

PERSONNEL RULES AND REGULATIONS\*

ARTICLE I. CIVIL SERVICE COMMISSION

ARTICLE II. CIVIL SERVICE RULES FOR PERSONNEL ADMINISTRATION

ARTICLE III. BUREAU OF PERSONNEL\*



**CODE OF ORDINANCES**

Chapter 19

**PERSONNEL RULES AND REGULATIONS\***

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\* **Cross reference(s)**--Administration and legislation, Ch. 2; conflicts of interest, § 2-16.  
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**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 2:30 pm on the Thursday 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 6, 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.

#### **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.

#### **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 register violating the provisions of this chapter or rules established pursuant to this chapter shall be excluded from the eligible register.

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.

**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: The list of the highest ranked applicants sent to the city manager (appointing authority) for consideration when a specific vacancy or vacancies occur. In the case of police department appointments it is the highest ranked Non-Certified Police Department applicants. In the case of fire department appointments, it is the highest ranked Non-Certified Paramedic applicants.
  - (3) Eligibility Register or Eligible Register: Those candidates who have successfully completed ALL testing procedures under this ordinance and are eligible for appointment. In the case of police department appointments it is those Non-Certified Police Department applicants who have successfully completed ALL testing procedures under this ordinance and are eligible for appointment. In the case of fire department appointments, it is those Non-Certified Paramedic applicants who have successfully completed ALL testing procedures under this ordinance and are eligible for appointment.
  - (4) 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.
  - (5) 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.
  - (6) Recall List: The names of previously laid-off employees.
  - (7) Reserve list: Candidates that have successfully completed the written examination, but have not completed the oral examination or physical agility test.

- (8) Non-certified Police Department Applicant: An applicant for employment with the police department who is not a Certified Law Enforcement Officer.
- (9) Non-certified Fire Department Applicant: An applicant for employment with the fire department who is not a Certified Paramedic.
- (10) Certified Law Enforcement Officer List: The list of Certified Law Enforcement Officers sent to the city manager (appointing authority) for consideration when a specific vacancy or vacancies occur.
- (11) Certified Paramedic List: The list of Certified Paramedics sent to the City Manager (appointing authority) for consideration when a specific vacancy or vacancies occur.

**Sec. 19-11. Rules.**

**RULE 1--APPLICATION.**

- (a) Vacancies. Whenever the city manager 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 register to provide an eligible list in order to fill such vacancy on a competitive basis, or if the existing eligible register has expired, the City Manager shall so inform the civil service commission. The civil service commission shall establish a convenient date and place for the examination, and shall give reasonable notice to all applicants. In the case of qualifying examinations for original appointments, the civil service commission shall cause the examination to be duly advertised.
- (b) Advertisement. The character of the advertisements may vary as deemed necessary by 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 or persons with Maine State or nationally registered paramedic licenses for fire department candidates. All advertisements shall include the phrase, "Equal Opportunity Employer; and the phrase "Applicants must be twenty (20) years or older on the date of the examination to be eligible to take the examination". All advertisements shall state that application forms are available from the city's Human Resources Department or may be downloaded from the City's web site and are to be filed with the Human Resources Department.
- (c) Applications. Applications shall be made on standard forms provided by the Human Resources Department and on such supplemental forms as each department may request for further information relevant to the applicant's qualifications, including but not limited to: a valid motor vehicle operator's license, evidence of high school graduation or its equivalency, copies of certificates or licenses that are prerequisites and requirements of the position for which application is made. The applications shall not include any questions either directly or indirectly relating to the applicant's ancestry or national origin, color, race, religion, sex, sexual orientation or marital status. All applications shall be filed with the Human Resources

Department, which shall record the date and time each application was received and provide each applicant with a receipt showing filing of the application; provided, however, no application shall be accepted by the Human Resources Department until it is fully completed and all of the necessary attachments are included.

Any applicant with a military service background must include with their application a copy of their form DD214.

The responsibility for keeping the commission and Human Resources Department apprised of his/her current address and telephone number rests with the applicant. Further, punctual attendance at all required examinations is also the responsibility of the applicant. Failure to meet any of the above obligations may result in immediate disqualification from the eligibility list.

Annual testing for police shall be in the first quarter of the calendar year. Annual testing for firefighters shall be in the second quarter of the calendar year. Additional testing shall be conducted as requested by the appointing authority.

## **RULE 2--EXAMINATIONS FOR ALL APPOINTMENTS.**

- (a) **Qualifying examination.** The civil service commission shall establish a date certain for the administration of a written examination which shall be a professionally developed, standardized, job-related, and, so far as practicable, validated examination. The civil service commission shall see that all applicants are given timely written notice 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. With the exception of applicants who are Certified Law Enforcement Officers, or who are Certified Paramedics, for whom the qualifying examination shall be waived, applicants who fail to appear for examination at the time and place specified shall be dropped from the list of applicants and must reapply for a succeeding examination. Immediately prior to administering the written examination, the civil service commission shall require each candidate to fill out an identification form containing the candidate's name, signature or other pertinent data. Each form shall contain an identification number which the candidate shall use to mark upon the test and answer sheets in lieu of his name, so that the results of the written examination of each candidate shall not be known until the oral examinations have been completed. Candidates must be 20 years of age or older on the date of the examination to be eligible to take the examination.
- (b) **Medical Examination.**
  - (1) **Original Appointment.** After an original appointment from the Eligible List or from the Certified Law Enforcement Officer List or from the Certified Paramedic 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 licensed in the State of Maine and selected by the Civil Service Commission according to the City's purchasing ordinance. The appointing authority 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. In consultation with a physician and the

chief of each department, the civil service commission shall make and publish 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 report indicates that the appointee is qualified, the appointee shall begin his or her employment duties.
- (ii) If the physician's report indicates that the appointee has a disability, the appointing authority, in consultation with the physician 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 licensed in the State of Maine and selected by the Civil Service Commission according to the City's purchasing ordinance. The appointing authority shall arrange the medical examination for the candidate and shall condition the appointment of that person on the merits of such examination.

- (i) If the physician's report indicates that the employee is qualified, the employee shall begin his or her new employment duties.
- (ii) If the physician's report indicates that the employee has a disability, the appointing authority, in consultation with the physician 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.

(c) Making of eligible register. 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 registers for its qualified candidates achieving a passing grade on the written examination for original and promotional appointments. Such eligible registers shall contain the name and final score obtained in the examinations of each successful candidate arranged in order of such final score. The eligible register for original appointments will contain no more than fifteen (15) names, rank ordered by final scoring on the written examination and all other examinations required or permitted by this rule. Each candidate whose name appears on the eligible register shall remain on the eligible register for one (1) year after the date on which that candidate took the written examination. If in the city manager's sole judgment the public interest requires the expeditious filling of any vacancy, and there is not a current eligible register, the city manager may request in writing from the civil service commission a list of eligible candidates to be taken from the most recent expired register. All eligible registers shall be published and retained by the secretary of the civil service commission and shall be available for public inspection.

(d) Making of the Eligible List, the Certified Law Enforcement Officer List, and the Certified Paramedic List: At the request of the appointing authority, 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. In the case of appointments to the police department a Certified Law Enforcement Officer List shall also be prepared and transmitted to the City manager (with a copy to the police chief). In the case of appointments to the fire department, a Certified Paramedic List shall also be prepared and transmitted to the City Manager (with a copy to the fire chief). Prior to placing a candidate's name on the eligible list, or the Certified Law Enforcement Officer List, or the Certified Paramedic List, the commission shall direct any such candidates to the police department where they shall be fingerprinted. The fingerprints for police department candidates shall be taken when the background investigation book is returned; the fingerprints for the top twenty (20) fire department candidates shall be taken upon notification by the commission that the candidate has passed the agility test. The fingerprints and records of each such candidate shall be checked against local municipal police files, state police files, and, if available, the files of the Federal Bureau of Investigation, 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 removed from the eligible register or the Certified Law Enforcement Officer List, or the Certified Paramedic List when it is found that:

- (1) The minimum requirements have not been met;
- (2) There is illegal use of narcotics, drugs, or excessive use of intoxicating liquors;
- (3) There is conviction of a class A, B, C or D crime, or its equivalent, or a crime involving moral turpitude, or a conviction of a Class E crime or its equivalent within the five-year period preceding application;
- (4) There is a false statement of material fact on the application or during the examination process; or
- (5) There are other verified facts which demonstrate unfitness for duty, including any conviction or conduct that would disqualify a candidate from attending the Maine Criminal Justice Academy.

The eligible list shall be created as follows: First, all names previously included on the list but not selected at the time of previous vacancies shall be included. Second, five (5) additional names from the eligible register shall be added to the list for the first vacancy. Third, five (5) additional names shall be added to the list for each additional vacancy; provided, however, if in the city manager's sole judgment the public interest requires the expeditious filling of any vacancy, the city manager may waive those requirements and request in writing an eligible list with as many names as validly remain on the eligible register at the time. Subject to the requirements contained herein, the names on the eligible

list shall be the highest on the applicable eligible register in the order in which they appear thereon.

The Certified Law Enforcement Officer List shall contain the names of the Certified Law Enforcement Officers who have applied for appointment to the Police Department and who have met the above requirements as of the date that the List is prepared by the Civil Service Commission. The Certified Law Enforcement Officer List shall list those applicants in alphabetical order. The Certified Paramedic List shall contain the names of the Certified Paramedics who have applied for appointment to the Fire Department and who have met the above requirements as of the date that the List is prepared by the Civil Service Commission. The Certified Paramedic List shall list those applicants in alphabetical order.

- (e) Polygraphic Examination. The Chief of Police or designee shall arrange for a polygraphic examination of any candidate for original appointment to the police department. This requirement will be waived if the candidate has taken a polygraph examination within the past six months. The polygraphic examination shall be administered by a trained and qualified polygraph operator who is not an employee of the city. No polygraphic examination may be required for promotion from within the department. 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 register. The report of polygraphic examination shall be furnished to the appointing authority, the Police Chief and/or the Deputy Police Chief.
- (f) 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).
- (g) 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--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, or in the case of an appointment to the police department from the eligible list or the Certified Law Enforcement Officer List at the city manager's discretion, or in the case of an applicant to the fire department from the eligible list or the Certified Paramedic List at the City Manager's discretion. The appointing authority shall advise the commission of the appointments made from the eligible list and/or the Certified Law Enforcement Officer List and/or the Certified Paramedic List. If the

appointing authority does not appoint the highest ranking candidate(s) on the eligible list, then the City Manager shall submit to the civil service commission, in writing, the reasons for passing over such person or persons. If the commission finds that the reasons stated by the appointing authority are sufficient to disqualify the candidate, then the candidate's name shall be removed from the eligible register. In all other cases, the candidate's name shall be restored to the eligible register in the order in which it originally appeared.

- (b) **Qualifications.** Appointment shall be based upon individual merit in competition, reflecting the qualification of the person appointed as shown by the candidate's rating upon examination, his prior experience or service, special skills and education, and his physical and mental fitness for duty. Before appointment, candidates for the police department must submit evidence of passage of the 'Alert Test' or other standardized written, entrance examination required to attend the Maine Criminal Justice Academy at the time of application, or must provide proof that they are a Certified Law Enforcement Officer.
- (c) **Scoring of examination.** After the written test required by Rule 2(a) has been corrected and scores have been determined, a passing score for the examination shall be determined by the civil service commission, giving due weight to the number of vacancies in the department, volume of applications, comparability of scores with prior examination and relative standings of the candidates. The Commission shall first establish a cut-off score. If the cutoff score is greater than 70 it must be low enough that no fewer than 50 candidates remain for determining the passing score. A candidate whose score falls below the cut-off score shall be eliminated from further consideration by the Commission.

Those candidates at or above the cut-off score shall be awarded additional points as provided for under the provisions of subsection (f)(2).

The Commission shall add the additional points to the raw score of the written examination to determine a candidate's combined score. The Commission, using the combined score, shall establish a passing score.

- (d) **Oral examination.** With the exception of applicants who are Certified Law Enforcement Officers, or who are Certified Paramedics, for whom the oral examination shall be waived, after the passing grade for the examination has been determined, the civil service commission shall notify each successful candidate of the date, time and place for the oral examination to be administered by the commission. In grading each candidate, the commission shall take into account the following characteristics: Physical and personal appearance, voice and expression, poise, self-confidence, alertness, attitude, interest in the department, comprehension and judgment.

The Civil Service Commission shall have the option of conducting oral examinations, agility tests and determining final examination scores for less than 100% of the candidates who have attained a passing grade on the written examination, including the points awarded under section (f)(2) below. Candidates for whom a final examination score is not determined shall remain on a reserve list, which may be used by the Commission in the event the eligible register is exhausted. The reserve list shall expire at the same time of the eligible register.

- (e) **Fitness / Agility test.** The commission shall also cause to be administered a fitness or agility test for all candidates to determine their physical fitness for the police or fire department respectively. Police candidates who show proof of successfully completing the fitness or

agility test required for admission to the Maine Criminal Justice Academy within 6 months prior to the date that the Commission would otherwise administer the fitness or agility test to the applicant are exempt from this requirement. Fire Department candidates who show proof of successfully completing the “C-PAT” agility test within 6 months prior to the date that the Commission would otherwise administer the fitness or agility test to the applicant are exempt from this requirement.

(f) Final examination scores. The final score for each candidate shall be determined as follows:

- (1) Full raw score on the entrance examination for fire fighter and police patrol officer, plus thirty-three and one-third (33 1/3) percent of the grade given on the oral examination.
- (2) For candidates for appointment to the fire department, the following additional points for education and experience shall be added to the score determined in (1) above:

x-State of Maine or Nationally Registered EMT Certificate; or	1 Point
x-State of Maine or Nationally Registered Intermediate Certificate; or	3Points
x-Maine State Fire Fighter I Academy Completion Certificate; or	1 Point
x-Maine State Fire Fighter II Academy Completion Certificate	2 Points
x-Fire Science Degree from an Accredited College	3 Points
x-Per year of South Portland Call Company or any full-time firefighter experience within the past five years, from the date of application	1 Point (max. 4)
x-Per year of Prior Active Military Duty	.5 Point (max. 2)

- (3) For candidates for appointment to the police department, the following additional points for education and experience shall be added to the score determined in (1) above:

x Bachelor Degree-Law Enforcement/Related field; or	4 Points
x Associates Degree-Law Enforcement/Related Field	2 Points
x Pre-service 100 hour MCJA course	1 Point
x Member of S.P.P.D. Reserve Program (minimum 1 year)	1 Point
x Per year of full-time police experience within the past 5 years from the date of application	1 Point (max. 4)
x Per year of Prior Active Military Duty	.5 Point (max. 2)

A maximum of four (4) points may be added for education (Bachelors and/or Associates degree) for candidates for appointment to the police department.

- (g) Oral interview. The appointing authority, and/or persons designated by the City Manager, shall conduct an oral interview of candidates whose names appear on the eligible list, the Certified Law Enforcement Officer List and the Certified Paramedic List, 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 and the particular needs of the department and the duties to which the candidate may be assigned.

- (h) Job Performance Assessment. The Human Resource Department shall arrange for a job performance assessment for all original appointees in either department by a qualified licensed psychologist. No job performance assessment may be required for promotion from within either department. The results of the job performance assessment will be furnished to the appointing authority, to the Chief and/or the Deputy Chief of the respective department. If the appointing authority 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 register, the Certified Law Enforcement Officer List, and the Certified Paramedic List as applicable.
- (i) 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 Maine Criminal Justice Academy or the date that the Maine Criminal Justice Academy Board of Trustees waives the basic training requirement. The appointing authority may, at any time during such period, reject for reasons which shall be stated in writing to the person involved 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 5.
- (j) 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 4--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 prepare an eligible register for promotion based on the standards contained in paragraphs (a) and (b) of this Rule and, upon request of the city manager, shall submit to the city manager an eligible list from which the appointment shall be made.

The eligible list shall contain, to the extent possible, the top five (5) names for each vacancy and the next two (2) additional names for each additional vacancy. Such promotions shall be made from successive grades (except in the fire department, where both captains and lieutenants may apply for positions as deputies), and no person shall

be examined for promotion to sergeant in the police department or lieutenant in the fire department without having completed at least five (5) years in the lower grade, or for any other grade at least one year in the lower grade. In addition, no person may be examined for promotion to lieutenant in the fire department unless the employee has attained the highest firefighter (NFPA) qualification level within the rank of private. 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 thirty (30) 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 register. In all other cases, the candidate's name shall be restored to the eligible register 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: 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 and rate the candidate based on knowledge in the field, interest in the department, comprehension and judgment, not to exceed twenty (20) points.
- (c) Performance record. In each department there shall be kept an individual performance and merit record showing continuous and comparative records of the work and conduct of all persons employed therein. Performance and conduct ratings shall be made by immediate supervisors during the months of June and December of each year. Such ratings shall be discussed with the member of the supervisor, after the chief and the supervisor have made their appropriate comments, to clarify which features of the performance and conduct are satisfactory and where improvement is sought. All comments by the superior officers or the respective chiefs shall be made before the employee's review and before the employee signs the evaluation.
- (d) Oral interviews. The appointing authority, and/or persons designated by the appointing authority, 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.

- (e) 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 to the person involved, 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.
- (f) Permanent appointment. The appointing authority shall notify in writing the civil service commission and the employee that the appointment has become permanent.

#### **RULE 5--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 register.
- (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 6--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 request 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. 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 upon all parties to the appeal, subject to rights of appeal of the parties.

**RULE 7--CHIEFS OF DEPARTMENT.**

(a) Vacancy. Whenever a vacancy occurs in either the office of the chief of the police department or chief of the fire department, the city manager shall so advise the civil service commission. The civil service commission shall forthwith advertise the position, and applications shall be accepted in the manner as provided in Rule 1(a), (b), (c). Applicants for position of chief of police must be certified, or able to become certified prior to appointment, for the position by the Maine Criminal Justice Academy or its recognized equivalent. Applications for either chief's position from within the department shall be limited to command or supervisory personnel in that department. Applications from outside the applicable department shall be limited to individuals with a minimum of five (5) years directly related full-time experience in police work or firefighting and with a minimum of three (3) years of such directly related full-time experience in a supervisory capacity.

(b) Examinations. The civil service commission shall examine the applicants to determine individual merit, reflecting the candidates' qualifications as shown by written and oral examination as follows:

(1) Written examination: The raw score received on a seventy-five-question customized multiple choice test designed FOR and administered by the commission to include questions appropriate to the respective departments for a maximum total of seventy-five (75) points;

(2) Oral examination: The commission shall conduct an oral examination and rate the candidate based on knowledge in the field, interest in the department, comprehension and judgment, not to exceed twenty-five (25) points;

(3) Polygraphic examination. The commission shall arrange for a polygraphic examination for any candidate for police chief 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's name from the eligible register. The report of polygraphic examination shall be furnished to the appointing authority.

(c) Eligible list. After ascertaining the scores of the written and oral examinations, the civil service commission shall prepare and transmit to the city manager an eligible list containing the names of all successful candidates arranged in order of such final score with the highest scoring candidate being first on the list.

(d) Appointing Authority. The appointing authority shall interview candidates from the eligible list, taking into consideration when making a final choice the final examination score as determined by the commission, the candidate's educational background and police or fire experience, as appropriate, and the results of any psychological examination. The appointing authority may ask for any additional person(s) to assist in the interview process. The appointing authority may appoint any candidate from the eligible register who he deems most qualified for and suited to the position of chief.

**RULE 8--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, race, sex, or color; because of age or physical or mental handicap, except where specific age or physical or mental requirements constitute a bona fide occupational qualification or failure to meet the physical or mental requirements poses a safety hazard or cannot be reasonably accommodated; because the applicant or member of the department has, or has declined to contribute to any political fund, or to reenter political service; or because of any lawful union activity or membership. No person shall seek or attempt to use, nor shall 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 4(a) 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 civil service commission shall biannually cause the legal review of the civil service ordinance and shall consider such amendments necessary, to bring this ordinance into compliance with all federal and state employment and labor law.

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



### **ARTICLE III. BUREAU OF PERSONNEL\***

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 \* 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.  
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#### **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])