appointing authority may, for disciplinary purposes, suspend for greater than seven (7) consecutive days and for periods aggregating not more than fourteen (14) days in a calendar year for more than one offense, reduce in rank or pay, or dismiss any member of their respective department on account of violation of departmental rules, incompetence, misconduct, negligence, insubordination or other sufficient cause. The recommendation of the chief of the department shall be in writing, clearly setting forth the specific reasons why such action is deemed necessary. A copy of such written recommendation shall be personally delivered to the member concerned, or shall be mailed to the employee's last and usual place of residence. The appointing authority shall take disciplinary action only after due notice and hearing before the appointing authority, and a written statement of reasons for such action shall be personally delivered to the member concerned.
- (c) Appeal to the commission. Within ten (10) days of the date the employee receives written notice of a suspension, demotion or dismissal, an employee against whom disciplinary action has been taken may appeal in writing to the civil service commission, requesting a hearing and review of such action by the commission. The employee shall include in the appeal a copy of the chief's or appointing authority's written statement of the reasons of the disciplinary action. The employee shall file a request for an appeal with the Commission through the City Clerk's office, which shall date stamp the request. The City Clerk shall immediately notify the Commission and the City Manager's office of the appeal.

At the review hearing before the commission, the burden shall be upon the person taking the disciplinary action to justify such action. If the commission finds no justification for the action, the employee shall be reinstated with full back pay and benefits. If the commission finds the action was justified, the suspension, demotion or removal shall be sustained as of the original date of official notification by the person taking such action.

- (d) Procedure of hearing. The following rules of procedure shall govern all hearings before the civil service commission relative to disciplinary action:
- (1) Parties. Only the employee against whom a suspension, demotion or dismissal is taken, the person recommending such action, and the appointing authority shall be parties to an appeal taken under this rule. The appointing authority is not required to be present at the hearing, if the chief of the department is present and the disciplinary action was taken by the chief.

- (2) Hearing date. The chairman of the commission shall set a hearing date at a time and place reasonably convenient to all parties, but not more than twenty (20) days from the date the employee's request for hearing was received by the city clerk, unless otherwise mutually agreed upon by the parties not exceeding sixty (60) days from the date of the employee's request for hearing. Written notice of the date, time and place of the hearing shall be provided to all parties.
- (3) Type of hearing. If the employee requests in writing the hearing to be open to the public, the hearing shall be open to the public. If the employee requests in writing the hearing to be closed to the public, the hearing shall be closed to the public, and only those individuals required by the commission or requested by the employee may be present; provided, however, a representative of the employee's collective bargaining agent may also attend such a closed hearing except as otherwise provided by law.
- (4) Quorum. Five (5) members of the commission shall constitute a quorum for hearings.
- (5) Disqualification. Any member of the commission who is to testify in behalf of any party to the appeal shall be disqualified from the hearing.
- (6) Rights of parties. All parties to the appeal shall have the right to be heard, to present evidence, to present and cross-examine witnesses, to be represented by counsel or other person of their choice, and to have official time off to attend the hearing without loss of pay (unless on any day a hearing is held the employee is then under suspension). If any witness is an employee of the city, that employee shall be granted official time off without loss of pay to attend and testify at the hearing.
- (7) Evidence. Technical rules of evidence shall not apply, but only evidence relevant to the issues under consideration shall be introduced at the hearing. The chiefs of the police and fire departments shall file with the commission all applicable departmental rules and regulations.
- (8) Records of hearing. The commission shall arrange a full stenographic record or a taped recording of the hearing, copies of which may be requested by any party. Such record shall be maintained for a period of at least two (2) years.
- (9) Decision of commission. The commission shall rule only on the basis of the facts or evidence presented at the hearing, and such decision shall be in writing upon the vote of all members present by a simple majority. In the event of a tie vote by the Commission in a disciplinary hearing, it shall be assumed that the City has not met its burden of proof, and the employee's suspension, demotion or removal shall be overturned.

The commission shall rule in writing on each ground of the disciplinary action separately, and the written decision of the commission must be delivered to the parties within three (3) working days following adjournment of the hearing. The decision of the commission shall be final and binding. Final decisions of the commission may be subject to arbitration if requested by either party within ten calendar days of the commission's decision.

RULE 8--CHIEFS OF DEPARTMENT.

(a) Vacancy. Whenever a Police Chief or Fire Chief vacancy occurs, the city manager, or his/her designee, shall inform the civil service commission. The city's human resources department shall advertise the position. Applications and resumes shall be accepted in the manner as provided in Rule 1(a), (b), (c). Applicants for chief of police must be certified, or able to become certified prior to appointment, by the Maine Criminal Justice Academy or its recognized equivalent. Applications for either chief's position from internal candidates within the department shall be limited to command or supervisory personnel.

Minimum qualifications including but not limited to training, education and experience, for both internal and external candidates shall be established by the appointing authority or his/her designee in advance of the hiring process.

- (b) Screening of Candidates. Within three (3) working days from the date applications close, the Human Resources Department, in collaboration with the Civil Service Commission, shall review all applications and resumes received and eliminate those candidates who do not meet the minimum requirements.

Within five (5) working days from the date applications close, a committee made up of the City Manager, Director of Human Resources, and the Chair of the Civil Service Commission or his/her designee (the "Committee") shall meet and determine the top candidates for the position who will be interviewed.

- (c) Polygraphic examination. The Human Resources Department shall arrange for a polygraphic examination for any candidate for police chief selected for an interview from outside the South Portland Police Department. The polygraphic examination shall be administered by a trained and qualified polygraph operator who is not an employee of the City. The report of a qualified polygraph examiner that the polygraphic examination had disclosed evidence which would otherwise disqualify a candidate or that polygraphic examination has revealed deception in response to questions relating to matters which would disqualify a candidate, shall be cause for removing the candidate from further consideration. The report of polygraphic examination shall be furnished to the appointing authority.
- (d) Appointing Authority. The appointing authority, or his/her designee, the Director of Human Resources, and at least two (2) and up to four (4) members of the civil service commission shall interview the top candidates selected by the Committee from the list of those meeting minimum qualifications, taking into consideration when making a final choice, the candidate's educational background, qualifications, police or fire experience, and other relevant selection criteria, as appropriate, and the results of any job performance and/or psychological assessment by a qualified, license psychologist. The appointing authority, or his/her designee, may select additional person(s) to assist in the interview process. The appointing authority may appoint any candidate who meets the minimum qualifications, and who the appointing authority deems is most qualified for and suited to the position of chief.

RULE 9--ADMINISTRATION.

- (a) Discrimination prohibited. No discrimination shall be exercised, promised, or threatened by any person, in connection with any action taken or to be taken under this article, in favor or against an applicant or member of a department because of his or her religious beliefs, ancestry, or national origin, marital status, race, sex, sexual orientation, genetic information, color; because of age or physical or mental disability, except where such characteristics constitute a bona fide occupational qualification or failure to meet the physical or mental requirements disqualifies an individual for the particular position, poses a safety hazard or cannot be reasonably accommodated; because of workers compensation history, whistleblower status, veteran status; because of any declination to contribute to any political fund, or to re-enter political service; because of any lawful union activity or membership; or any other legally protected category. No person shall seek or attempt to use, nor shall the appointing authority or the civil service commission give consideration to, any political endorsement, or any other factor prohibited by the preceding sentence.
- (b) Amendment or repeal of rules. The civil service commission may from time to time propose amendments, or revisions to or the repeal of the provisions of these rules in a manner consistent with merit principles and the civil service ordinance. The full text of any such proposed amendment, revision or repeal shall be submitted to the city council.
- No proposed ordinance amendment shall be considered until the Civil Service Commission has held a public hearing on that amendment, having given due notice consistent with section 19-1(c) of this ordinance to affected Civil Service employees, the respective chief and appointing authority on the date, time and place of the public hearing.
- (c) Variance of requirements. During periods of difficulty in recruitment, or when the number of employees eligible for promotion to a particular vacancy are insufficient to permit meaningful competition, the civil service commission may in its discretion make variations in the requirements of these rules if the applicants are in other respects physically and mentally fit according to the other provisions of the rules relating to such qualifications. Such variances shall be effective only for the duration of the eligible list prepared at that time, and shall apply uniformly to all candidates whose names appear on such eligible list. The city manager may also waive the minimum one year in grade requirement for promotions contained in Rule 41(d) when the number of persons eligible is insufficient to provide meaningful competition.
- (d) Emergencies. During times of emergency affecting the health, safety and welfare of the public as declared by the city council, all provisions of these rules may be suspended until such time as the city council shall declare the emergency terminated.
- (e) The Human Resources Department, in collaboration with the civil service commission, shall annually cause the legal review of the civil service ordinance and shall submit any proposed revisions or amendments, to bring this ordinance into compliance with all federal and state employment and labor law to the civil service commission.

(Ord. No. 20-17/18, 5/1/2018 [Fiscal Note: Less than \$1000]; Ord. No. 16-20/21, 5/4/2021 [Fiscal Note: Less than \$1000], Ord. No. 10-22/23, 10/8/2022 [Fiscal Note: Less than \$1000])

Secs. 19-12--19-19. Reserved.

ARTICLE III. BUREAU OF PERSONNEL*

 * Charter reference(s)--Establishment of bureau of personnel, § 421; appointment and removal of personnel, §§ 229, 302.1; department heads, § 305; compensation of officers and employees, § 230; merit basis of appointment, § 422; prohibited personnel practices, § 423.

Sec. 19-20. Bureau of personnel established.

There is hereby established a bureau of personnel to administer the rules and regulations contained in the City of South Portland's Personnel Policy for municipal employees of the City of South Portland.

Director of personnel. The head of the bureau of personnel shall be the director of personnel. The director of personnel may be the city manager or his appointee.

Sec. 19-21. Division of offices and positions.

All offices and positions of the City of South Portland are divided into the following categories:

- (a) Exempt employees. Exempt employees shall include all elected officials and members of boards and commissions and committees of the city.
- (b) Council appointees. Council appointees shall include the city manager, city clerk and corporation counsel.
- (c) Civil service employees. The civil service employees shall include all uniformed employees of the police and fire departments, including the chiefs of the respective departments, subject to the jurisdiction of the civil service ordinance.
- (d) Union employees. Employees covered by a collective bargaining agreement under the provisions of 26 M.R.S.A. §963.
- (e) Non-Union employees. Non-union employees include all municipal employees of the city not included in subsections (a), (b) or (d) above.

Sec. 19-22. Personnel policy.

- (a) Establishment of personnel policy. The director of personnel shall adopt a personnel policy, subject to the approval of the city council, based on merit principles and shall administer that policy for all municipal employees; except where a collective bargaining agreement for union-employees, this Code of Ordinances, Council Order or State or Federal law provides a different standard or procedure, in which case the personnel policy shall be superseded by the applicable agreement, ordinance, order or law.
- (b) Application to exempt employees and civil service employees: The personnel policy shall not apply to exempt employees. The personnel policy shall apply to civil service employees, except for the promotional examination process and disciplinary actions as specifically exempted by the provisions of Article II of Chapter 19 of this Code and except when superseded by

collective bargaining agreement, Council Order, City Ordinance, or State or Federal Law.

(Ord. No. 10-11/12, 3/19/12 [Fiscal Note: Less than \$1000])