

City of Tenino

149 Hodgen Street South

Tenino, WA 98589

Civil Service Commission

Thursday, July 11, 2019 at 10:00 AM

Agenda

CALL TO ORDER

HOUSEKEEPING

PUBLIC COMMENT

UNFINISHED BUSINESS

[At](#) the May 9 meeting, it was decided that Acting Secretary Millard would prepare a proposed set of Tenino Civil Service Rules in order that the Commissioners may have a template from which to craft a set of Civil Service Rules that will work for the City of Tenino.

NEW BUSINESS

[The](#) City announced the vacancy opened by the resignation of Commissioner Lucas. Three applications have been received and are being considered by Mayor Fournier (Ms. Lauraine Carlson, Ms. Donna Wilson, Ms. Ronna Barnes)

- [3.](#) The City implemented an electronic meeting management system designed to standardize the preparation of the agendas, packets, and minutes of each of the City's Councils, Commissions, and Committees. Acting Secretary Millard will demonstrate how this system works and what the potential advantages and disadvantages are to the Civil Service Commission.

ADJOURN

Item Attachment Documents:

At the May 9 meeting, it was decided that Acting Secretary Millard would prepare a proposed set of Tenino Civil Service Rules in order that the Commissioners may have a template from which to craft a set of Civil Service Rules that will work for the City of Tenino.

CITY OF WENATCHEE CIVIL SERVICE COMMISSION

GENERAL RULES AND REGULATIONS

Adopted January 8, 2018

REVISIONS:

11/21/1978

09/23/1980

07/21/ 1981

01/10/ 1989

08/18/ 1991

09/10/ 1991

01/14/ 1992

08/10/ 2009

02/08/ 2010

06/14/ 2010

02/14/ 2011

12/09/2013

10/13/2014

04/13/2015

03/14/2016

07/11/2016

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ADOPTED: January 8, 2018 (Superseding Former Rules and Regulations)

RULE 1 GENERAL PROVISIONS

AUTHORITY AND APPLICATION:

Pursuant to the provisions of the Municipal Codes of the City of Wenatchee and Washington State Law, the City of Wenatchee Civil Service Commission adopts these Rules and Regulations. These rules are applicable to proceedings before the Civil Service Commission and should be read in conjunction with the applicable provisions of the Charter and Municipal Code.

SCOPE AND PURPOSE:

The Civil Service Commission will represent eligible employees of the Wenatchee Police Department. The purpose of these rules is to assure that the Civil Service Commission is administered in accordance with the City of Wenatchee ordinances, and that all proceedings before the Commission are conducted in an orderly, fair and timely manner.

VALIDITY:

The Civil Service System implemented by these rules substantially accomplishes the purpose of Chapter and 41.12 of the R.C.W. These rules are presumed to be valid and shall be upheld unless in direct conflict with Chapter 41.12 of the R.C.W.

SEVERABILITY:

If any provision or application of these rules to any person or circumstance is held invalid, such invalidity will not affect other provisions or applications of these rules.

RULE 2 DEFINITIONS

A.A.: Associates of Arts

A.A.S.: Associates of Applied Science

A.A.S.-T: Associates of Applied Science Transfer Degree

A.S.: Associates of Science

A.T.S: Associate of Technical Science

Administration: Refers to the City of Wenatchee's managerial group.

Applicant: An individual who has applied for a position.

Appointing Authority: The Appointing Authority as designated by the City Mayor is the director of the department. For the police department, the director is the Chief of Police or his/her designee. The director is authorized to hire, promote, discipline or discharge an employee.

Appointment: Offer from the Appointing Authority for hire or promotion.

Assessment Center: A means of testing qualified applicants under standardized conditions to determine their capabilities to perform a specific job. Assessment Centers may be conducted by an Independent Testing Company with the approval of the Commission.

Candidate: An applicant that has been screened and passed initial testing.

Cause: Any action or inaction the Appointing Authority and/or the Civil Service Commission deems appropriate justification for disciplinary action to include termination, suspension or reduction in rank. Cause may also include any justifiable reason to remove a candidate from an eligibility list.

Certification: The process of the Commission approving the list of final scores on the eligibility list.

Certified: The process to granting authority to a qualified peace officer by the Washington State Criminal Justice Commission (WSCJTC).

Civil Service Secretary-Examiner: Appointed by the Civil Service Commission as outlined in these rules and as outlined RCW 41.08.040. When Secretary is referred to in these rules, the term will include the Secretary-Examiner.

Class: A group of positions similar in duties, responsibilities, authority and qualifications. All work under the same title with equal pay and compensation.

Classified Service: All city employees that are under the jurisdiction of the Civil Service Commission.

Collective Bargaining Agreement: A labor contract between administration and employees.

Commission: The Commission refers to the Wenatchee Civil Service Commission.

Commissioned: The oath of office or rank granted by the city.

Competitive Exam: The process of testing qualified candidates.

Demotion: An employee being removed from current rank to a lower rank by the Appointing Authority.

Eligibility List: The list of candidates in ranking order as determined by the Secretary-Examiner certified by the Civil Service Commission.

Emergency: A need for immediate action from the Civil Service Commission.

Employment Handbook: City of Wenatchee Employee Handbook.

Entry Level: A position that meets the minimum requirements of that department.

Final Examination Score: Total score of the testing components, including any applicable veteran credit.

Independent Testing Company: An outside consulting specialist approved by the Commission to assist with testing applicants/candidates for employment/promotion.

In Grade: Time in a paid position or rank

Labor Representative: The employee representative designated by union or guild members to receive Civil Service correspondence.

Lateral: An employee entering into employment at a rank higher than entry level.

Lay-off: The involuntary termination of an employee for reasons other than cause.

Non-Commissioned Applicants: Applicants applying for positions that do not require being sworn in by the Appointing Authority.

Open Public Meeting: Meetings set at a regular date and time or posted for public attendance.

Police: All certified and sworn police officers and civilian personnel within the police department covered by the Commission.

Position: Employment offered to a qualified candidate.

Position Descriptions: An approved list of qualifications and requirements defined by the City of Wenatchee Human Resources Department for a specific class of employment.

Probation: A defined period when employees are required to demonstrate their ability and capacity to perform duties satisfactorily.

Promotion: An elevation in rank and pay.

Public Notice: The posting of a Civil Service position or scheduled Commission meeting.

RCW: Revised Code of Washington.

Recruit: An applicant applying for an entry level position and first rank in grade.

Reduction in Force: The process involving reducing the number of active employees

Reduction in Rank: See “Demotion”.

Regular Employee: An employee in a civil service position who has successfully completed a probationary period as a new hire.

Rehire: An employee that has separated from employment and is requesting to rejoin city employment.

Resignation: The voluntary action by an employee that terminates their employment.

Retire: To terminate an eligibility list that no longer has any viable candidates.

Roberts Rules of Order: The guidelines in which the Commission will conduct all public meetings.

Rule of Five: The process of the Commission providing the Appointing Authority a certified eligibility list from which any of the top five ranked names will be selected for potential employment or promotion. This rule only applies when the eligibility list includes 12 or more candidates.

Rule of Three: The process of the Commission providing the Appointing Authority a certified eligibility list from which any of the top three ranked names will be selected for potential employment or promotion.

Seniority: An employee’s length of accredited service as determined by the Collective Bargaining Agreement.

Separation of Employment: Any action that removes a paid employee from their position, temporarily or permanently.

Suspension: A temporary removal of an employee from duty, with or without pay, for disciplinary or investigative purposes.

Sworn Personnel: City employees required to be sworn into their position by the Appointing Authority.

Temporary Appointment: A regular employee in a position for a limited duration.

Termination: Termination will be used in regard to the separation of employment from a position by the Appointing Authority.

Testing Process: Testing components.

Veteran: An applicant that has held a documented rank within the US Armed Forces as determined by RCW 41.04.007.

RULE 3 ADMINISTRATION AND OPERATIONS

COMMISSIONERS: The Civil Service Commission is composed of three persons appointed by the City Mayor.

- a. A Commissioner may resign their position at their own request or be removed from office for cause as provided by the City Municipal Code. The first three Commissioners may be appointed to different terms as follows: One to serve a period of two years, one to serve a period of four years, and one to serve a period of six years as stated in RCW 41.12.030. Commissioners can extend their terms of service as requested and approved by the Mayor. There is no maximum term limit.

CHAIR: The Commission will elect one of its members as Chair. Should a Chair resign or be removed, the Commission shall elect a new Chair.

COMMISSION ADDRESS AND HOURS: The office and address of the Civil Service Commission will be in c/o the City of Wenatchee, 129 S. Chelan Ave, Wenatchee, WA 98801. Telephone contact with the Commission may be made through the City of Wenatchee Human Resource Department at (509) 888-6203.

COMMISSION MEETINGS: The Commission will schedule a regular monthly meeting time and place. The meeting time and/or place may change at the discretion of the Commission. Any meeting can be cancelled and/or re-scheduled if there is no pending business requiring Commission action and/or necessary for other reasons.

- a. The meeting schedule is the second Monday of each month at 4:30 p.m. in the City Council Chambers at City Hall.
- b. The Commission may schedule additional special set meetings as necessary. Notice of these special meetings will be provided as required by the Open Public Meetings Act (Chapter 42.30 of the RCW) and both administration and labor representatives will be notified.
- c. The Commission may also schedule and conduct hearings as required. Notice of hearings will be done as required by these rules.

- d. All meetings or hearings, regular or as required, will be open and public. However, the Commission may meet in executive session as authorized, and by the Open Public Meetings Act, RCW 42.30. The Commission will be allowed to have closed agenda items for purposes of test development. The Commission may close a hearing to deliberate testimony prior to recording their individual votes at a hearing.
- e. Two members will constitute a quorum and two affirmative votes will be required for the transaction of official business.
- f. The Secretary-Examiner or a designee will attend all meetings.
- g. Roberts Rules of Order shall be the final authority on all questions of procedure and parliamentary law.

POWERS AND DUTIES:

The Civil Service Commission will:

- a. Adopt rules for the regulation of personnel matters within classified service.
- b. Appoint, when necessary, a Secretary-Examiner in conformity with these rules.
- c. Approve minutes of meetings and keep record of proceedings. Upon approval, the minutes of each meeting will be signed by the chair and countersigned by the Secretary-Examiner or designee.
- d. Provide competitive tests for classified positions, as requested by the Appointing Authority and as required by these rules.
- e. Provide Appointing Authorities with certified lists from which employees may be hired, promoted and/or reinstated.
- f. Review the creation, amendment or discontinuance of classified positions.
- g. Investigate all disciplinary actions as requested by classified employees.
- h. Hear and determine appeals arising from applications, testing and promotional appointments as requested by the Appointing Authority, classified employee, applicant or candidate.
- i. Execute the Commission as powers and duties are imposed by Chapter and 41.12 of the RCW.

CHANGES/UPDATES TO THE CIVIL SERVICE RULES AND REGULATIONS:

As the need arises, the Commission reserves the right to modify these rules. The Commission may deviate from these rules in individual situations, particularly in an emergency, in order to achieve the primary mission of serving Wenatchee.

Employees may request changes to these rules by submitting their suggestions in writing to the Commission. Changes will be provided to the Appointing Authorities, Labor Representatives for both the Wenatchee Police Department and Human Resources Department. It will be those persons responsibility to provide the change to all affected employees.

RULE 4 SECRETARY-EXAMINER

The Commission shall appoint and set the salary of a Secretary-Examiner (herein referred to as Secretary) within the City of Wenatchee guidelines. The Commission may set a list of minimum qualifications and shall conduct a competitive examination of qualified applicants, per RCW 41.08.040. The Secretary cannot be a member of the Wenatchee Police Department. The Secretary must be eligible to become a notary for the State of Washington at the expense of the City of Wenatchee.

SECRETARY DUTIES:

- a. Keep minutes and records of the proceedings.
- b. Safekeeping of the records and property.
- c. Provide proper notice of regular and special set meetings.
- d. Schedule hearings and notify all parties of hearings schedule.
- e. Make recommendations regarding policy and amendments to these rules.
- f. Report to the Commission at each regular meeting.
- g. Submit Commission expenses to be paid by the City.
- h. Prepare, under the direction of the Commission, and oversee all examinations including: posting examinations and screening applicants, preparing examinations and questions, consulting with the Appointing Authority, determining minimum qualifications, scoring the examinations, establishing a ranking list of those with passing scores, preparing an eligibility list for hire or promotion.
- i. Submit testing materials and eligibility lists for the Commission to audit/review and certify.
- j. Inform the Commission of all appeals.
- k. Secure the approval of the Commission for the testing process to be used in each examination.
- l. Supervise or appoint a designee to be present at all examinations whenever reasonable and practical.
- m. Facilitate correspondences and questions to the Commission.
- n. Maintain all eligibility lists.
- o. Record the results of votes taken by the Commissioners.
- p. Provide notification of meetings and agenda items to the Commissioners, Appointing Authority and Labor Representative at least seven days prior to the next meeting, as well as post the agenda on the City of Wenatchee website within 24 hours of the meeting being held. Provide minutes to each Commissioner prior to the meeting and copies to others as requested or required by state law.
- q. Perform all other functions necessary to carry out these rules and/or the provisions of law relating to the Civil Service System and additional duties as assigned.
- r. Maintain current State of Washington notary status.
- s. On behalf of the Commission, the Secretary-Examiner may assist the Appointing Authority in providing city information to potential applicants and facilitating of candidates on eligibility lists.

REVIEW OF ACTIONS OR DECISIONS OF THE SECRETARY:

There is no appeal of any action or decision of the Secretary except as specifically provided for in these rules. However, the Commission retains the authority to review or modify any action or decision of the Secretary as it deems necessary to carry out the purpose of the state law, city ordinances, or these rules.

RULE 5 RULEMAKING

The Commission may apply principles as necessary to carry out the purposes of state law and the existing rules in cases that are not clearly defined.

AMENDMENT OF RULES: The Commission may amend these rules by a majority vote at any regular or special meeting.

- a. Proposed amendments to these rules shall be discussed in a regular or special set open meeting prior to adoption.
- b. Upon declaration of an emergency, a rule amendment may be adopted at the meeting where the amendment is first proposed.

EFFECTIVE DATE OF RULES: All rules and amendments will become effective immediately upon their adoption by the Commission, unless specified otherwise by the Commission.

COPIES OF RULES: A copy of the rules and all subsequent rules or amendments will be sent to each Appointing Authority and Labor Representative of each department. The Secretary will maintain a master copy of the rules, and copies will be available as requested or required by state law. A current copy of the Commission rules will be available upon request by any party.

INTERPRETATION OF RULES: The Commission has the authority to interpret these rules.

COLLECTIVE BARGAINING AGREEMENT: In the event a conflict arises between these rules and the Collective Bargaining Agreements, the Collective Bargaining Agreements will prevail.

RULE 6 ENTRY LEVEL AND LATERAL QUALIFICATIONS

POLICE DEPARTMENT:

Entry Level Police Officer: An applicant must be a citizen of the United States of America, read, write and speak English. An applicant must possess the required amount of higher education by the date of hire. An applicant must possess a minimum of an AA/AS/AAS/ATS or AAS-T degree from an accredited institution. In lieu of a degree, documented course work equivalent to a two-year transfer degree from an accredited four-year college or university may be accepted. In lieu of the education requirements, an applicant can be a current Reserve Officer/First Class with the Wenatchee Police Department and certified by the Washington State Criminal Justice Training Commission or an equivalent academy from another state. All applicants must be at least twenty years old by the date of the exam and twenty and one-half years old at the time of employment. The applicant must meet the requirements of the position description for police officer. They must pass a background investigation, polygraph examination, psychological examination and physical examination. Other examinations may be required as part of the hiring process.

Lateral Entry Police Officer: If certified in Washington State, an applicant must have by date of hire a minimum of three-years continuous full time commissioned law enforcement employment within the last eight years. Or, the candidate must have at least one continuous year of commissioned full-time employment within the last 24 months and either possess a minimum of an AA/AS/AAS/ATS or AAS-T degree from an accredited institution or be fluent in the Spanish language. In lieu of a degree, documentation of course work completed at an accredited four-year college or university equivalent to a two-year transfer degree may be accepted. This is meant to mirror the lapse in service requirements set forth in WAC 139-05-210.

If certified in a state other than Washington, an applicant must have a minimum of three continuous years of full time commissioned law enforcement employment within the last five years or have at least one continuous year of commissioned full-time employment within the last 24 months and either possess a minimum of an AA/AS/AAS/ATS or AAS-T degree from an accredited institution by the date of hire or have fluency in the Spanish language. In lieu of a degree, documentation of course work completed at an accredited four-year college or university equivalent to a two-year transfer degree may be accepted.

By date of hire, all lateral entry applicants must be in good standing with their previous or current agency and have successfully completed the Washington State Criminal Justice Training Basic Law Enforcement Academy or an equivalent state certified law enforcement basic academy. They must be able to pass the Washington State Equivalency Academy within their probationary period. The applicant must meet the requirements of the position description for police officer. An applicant must pass a background investigation, polygraph examination, psychological examination and physical examination. Other examinations may be required as part of the hiring process, including a proficiency exam in Spanish if applicable.

Non-Commissioned Applicants: An applicant for any position must be a citizen of the United States of America and read, write and speak English. An applicant must be 21 years of age at the time of employment, possess a high school diploma or GED and pass a background investigation and polygraph examination. Other examinations may be required as part of the hiring process. The applicant must meet the requirements of the position description.

MEDICAL/PHYSICAL EXAMINATIONS:

A complete medical/physical examination will be taken by all new sworn personnel prior to entering their employment. The examination requirements will be approved by the Commission as recommended by the Appointing Authority.

All examinations will be by a licensed medical provider and the results recorded on the proper forms required by the city. The expense of the examination will be covered by funds from the department. Candidates shall not report for duty until they have been certified by a licensed medical provider.

RULE 7 APPLICATIONS

ANNOUNCEMENT: Whenever there is a need, the Secretary will give public notice or reference qualified applicants provided to the Commission by an approved Independent Testing Company. The announcement will include:

- a. Title and minimum salary of the position
- b. Minimum qualifications required
- c. Location where the applications may be made
- d. Final date the applications will be accepted
- e. A non-refundable application fee that may be required at the time of filing
- f. Number of applicants the exam will be limited to

Entry level written and physical fitness examinations for Police Officer applicants may be conducted by an Independent Testing Company.

APPLICATION FORMS: Applications for examination will be made on forms furnished by the City of Wenatchee or from a Commission approved Independent Testing Company.

FALSE STATEMENTS: Any willful false statement made by a person in connection with an application for examination will be cause for exclusion from eligibility of employment and may include removal or discharge from probationary employment.

INCOMPLETE APPLICATION: An incomplete application will not be accepted and the applicant will be notified by the Secretary.

RETAINED IN COMMISSION FILE: Applications will be retained by the Secretary for three years, or as otherwise required by law or city ordinance.

PERIOD OF ACCEPTANCE: Applications for examinations will be accepted for the period of time set by the Commission, or up until the maximum amount of pre-determined applicants is reached.

NOTIFICATION TO APPLICANTS: Applicants shall be given notice of the time and place of the examination. Failure to respond to a notification by the Secretary will be cause to disqualify the applicant. An applicant can waive one testing date.

BASIC REQUIREMENTS OF APPLICANTS: In order to be considered by the Commission applicants must meet the following:

- a. Minimum requirements of the position by date of hire
- b. Be able to meet the requirements of the position description
- c. Be able to perform the requirements set forth by the announcement
- d. Be free of felony or disqualifying misdemeanor convictions
- e. Employed or separated from city employment in good standing
- f. Present for all parts of the examination as required
- g. Not been involved in preparing the examination
- h. Disclosed any money, services or goods provided to anyone involved in the examination process
- i. All other minimum qualifications set forth by law

APPEAL RIGHTS FOR APPLICANTS: If an applicant is disqualified for any reason, within 14 days of notice, they may request in writing, to address the Commission.

RULE 8 EXAMINATIONS

SCOPE: The Commission will oversee all necessary exams resulting in Eligibility Lists. All examinations will be practical and impartial and will consist of relevant materials required for the position or promotion. The Commission will hear and decide any appeals to an examination processes.

EXAMS: Exams will consist of any or all of the following as approved by the Commission:

- a. Written and practical exams
- b. Oral board examinations
- c. Job related exercises or simulations
- d. Chief/Administration interviews

ORAL EXAMINATIONS: Qualified candidates offered an oral interview consisting of Commission approved test components and appointed assessors.

REQUIREMENTS WAIVED: The Commission may waive minimal requirements for examinations if it would be beneficial to the department.

VETERANS CREDIT: There will be a credit for applicants who have provided verification of military service in accordance with RCW 41.04.005 and RCW 41.04.010.

PROCEDURES: Applicants must be present as instructed to participate in the exam. Time limits for exams will be announced prior to the exam. Applicants will return all testing materials prior to leaving the examination. Final examination scores will be prepared by the Secretary-Examiner, reviewed and audited with assessors prior to certifying the eligibility list. All test components and procedures for all exams will be reviewed and approved by the Commission.

FAIRNESS PRACTICES:

- a. When reasonable and practical the Secretary or designee will be present during all parts of the exam.
- b. When reasonable and practical a Commissioner will be present at each oral board examination.
- c. During the testing process communications between applicants regarding the exam will be prohibited.
- d. During the testing process candidates will be required to maintain professional demeanor at all times. Examinations will be conducted as regulated by the Commission.
- e. Applicants can be disqualified at any time during the testing process if they have violated rules set forth by the Commission or test administrator.
- f. The Commission will follow the laws of the Equal Employment Opportunity and American with Disabilities Act, as well as the employees with life threatening/communicable diseases, employment of family members and anti-harassment/sexual harassment policies as outline by the Employee Handbook
- g. The Commission will abide by and encourage the reporting of improper governmental action as defined by the Employee Handbook
- h. If requested by a candidate, the Civil Service Secretary will make arrangements for the review of past available exam materials. The review will allow for the candidate to see all of their own written exam materials and any available assessor scoring or input. The review will take place in the presence of the Civil Service Secretary or appointed representative.
- i. Exam materials cannot be copied or removed from the possession of the Civil Service Commission.

APPEAL RIGHTS: An applicant who participates in an examination may file an appeal to the Commission based on the following grounds:

- a. The Commission failed to follow city ordinance, state law or its own rules in the administration of the examination and/or the examination process.
- b. The examination was not valid, for example the exam was not job related.
- c. The examiners were not impartial.
- d. A clerical error was made in the scoring of the examination.
- e. The examination or the examination process was discriminatory as defined under state law.

PROCEDURES FOR APPEALS: The following procedures must be followed for filing an examination appeal:

- a. Notice of appeal must be in writing and filed with the Commission.
- b. The notice of appeal must contain a brief description of the facts giving rise to the appeal, a concise statement of the reason for the appeal and desired remedy.
- c. The notice must be received by the Secretary within fourteen days following the certification of the list. Failure to appeal within this time period is a waiver of any right to appeal the examination that is established by these rules.
- d. Upon receipt of an appeal the Commission will review the facts and respond in a timely manner.

CERTIFICATION AND FINALIZATION OF THE ELIGIBILITY LIST: The Commission will review all scores and rank each applicant according to their final score. The exam will be certified at the next scheduled Civil Service meeting. The Commission may call a special session to certify the exam outside of a regular meeting. If a special session is called, it will be posted as required by the Open Public Meetings Act. The final list will be presented to the Appointing Authority by the Secretary. Each applicant will be notified of their ranking on the list.

RULE 9 ELIGIBILITY LISTS

SCOPE: The Commission will provide lists from which the Appointing Authority will hire, promote and reinstate civil service employees.

ESTABLISHMENT OF LISTS: All candidates who test will be eligible for appointment or promotion to the position for which the examination was taken. Their names will be ranked on an eligibility list in the order of their final score with the highest composite score first on the list.

DISPOSITION OF A TIE: Candidates that have equal final scores will be placed at the same rank on the list but counted separately when determining the next rank. For example, two candidates with an equal score that is third highest will be ranked at 3; the next candidate will be ranked at 5.

ENTRY LEVEL ELIGIBILITY LIST: An eligibility list for recruits will remain in effect for six months from the date of certification. The Commission can extend, shorten or implement a continuous eligibility list at the request of the Appointing Authority and in the best interest of the department. If at any point there are no longer any viable candidates, the Appointing Authority can make a recommendation to the Commission to retire a list prior to expiration.

LATERAL LEVEL ELIGIBILITY LIST: An eligibility list for lateral-entry personnel will remain in effect for six months from the date of certification. The Commission can extend, shorten or implement a continuous eligibility list at the request of the Appointing Authority and in the best interest of the department. If at any point there are no longer any viable candidates, the Appointing Authority can make a recommendation to the Commission to retire a list prior to expiration.

CONTINUOUS ELIGIBILITY LIST: To maintain a continuous eligibility list the Appointing Authority must have the approval of the Commission. Candidates will remain on a continuous eligibility for six months from the date of their exam certification. As additional tests are administered, the list will be updated to rank all eligible candidates in order by score. Additional tests/interviews may affect a candidate's ranking during their of eligibility.

PROMOTIONAL ELIGIBILITY LIST: Eligibility Lists will remain in effect for a period of two years from the date of certification. The Commission can extend, shorten or implement a continuous promotional list at the request of the Appointing Authority and in the best interest of the department. If at any point there are no longer any viable candidates, the Appointing Authority can make a recommendation to the Commission to retire a list prior to expiration.

NOTICE OF ELIGIBLE CANDIDATE CHANGES: Individuals on an eligibility list are responsible for notifying the Secretary of any change of address, phone number, e-mail address and/or employment status. Failure to do so may result in removal of their name from the eligibility list.

TERMINATION OF AN ELIGIBILITY LIST: An entry or promotional eligibility list may be retired for good cause when it contains no viable eligibility candidates or as deemed necessary by the Commission and in the best interest of the City.

REMOVAL OF A CANDIDATE FROM AN ELIGIBILITY LIST: A candidate may be removed from an eligibility list for cause including but not limited to:

- a. Failure to pass a required examination or upon receipt of proof of bad character or other unfitness; fraudulent conduct; false statements by the candidate or by others with the candidate's collusion; material or physical mental disability; or other disqualifying factor in connection with any application, examination or securing of the appointment.

- b. A previous unsatisfactory work record with the City or dismissal from City service. Or, a dismissal from any position, public or private, for any reason being cause for dismissal from City service.
- c. Failure to respond, call or accept employment
- d. Other material reasons, or lack of fitness for City employment as determined by the Appointing Authority and/or the Commission.
- e. Promotional eligibility will terminate with separation from City service.
- f. At the candidate's own request.

NOTICE OF DISQUALIFICATION: A request to strike a candidate's name must be provided to the Commission by the Appointing Authority in writing and include the reason. Prior to striking a candidate's name from any eligibility list the candidate shall be provided written notice of the action. The candidate may file a written protest of the notice with the Commission. The Commission will consider a timely filed protest and take appropriate action. No notice is required if the candidate requests, or consents to be removed from an eligibility list.

RULE 10 APPOINTMENTS AND DEMOTIONS

SCOPE: The Commission will oversee and be notified of all permanent and temporary appointments by the Appointing Authority, and ensure that any re-hiring or demoting of employees is done in accordance with Civil Service Rules.

BASIS OF APPOINTMENT: All appointments will be made from certified eligibility lists approved by the Commission. The Appointing Authority will select an individual for employment or promotion utilizing the rule of three or the rule of five. If a candidate is removed from the list for any reason, the Appointing Authority will receive additional name(s) from the eligibility list in ranking order. In order to consider additional candidates beyond the set amount, the Appointing Authority must provide written reason for the disqualification of a candidate to the Commission. At that point, all testing materials of the removed candidate will be returned to the Secretary and the next candidate will be provided.

DECLINING APPOINTMENT: A candidate can waive an appointment on one occasion without removal from their position on the list. If they wish to waive an appointment a second time, the candidate must present their request in writing before the Commission for a ruling. If approved by the Commission, they may waive a second appointment and remain on the list. Otherwise, their name will be removed from the eligibility list.

FAILURE TO RESPOND TO APPOINTMENT: If a candidate fails to respond to an appointment within 14 days of notice, the candidate will be disqualified and their name removed from the eligibility list.

PROBATION PERIOD: No new hire or promotion to any position shall be complete until a successful twelve months of probation and completion of all department training requirements are satisfied. For newly commissioned officers, the probationary period will begin upon successful completion of basic training and peace officer certification, to include recognized tribal law enforcement certification.

TERMINATION DURING PROBATION PERIOD: The Appointing Authority may terminate or demote the employee at any time during the probationary period, if the person is found to be unfit or unsatisfactory. The Appointing Authority must notify the Commission in writing of the termination or demotion of the employee. This action on the part of the Appointing Authority is not subject to appeal.

DEMOTION DURING PROMOTIONAL PROBATIONARY PERIOD: The Appointing Authority may terminate the promotion at any time during the probationary period if the person is found unfit or unsatisfactory. The Appointing Authority must notify the Commission in writing of the demotion. The probationary employee will have the right to revert to a position held equal to their prior permanent class. They will be removed from the current promotional eligibility list. This action on the part of the Appointing Authority is not subject to appeal.

DEMOTION DUE TO LAY OFF: If a promotion is not made permanent due to lay off or reduction in force, the employee will be returned to the eligibility list as though they had never received an appointment to that position.

DEMOTION DUE TO DISABILITY LEAVE: If a position becomes vacant because the employee holding the position is on disability leave, the position may be filled by making a temporary promotion.

CERTIFICATION OF ELIGIBLE AND TEMPORARY APPOINTMENTS: Appointments for temporary assignments maybe be made from the eligibility list, if a current list is in existence. Any temporary assignments for more than six months in a twelve month period must be in writing and have Commission approval.

CREDIT FOR TEMPORARY EMPLOYMENT: The time spent in a temporary position will not apply toward credit for the probationary service of that position.

SPECIAL PROFICIENCY: If a special proficiency is needed for a position to be filled the Appointing Authority will notify the Commission.

RULE 11 POLICE PROMOTIONAL REQUIREMENTS

CAPTAIN: All applicants must meet the requirements and qualifications of the position description of Captain.

SERGEANT: All applicants must meet the requirements and qualifications of the position description of Sergeant.

CORPORAL: All applicants must meet the requirements and qualifications of the position description of Corporal.

Changes in police officer pay or grade may occur based on the City of Wenatchee Human Resource Department position descriptions. These actions do not involve the Civil Service Commission.

RULE 12 DISCIPLINARY EMPLOYEE APPEALS

CAUSES FOR APPOINTING AUTHORITY ACTION: An employee, under the provisions of these rules may be removed, suspended, demoted or discharged for cause including but not limited to:

- a. Lack of mental or physical fitness for the position the employee holds.
- b. An action subject to disciplinary action as outlined by the Employee Handbook, Collective Bargaining Agreement and/or department policy and procedure.

PROCEDURE FOR INVESTIGATION: No employee will be removed, suspended, demoted or discharged (hereby known as an action) except for cause and by the written request of the Appointing Authority. Written notice will be served to the employee in question. The Appointing Authority will provide notice to the Commission of any action. Any employee served with an action may file in writing and within ten days a request for an investigation by the Commission as outlined in Chapter 41.12.090 of the RCW. Appeals to the Commission will be limited to actions that include removal, suspension, demotion and/or discharge only. The employee must have suffered a loss of property.

The employee may utilize labor representation, private representation or the Commission to investigate. However, they are only allowed to select one investigating authority. An employee may request in writing for the Commission to delay an investigation, however, the Commission has the authority to grant, modify or reject that request.

The Commission will conduct an investigation within sixty days of the date the appeal is received. The investigation will be confined to the determination that the action was for cause and in good faith.

The employee may appeal to the Superior Court of Chelan County to be heard, as provided by Chapter and 41.12 of the RCW, within thirty days of receipt of the Commission's decision. The Commission will provide certified records of the investigation and decision as required to the Court within ten days of notice of the appeal.

RULE 13 LEAVES

LEAVES OF ABSENCE: An absence for up to one hundred and twenty days (120 days) without pay may be granted by the Appointing Authority. If the absence without pay is more than one hundred and twenty days (120 days), the Appointing Authority will notify the Commission of the extended leave. Leaves of absence will be granted by the Appointing Authority and as outlined in the Employee Handbook.

RULE 14 LAY OFFS/REDUCTION IN FORCES/REINSTATEMENT

The Commission will be notified of reduction in forces by the Appointing Authority. If the department must incorporate a reduction in forces, layoffs shall occur in the inverse order of seniority as outlined in the Collective Bargaining Agreement.

REINSTATEMENT LIST: A reinstatement list will be kept with the names of those who have been subject to lay off from a reduction in force. Those who have been subject to lay off will be the first to be considered for re-employment with the City by seniority as outlined in the Collective Bargaining Agreement.

REINSTATEMENT RULES: Employees shall be selected first by order of list and second by position on the list as follows:

- a. Medical reinstatement lists;
- b. Layoff and reduction in rank list;
- c. Re-employment.

No new hires will be considered if laid off employees are eligible to return to work. No new promotions shall occur until all employees have had the opportunity to return to the rank held prior to layoff or reduction in force.

RULE 15 RESIGNATIONS

An employee may resign, in writing to their Appointing Authority as outlined in the Employee Handbook. To resign in good standing, an employee will give at least two calendar weeks of notice, unless a shorter period of notice is agreed upon. The Appointing Authority will notify the Commission of an employee resignation and the circumstances of the resignation. If an employee voluntarily resigns, they do not have appeal rights through the Commission.

If an employee in a permanent position resigns in good standing and reapplies for employment within one year, the Commission will, at their discretion and with the approval of the Appointing Authority place that individual's name on the re-employment list for consideration. The rehired individual will not be eligible for promotional exams for a period of one year after their rehire.

RULE 16 REPORTS OF CLASSIFICATION

CLASSIFICATION: The Appointing Authority will keep the Commission informed of all classified job positions covered by the Civil Service System.

DUTIES OF THE APPOINTING AUTHORITY: In order for the Commission to keep proper record of changes in the classified service, the Appointing Authority will provide notice of:

- a. Probationary or temporary appointments
- b. Refusal to accept an appointment
- c. Separation from employment
- d. Current job descriptions, to include creation, amendment or discontinuance of classified jobs.
- e. New hires, promotions or demotions.

COMMISSION DUTIES: The Secretary will report to the Commission any changes in the classification of positions to include appointments, promotions or separations of employment. The Appointing Authority will provide the commission with an updated organizational chart.

RULE 17 ELIGIBILITY OF SALARY

CONFORMANCE WITH RULES: No payment in compensation of service shall be approved or made to any person until an offer of position has been made and accepted.

CLASSIFIED CIVIL SERVICE POSITIONS: The Commission will represent all of the listed employees for the Wenatchee Police Department.

A. Wenatchee Police Department

Captain
Sergeant
Corporal
Patrol Officer First Class
Patrol Officer Second Class
Patrol Officer Third Class
Patrol Officer Recruit
Administrative Assistance to the Police Chief
Records Specialist
Records Specialist II
Traffic Violations Clerk
Parking Enforcement Clerk
Support and Technical Services Manager

CITY OF YAKIMA

CIVIL SERVICE

RULES AND REGULATIONS

CIVIL SERVICE COMMISSION

MELANIE GILMORE

GREG LIGHTY

BEVERLY WARREN

ADOPTED

April 20, 1995

Last Revised

January 4, 2016

(SUPERSEDES ALL PREVIOUS EDITIONS)

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INTRODUCTION

In the preparation of these rules, every effort has been made to frame them in such a manner as to secure for the people of Yakima the maximum in honest, efficient, and meritorious service by public servants who are entirely fitted and qualified to discharge the obligations and duties of their offices.

The rules are intended to fix the administrative framework in which the appointing authority can secure and retain efficient government service. With this paramount duty in mind, it is conceived that security in office for the personnel is and must be secondary, although a desirable goal, so that the law and the rules shall not be perverted to shield the dishonest or the inefficient, but that job security will naturally follow and depend upon efficient and meritorious service.

It is intended that these rules will outline personnel policies which will accomplish these primary objectives and will result in improved service for the people of Yakima. It is also intended by these rules to provide a comprehensive but flexible working policy of personnel administration within which both the employees in the classified service and the administrators can cooperate on a friendly basis and with complete assurance that all personnel problems will be settled upon their merits and that all interested parties including the public will have just and equitable treatment.

These rules may be amended under the provision of the Charter of the City of Yakima.

CHAPTER I

DEFINITIONS

1. **ALLOCATION**: The assignment of a position to a class on the basis of the kind, difficulty, and responsibility of the position.
2. **APPOINTING AUTHORITY**: The City Manager or a designee appointed by the City Manager.
3. **CHARTER**: The Charter of the City of Yakima as amended.
4. **CHIEF EXAMINER**: The secretary and Chief Examiner of the Civil Service Commission appointed by the Civil Service Commission.
5. **CLASS**: A group of positions similar in duties and responsibilities so that the same class title may be used; the same entrance qualifications may be required; and the same schedule of pay may be applied equitably under similar employment conditions.
6. **CLASSIFICATION SERIES**: A series of one or more classes similar in work but differing in difficulty, responsibility, entrance qualifications, and pay range.
7. **CLASSIFIED SERVICE**: All persons regularly employed by the City either on a part time, seasonal, limited duration, or full time basis with the exception of:
 - (a) Officers elected by the people and persons appointed to fill vacancies in elected offices.
 - (b) Members of Boards and Commissions and the City Manager.
 - (c) Employees under Civil Service coverage within the Police and Fire Departments.
 - (d) All department heads and division heads, one confidential secretary and one administrative assistant for the City Manager.
 - (e) Judges, City Attorneys, and all Assistant City Attorneys.
 - (f) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination, on

behalf of the City Council or a committee thereof, or by authority of the City Manager.

(g) Temporary, emergency, and provisional employees.

8. **COMMISSION:** The Civil Service Commission as provided for in Section 3 of Article XV of the Charter. "Commissioner" means any one of the three members of any such commission.
9. **COUNCIL:** Yakima City Council.
10. **DEMOTION:** A reduction in employment status to a classification with a lower range of pay.
11. **INTEGRATED REGISTER:** A list of persons arranged in descending order of their examination scores for a classification for which they have competed and qualified for appointment. The list may have names of previously tested candidates integrated with newly tested and/or retested candidate.
12. **LENGTH OF SERVICE:** Continuous uninterrupted service or continuous service as a permanent or permanent seasonal employee with the City of Yakima except as otherwise provided by State Law and City Ordinance. (Rev. 4/95)
13. **LIMITED DURATION POSITIONS:** A position in which the employment candidate knows that the position will end within a short period of time and it will end without reference to the individual employee's merits. The employee becomes a permanent employee within the meaning of the definition for permanent employee. The employee will receive written notice two weeks prior to the expiration of employment.
14. **OPEN COMPETITIVE EXAMINATION:** An examination open to all candidates who meet the specified requirements.
15. **PERMANENT PART-TIME POSITION:** A position in which an employee is normally required to work at least a monthly average of 20 hours per week but less than 40 hours per week.

16. **PERMANENT EMPLOYEE:** An employee who has completed an initial probationary period.
17. **PROBATIONARY PERIOD:** The six month trial service an employee works before receiving a permanent appointment except, all employees of the Police Department shall serve a twelve month probationary period before receiving a permanent appointment.
18. **PROMOTION:** Appointment from a register to a classification with a higher range of pay.
19. **PROMOTIONAL EXAMINATION:** An examination limited to employees in the classified service who have completed their initial probationary period, except as provided in Chapter V, Section B(2) and former permanent employees who have been separated from service due to a disability under RCW 49.60, the Americans with Disabilities Act, or other applicable disability law. The position applied for must be at a higher pay range than the employee's current permanent position. (Rev. 4/95)
20. **PROVISIONAL APPOINTMENT:** A temporary appointment to a permanent position pending the establishment of a register for that class not to exceed five months.
21. **PUBLIC NOTICE:** Notice given by posting in at least three conspicuous places in public buildings in the City and department bulletin boards for not less than seven calendar days.
22. **RE-EMPLOYMENT REGISTER:** A list of names of persons who have been permanently employed in the classified service and who have been separated from the service by layoff or have been separated from service due to a disability under RCW 49.60, the Americans with Disabilities Act, or other applicable disability law. (Rev. 4/95)
23. **REGISTER:** A list of persons arranged in descending order of their examination scores for a classification for which they have competed and have qualified for appointment.

24. **SEASONAL POSITION:** A position in which an employee is required to work more than 5 months but less than 12 months annually beginning and ending regularly each year.
25. **TEMPORARY AND EMERGENCY APPOINTMENTS:** Appointments for a temporary service period of not more than five months or 866 hours in any one fiscal year.
26. **TRANSFER:** The movement of a permanent employee from a position in one class to another position having the same pay range.

CHAPTER II

GENERAL PROVISIONS AND PROHIBITIONS

- A. **OBJECTIVE:** It is the objective of these rules to establish, in compliance with the Charter and applicable general law, a system of administrative policies and procedures by which appointment, promotion, discipline, and continued employment within the classified service of the City of Yakima shall depend on honest, efficient, loyal, energetic, and meritorious service to the City and its citizens in accordance with the highest standards of public ethics, morality, and workmanship. To that end it is intended to protect the honest and efficient public employee from adverse discriminatory action whether from political or any other improper motive and thus to secure for the people the services of honest, efficient, and experienced public employees. At the same time it is intended that the administrative officers shall have ample authority to correct where possible, and to remove when necessary, dishonest or inefficient employees without placing upon the administrators an impractical or unfair burden in the discharge of such duties. The objective and intent is to establish such personnel policies and procedures as will insure to the people of Yakima the maximum in honest and efficient public service by attracting to and retaining in the City's classified service the most qualified and motivated employees available.
- B. **APPLICABILITY OF RULES:** These rules shall apply to all positions in the classified service as defined in Section 6, Article XV of the City Charter.
- C. **CERTIFICATION OF PAYROLL:** Upon compiling payroll or claims containing the names of any person or persons to be paid for services rendered in the classified service, and before payment is made, the paying officer of the City shall submit the payroll or claims to the Chief Examiner for examination to determine whether the names appearing thereon have been appointed, employed, promoted, demoted, or their salary increased or decreased in conformity with the provisions of Article XV of the Charter and these rules.

D. DISCRIMINATORY PRACTICES:

- I. Prohibition Against Discrimination: The right of any person to an appointment or promotion to any position in the classified service of the City who is qualified and able to perform the duties of that position shall not be abridged because of race, color, religion, creed, national origin, sex, marital status, age, or presence of any mental, physical, or sensory handicap, political affiliation or belief, nor shall any person be dismissed, demoted, transferred or reduced in grade for such reason. No application or examination shall contain questions so framed as to elicit such information except as provided by law.
2. Limitation of Political Activity: No person in the classified service shall:
 - a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.
 - b. Directly or indirectly coerce, attempt to coerce, command, or advise a City employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

The foregoing shall not prohibit the employee's right to:

- a. Express opinions on political subjects and candidates,
- b. Take an active part in political management and political campaigns, and
- c. Be a candidate for political party office,
- d. Make voluntary contributions as he so desires.

E. OTHER EMPLOYMENT: No employee shall have conflicting employment while in the employ of the City.

F. RESTRICTION ON NEPOTISM:

I. Definitions:

a. "Family member" means that husband or wife or that person living as husband or wife of a job applicant or a job applicant's children, whether natural, adoptive or step.

b. "Close relative" means the natural, adoptive or step brother, sister, mother, or father of a job applicant.

2. No more than one member of a family or one close relative shall be eligible for employment in the classified service at the same time if:

a. One member of such family or one close relative would be responsible for supervising another family member or close relative, or

b. One member of such family or close relative would be responsible for auditing the work (on an ongoing or regular basis) of the other family member or close relative.

c. Circumstances exist which would place a family member or close relative in a situation of actual or reasonably foreseeable conflict between the interests of the employer and the interests of the employee in family harmony and/or in their common interests as family or as close relatives.

d. Circumstances exist which may require the exclusion of all relatives.

3. Those persons affected by the terms of the foregoing sections shall be permitted to decide which spouse or relative shall get or keep employment, provided, however, if they do not decide within a reasonable time the appointing authority shall decide, provided further that a sex neutral standard shall be used in making such a decision.
 4. None of the foregoing regulations shall have any affect on persons employed in the classified service at the time of the passage of this section but shall only pertain to appointments after the passage of this section. In exceptional cases, the commission retains authority to waive the rule.
- G. SEPARABILITY OF PROVISIONS: If any rule, subdivision, sentence, clause, or phrase of these rules is for any reason held to be invalid, such decision shall not affect the remaining rules, subdivisions, sentences, clauses, or phrases.
- H. CONDITION OF EMPLOYMENT: No one shall be required as a condition of employment, appointment, transfer, promotion, or retention in the service to join any organization or association of employees except as provided in RCW 41.56.122 which allows the City through negotiation to enter into a union security agreement.
- I. DISPUTES BETWEEN LABOR AND MANAGEMENT: Disputes pertaining to hours of work, employment conditions or any other matter not covered by these rules shall be processed through established supervisory channels as prescribed by Administrative Rules issued by the Manager or as provided by collective bargaining agreements.
- J. CONFIDENTIAL MATTER OF PERSONNEL RECORDS: The official personnel file on each employee in the classified service shall be maintained by the Human Resources Manager. All personnel records shall be confidential and may be inspected by the Civil Service Commission or any member thereof, the Chief Examiner, the City Manager, the employee, the department head/division manager, the City Attorney or an authorized representative.

CHAPTER III

COMMISSION

- A. ORGANIZATION: Annually during the first meeting of the year, the Commission shall elect a Chair. Two members of the Commission shall constitute a quorum and concurrence of two members shall be required for the transaction of any and all official business.
- B. RECORDS: The Chief Examiner shall keep the records for the Commission, preserve all reports made to it, supervise and keep a record of all examinations held under its direction and perform such other duties as the Commission may prescribe.
- C. MINUTES: The Chief Examiner shall keep the minutes for the Commission and submit them to the Commission at the next regular meeting for approval or correction. Upon such approval, said minutes shall be signed by the Chair and shall become part of the permanent files of the Commission.
- D. MEETINGS: The Commission shall hold regular meetings at least once a month and such additional meetings as may be required for the proper discharge of its duties. All meetings of the Commission shall be open to the public. Meetings shall not be construed to include the conducting of written or oral examinations. All official acts of the Commission shall be available to the public. Robert's Rules of Order shall serve as the guide on questions of procedure in parliamentary law not otherwise provided for by these rules or the Charter.
- E. POWERS AND DUTIES: It shall be the duty of the Civil Service Commission to:
 - 1. Appoint a Chief Examiner who shall also act as Secretary to the Commission.
 - 2. Make suitable rules and regulations not inconsistent with the provisions of the Charter.

3. Give practical tests which will fairly determine the capability of persons examined to perform duties of the position to which appointment is to be made.
4. Investigate and report matters concerning the enforcement and effect of the provisions of Article XV of the Charter and of these Rules and Regulations. Investigations requested in writing by any employee or citizen may be made by the Commission, any Commissioner designated by the Commission or Chief Examiner when authorized by the Commission.
5. Issue subpoenas compelling the attendance of witnesses and the production of materials pertinent to the investigation. The Commission may authorize the depositions of witnesses. Subpoenas shall also be issued by the Commission at the request of the parties to the proceedings.
6. Administer oaths and take testimony.
7. Examine public records relating to any investigation.
8. Conduct hearings and investigations in accordance with Article XV of the Charter and by these Rules and Regulations.
9. Hear and determine appeals or complaints respecting the allocation of positions, the rejection of an examinee, and such other matters as may be referred to the Commission.

CHAPTER IV

CLASSIFICATION PLAN

- A. PREPARATION OF PLAN: The Chief Examiner shall ascertain the duties and responsibilities of each position in the classified service. After analyzing this information and consulting with the appointing power, individual employees or groups of employees, the Chief Examiner shall prepare and submit to the Civil Service Commission a classification plan which shall group all positions in the classified service into classes based upon their duties and responsibilities.
- B. ADOPTION OF THE PLAN: After the plan has been prepared, the Chief Examiner shall submit it to the Commission who shall review and approve such plan with or without amendment. After such action has been taken by the Commission, the plan shall be submitted in ordinance form to the City Council. No position in any class shall be assigned a salary greater than the maximum nor less than the minimum rate fixed by the classification and compensation plans.
- C. CLASS SPECIFICATIONS: Class Specifications shall be prepared by the Chief Examiner and submitted to the Civil Service Commission for approval.

The title of each class specification shall be the official designation of the classification to which it is assigned. It shall indicate the general nature of the work of any employee holding a position in such class. Only the titles included in the classification plan shall be used by the Human Resources Division in recruiting, official records, payrolls, and communications pertaining to positions and employees within the classified service.

The class specifications shall set forth in general terms, duties to be performed by employees within the class; supervision received; the extent of authority exercised over others; major worker characteristics; unusual working conditions; licenses, registrations and certifications required; and minimum qualifications.

It is not to be assumed that each task listed in the class specification will be performed by all employees within the class. The examples given are to be

construed as descriptive of the class as a whole and not as prescribing the exact duties of any employee. Department heads, division managers or supervisors retain the right to assign other related duties.

The minimum qualifications shall serve as a basis for rejection or admission of applicants to examinations.

D. ADMINISTRATION:

- I. Allocation: Every position in the classified service shall be allocated to an appropriate class. Whenever a new position is authorized, the appointing authority shall prepare a description of the position and submit it to the Chief Examiner for evaluation and allocation. In determining the allocation of a given position, consideration shall be given to the general duties; specific work examples; responsibilities; major worker characteristics; unusual working conditions; licenses, registrations and certifications required; minimum qualifications, and to the relationships with other classes in the plan. When an appropriate class does not exist, the Chief Examiner shall propose a new class and submit it to the Commission for approval who in turn will submit a revised classification plan in ordinance form to the City Council for adoption. No person shall be employed in a position in the classified service which has not been allocated in the classification plan.

Chapter IV
Revised August 5, 2013

CHAPTER V

RECRUITMENT AND EXAMINATIONS

A. **DUTY OF CHIEF EXAMINER TO HOLD EXAMINATIONS:**

The Chief Examiner shall hold entrance and promotional examinations for the purpose of establishing registers for full time and/or part-time positions in the classified service. Whenever there is a reasonable expectation that one or more permanent employees qualify for a vacancy, such vacancy shall be advertised as a promotional examination. (Rev. 3/89)

B. **NOTICES OF EXAMINATIONS:**

1. The Chief Examiner shall give public notice of all examinations at least seven calendar days in advance of the closing date for receipt of applications. Announcements of examinations shall be posted in important public centers in the City, copies may be sent to appropriate media and other sources as the Chief Examiner may deem expedient. Distribution of promotional announcements shall be limited to employees in the classified service and former permanent employees who have been separated from service due to a disability under RCW 49.60, the Americans with Disabilities Act, or other applicable disability law. Announcements shall specify title; compensation range; general duties to be performed; qualifications specified in the class specification; other specific minimum qualifications as the Commission may determine necessary; the type of examination(s) to be given; final date on which applications will be received; and all other conditions of competition. (Rev. 4/95)
2. Temporary Transit Operators are eligible to apply for promotional Transit Operator examinations. (Rev. 7/02)
3. Promotional examinations shall be available service wide and to former permanent employees who have been separated from service due to a disability under RCW 49.60, the Americans with Disabilities Act, or other

applicable disability law. Notice of promotional examinations shall be given for posting at least seven (7) calendar days in advance of the closing date. (Rev. 4/95)

C. PROBATIONARY EMPLOYEE FILING PROCESS:

An employee serving any probationary period is not eligible to apply for a promotional examination. If a probationary employee is currently on a promotional register they may be certified for the open position. If certification is declined, the employee's name may remain on the promotional register. Any permanent City employee who has applied for a promotional position within prescribed time limits and meets the minimum requirements of the position shall be allowed to participate in the examination process, provided that the position applied for is at a higher pay range than the permanent position currently held.

D. FILING APPLICATIONS:

Applications shall be made on forms prescribed by the Chief Examiner. Applications not filed or postmarked on or before midnight of the final date shall be rejected. Applications shall be signed certifying the truth of all statements contained therein.

E. QUALIFICATIONS OF APPLICANTS:

- I. Applicants for examination must meet the minimum qualifications for the advertised position at the time of application.
2. Persons whose applications have been accepted to participate in the examination process shall be notified by the Chief Examiner of the time and place of the examination. Notice shall be by letter, post card or telephone directed to the applicant's last known address or telephone number and given not less than five days prior to the date fixed for the examination.

F. NUMBER OF APPLICANTS -- LIMITATIONS:

1. The Examiner may restrict the number of qualified applicants to be examined at any one time whenever an examination for a position is likely to attract large numbers of qualified applicants, and when job-related testing processes are prohibitively costly or impractical to administer to all qualified applicants, or may have adverse impact on protected groups.
 - a. Random Sample. The Examiner may provide for a random sample of qualified applicants to be drawn by lot for an entry level examination by so stating in the job announcement. Those qualified applicants whose names are not drawn by lot for the initial group to be examined shall be held on file. Should the initial group examined fail to yield a register of sufficient size to meet the City's needs for candidates for that class, or should the list become exhausted before it expires, a sample from the remaining qualified applicants will again be drawn by lot and the examination process repeated.

G. DISQUALIFICATION OF APPLICANTS AND ELIGIBLES:

- I. The Chief Examiner shall reject the application and refuse to examine any applicant or shall remove any applicant's name from an eligible register if the applicant:
 - a. Is found to lack any of the minimum qualifications established for the class except in-training appointments.
 - b. Has made a false statement of material fact on the employment application;
 - c. Has directly or indirectly obtained unauthorized information regarding the examination;
 - d. Has failed to apply correctly or within the prescribed time limits;

- e. Has taken part in the compilation, administration or scoring of the examination; or,
 - f. Has otherwise violated provisions of these rules.
- 2. An applicant whose name is removed from an eligible register for any reason specified in this section shall be notified by mail within seven (7) calendar days of said action.
 - 3. If in the opinion of the Chief Examiner the number of qualified applicants is inadequate, the examination may be cancelled or closing date extended for receiving applications.

H. CHARACTER OF EXAMINATIONS:

- I. Examinations may consist of written, oral, or performance tests; ratings of education and experience; tests of technical knowledge; manual skills, physical or mental fitness; or any combination thereof which the Chief Examiner deems appropriate.
- 2. The Chief Examiner shall determine all questions pertaining to examinations, except those which in accordance with these rules may require the approval of the Commission, including the types of examinations to be given; the weights to be assigned; and the choice of consultants to assist in the preparation and rating of the examinations. The Chief Examiner shall consult with the City Manager and/or the appropriate department heads or designee on the procedure to be followed in each examination.
- 3. Subscription Testing Services Authorization
The Chief Examiner may enter into a contract with one or more Subscription Testing Services.
 - a. "Subscription Testing Service" means a person or organization offering a service that test and maintains lists of candidates for employment who have successfully completed the Subscription Testing Service process.
 - b. The Chief Examiner shall verify that the Subscription Testing Service provides qualified testing resources that are content valid and job-related.

- c. All applicants certified as a qualified candidate by the Subscription Testing Service shall be subject to additional testing including but not limited to an oral examination conducted by the Chief Examiner.
 - d. Following completion of the examinations by the candidates, pursuant to the procedure set forth in the contract with the Subscription Testing Service with the addition of any additional testing, a list of qualified candidates shall be reviewed and approved by the Chief Examiner prior to referral to the Appointing Authority. Candidates may then be certified as eligible for appointments to the Appointing Authority.
 - e. Review and approval of candidates shall be completed by the Chief Examiner. Chief Examiner shall verify that candidates for placement on the eligible register meet the minimum eligibility requirements for employment.
 - f. Candidates qualified for appointment, pursuant to the procedures established in the Rules, shall be placed on the eligibility register. Candidates rejected by the Chief Examiner for: 1) not satisfying any test requirement; 2) not completing probation; or, 3) following certification, not responding to the appointing authority for consideration, shall be removed from the eligible register.
 - g. Additional Testing Candidates shall be subject to such additional testing as may be required by the Chief Examiner or the appointing authority. Such testing shall include, but not be limited to, background, polygraph, psychological, and/or physical agility testing.
4. Continuous Testing
- The Chief Examiner may establish an eligibility list for use by applicants tested through and certified for eligibility through a continuous testing process.
- a. "Continuous testing" shall mean a written examination, performance exam and/or a standardized physical fitness/agility test. Tests will be conducted pursuant to set and commonly applied standards. Results shall be valid for a period of one calendar year from the date of certification to a Continuous Testing Initial Eligibility list. Continuous testing may, at the discretion of the Chief Examiner, be offered through the Chief Examiner or pursuant to a subscription testing agreement
 - b. Applicants certified pursuant to a continuous testing process shall be placed on a Continuous Testing Initial Eligibility list. Certification shall be in accordance with the rules and regulations of this Commission. Each applicant is placed in accordance with his or her scores and

veteran's preference (if applicable). The placement of all others on the list shall be adjusted accordingly.

- c. Applicants placed upon the eligibility list shall be subject to such other testing processes as the Chief Examiner directs, including but not limited to oral boards or any additional testing process conducted by the Examiner or by a subscriber.
- d. The names of candidates certified to the eligibility list shall remain on the list until either: 1) certified to a secondary hiring list following an oral board or other testing as established by the Chief Examiner, 2) one year has passed since the name was certified, or 3) the candidate has been hired by another public safety organization. Upon written notification, names may be removed by the candidate, another public safety employer, or an entity providing subscription testing. (10/11)

I. CONDUCT OF EXAMINATIONS:

- 1. Examinations may be conducted simultaneously. The Chief Examiner may *designate monitors to conduct examinations as necessary*.
- 2. The identity of persons taking written tests shall be concealed by the use of an identification number. Any test paper bearing the name of an applicant or any identifying mark other than the identification number shall be rejected before grading and the applicant involved shall be disqualified.
- 3. The formula used in appraising training and experience shall consider recency, quality, quantity of experience and pertinency of the training.
- 4. An oral examination board shall consist of two or more persons, one of whom shall be technically familiar with the character or work required in the class for which the applicants are to be examined.

All applicants being examined for the same class shall be rated by the same oral examination board.

All applicants being examined for an integrated register shall be rated by the same or substantially the same oral examination board that previously rated on the exam being integrated.

5. The Chief Examiner may test and integrate new names onto an unexpired eligible register in the event the appointing authority has requested certification of three names and fewer than three eligible names remain on such register.

The Chief Examiner shall give notice to those eligible persons on the register stating that they may either retest or retain their original score. The result of such re-examination, whether higher or lower, shall determine the eligible person's placement on the integrated register. In the event an eligible person does not elect to retest, they may for one time only retain their original score and be reranked on the register.

The integrated register shall be formed, in rank order, highest first, using the test scores of new candidates and those who retested or retained their original scores.

J. SCORING EXAMINATIONS:

1. The Chief Examiner shall set a minimum passing standard for each examination which shall be the lowest score which reflects the ability of the applicant to adequately perform the duties of the classification for which the examination is given. Where an examination consists of two or more parts, the Chief Examiner shall set a minimum passing standard for each part of the examination. Each part of the examination shall be graded independently. Failure to attain the minimum passing standard on any part of the examination shall disqualify the applicant from further examination and inclusion on the register.
2. The Chief Examiner shall determine whether examinations or parts of examinations will be scored on a percentage basis with 100%

representing total accuracy or on a pass/fail basis whereby failure to achieve the minimum passing standard shall disqualify the applicant. No exam shall be scored in its entirety on a pass/fail basis.

3. The Chief Examiner shall determine the final score of each applicant who has passed all phases of the examination. Parts of examinations scored on a pass/fail basis shall not be included in the applicant's final score.
4. After each examination, the Chief Examiner shall prepare a register on which the names of all candidates passing all phases of the examination shall be ranked in descending order of their final scores.
5. The Chief Examiner may limit the number of names to be included on the register. That determination shall consider the number of vacancies normally expected during the term of the register and may include:
 - a. Candidates passing all parts of the examination and who attain a percentage grade established by the Chief Examiner, or
 - b. A fixed number of candidates passing all parts of the exam.
6. Special Scoring Provisions
 - a. Veteran's Preference will be allowed as provided for by State Law.
 - b. Length of service credit shall be added: one-half point to all passing grades on promotional examinations for each 12 months of service as a permanent employee for the first 120 months of service. Length of service credit shall not apply to any person who is not currently a City employee. (Rev. 4/95)

K. NOTICE OF RESULTS OF EXAMINATION:

1. The Chief Examiner shall notify competitors in writing of their final score and position on the register.
2. Competitors may, within 30 days after establishment of the register, request a consultation with the Chief Examiner to review their own test results.

L. EXAMINATION RECORDS:

The Chief Examiner shall maintain all examination records. Applications and examination records of persons on the eligible register shall be retained for the term of the register.

M. MAINTENANCE OF REGISTERS:

1. Effective Date and Term of Registers: Registers shall become effective upon completion of the testing procedure and approval by the Chief Examiner. The eligibility of candidates on employment, integrated and promotional registers shall remain in effect for twelve months with the exception that Police Department open competitive employment registers may be automatically revoked when less than three names remain on the register and the appointing authority requests three names for certification, provided, however, that any person remaining on the register to be revoked shall be given written notice of their right to compete for open register positions. Special non-promotional registers with a duration of 6 to 12 months may be created. Prior notice must be given to candidates as to the duration of the register. Eligibility of candidates on a re-employment register shall remain in effect for twenty-four months. Registers may be extended by action of the Civil Service Commission for up to an additional twelve months.
2. Removal From Registers: The names of persons appearing on a promotional register or open register may be removed if the candidate fails to respond to a notice of certification, declines an appointment without reason satisfactory to the Commission, cannot be located by postal authorities. Names of persons on promotional registers who resign or terminate from the service shall be removed upon resignation or termination. (Rev 4/11)
3. Revocation of Registers: The Commission may revoke an open or promotional register and order a new examination because of fraud, error, inappropriate standards prescribed in connection with the examination, plainly inadequate results obtained from the examination or when less

than three names remain on an open competitive employment register. No register shall be revoked or altered except after timely written notice is given to all persons affected by such a revocation or alteration except for Police Department open competitive employment registers. Such notice shall be mailed certified mail, return receipt requested, to all affected persons at least ten (10) calendar days prior to the Commission taking any action on such examination. The notice shall state the following: contemplated Commission action, time, place, and date of the meeting in which the Commission may take action, and a statement that the affected person may appear in person or with an attorney or make a written statement for the purpose of contesting proposed Commission action.

CHAPTER VI

CERTIFICATION AND APPOINTMENT

- A. **CERTIFICATION**: When there is a need to fill a vacancy in the classified service, the appointing authority shall make written requisition to the Chief Examiner. Upon receipt of a requisition, the Chief Examiner shall certify in writing the names of the three persons highest on the register for the position requested and the name of the person next highest on the register for each additional vacancy. The order of certification shall be as follows: re-employment register, promotional register, open competition register.

When the number of names certified is less than three, the appointing authority may fill the vacancy from the list certified, or return the list and require the certification of three names. If a promotional register contains less than three names, the Chief Examiner shall certify additional names from the open competition register as needed. Nothing in this section shall authorize or require the addition of names from either promotional or open competition registers to those names certified from re-employment registers.

1. **Bilingual Certification**: In the event a department's work force covered by these rules has demonstrated a need for bilingual employees, and the appointing authority has submitted a requisition to the Chief Examiner, the Chief Examiner shall have the authority to change the minimum requirements of the specific classification for the purpose of establishing a bilingual classification and register. The Chief Examiner will add to the minimum requirements the phrase "Applicants must be bilingual". The Chief Examiner will add to the duties section the phrase "Interprets and explains information to the [specific language, e.g. Spanish] speaking public". The Chief Examiner will add to the examination section specific guidelines that will explain the bilingual testing procedures. The Chief Examiner will add bilingual to the classification title.

Under the provisions of this subsection, the regular classification will be used for subsequent openings unless the appointing authority again requests bilingual certification. Nothing in this subsection shall alter the

order of certification of registers as provided in Chapter 6-A. The provisions of this subsection shall not be construed to alter or waive the requirements necessary to be placed on the eligible register for employment, other than adding the requirement to be bilingual.

2. Declaration of Certification: When a person declines certification, it shall not be grounds for removal from the register. (Rev. 4/95)

B. APPOINTMENT:

- I. Selection: The appointing authority shall make selections from the names certified unless objection is made in writing and sustained by the Commission.
2. Declination of Appointment: Appointment is deemed to be declined if a candidate:
 - a. fails to respond within three business days after receipt of a written notification of employment opportunities from the Chief Examiner or appointing authority; or,
 - b. fails to accept a written offer of appointment within the next business day after receipt; or,
 - c. fails to accept a verbal offer of appointment within the next business day after the offer is made; or,
 - d. fails to report for duty on the date required.
3. Effect of Declination: Any person who fails to report for duty shall be removed from the register unless cause for such failure to report is approved by the Commission. When a person declines a position, it shall not be grounds for removal from the register. (Rev. 1/91)
4. Certification from Alternate registers: If there is no appropriate eligible list for a class, the Commission and/or Chief Examiner may allow certification

from a list held appropriate. Examples of classes currently held appropriate for certification from a register with a different class title are:

- a. Department Assistant II and Police Department Assistant II.
- b. Bilingual Department Assistant II and Bilingual Police Department Assistant II.

The provisions of this Subsection shall not be construed to alter or waive the requirements necessary to be placed on the eligible register for employment.

C. EXCEPTIONAL APPOINTMENTS:

- I. Emergency Appointments: The appointing authority may employ persons under emergency conditions which threaten public health, safety, property, or welfare whenever it is impossible to secure the services of persons through the Civil Service Commission. All such appointments shall be reported to the Chief Examiner. No emergency appointment shall be continued for more than the duration of the emergency.
2. Provisional Appointments: In the event of a vacancy in a permanent position in a class for which there is no register, the position may be filled by provisional appointment until a register is available. No provisional appointment or a combination of a provisional and temporary appointment shall continue for a period longer than five months nor shall any person receive more than one such appointment or serve more than five months as a provisional appointee or a combination of a temporary and provisional appointee in any one fiscal year. Provisional appointees must meet the minimum requirements of the classification to which they are appointed. (Rev. 2/85)
3. Temporary Appointment: Temporary appointments may not exceed five months or 866 hours whichever is the greater period in any one fiscal year. The appointing authority shall requisition the Chief Examiner as provided for regular appointments, and shall indicate the date it is

estimated the position will terminate. Temporary service shall not be credited on any probationary period.

4. Seasonal Appointment: Seasonal appointees are permanent, classified employees and must serve a probationary period as required in Chapter VII of these rules. The employee shall be placed on leave without pay between work seasons. Permanent seasonal employees shall not accrue seniority during periods of leave without pay. Seasonal appointments shall be made in accordance with Sections A and B of this Chapter.
5. Voluntary Demotion: An employee may voluntarily request demotion providing they meet the minimum requirements of the position. Such request must be in writing to the Chief Examiner who shall determine if the minimum requirements have been met and shall be subject to the approval by the appointing authority.
6. Permanent Limited Duration Appointment: Persons employed in limited duration classifications are in the classified service and are subject to all Civil Service Rules except the Reduction in Force Rules of Chapter XI, Section A 1 and 2.
7. Transfers: The transfer of an employee in one classification to the same classification in a different department or division may be made at any time by the appointing authority concerned and shall be reported to the Chief Examiner. A transfer of a permanent employee from a position in one class to a position in another class having the same entrance salary and provided the employee meets the minimum requirements of the position, may be made by the appointing authority upon mutual agreement of all parties involved. The request must be made in writing to the Chief Examiner who shall determine if the minimum requirements have been met. The change of employees from a position in one class to a class having a higher or lower range of pay shall be deemed a promotion or demotion respectively.

Effect of Transfer on Rate of Pay: A person who is transferred, shall enter the position at the range of pay which was received at the time of transfer.

Transfers Between Represented and Non-Represented Positions: A transfer from a represented classification to a non-represented classification or vice versa, shall not be deemed a promotion or demotion if the result is a change in pay. The transfer may be made at any time by the appointing authority concerned and shall be reported to the Chief Examiner. The transfer must involve either the same or similar classifications and further, the employee must have achieved permanent status and meet the minimum requirements of the position. The request must be made in writing to the Chief Examiner who shall determine if the minimum requirements have been met.

8. Return to Civil Service by Exempt Employees: An exempt employee who has previously held permanent status in the classified service, may request a voluntary demotion in order to return to the classified service, provided, a vacancy exists for a position in a classification series in which such employee has held permanent status and for which position no valid register is in effect. Such request shall be in writing and subject to the approval of the appointing authority.

CHAPTER VII

PROBATIONARY PERIOD

- A. **REQUIREMENT:** All open competition and promotional appointees to permanent positions shall serve a probationary period of six months including appointments to previously held positions where a material change in job requirements has taken place except, all employees of the Police Department shall serve a twelve month probationary period.
- B. **COMPLETION OF PROBATION:** Successful completion of a probationary period shall be recommended in writing by the employee's supervisor and approved by the appointing authority with copies provided to the employee and Chief Examiner at least fifteen days before the end of the probationary period.
- C. **FAILURE OF INITIAL PROBATION:** A probationer serving in an initial appointment, may be separated from service after prior notice without right of appeal or hearing. The reasons for dismissal shall be filed with the Chief Examiner for permanent record.
- D. **LENGTH OF SERVICE CREDITS:** Length of service credits shall include the probationary period. For permanent seasonal employees, length of service credit shall include only those actual months worked including the probationary period.
- E. **PROMOTIONAL APPOINTEES:**
 - 1. Promotional appointees who fail, or for other reasons do not complete the probationary period for the position to which they have been promoted, shall be restored to the position from which they were promoted provided the position has been filled by a person in a temporary, provisional, or probationary status including persons serving probationary periods in promotional appointments. However, nothing in this rule shall be interpreted to allow the removal of an employee who has achieved permanent status in the position from which the appointee was promoted.

2. An employee who is appointed as a result of competitive examination to a position in a different classification series with a pay range the same or lower than the position of such employee and who fails, or for other reasons does not complete the probationary period, shall be restored to the position from which the employee was originally appointed provided that such position has been filled by a person in a temporary, provisional or probationary status including persons serving probationary periods in promotional appointments. However, nothing in this rule shall be interpreted to allow the removal of an employee who has achieved permanent status in the position from which the appointee was promoted.
3. Promotional appointees failing or otherwise not completing the probationary period shall have no right of appeal from the failure but permanent employees shall retain their rights as permanent employees in their former position including the right to reinstatement therein in preference to any temporary, provisional, or probationary employees filling the position. Promotional appointees not completing the probationary period for reasons other than failure shall be replaced upon the eligible register from which they were certified for the promotional appointment. Any promotional appointees not completing the probationary period who are unable to be restored to their former positions shall be separated from the service and shall have their names placed on a re-employment register as prescribed in these rules and regulations. (Rev. 4/95)

CHAPTER VIII

PERFORMANCE EVALUATION

- A. **PERFORMANCE RATINGS:** The Human Resources Manager shall, devise a system for evaluating the performance of employees in the classified service based on such factors as ability, quality of work, quantity of work, reliability, discipline, attendance and other job related factors as may be appropriate. The system shall require:
- I. Standards of performance which must be met by an employee in order to be eligible for a step increase in salary or promotion.
 2. Maintenance of reasonable standards of physical fitness for performance of the duties of the position. Periodic or occasional physical examinations may be required, and the results included in the rating.
 3. A performance evaluation for each employee at least once each year and at appropriate intervals during a probationary period, which will become a permanent part of the employee personnel file.
- B. **EFFECTS OF PERFORMANCE EVALUATION:**
1. Any employee who receives two successive, overall unsatisfactory performance evaluations or two successive performance evaluations indicating overall performance which requires improvement may be subject to disciplinary action.
 2. Evaluations of an employee being considered for promotion may be inspected by the Commission, the employee, the Chief Examiner, Human Resources Manager, Division Manager, Department Manager, and City Manager.

C. REVIEW AND RESPONSE:

1. The evaluator shall discuss and review evaluations with the employee. The evaluator shall provide a copy of the evaluation to the employee who shall have twenty-four (24) hours, or longer if mutually agreed upon, within which to consider the evaluation and draft a response if desired.
2. An employee shall review, respond to and sign the evaluation clearly indicating in writing agreement or disagreement and the reasons therefore.

D. APPEAL FROM PERFORMANCE RATING: An employee shall have the right to appeal any overall unsatisfactory performance evaluation in accordance with Chapter X of these rules.

Performance ratings of probationers, including permanent employees serving probationary periods in promotional appointments, shall not be subject to appeal.

CHAPTER IX

DISCIPLINARY ACTION

A. CAUSE FOR DISCIPLINARY ACTION: The following conduct is considered cause for disciplinary action:

1. Incompetency, inefficiency, repeated tardiness, inattention to, or dereliction of duty.
2. Dishonesty, insubordination, immoral conduct, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any willful failure on the part of the employee to properly conduct himself or any willful violation of the provisions of the Municipal Code or Rules and Regulations of the Commission.
3. Mental or physical unfitness for the position which the employee holds.
4. Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid, or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee on the job or which precludes the employee from properly performing the function and duties of any position under classified service.
5. Conviction of a felony or a misdemeanor involving moral turpitude.
6. Willfully disobeying the lawful orders of a superior officer or supervisor.
7. Willful or deliberate abuse and damage of City equipment.
8. Failure to report to work when so ordered without legitimate reason or failure to report an inability to work due to illness or other reason.

9. Any unlawful act of discrimination or any act of harassment based on race, color, national origin, religion, sex, handicap, age, creed or veteran status.
10. Any other act or failure which in the judgment of the Civil Service Commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public services.

B. PROGRESSIVE DISCIPLINE: In the event that the appointing authority determines that disciplinary action is necessary, unless otherwise provided for herein, the order of discipline shall be:

1. Oral reprimand - Any instance in which an employee is verbally warned.
2. Written reprimand - Any disciplinary letter, memo or other written document regarding an employee's performance or behavior that appears in his file is a written warning (reprimand). A written warning (reprimand) must list the violations or failures as well as previous related oral warnings (reprimands), and indicate corrective action necessary to avoid further disciplinary actions.
3. Suspension - Relieving an employee from work for cause, with or without pay.
4. Termination - Involuntary discharge of an employee for cause.

Step 1, oral reprimand, and Step 2, written reprimand, may be by-passed if action of the employee is of such serious nature that in the judgment of the appointing authority it demands immediate suspension or termination.

Written reprimands shall be destroyed upon the employee's request after two years if there has been no reoccurrence of the conduct or performance which gave cause for the written reprimand. Notices of suspension shall be destroyed upon the employee's request after four years if there has been no reoccurrence of the conduct or performance which gave cause for the suspension. All record

of suspensions appealed to the Civil Service Commission shall become a permanent part of the employee's official personnel file.

- C. PRE-DISCIPLINARY HEARINGS: Any employee covered by these rules who is subject to discharge, suspension, demotion, reduction in grade, delay in step increase, or written reprimand, shall be provided with a pre-disciplinary hearing conducted by the appointing authority or his designee prior to such discipline. At the hearing, the appointing authority shall furnish the employee with a statement of the cause and an explanation of the evidence supporting the charges, and also provide the employee with an opportunity to present an explanation of the disciplinary matter including any mitigating circumstances. The employee will be afforded the opportunity for representation of his/her own choosing at the hearing.

In the event the appointing authority shall decide to discipline the employee following the pre-disciplinary hearing, the employee shall be provided with a written statement as provided in this Chapter.

- D. SUSPENSION: The appointing authority may suspend for cause any employee for up to fifteen calendar days for any one suspension or thirty calendar days in any twelve month period. The Chief Examiner shall be furnished with a written statement specifically setting forth reasons for such suspension, and a copy of such statement shall be given to the affected employee. An employee may be suspended with or without pay for a period in excess of thirty days pending the investigation or trial on any criminal charges filed against the employee. An employee found not guilty of the charges shall be paid for the time which normally would have been worked during the period suspended.
- E. DEMOTION OR OTHER SANCTIONS: The appointing authority may demote an employee; or delay a step increase or reduce the salary of an employee within the pay range. Such action shall be for cause. A written statement specifying the reasons for such action shall be furnished to the employee and a copy filed with the Chief Examiner. No demotion shall be made unless the employee is qualified for the lower class. A demotion shall not be made if a regular employee would be laid off as a result.

- F. APPEAL FROM DISCIPLINARY ACTION: Any permanent employee who is reduced, suspended, demoted, or discharged may appeal such action as provided in Chapter X.

CHAPTER X

APPEALS AND HEARINGS PROCEDURES

A. APPEAL:

Any permanent employee, except as provided in Chapter VIII, Section D and Chapter VII, Section E, may appeal any disciplinary action taken under these rules as follows:

Step 1.

The employee shall within seven (7) calendar days of the action, present^{*} the Division Manager a written statement specifying the complaint, the reasons therefore and the relief sought.

The Division Manager shall investigate the matter and present a written decision to the employee within seven (7) calendar days.

- * Present shall mean hand delivery or receipt of mail at the last known address of the employee or the business address of the appropriate manager as the case may be, by certified mail, return receipt requested.

Step 2.

If the complaint is not resolved to the employee's satisfaction in Step 1, the employee shall within seven (7) calendar days of the receipt of the Division Manager's decision, present the written statement with the Division Manager's decision to the Department Head for review. The Department Head shall investigate the matter and present a written decision to the employee within seven (7) calendar days.

Step 3.

If the complaint is not resolved to the employee's satisfaction in Step 2, the employee shall within seven (7) calendar days after receipt of the Department Head's decision, present the written statement along with a copy of the Division Manager's and Department Head's decisions to the City Manager for review. The City Manager shall investigate the matter and present to the employee a written decision within fourteen (14) calendar days.

B. APPEALS TO THE CIVIL SERVICE COMMISSION:

If the complaint is not resolved to the employee's satisfaction at Step 3, the employee shall appeal the decision to the Civil Service Commission within 10 calendar days of receipt of the City Manager's decision. The appeal shall be in writing and include copies of the decisions of the Division Manager, Department Head and City Manager and shall be presented to the Secretary-Chief Examiner.

C. HEARING:

Upon receipt of an appeal, the Commission shall schedule a hearing.

All hearings by the Commission shall be open to the public and shall take place after fifteen (15) calendar days written notice to all parties concerned of the time, date and place. Hearings shall be of an informal nature and the Commission shall not be bound by technical rules of evidence. No informality in any proceedings or hearings or in the matter of taking testimony before the Commission shall invalidate any order, rule, decision, or regulation made or confirmed by the Commission. No order, rule, decision or regulation made by any designated commissioner conducting a hearing shall have any force or effect unless concurred in by at least one other Commissioner.

D. COMMISSION FINDINGS AND ORDER:

At the conclusion of the hearing, the Commission shall determine whether the action appealed from was made in good faith for cause. If the Commission finds that the action was not in good faith for cause or was taken for any political or

discriminatory reason, the employee shall be reinstated without loss of pay. In all other cases, the Commission shall determine what disposition shall be made of the appeal, taking into account the best interest of the City and the employee. The Commission shall reduce its findings into writing which shall be final and binding and entered in the Commission's records.

E. CAMERAS IN THE HEARING ROOM:

Broadcasting, televising, recording, and taking photographs in the hearing room is authorized during a hearing, including recesses, under the following conditions:

- a. Permission shall have first been expressly granted by the Commission Chairman and under such conditions as the Chairman may prescribe; and
- b. The media personnel will not distract participants or impair the dignity of the proceedings.

Illustrative Broadcast Guidelines

1. *Officers of the Hearing Room.* The Chair has the authority to direct whether broadcast equipment may be taken within the hearing room. Broadcast newsmen should advise the Chief Examiner prior to the start of a hearing that they desire to electronically record and/or broadcast live from within the hearing room. The Chief Examiner may have prior instructions from the Chair as to where the broadcast reporter and/or camera operator may position themselves. In the absence of any directions from the Chair or Chief Examiner, the position should be behind the front row of spectator seats by the least used aisleway or other unobtrusive but viable location.
2. *Pooling.* Unless the Chair directs otherwise, no more than one television camera should be taking pictures in the hearing room (as presently constructed) at any one time. Where coverage is by both radio and television, the microphones used by television should also serve for radio

and radio should be permitted to feed from the television sound system. Multiple radio feeds, if any, should be provided by a junction box. It should be the responsibility of each broadcast news representative present at the opening of each hearing to achieve an understanding with all other broadcast representatives as to who will function at any given time, or, in the alternative, how they will pool their photographic coverage. This understanding should be reached outside the hearing room and without imposing on the Chair or other personnel.

Broadcast coverage outside the hearing room should be handled with care and discretion, but need not be pooled.

3. *Broadcast Equipment.* All running wires used should be securely taped to the floor. All broadcast equipment should be handled as inconspicuously and quietly as reasonably possible. Sufficient film and/or tape capacities should be provided to obviate film and/or tape changes except during recess. No camera should give any indication of whether it is or is not operating such as a red light on some studio cameras. No additional lights should be used without the specific approval of the Chair and then only as the Chair may specifically approve as may be needed in the case of appellate hearings.
4. *Decorum.* Broadcast representatives' dress should not set them apart unduly from other spectators. Camera operators should not move tripod-mounted cameras except during recesses. All broadcast equipment should be in place and ready to function no less than 15 minutes before the beginning of each hearing.

Illustrative Print Media Guidelines

1. *Officers of the Hearing Room.* The Commission Chair has authority to direct whether photographs may be taken within the hearing room. The photographer should advise the Chief Examiner, prior to the start of a hearing, that photographs are desired. The Chief Examiner may have prior instructions from the Chair as to where the photographer may be positioned. In the absence of any directions from the Chair or Chief

Examiner, the photographer should remain behind the front row of spectator seats.

2. *Pooling.* Unless the Chair directs otherwise, no more than one still picture photographer is to be taking pictures in the hearing room at any one time. It is the responsibility of each photographer present at the opening of each hearing to achieve an understanding with all other photographers present as to which will function at any given time, or, in the alternative, how they will pool their photographic coverage. This understanding must be reached outside the hearing room and without imposing on the Chair or other personnel.
3. *Decorum.* The photographers' dress and equipment should not set them apart unduly from other spectators. Cameras which operate without flash and with a minimum of noise should be utilized.

The photographer's movements in and out of the hearing room and while taking pictures should be unobtrusive. The photographer should not, for example, assume body positions inappropriate for spectators. (2/98)

CHAPTER XI

SEPARATION FROM SERVICE

A. REDUCTION IN FORCE:

- I. Identification of Positions: When it becomes necessary to reduce the City employment force because of a change in duties, reorganization, lack of work or funds or other causes, but without cause on the part of the employee, the appointing authority shall determine the number of positions and the position classification(s) in which the reductions shall take place, taking into account the nature of functions to be performed, public safety and impact on service levels. The Civil Service Commission and representatives of employee organizations shall be notified of the number of positions and the classifications designated for reduction.
2. Administration: The Civil Service Chief Examiner in consultation with the Human Resources Manager shall administer the reduction in force determining the employees to be affected in accordance with the following principles and procedures.
 - a. Order of Reduction: The order of reduction shall be in accordance with the seniority of the employee involved. For the purpose of layoff, seniority is defined as the length of the last period of unbroken time served in a permanent appointment in the service of the City. Time shall not be considered broken by approved leaves of absence, separations of up to one year due to reduction in force, educational leaves without pay or other leaves taken at the request of and for the benefit of the City provided that employee who has been laid off and recalled within one year will not accrue additional seniority during the time of the lay off.

The order of reduction will be as follows:

- (i) First, employees in temporary or provisional appointments who's duties include, in whole or in part, the work that has been identified for reduction.
- (ii) Second, employees serving probationary periods in the classification identified for reduction provided that if an employee is in a promotional status s/he will revert to the position in the class previously held and be considered in the order of reduction in that classification.
- (iii) Third, employees having permanent status, in which case employees with the least seniority shall be identified for RIF. Such employees shall have the right to displace the least senior employee in another classification in which s/he formerly held permanent status if the class is the same or lower in pay level than the class from which it is intended to lay off the employee and the employee is qualified to perform the job.

If equal seniority exists preference will be given first to employees with the most seniority in the classification involved; second, to employees with the most seniority in the department; third, to employees with the most seniority in City service; and if equal seniority exists, the order of lay-off will be determined by the ranking on the Civil Service Register.

Reductions of positions from full-time to less-than-full-time shall be considered as a reduction in force and regulated by these Rules and Regulations and persons occupying such positions shall have all the rights to displace less senior employees. However, full-time employees, whether their positions are eliminated or reduced to less-than-full-time, shall not be required to accept a part-time position in lieu of lay-off, rather may displace the least senior as described in Section 2. a above.

b. Options in Lieu of Separation by Reduction in Force:

A permanent employee involved in a RIF has the options provided for by this rule. When an option has been determined, no further options will be identified. The employee must currently meet the minimum qualifications and possess the skills and abilities to perform the duties of the position offered.

The process below will continue for any previously held positions in reverse chronological order, until a position is offered or no position is found and will apply to each employee identified for RIF.

Options provided will be as follows:

- (i) Reduce/Downgrade or transfer to a funded vacant position within the classification last held by the affected employee.
- (ii) Reduce/Downgrade or transfer to a funded filled position in the classification last held by the affected employee. The employee affected by the reduction in force has the option to displace the least senior employee in the classification last held based on city wide seniority.
- (iii) At the completion of the entire RIF process and after termination notice has been given, if there are any vacancies that have not been identified as options in accordance with the steps above, the Transfer and Voluntary Demotion opportunities identified in Chapter VI, Section C. 5 & 7 of these Rules and Regulations may be considered as an option.

- c. Notification: The Chief Examiner in consultation with the Human Resources Manager or designee shall give a minimum of fourteen (14) calendar days written notice by direct delivery to each employee impacted by the reduction in force. Notice will be

construed to start when the direct delivery is made. The employee will be given seven (7) calendar days to accept or decline, in writing, any option provided to them. The seven (7) day response period will run concurrent with the fourteen (14) day notification period.

3. Re-employment Register: Employees who have been laid off as a result of a reduction in force or who have been separated from service due to a disability under RCW 49.60, the Americans with Disabilities Act, or other applicable disability law, will be placed on a re-employment register for the class from which they have been laid off/separated from service for a period of twenty-four (24) months. Placement on the re-employment register shall be in order of their seniority in the class from which the employees have been laid off/separated from service. The former employee with the most seniority in class shall be the first name on the re-employment register. The former employee with the least seniority shall be the last name on the re-employment register.

Employees who voluntarily reduce to a lower classification in lieu of layoff as a result of a reduction of position to less-than-full-time shall have their name placed on a reemployment register and shall be recalled to the position if it is returned to full-time within twenty-four (24) months. In addition, the employee shall be offered any position vacancy in the formerly held classification and shall have the option to accept or reject two such offers of reinstatement during the twenty-four (24) month period after which the eligibility shall be forfeited.

4. Preference of Employment: Vacancies to positions to be filled in the Classified Service shall be filled according to the order established in Chapter VI. CERTIFICATION AND APPOINTMENT of the Civil Service Rules; re-employment register, promotional register, open competition register. Provisional and temporary appointments shall not be filled without first contacting the Chief Examiner in consultation with the Human Resources Manager in an effort to fill the position by qualifying employees who have been or are scheduled for separation due to reduction in force.
(Rev. 4/95)

5. Recall: The Chief Examiner in consultation with the Human Resources Manager shall notify an employee being recalled by certified mail with return receipt at their last known address of the vacancy to be filled. Unless the Human Resources Division received from such employee an acceptance or rejection of the employment offer within five (5) business days of the date the employee receives the notice, as indicated by his signed receipt, then such employee shall no longer be eligible for recall. Employees have the responsibility to keep the Human Resources Division advised of their current address while on lay-off.
 6. Effect of Lay-Off on Rate of Pay: A former employee laid off because of lack of work or force reduction who is reinstated in the class in which he was employed, shall enter the position at the range of pay which had been received at the time of separation.
- B. RESIGNATIONS: To resign in good standing an employee must give the appointing authority at least fourteen calendar days prior notice unless the appointing authority, because of extenuating circumstances, agrees to permit a shorter period of notice. A written resignation shall be supplied by the employee to the appointing authority. Failure to comply with this rule may be cause for denying future employment by the City.

The resignation shall be forwarded to the Chief Examiner with a statement as to the resigned employee's service performance and any pertinent information concerning the cause for resignation. The resignation of any employee who fails to give notice shall be immediately reported to the Chief Examiner by the department head.

Any permanent employee who resigns in good standing or any employee who is the subject of a reduction in force before completing probation, may at the option of the appointing authority be reinstated to a position of the same classification if a vacancy exists without further examination within a year of the date of the resignation or position elimination. Employees who are rehired with the City do not retain their seniority status. Employees who have not completed probation

will be required to restart probation without credit for the previous probationary time.

- C. ABSENCE WITHOUT LEAVE: No employee in the classified service shall absent himself from duty without leave, except in case of extreme emergency. Failure to report for duty as scheduled, or failure to notify the head of the department or appointing authority of inability to report, or failure to report after a leave of absence has expired or has been revoked or cancelled by the appointing authority, shall be deemed an automatic resignation and the position shall be declared vacant, unless the employee shall show, to the satisfaction of the appointing authority, that such failure to report was due to sickness or extreme emergency which made reporting impossible.

Chapter XI
Revised October 5, 2009

**RULES AND REGULATIONS OF THE
SPOKANE COUNTY CIVIL SERVICE COMMISSION
AS PROVIDED FOR IN
CHAPTER 41.14 RCW**

RULE I. PURPOSE, EFFECT, AMENDMENT AND ADMINISTRATION

Section 1. Purpose. These rules shall give effect to the provisions of Chapter 41.14 RCW of the State of Washington providing civil service for deputy sheriffs and other employees of the office of county sheriff. They set forth the principles and procedures that are to be followed in the administration of the civil service program. These rules are further intended to establish a modern and workable system of personnel administration based on merit principles and scientific methods, to govern the appointment, promotion, transfer, lay-off, dismissal, disciplinary actions, and other conditions of employment of employees.

Section 2. Effect. These rules shall have the force of law when processed and adopted by the Civil Service Commission.

Section 3. Amendment. Amendments and revisions of these rules not inconsistent with the Chapter 41.14 RCW may be initiated by the Chief Examiner or the Civil Service Commission. The Civil Service Commission shall conduct public hearings after due notice before taking final action on amendments or revisions of these rules.

Section 4. Administration. The Chief Examiner shall be charged with the responsibility for the administration of the provisions of these rules.

Section 5. Grant or Special Revenue Sharing Programs. Any grant program or special revenue sharing program shall be administered in conformance with the conditions of the program and be initially identified as either emergency, provisional, temporary, or permanent employment. All programs shall be subject to the Civil Service hiring procedures as though such were permanent classified positions. The staffing of all grant or special revenue sharing programs, whether identified as an emergency, provisional, temporary, or permanent employment, shall be by recruitment and appointment, insofar as practicable, through Civil Service processes and existing eligible lists for commensurate positions. (Min. 6-10-74)

Section 6. Commission Records. Pursuant to RCW 41.14.060(8), the Commission must keep such records as may be necessary for the proper administration of Chapter 41.14 RCW. Such records shall be retained and destroyed in compliance with the requirements of Chapter 40.14 RCW and applicable retention schedules adopted by the state under RCW 40.14.050. The Chief Examiner shall maintain documentation identifying record disposal consistent with applicable regulations adopted under Chapter 40.14 RCW.

The Commission adopts the County's public records policy set forth in Spokane County Resolution No. 2006-0769.

The Chief Examiner shall determine the actual costs for copies of public records as provided for under RCW 42.56.070(7)(b) and present the documentation to the Commission for review and approval. Once approved, it will be posted and applicable for copies of public records.

Records shall be indexed in order to assure their prompt retrieval.

At the end of the period designated in the state retention schedule, records relating to employee misconduct or alleged misconduct shall be destroyed or retained as follows:

- (a) all records containing information determined to be false and all records containing information where the employee has been fully exonerated of wrongdoing, shall be promptly destroyed;
- (b) all records containing information having no reasonable bearing on the employee's job performance or on the efficient and effective management of the Commission, shall be promptly destroyed;
- (c) all other records containing information shall be retained only so long as it has a reasonable bearing on the employee's job performance, or on the efficient and effective management of the Commission.

Provided, however, the Commission may retain records containing information relating to employee misconduct or alleged misconduct beyond the period in the retention schedule in the following circumstances:

- (a) The employee requests that the record containing the information be retained; or
- (b) The record containing the information is related to pending legal action, or legal action may be reasonably expected to result;
- (c) For purposes of disciplinary appeals held pursuant to RCW 41.14.120, the Chief Examiner may maintain a record containing a summary of all past disciplinary actions taken by the appointing authority. Such summary shall include: (1) date of discipline; (2) summary of misconduct; (3) the employee's work record at time of discipline—including seniority with the department, previous discipline, and awards and commendations; and (4) discipline imposed. Such summary shall not include identifying information relating to the employee involved in the disciplinary action;
- (d) All past findings, conclusions, or orders issued by the Commission in disciplinary appeals held pursuant to RCW 41.14.120. (Minutes 9-10-07)

RULE II. DEFINITIONS

Section 1. Advancement. Advancement means a salary increase within an arranged schedule or established rate of pay for a class of position which is made without examination.

Section 2. Allocation. Allocation means the assignment of a position to a class on the basis of the kind, difficulty, and responsibility of work of the position.

Section 3. Chief Examiner. Chief Examiner means the secretary or executive officer of the Civil Service Commission, who shall serve as personnel director.

Section 4. Class. Class means a group of positions sufficiently similar with respect to duties and responsibilities so that the same title may reasonably be applied to each position, same qualifications may be required and the same salary range may be applied with equity.

Section 5. Classified Service. Classified service means all positions and employments in the various Sheriff's Departments of the county with the exception of those specified in RCW 41.14.070.

Section 6. Commission. Commission means a Civil Service Commission as provided for in RCW 41.14.030.

Section 7. Demotion. Demotion means a reduction in employment status to a class having a lower maximum rate of pay.

Section 8. Discharge. Discharge means a separation of a permanent employee from the service for cause.

Section 9. Eligible. Eligible means the condition of being qualified or a person who has become qualified by examination, prior service, or otherwise as provided in Chapter 41.14 RCW or these rules.

Section 10. Eligible list. Eligible list means a list of persons arranged in descending order of their ratings on examinations for classes of positions for which they have competed in open competitive examinations and to which they are qualified for appointment.

Section 11. Grievance. Grievance means a misunderstanding or disagreement between an employee or group of employees and the Sheriff, or the county as employer, arising out of a belief on the part of the employees that he, or they, are being treated unfairly in regard to the terms or conditions of employment under the act or rules.

Section 12. Lay-off. Lay-off means the termination of employment because of the lack of funds or work, or because of material changes in organization.

Section 13. Permanent Employee. Permanent employee means an employee who has permanent status and thus who has completed his probationary period as elsewhere defined in these rules.

Section 14. Position. Position means any employment or office in the classified service.

Section 15. Probation. Probation means a term of employment or trial service period in which an employee works before receiving permanent appointment, i.e., one year in accordance with RCW 41.14.130.

Section 16. Probationer. Probationer means an employee serving in the probationary or trial service period.

Section 17. Promotion. Promotion means a change of status in accordance with these rules from a position in a class with a lower to a class with a higher maximum rate of pay.

Section 18. Promotional Examination. Promotional examination means an examination for positions in a particular class, admission to which is limited to employees in the classified service or exempt employees who have previously served in the classified service who meet the qualifications set forth in the announcement of the examination.

Section 19. Promotional List. Promotional list means a list of persons arranged in descending order of their final ratings on examinations for classes of positions for which they have competed in promotional examinations and to which they are qualified for appointment to higher positions.

Section 20. Provisional Appointment. Provisional appointment means a non-competitive appointment made for a period of not more than four months to fill a classified position pending the establishment of an eligible list for the class.

Section 21. Public Notice. Public notice means giving notice by posting in at least three conspicuous places in public buildings or by publication in a newspaper having general circulation within Spokane County.

Section 22. Re-employment List. Re-employment list means a list of names of persons who have been permanently employed in the classified service and who have been separated from the service in good standing and are entitled to have their names certified to appointing powers.

Section 23. Seasonal Employment. Seasonal employment means employments which occur, terminate, and reoccur periodically and regularly.

Section 24. Seniority. Seniority means a right earned by service in the classified civil service except as provided under Rule XVI, Section 2.

Section 25. Suspension. Suspension means temporary termination of services without pay for disciplinary purposes because of insubordination or misconduct as defined in RCW 41.14.110.

Section 26. Temporary Appointment. Temporary appointment means the appointment of an eligible without regard to standing on the list for a temporary service period to fill vacancy created by leave of absence.

Section 27. Written Notice. Written notice means the service of a notice in writing either on the person or directly by mail. In the case of service by mail the notice must be deposited in the United States Post Office with postage prepaid and addressed to the person on whom it is to be served at his last known address as it appears on the records of the Civil Service Commission. Such service shall be deemed completed at the time of deposit in the Post Office and it shall be presumed received within five (5) days of that deposit (Min. 7-8-91)

RULE III. APPLICABILITY OF RULES

These rules shall apply to all positions in the classified service as defined in RCW 41.14.070.

RULE IV. ORGANIZATION OF THE CIVIL SERVICE COMMISSION

Section 1. Election of Chairman. Upon the commencement of the full term of a newly appointed member the Commission shall elect a chairman. At the first monthly meeting of each calendar year, the Commission shall elect one of its members to serve as acting chairman in the absence of the chairman. (Min. 12-8-08)

Section 2. Meetings. All meetings of the Commission shall be open and public, except for the holding of executive sessions, as provided for by the Open Meeting Law RCW 42.30.110.

Regular meetings shall be held the second Tuesday of each month at 2:00 p.m. except when such days occur on a legal holiday. Meetings shall be held in one of the conference rooms in the Spokane County Courthouse Complex, or as specified on public notice of the meeting. Special meetings may be called at any time in accordance with RCW 42.30.080. (Min. 3-12-79; 4-14-14)

All items to be included on the regular meeting agenda shall be submitted to the Chief Examiner ten (10) days prior to the scheduled meeting by all interested parties. This notice requirement can be waived at the discretion of the Commission. (Min. 9-12-94)

Section 3. Conduct of Meetings. A majority of the duly appointed members of the Commission shall constitute a quorum and accord of a majority of the duly appointed members shall be required for the transaction of any and all official business. The Chief Examiner shall keep the minutes for the Commission and submit them to the Commission at the next regular meeting for approval or correction. Upon such approval said minutes shall be signed by the chairman and shall become part of the permanent files of the Commission. Roberts' Rules of Order shall serve as the guide on questions of procedure in parliamentary law not otherwise provided for by these rules or Chapter 41.14 RCW. (Min. 4-12-10)

Section 4. Chief Examiner and/or Assistants. The Chief Examiner shall be appointed as a result of open competitive examination as provided for in RCW 41.14.050. The Chief Examiner may be subject to discharge for any of the provisions as set forth in RCW 41.14.110.

The Commission may appoint such assistants as they deem necessary to assist the Chief Examiner in the carrying out of his functions. All such assistants shall be appointed as a result of open competitive examination. All such assistants may be subject to discharge for any of the provisions as set forth in RCW 41.14.110. (Min. 3-12-79)

RULE V. HEARINGS AND INVESTIGATIONS

Hearings and investigations shall be conducted in an informal fashion and shall not be governed by the strict rules of courtroom evidence. Interested parties may appear in person, by counsel, or through other representatives of their choosing. At least five day's written notice shall be given to all interested parties of the time and place of any hearing or investigation and the purpose thereof; PROVIDED, the five days or any portion thereof may be waived by written consent of the parties involved. The decision shall be given in writing within 10 days of the conclusion of any hearing or investigation, and it shall be final and binding. Any decision regarding a permanent employee shall be given in accordance with RCW 41.14.120. (Mins. 7-8-91; 6-11-84)

RULE VI. CLASSIFICATION PLAN

Section 1. Preparation of Plan. The Chief Examiner shall ascertain the duties and responsibilities of each position in the classified service. After analyzing this information and consulting with the appointing power, individual employees, groups of employees, or their representatives, he shall prepare and submit to the Civil Service Commission a classification plan which shall group all positions in the classified service into classes based upon their duties and responsibilities. The classification plan shall include class specifications and shall set forth for each class of positions a class title, a statement of duties and responsibilities, and a statement of the qualifications needed by applicants.

Section 2. Adoption of the Plan. After the plan has been prepared by the Chief Examiner, he shall submit it to the Civil Service Commission which shall review and approve such plan with or without amendment. After such action has been taken by the Civil Service Commission, the plan shall be submitted to the Board of County Commissioners for their approval. Thereafter no position shall be assigned a salary greater than the maximum nor less than the minimum rate fixed in the compensation plan. Salaries of persons holding positions in the classified service shall not be approved by paying authorities unless such salaries conform to the compensation plan as adopted.

Section 3. Effect of Transfer on Rate of Pay. The minimum or entrance rate of pay for any class of position shall be payable to any person on first appointment to a position allocated to a class. However, if a person already in the classified service is transferred or a former employee is reinstated in the class in which he was employed, with approval of the Civil Service Commission, he may enter the position at the rate of pay which he has been receiving at the time of transfer or separation.

Section 4. Additional Classes. Action leading to the establishment of additional classes or the division, combination, alteration or abolishment of classes may be initiated by the Commission or upon the request of the appointing power. Appointing powers intending to establish new positions shall notify the Commission and no person shall be appointed or employed for any such position until it has been properly classified as herein provided and an appropriate employment or promotional list established therefore.

Section 5. Administration of the Plan. Once adopted, the Chief Examiner shall be charged with the responsibility for the properly continued administration of the classification plan so that it will reflect the duties being performed by each employee in the classified service and the class to which each position is allocated.

RULE VII. CLASS SPECIFICATIONS

The class specifications mentioned in Rule VI, Section 1, shall be prepared by the Chief Examiner and submitted to the Civil Service Commission for approval. Such class specifications are hereby declared to have the following power, force, and effect:

(A) They are descriptive and explanatory and are not restrictive. The use of a particular expression or illustration as to duties, qualifications, or other attributes of a class shall not be held to exclude others not mentioned if such others are similar as to kind or quality.

(B) In determining the allocation of a given position the specifications shall be considered as a whole. Consideration shall be given to the general duties, specific examples, responsibilities, minimum prerequisites, and to the relationships with other classes so as to afford an inclusive picture of the employment which the class is intended to embrace.

(C) The "Examples of Duties" is not intended to prescribe what the specific duties of the given position shall be nor to limit the power of the appointing powers to modify or alter the detailed tasks involved in the performance of any position. The functions listed are merely indicative of the type and character of tasks to be expected of a position in that particular class. When a substantial change of duties is made in a position, such change shall be reported to the Commission with a view to a possible reclassification of the position.

(D) Although they may not be specifically mentioned in the specifications, certain qualifications which should properly apply to practically all positions such as citizenship, age, honesty, sobriety, and industry, are taken for granted.

RULE VIII. ALLOCATION OF POSITIONS TO CLASSES

Section 1. Adjustments. Every position in the classified service shall be allocated to its appropriate class. Whenever a new position is established or the duties of an existing position become changed so that it no longer properly belongs to its former class, the appointing power shall forthwith report the facts to the Commission with a full description of the duties, or the duties as changed. After investigation, a position may be reclassified or reallocated in the same manner as the classification was originally adopted. From time to time and as need requires, the Commission on its own initiative may investigate and determine the duties of a position or positions, or of the entire service, with the view to correcting, amending and adjusting the classification plan or the allocation of positions thereto.

Section 2. Transfers to Newly Allocated Position. Whenever, by action of the constituted authorities, a new class of position shall be created and a new position in the changed class allocated in lieu of an old position which has been abolished or discontinued, and the duties of such old and new positions are of an overlapping or closely related nature, the Civil Service Commission may approve the appointment or transfer of the incumbent from the old position to the new position without examination.

Section 3. Effect of Reclassification on Employees. If a position is reclassified to a higher class of position of changed duties or responsibilities, the incumbent, upon approval of the Board, shall be advanced to the reclassified position if he can demonstrate his qualifications therefore by passing a non-competitive examination for the same class of position, or at his option he may be transferred to a vacant position in the class to which his position was formerly allocated, or with the approval of the Civil Service Commission he may be demoted to a lower class of position for which he is qualified, or his name may be placed on the reemployment list for the class to which the position formerly was allocated.

RULE IX. RECRUITMENT

Section 1. Examinations. Whenever there is need, the Civil Service Commission shall provide for and conduct open competitive examinations to establish employment lists of eligibles for all positions in the classified service. It shall give public notice of such examinations, specifying the title and salary range of the position. A brief outline of the requirements of the position, the minimum qualifications required and the final date upon which applications will be received.

Applicants taking entrance examination for the Sheriff's Department will be allowed two (2) points if they have a Bachelor of Arts, or equal degree from a four-year college; two (2) points will be given for a Police Science or related degree from a two-year junior college. (Min. 1-12-87)

Section 2. Application Packets. Applications shall be made on forms prescribed by the Commission. The Commission approves the use of an electronic web-based job application process adopted by the Board of County Commissioners, including electronic job application forms used in conjunction therewith. Such forms shall provide for information covering education, experience, references and other pertinent information. All applications should be made out and signed by the person making application who shall certify that all of the information provided in the application and in any attachments or supporting documents is true, correct, and complete. (Min. 12-13-04; 5-12-03; 4-14-14)

Examination notices shall contain a minimum age. Examination notices shall contain a maximum age only as the same may be established as a bona fide occupational qualification. An individual may qualify to take the entrance examination for a classification which has a minimum age of 21 providing the individual will pass the minimum age birth date during the life of the eligible list established by that examination. A successful applicant will have delayed eligibility until the required minimum age is attained. (Min. 8-8-83)

All applicants must be high school graduates (or equivalent). Applicants for Deputy Sheriff and Corrections Officer must have at least 20/100 vision in both eyes, correctable to 20/20 in the better eye, 20/30 in the lesser eye. Must possess normal hearing and normal color vision sufficient to meet the requirements of the position. Vision and hearing for all other employees must meet the requirements of the specific classification. (Min. 6-11-84)

Section 3. Rejection of Applicants. The Chief Examiner may refuse to accept an application, or after accepting, may reject an applicant or after examination may disqualify a successful applicant, or may remove the name of a successful applicant from the employment list, or may refuse to certify the name of a successful applicant whenever the applicant or eligible is found to lack any of minimum prerequisites established for the class of the position, or is addicted to the habitual use of intoxicating liquor or drugs, or has been found guilty of any infamous or notoriously disgraceful conduct or has made false statement of material facts in his application or has otherwise violated the provisions of the constitution or statutes of the State of Washington or these rules. The cause for rejection, including but not limited to the specific causes mentioned above, shall be entered upon the application form and filed in conformity with these rules. (Min. 6-8-81)

Any individual who is rejected by the Chief Examiner during the preliminary processing for a classification shall not be eligible to submit a new application until one year from date of rejection. An exception may be granted where the disqualifying factor or factors would not be applicable to a different classification. In accordance with RCW 41.14.060(5), any person rejected by the Chief Examiner during the pre-employment investigation may request a hearing before the Commission providing it is filed within 10 days after receipt of notice of the rejection, and it will be presumed that such notice was

received within five days after deposit in the post office. The cause for rejection shall be entered upon the written notice provided to the applicant. (Min. 3-9-81; 8-22-14)

RULE X. EXAMINATION

Section 1. Preparation. Examinations shall be prepared by the Chief Examiner which will test the ability of applicants in accordance with RCW 41.14.060(2).

Section 2. Assistance. The Commission or Chief Examiner may designate special examiners to assist in the conduct of any examination or test and may make arrangements for the use of public buildings and equipment in testing. (Min. 7-8-91)

Section 3. Announcement and Notification. The Commission shall, insofar as possible, include in the announcement of examinations the appropriate number of applicants likely to have opportunity for service as the result of such test, the likely location where such applicants may be called to serve, and all applicants shall be notified of their rating and whether or not they have attained standings high enough to entitle them to have their names placed on eligible lists for service.

Section 4-a. Time, Place and Notice. Examinations for admission to the eligible list, or for promotion in the service, shall be held at such times and places as shall be designated by the Commission. Public Notice of examinations shall be posted for two weeks preceding such examination. A written or printed notice of such examination shall be mailed to or served upon each person who applies. Only those with completed applications on file by the closing date shall be entitled to take the examination. (Min. 7-8-91)

Section 4-a.1. Continuous Examinations. Original entrance examinations, for classifications in which the need continually exceeds the availability of appointees, in the opinion of the Commission, may be administered as applications are received with results merged into one eligible list according to final ratings. On such examinations when there has been no change in test content or standards, an applicant who achieves a passing score on one part of an examination need not repeat that part if retested within a 12 month period. The final grade of an applicant who repeats any part of an examination will be based on the latest test results. (Min. 10-12-92)

Section 4-a.2. Make-Up Examinations. An applicant who is unable to take the regular examination, as scheduled, may be given a special examination upon written request. Such applicant must submit a written request setting forth the reasons requiring the absence and provide documentary evidence which demonstrates that the applicant was unable to take the regular examination as scheduled.

The following are the only reasons for granting a special examination time for an entry level examination:

- 1) Activated for military duty. Applicant must provide a copy of their separation papers no later than 10 days from the termination of such military duty;
- 2) Receipt of military orders requiring the applicant to report for active duty. Applicant must provide a copy of their orders at the time of the request.
- 3) Absence from the test within one week after the date of death of a spouse, domestic partner, mother, father, sister, brother, child or child of a domestic partner of such applicant.

The following are the only reasons for granting a special examination time for a promotional examination:

- 1) Activated for military duty. Applicant must provide a copy of their separation papers no later than 10 days from the termination of such military duty;
- 2) Receipt of military orders requiring the applicant to report for active duty. Applicant must provide a copy of their orders at the time of the request;
- 3) Compulsory attendance before a court or other public body or official having the power to compel attendance;
- 4) Any mandatory department training;
- 5) Absence from the written test within one week after the date of a birth of a child or death of a spouse, domestic partner, mother, father, sister, brother, child or child of a domestic partner of such applicant. (Min. 4-9-07; 12-13-04)

Section 4-b. Competitive. All examinations held under the provisions of the law and these rules shall be competitive.

Section 4-c. Limitations. No limitations shall be made as to the number of applicants to be received for examination. The Commission may limit the number of applicants to be examined at any one time, according to the needs of the service or for convenience in conducting the examination, but in all cases applicants shall be admitted to examination in the order in which their applications were filed.

Section 4-d. Subjects, Weights and General Averages. Each examination shall embrace certain subjects, to which weights shall be assigned, the weight given to each subject to represent its relative value in ascertaining the fitness of the applicant. The weight of each subject shall be determined by the Civil Service Commission prior to the examination and a letter of agreement from the Spokane County Sheriff. (Min. 6-9-08)

Section 4-e. Questions Shall Be Practical. Examinations shall be practical in their character and shall relate to those matters only which will fairly test the general fitness of the persons examined to discharge the duties of the position to which they seek to be appointed.

Section 4-f. Questions Prohibited. No question pertaining to race, creed, religion, color, or national origin, fraternal or political opinions or affiliations will be allowed at any examination or proceeding. (Min. 5-10-16)

Section 4-g. Written or Oral. Whenever practical, examinations shall be in written and/or oral format, and, when appropriate, include physical and practical tests. The Commission may act as a committee or appoint a committee to conduct oral examinations on certain subjects when, in their judgment, that is the best means of determining an applicant's qualifications for the position applied for. This will particularly apply to positions where executive ability is essential, or experience is one of the subjects in the examination. Any willful false statement regarding past record or experience shall be a ground for withholding the name of an applicant from an eligible list and shall be a ground for discharge and disqualifies an applicant from taking any future examination, and before the examination begins applicants shall be so admonished. All entrance applicants may be required to take a polygraph screening. (Min. 4-8-02; 4-9-73)

Section 4-h. Physical Ability Examination. The Commission may determine by physical ability examination the physical qualifications of any applicant for a specific classification. The Commission may establish tests of physical strength and condition as a subject in examination and give weight thereto, as provided in Section 4-d of this rule. Where positions require special physical fitness, a special investigation of eligibles may be made by the Commission to determine whether they continue to possess the same. (Min. 2-9-04; 6-11-84)

Section 4-i. Explanation. All necessary explanations will be made to the whole class. Examiners are forbidden to explain the meaning of any question or to make remarks or suggestions that may assist in its solution.

Section 4-j. Conversation and Communication. All conversation or communication between or among applicants during examination is strictly prohibited.

Section 4-k. Cannot Leave the Room. During an examination no applicant will be allowed or permitted to leave the room, except in case of extreme necessity, and after notice to an examiner, and then only when accompanied by one of the clerks.

Section 4-l. Penalty for Withdrawal. An applicant who withdraws from an examination, after filling out his identification sheet and receiving a copy of the questions, shall be considered as having failed.

Section 4-m. No Helps Allowed. NO HELPS of any kind will be allowed during the examination unless authorized on the exam booklet, on the official Notice of the examination, or by the Chief Examiner. Possession of or access to any outside information during the test or any attempt to copy from a competitor shall disqualify the individual for the position for which the test is being rendered. This disqualification shall be in effect for a period of time as specified by the Commission but not to exceed 22 months. (Min. 1-14-91)

Section 4-p. Grading of Papers. No unnecessary delay will occur in the marking and grading of the examination papers. A uniform grade of 70% is established as a passing grade on all future examinations unless otherwise changed by the Board under special conditions and circumstances. (Min. 4-8-02)

Section 4-q. Notice of Result. As soon as the grading of the papers is completed the applicants will be notified of their results and whether they passed or failed, and their position on the eligible list. No questions will be shown to any applicant following the test. By request, within a reasonable time following the examination, applicants may be told grade attained on each component part of the examination only. (Min. 4-8-02; 7-8-91)

Section 4-r. Papers Not Returned. After the grading of the papers is completed and the eligible list established, the examination papers become the permanent property of the Civil Service Commission and will be kept on file in the office of the Commission.

Section 4-s. Re-examination. Any applicant failing to pass in two examinations for the same class of service shall not be eligible for examination in said class within one year from the date of last examination. This section shall not apply to examinations administered by an outside testing service utilized by the Commission. (Min. 3-8-16)

Section 4-t. Postponement or Continuance of Examination. Whenever it may appear to the Commission, by reason of the small number of applicants for any examination, either original or promotional, that such examination has not been given sufficient publicity, or for other good and sufficient cause, the Commission may postpone said examination to a later date. All persons having applications on file shall be immediately notified of the postponement or continuance and shall be further notified of the time at which they are to appear for such examination.

Section 5. Promotional Examinations. Promotional examinations will be conducted under the same rules that apply to original entrance examinations. On a promotional test, possession of or access to any outside information during the time the test is being conducted, or any attempt to copy from a competitor shall disqualify the individual for the position for which the test is being given. Report of any disqualification pursuant to these rules shall be reported to the County Sheriff. (Min. 12-10-90)

Section 5-a. Filling Vacancies. So far as practicable vacancies in positions in the classified service shall be filled by promotion of permanent employees. Promotional examinations may at the discretion of the Commission be limited to a single division or may be service-wide. Whenever promotional examinations are limited to a division, successful applicants shall be eligible only in that division. (Min. 1-14-91)

Section 5-b. Eligibility. To be eligible to take any promotional examination, except as herein provided, applicant must have completed at least three consecutive years of satisfactory service in the next lower grade immediately preceding the effective date of the promotional eligibility list for that classification; PROVIDED that, an employee who is returned to duty from disability retirement by the Disability Board pursuant to Chapter 41.26 RCW, shall have completed at least three years of service in the next lower grade, one year of which shall be completed within the 24 months immediately preceding the effective date of the next promotional eligibility list. (Min. 9-12-94)

Examinations for Sergeant will only be for those applicants having at least 18 consecutive months of satisfactory service as a Detective/Corporal and have at least 12 months assignment in the investigation division. The eligibility list will continue to be a one-year list for all future Sergeant examinations. (Min. 7-14-03, Min. 7-14-15)

Where the Commission finds that exceptional circumstances exist which require expanding the pool of eligible applicants for a promotional examination, it may establish appropriate eligibility requirements prior to the posting of that examination. (Min. 2-14-94)

All applicants must otherwise meet the minimum requirements of the promotional position as of the effective date of the eligibility list. Leaves of absence without pay cannot be credited as time served in grade. Positions requiring technical training and experience not available within the operation of the Department shall be exceptions to this rule. (Min. 1-14-91)

Examinations for the promotional positions of Detective/Corporal shall be given every two years. (Min. 12-9-13; 2-9-04; 6-10-02)

Section 5-c. Promotional Examination Grading. All promotional examinations will be graded on the basis of 70% for written, and 30% for oral examination unless otherwise changed by the Board under special conditions and circumstances. Promotional examinations for the position of Sergeant, where an assessment test may/will be given, will be graded according to the standards set for assessment center testing. The written standards will be available for review in the chief examiner's office at the time the applicant submits their application. (Min. 12-9-13; 10-11-04; 2-9-04; 7-13-92; 7-8-91)

Section 5-d. Seniority Credit. Seniority credit shall be added: One (1) point per year for the first five years of service, one-half (1/2) point per year for the second five years of service, for a maximum of seven and one-half (7-1/2) points, to all passing grades on promotional examinations. Seniority credit will be computed, within the above guidelines, with consideration for completed quarters within the last year of satisfactory service up to the date of the examination. (Min. 1-14-91; 1-12-87)

Section 7. Veteran's Preference. Points for Veteran's Preference in all entrance and promotional examinations shall be given in accordance with RCW 41.04.010. (Min. 5-9-05)

Section 8. Application Following Disciplinary Action. No application for any examination shall be received from any applicant who has previously been suspended for a period in excess of ten (10) working days, demoted, discharged, or resigned in lieu of discharge, pursuant to Rule XIX, for one year from the effective date of reinstatement, or one year from effective date of demotion, discharge, or involuntary resignation. (Min. 3-13-78)

Section 9. Lateral Entry Examination.

1. Eligibility. Every person who shall make application as a lateral entry employee for the position of Deputy Sheriff-Lateral Entry within the Spokane County Sheriff's Office shall comply with all the general qualifications set forth in the Spokane County Civil Service Commission Rules and Regulations and Chapter 41.14 of the Revised Code of Washington. (Min. 12-9-13; 9-11-00)

(a) Deputy Sheriff-Lateral Entry—Additional Qualifications. In addition to these general qualifications, the following shall be requirements for an individual to be eligible to take the entrance examination for placement on the lateral entry eligible list for Deputy Sheriff-Lateral Entry:

(i) Successful completion of the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy or Washington State Basic Equivalency Academy, and holding current certification; or having the ability to obtain an equivalency certification prior to the completion of the one year's probation period by meeting the standards of the Washington State Criminal Justice Training Commission; and (Min. 5-8-95)

(ii) After graduation from an accredited basic law enforcement academy, a minimum of five years of sworn, non-military, continuous patrol officer experience with a single agency, with no break in service of more than 180 days, with less than two years of separation from employment as a law enforcement officer in a position equivalent to Deputy Sheriff, Spokane County with proper certification. An application for Deputy Sheriff-Lateral Entry may also be approved under such similar circumstances as deemed appropriate by the Commission. (Min. 7-8-02; 5-8-00; 8-14-00; 4-14-14)

(iii) Applicant is not currently on an entry level list or has not tested for an entry level position for the duration of the current lateral entry list.

(b) Communications Officer-Lateral Entry—Additional Qualifications. With regard to the eligible list for Communications Officer-Lateral Entry, the following shall be additional requirements for an individual to be eligible to take the entrance examination for placement on lateral entry eligible list for Communications Officer-Lateral Entry.

(i) A minimum of two years of non-military, continuous Communications Officer experience with a single law enforcement agency, with no break in service of more than 180 days, and be currently employed as a Communications Officer in a position equivalent to Communications Officer, Spokane County, with proper certification. An application for Communications Officer-Lateral Entry may also be approved under such similar circumstances as deemed appropriate by the Commission.

(ii) Applicant is not currently on an entry level list or has not tested for an entry level position for duration of the current lateral entry list. (Min.12-9-13; 10-10-05)

(c) Deputy Sheriff-Intermediate Lateral Entry—Additional Qualifications. In addition to these general qualifications for Deputy Sheriff, the following shall be a requirement for an individual to be eligible to take the entrance examination for placement on the eligible list for Deputy Sheriff-Intermediate Lateral Entry:

(i) Successful completion of the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy, and holding current certification;

(ii) Applicant is not currently on an entry level list or has not tested for an entry level position for the duration of the current entry level list. (Min. 12-9-13)

2. Examination Procedures.

(a) Examination. Examination will consist of a Training and Experience Statement (weighted at 100%) and must pass the physical ability test as determined by the Washington State Criminal Justice Training Commission. Applicants must achieve a passing grade of 70% on the Training and Experience Statement to be considered eligible. (Min. 12-9-13; 11-10-15)

(c) Medical and Physical Examination. The Commission may determine medical and physical fitness for lateral entry applicants in the same manner as provided in Rule X, Section 4-h, which tests of physical strength and condition shall be graded on a pass/fail basis.

3. Lateral Entry Eligibility List. The Civil Service Commission shall establish and maintain a lateral entry eligible list comprised of those individuals who: (1) meet the eligibility requirements for lateral entry employees listed above; (2) are medically and physically qualified; and (3) satisfactorily complete the application form and achieve a grade of 70% or more based upon the evaluation. Successful applicants shall be arranged in descending order of their ratings based on their total points. Processing will be completed through the background, oral interviews, polygraph and medical the same as entry level. Names will remain on the lateral entry list for two years from the date of the individual's test. Names would be integrated on the list according to scores achieved. (Min. 6-9-08; 6-10-13)

The Sheriff shall select from the applicants certified by the Commission from the eligible list. (Min. 9-11-00)

4. Seniority/Benefits. Seniority for lateral entry employees shall commence on the date of hire with the Department. Lateral entry employees shall be subject to the same rules, and enjoy the same rights, as employees hired from the entry level list.

Section 10. Police Corps.

1. Police Corps Authorized. The Commission recognizes the Police Corps Program as authorized by Title XX, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14091 *et seq.*, as a qualified testing and eligibility process for employment in the Spokane County Sheriff's Office. The Commission hereby establishes procedures for applicant sponsorship and eligibility for employment in the position of Deputy Sheriff-Police Corps. Following qualification of applicants pursuant to the procedures set forth in this section, applicants shall be certified as eligible for appointment by the Spokane County Sheriff's Office. Applicants appointed to probationary status pursuant to the procedures of the Police Corps Program shall be subject to the same terms and conditions of the Commission as other probationary employees of the Spokane County Sheriff's Office.

2. Sponsorship: Each applicant for sponsorship by the Spokane County Sheriff's Office shall: (1) initially file an application with the Criminal Justice Training Commission (CJTC) for participation in the Police Corps Program; (2) pass the screening for the Police Corps Program conducted by CJTC; and (3) be referred by CJTC to the Spokane County Sheriff's Office and the Commission for sponsorship. Each applicant shall be reviewed and approved by the Commission and the Spokane County Sheriff. The Chief Examiner shall verify that applicants for sponsorship meet the minimum eligibility requirements for employment in the Spokane County Sheriff's Office.

3. Applicant Qualifications: Applicants for Police Corps sponsorship by the Spokane County Sheriff's Office shall be subject to initial testing to determine fitness for employment. Such testing shall be the equivalent of that conducted for entry level Officer Candidate (Deputy Sheriff), including written or oral examination, physical agility testing, background investigation, polygraph screening, and medical and physical examination. Upon satisfactory completion of such testing, the applicant may be sponsored by the Spokane County Sheriff's Office and the Commission. Sponsorship shall be approved by Spokane County Sheriff and by the Commission.

4. Record of Program Completion: Following sponsorship by the Spokane County Sheriff's Office and the Commission, the applicant may be admitted to the Police Corps Program, and subject to the Program as conducted by CJTC. Upon successful completion of the CJTC Program, and certification of the applicant for employment under the Program, the information shall be submitted to the Chief Examiner. Additional administration of tests as noted in paragraph 3 above to confirm the continuing eligibility of the applicant for employment may be administered by the Chief Examiner.

5. Police Corps Eligibility List: The Commission shall establish a Deputy Sheriff-Police Corps eligibility list comprised of individuals who successfully complete the additional testing outlined in the preceding paragraph, and who otherwise satisfy the requirements outlined above.

6. Certification to Appointing Authority: The Spokane County Sheriff shall select from the applicants certified by the Commission from the eligible list for Deputy Sheriff-Police Corps. Applicants appointed shall be employed in a probationary status, and shall be subject to all policies, rules, regulations, and collective bargaining agreements applicable to probationary employees of the Spokane County Sheriff's Office. Any officer originally appointed from the Deputy Sheriff-Police Corps eligibility list shall serve no less than four (4) years of employment with the Department on community patrol. Police Corps employees shall be subject to the same rules, and enjoy the same rights, as employees hired

from the entry level list. Service in community patrol shall not preclude an employee from eligibility for testing or promotion, consistent with rules now or hereafter adopted by the Commission. (Min. 01-13-01)

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Section 11. Reserve Deputy Credit. On entry-level Deputy Sheriff examinations, credits will be added for service as a Reserve Deputy in the Spokane County Sheriff's Office as follows:

- 1) Two credit points for successful completion of the Reserve Academy and Commissioning as a Reserve Deputy for Spokane County.
- 2) Two additional credit points for successful completion of the first year of service as a Reserve Deputy Sheriff, provided the candidate meets or exceeds all requirements set forth in Sheriff's Policy 350.

Effective May 14, 2012, the above rules would apply to all current Reserve Deputy Sheriffs. (Min. 7-9-12)

RULE XI. EMPLOYMENT, RE-EMPLOYMENT AND PROMOTIONAL LISTS

Section 1. Maintenance of Lists. As a result of examination the Commission shall maintain employment lists of eligibles. Names shall be placed upon such lists in order of preference according to the final earned rating of each person competing in the examination including seniority credits on promotional lists.

Section 2. Effective Date and Life of Lists. Eligible lists shall become effective when approved by the chairman of the Commission by signature thereto or by the signature of the Chief Examiner. The eligibility of applicants on employment and promotional lists shall remain in effect one year, except that in an emergency eligibility list may be extended for a period not to exceed ninety days; PROVIDED that lists for promotional positions of Detective/Corporal and Corrections Lieutenant and entrance positions of Forensic Technician, Digital Forensic Technician, Forensic Specialist and Automotive Servicer Technician shall remain in effect for two years unless otherwise exhausted prior to that time. (Min. 11-13-07; 2-9-04; 11-15-94; 7-8-91; 5-90; 5-88; 6-85; 3-12; 3-8-16)

Section 3. Reemployment Lists. For each class of position the Commission shall maintain separate reemployment lists consisting of the names of persons who have occupied positions in such classes with permanent, satisfactory probationary status, or satisfactory temporary appointment/promotion and who have been separated therefrom by layoff or leave of absence, and who have made written application to the Civil Service Commission to have their names placed on the appropriate reemployment lists. Names shall be placed on reemployment lists in order of seniority of service. Eligibility shall expire at the end of two years and may be extended for one additional year. All of those on the reemployment lists, including probationers with satisfactory service, shall retain all seniority and other rights previously accrued. (Minutes 2-9-04; 6-81; 1-76)

Section 4. Removal from Lists. The names of any persons appearing on a promotional employment list, entrance employment list, or reemployment list may be removed by the Commission if the applicant fails to respond to a notice of certification, if he declines an appointment without reason satisfactory to the Commission, or if he cannot be located by postal authorities. In case of such removal the Commission shall notify in writing the applicant affected at his last known address. The name of a person so removed may be reinstated only if satisfactory explanation of the circumstances is made to the Commission.

Names of applicants who have been certified for appointment three times and have not been appointed may be dropped from the list by the Commission, and the names of persons on promotional employment lists who resign from the service shall be automatically dropped from such lists upon such resignation. (Min. 6-8-81)

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Section 5. Notification of Change of Address. Each person on an employment list shall file with the Board written notice of any change of name or address, and failure to do so may cause removal of his name from the list.

Section 6. Revocation of Lists. An employment or promotional list may be revoked and another examination ordered only when such action is deemed advisable on account of fraud, error, or obviously inappropriate standards prescribed in connection with the examination, and of plainly inadequate results obtained therefrom. No list shall be altered or revoked except upon written notice to all persons whose standing may be affected and upon entry of the reasons in the minutes of the Commission.

RULE XII. CERTIFICATION

Section 1. Whenever an appointing power requires the services of a person to fill a vacancy in the classified service, written requisition shall be made upon the Chief Examiner which requisition shall state the number of positions to be filled in each class, and shall supply the class title and other information requested by the Chief Examiner. Upon the receipt of a requisition, the Chief Examiner shall submit in writing the names of the five persons highest on the entrance employment (new hire) eligible list for all Sheriff's Office entry level positions, and the name of the person next highest on the eligible list for each additional vacancy. For all other eligibility lists, the Chief Examiner shall submit in writing the names of the three highest and the name of the next person highest on the eligible list for each additional vacancy.

Whenever a person is removed from the written list of names certified for appointment pursuant to Rule IX, Section 3, the Chief Examiner shall substitute the highest ranked individual person who is not included on the list of names certified to the appointing authority. The order of certification shall be as follows: reemployment list, promotional list, transferring city employees pursuant to RCW 41.14.260(2), entrance employment list. (Min. 7-13-81; 1-22-82; 12-9-13)

RULE XIII. APPOINTMENT

Section 1. Selection. Appointing powers shall make selections from the names submitted for certification unless objection is made in writing and sustained by the Commission for one or more of the reasons set forth in Rule IX, Section 3, or Rule XI, Section 4. Appointments shall be reported on forms prescribed by the Commission.

Section 2. Declination. Whenever an applicant whose name has been certified for appointment fails to answer the inquiry of the Board or appointing officer within two business days next succeeding the date of certified mail return receipt of such notice of certification or fails to accept an appointment when offered him within the same period, then in that event he may be deemed to have declined appointment. If an applicant accepts an appointment within the period outlined and fails to present himself for duty within five days from the date specified in the notice, he may be deemed to have declined the appointment.

Section 3. Effect of Declination. Any person who declines certification or appointment, or who fails to report, shall be permanently dropped from the list on which his name appears unless he shows satisfactory cause to the Commission for his action. Upon a showing of satisfactory cause, the applicant's name shall be retained on the top of the eligible list until the next request for certification comes from the Sheriff's Department or until an appointment is to be made at which time the applicant will again be contacted. An applicant shall be retained on the top of the eligible list as long as he is able to show satisfactory cause for declining certification or appointment or for failure to report.

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RULE XIV. EXCEPTIONAL APPOINTMENTS.

Section 1. Emergency Appointments. The appointing powers may employ any person or persons who meet the immediate requirements of emergency conditions which threaten public life or property whenever due to lack of time or otherwise it is impossible to secure the services of persons through the Civil Service Commission. As soon as practicable, all such appointments shall be reported to the Commission. The Commission may disallow or terminate any such appointment at any time and in no event shall such employment of any one person be continued for more than thirty days in any one year, unless the Commission determines the emergency conditions still exist in which case the employment may be continued until the emergency conditions cease, subject to review every thirty days by the Civil Service Commission. No contractual, seniority, Civil Service or other employment rights shall be acquired during the time frame of the emergency appointment. (Min. 3-12-90)

Section 2. Provisional Appointments. Provisional appointments may be made only in the absence of lists appropriate for the position to be filled. In such case, the appointing power may select a person meeting the minimum prerequisites of the class to which the position is allocated. The Commission shall determine as soon as possible by any method felt advisable whether or not the nominee possesses the necessary experience, training, and other prerequisites for the position. If satisfactory, the name of such provisional appointee shall be certified to the appointing power for appointment and such person's application accepted for an examination to establish an employment list for the position. The Commission shall then announce and conduct the examination and certify names for regular appointment in the usual manner as soon as possible. In no case, however, shall any credit in an examination be given for service of a provisional appointee. Provisional appointments shall in no case be continued for longer than 4 months, and no provisional appointee shall be again appointed in the same year unless he qualified by competitive examination and is appointed in the regular manner.

Section 3. Temporary Appointments. Temporary appointment is appointment from an employment, promotional or re-employment list in the usual manner to fill a position created by the granting of a Leave of Absence. In making such temporary appointments, the appointing authority shall requisition the Chief Examiner in the manner provided for regular appointments but shall indicate the time or the date at which it is estimated the position will terminate. The Chief Examiner shall contact persons appearing on the appropriate eligible list or lists, indicating the nature of the position and its duration to learn who may be willing to accept the temporary appointment. (Min. 1-13-03)

Section 4. Appointment in Lieu of List. If there is need for an appointment to a classification for which there is no current eligible list, the Commission may certify the names of three persons standing highest on such other list held appropriate for such class, who are willing to accept the appointment. Acceptance of such an appointment will not affect the standing of the applicant on the list from which he was appointed. (Min. 10-13-80)

RULE XV. PROBATIONARY PERIOD.

Section 1. Rejection of Employees. All appointments to positions in the classified service except appointment from re-employment lists shall be tentative and subject to a probationary period of one year in length. During the probationary period, the appointing officer at his discretion may reject an employee other than a promotional appointee. Notice of rejection shall be submitted to the Commission which may inquire as to the cause thereof but may not order the reinstatement of the applicant. Such rejected employee may not appeal his rejection to the Commission as elsewhere provided for discharges of permanent employees. (Min. 5-8-95)

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Section 2. Reports on Probationary Employees. Unsatisfactory reports upon the services of an employee during the probationary period shall be grounds at the discretion of the Commission for refusing to place the name back on the eligible list from which it was certified. (Min. 11-14-05)

Section 3. Promotional Appointees. A promotional appointee may only be rejected by the appointing officer for cause (RCW 41.14.120). For purposes of this section, "cause" means a fair and honest cause or reason indicating a promotional appointee is unfit or unsatisfactory for the position, regulated by good faith on the part of the appointing officer. A rejection for cause is one based on facts that (1) are supported by substantial evidence and (2) are reasonably believed by the employer to be true and (3) is not for any arbitrary, capricious, or illegal reason.

Notice of rejection shall be submitted to the Commission which may inquire as to the cause thereof, or shall initiate an inquiry at the request of the promotional appointee if such request is received within fifteen (15) days of the notice of rejection. If such inquiry reveals that the rejection of the promotional appointee was not made for cause, the Commission shall order the reinstatement of the promotional appointee.

A promotional appointee who is rejected for cause during the probationary period from the position to which he has been promoted shall be restored to the position from which he was promoted. (Min. 5-8-95)

Section 4. Temporary Employees- -Probationary Status. At the discretion of the Commission, an individual's service as a temporary employee may be credited on any probationary period. (Min. 1-13-03)

RULE XVI. SENIORITY

Section 1. When Seniority Not Accrued. Service in emergency, provisional and temporary positions shall not be considered in the computation of seniority. Probationary employees shall not be considered to have acquired seniority, except as provided in Section 2. After the completion of a probationary period, however, credit for seniority purposes shall be given for such probationary period.

Section 2. Computation of Seniority. Seniority rights in the classified service shall be based upon the length of service within a class, or in higher classes of positions in the same series. Where a classified employee is given an appointment to a position in the unclassified service designated in RCW 41.14.070, or where an employee is assigned to a separate division or task force under the direction and control of the Sheriff, such service shall be credited to such employee's seniority in the classified service and such employee may at the termination of such appointment or assignment return to his class in the classified service. No employee shall be penalized in seniority rights in accepting such unclassified position or assignment. Should no vacancy exist in the classified position held at the time of appointment or assignment such position shall be created by removing from like position, grade and classification the incumbent with lowest seniority standing. (Min. 7-13-98)

Section 3. Computation of Seniority - Not Retained. Seniority shall not be retained by any employee who has a break in service caused by termination, either voluntary or involuntary, from the Sheriff's Department PROVIDED, that any employee on layoff whose name is placed on the reemployment list pursuant to Rule XVIII, Section 2, shall retain seniority previously earned for a period not to exceed the life of the reemployment list. Seniority shall not be transferable between classifications, PROVIDED that seniority accrued as an Officer Candidate shall be included in the computation of seniority as a

Deputy Sheriff, as they are two designations within one classification. (Min. 6-14-82)

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Section 4. Computation of Seniority - Leave of Absence. Seniority shall not be accrued by any employee on authorized leave of absence without pay except as provided in Section 2. An employee taking an authorized leave of absence without pay shall retain seniority previously earned. Earned vacation and sick leave, or annual military leave of 15 days pursuant to Rule XXII, Section 4, shall not be considered leave of absence as referred to in this rule. (Min. 6-14-82)

Section 5. Computation of Seniority - Employee Transferring from Contracting City or Town. Any employee qualifying under Rule XXVIII shall be credited with the time employed by the police department of the contracting city or town immediately preceding the execution of a contract as provided in Rule XXVIII. This must be consecutive time not interrupted by a break in service. Time so earned shall not be credited to the employee until he has completed one year's probation with the Sheriff's Department. (Min. 6-14-82)

RULE XVII. SEASONAL EMPLOYMENTS

Employments in positions which occur, terminate, and reoccur periodically and regularly, regardless of the duration thereof shall be designated a seasonal position. Incumbents of such positions shall be known as seasonal employees. Whenever positions have been designated by the Commission as seasonal, employees regularly certified for and serving satisfactorily in such positions through one seasonal service period shall be entitled to status for the purpose of recertification for service in subsequent seasonal positions.

RULE XVIII. LAY-OFFS

Section 1. Procedure. Whenever an appointing power contemplates a reduction in staff because of shortage of funds, lack of work, or material reorganization of the department, notice shall be sent to the Civil Service Commission which shall cooperate with the appointing power in determining the advisable procedure and shall advise the appointing power of possible readjustment of personnel through reassignments of duty. When it is decided which positions are to be abandoned, emergency, temporary and provisional employees shall be laid off first. Then seasonal employees without seniority status and probationary employees shall be laid off. Permanent employees shall be the last to be laid off and then in inverse order of their length of service unless the appointing power can show sufficient cause to do otherwise. The Commission shall investigate any complaint by a permanent employee that lay-off was in bad faith. The Commission may approve an alteration in order of lay-off or, if it finds that the lay-off was irregular, it may order the reinstatement of the permanent employee or employees.

Section 2. Notice and Reemployment. Notice of lay-off shall be given in writing to the employee concerned and to the Commission at least two weeks before the effective date thereof. Permanent employees, probationary employees, or temporary appointment/promotion who have performed satisfactorily with satisfactory service who are laid off shall have their names placed on the reemployment list for the class to which their position was allocated, or a comparable class, and shall be certified for reemployment in order of length of service in the class or comparable class. (Min. 2-9-04; 7-13-81)

Section 3. Transfer in Lieu of Layoff. When a layoff is pending, employees affected shall be counseled and considered for transfer in lieu of layoff. Employees desiring to exercise this option shall be placed on a Special Transfer List. An employee may request a transfer to any vacant position

approved to be filled from the Special Transfer List. Employees shall be certified on the Special Transfer List in order of seniority. Appointment may be made upon showing that the transferee is capable of satisfactorily performing the duties of the position. Regular standing in the new position

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may be attained by the employee only through examination and regular appointment. An employee transferring to a new position under this option shall have the right based on seniority to return to his/her original job classification when a vacancy in that classification occurs. (Min. 11-9-09)

Section 4. Demotion for Economic or Administrative Reasons. Employees may be voluntarily demoted due to curtailment of expenditures, reduction in force, and for like causes. Employees accepting such voluntary demotions shall head the applicable eligible list in the order of their seniority, to the end that they shall be the first to be reemployed or reinstated in their former job class. This section shall apply to all such demotions occurring on or after June 15, 2010. (Min 8-8-10)

RULE XIX. DISCIPLINARY ACTIONS

Section 1. Procedure for Appointing Power. An appointing power may suspend, demote or discharge a permanent employee for inefficiency or for other just cause as provided in RCW 41.14.110. Any such action shall immediately be reported to the Civil Service Commission by the appointing power.

The Commission on its own initiative, or upon request of the appointing power, shall have the authority to require that every person holding an office, place, position, or employment under Chapter 41.14 RCW must continue to meet the physical requirements of the Civil Service Commission for continuing employment, as provided in 41.14.110(3). Such tests may include tests of physical fitness or manual skill or both, with the physical fitness to be determined by physical agility test or medical test or both.

Section 2. Procedure for Commission. A suspended, discharged, or demoted employee may appeal such action to the Commission within ten (10) days. In case of such appeal, the Commission shall within 10 days set a date for a public hearing which will be held within 30 days from the date of receipt, and may make such disposition of the case as it deems advisable including reinstatement with back pay, modification of the suspension order by reduction or any other action, or reversal. (Min. 6-11-84)

Section 3. Findings Reduced to Writing and are Binding. The Civil Service Commission shall cause its findings to be reduced to writing within ten (10) days of the conclusion of the investigation or hearing as provided in RCW 41.14.120. Such findings shall be final and binding as provided in RCW 41.14.120 and Rule V of these rules (Min. 8-13-84), unless a motion for reconsideration filed as provided in the following section. (Min. 8-9-10)

Section 4. Reconsideration. A party may move for reconsideration of the Commission's Findings. Such motion must be filed with the Commission, and served on the opposing party, within ten (10) days of the issuance of the Findings. The motion shall state the specific grounds upon which relief is requested, and may be supported by affidavits or declarations. The opposing party shall then have ten (10) days to file a response, which may be supported by affidavits or declarations. A motion for reconsideration will be deemed denied, unless the Commission schedules a hearing on the motion within ten (10) days of the receipt of the opposing party's response. The hearing on the motion shall be limited to the written materials submitted by the parties and brief oral argument; and shall otherwise be conducted as provided in Rule V. At the conclusion of the hearing, the Commission shall either grant or deny the motion for reconsideration. The Commission may, as part of its decision, modify Findings. (Min 8-9-10)

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RULE XX. GRIEVANCE PROCEDURE

Section 1. Right of Employee to Submit Grievance. Employees who have grievances created by work situations shall have the right to submit such grievances for orderly adjudication thereof. (Min. 12-11-78)

Section 2. Steps in the Grievance Procedure.

Step 1

(a) The employee and/or his representative will explain the situation to the employee's immediate supervisor.

(b) Within three (3) days thereafter the immediate supervisor will either alone or together with his superiors reach a decision and communicate it to the employee in writing.

Step 2

(a) If the grievance is not settled at the first step, the employee and/or his representative will submit the grievance to the appointing power.

(b) The appointing power will notify the employee of his decision within two (2) days after receipt of the notice of grievance.

Step 3

(a) If the grievance is not settled at the second step, the employee shall within three (3) days submit the grievance to the Civil Service Commission.

(b) The Commission will notify all interested parties of its decision within seven (7) days of receipt of the notice of grievance. The decision of the Commission shall be final.

RULE XXI. UNION RECOGNITION

Section 1. Right to Organize. All employees shall have the right to form or join a labor union of their choice.

Section 2. Right to Bargain Collectively. Employees shall have the right to bargain collectively with the appointing power and the Board of County Commissioners of Spokane County on all matters relating to salaries, working conditions and similar subjects and the employees' viewpoint may be presented by representatives of their choice.

RULE XXII. LEAVES

Section 1. Leave Without Pay. Subject to the notice being given the Commission, the appointing power may grant a permanent employee a leave of absence without pay. No leave without pay shall be granted except upon written request of the employee. Such leave shall be in writing and signed by the appointing power. A copy shall be filed in the office of the Commission. Upon the expiration of a regularly approved leave without pay failure of the employee to return at the time specified at the expiration of the leave shall be cause for discharge.

Section 2. Vacation. Vacation leave with pay shall be granted to all employees in the classified service to the same extent as is currently practiced and approved by the Board of County Commissioners of Spokane County.

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Section 3. Sick Leave. Sick leave with pay shall be granted by the appointing power at the rate currently in effect and approved by the Board of County Commissioners of Spokane County. (Min. 8-9-93; 8-8-77)

Section 4. Military Leave. Employees who are members of the National Guard or any of the Armed Forces Reserve Corps may be granted leaves not exceeding fifteen days in any given calendar year to participate in training courses. Military leave shall also be granted for any period of active military duty.

RULE XXIII. REPORTS

Section 1. Reports by Appointing Power. Appointing power shall report to the Civil Service Commission in writing upon forms prescribed by it all employments and all changes whatsoever in the status of personnel supplying the name of the appointee or employee, the title of his position, the date of commencement of service, and change recommended or made therein.

Section 2. Reports by Civil Service Commission. The Civil Service Commission shall prepare and submit to the Board of County Commissioners of Spokane County an annual report on or before the 30th day of April of the activity of the Civil Service Commission. Included shall be a copy of the personnel rules, suggestions for improvements in personnel procedures, a statement of financial requirements for efficient administration, and recommendations for necessary changes. (Min. 1-9-89)

RULE XXIV. CERTIFICATION OF PAYROLL

Upon compiling payroll or claims containing the names of any person or persons to be paid for services rendered in the classified service and before issuing warrants or checks for payment of such services, the paying officer of such county shall submit the payroll or claims to the Chief Examiner of the

Civil Service system for examination to determine whether the names appearing thereon have been appointed, employed, promoted, demoted, or their salary increased or decreased in conformity with the provisions of Chapter 41.14 RCW and these rules. The paying officer shall not issue any check, warrant, voucher, or payment for personal services which has not been properly certified in writing by the Chief Examiner or a member of the Civil Service Commission.

RULE XXVIII. CITY CONTRACTS TO OBTAIN SHERIFF'S OFFICE LAW ENFORCEMENT SERVICES

Section 1. City Police Department Employees Requesting Transfer. When any city or town shall contract with the Spokane County Sheriff's Office to obtain law enforcement service to the city or town pursuant to RCW 41.14.250, 41.14.260 and 41.14.270, employees of the police department of such city or town may request a transfer to the Spokane County Sheriff's Department subject to the rules of the Spokane County Civil Service Commission.

Section 2. Eligibility of City Employees to Request Transfer.

1. At the time the contract is entered into, any employee holding a permanent position in the

department of the city or town who was,

(a) at the time of such contract, employed exclusively or principally in performing the powers, duties and functions which are to be performed by the County Sheriff's Office under such contract, and

(b) who will, as a direct consequence of such contract, be separated from the employ of the city or town, and

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(c) who meets the minimum standards and qualifications of Civil Service and the Sheriff's Department may request a transfer to the Sheriff's Department subject to the rules of the Spokane County Civil Service Commission.

2. To be eligible to request a transfer from a contracting city to the Sheriff's Department, the employee requesting transfer to a position as Deputy Sheriff must meet the following requirements:

(a) Must be at least 21 years of age.

(b) Height and weight proportional and sufficient for physical restraint of suspects and/or inmates.

(c) Must be a high school graduate or equivalent.

(d) Must possess vision of at least 20/100 in both eyes correctable to 20/20 in the better eye, 20/30 in the lesser eye.

(e) Must possess normal hearing and normal color vision sufficient to meet the requirements of the position.

(f) Must meet the minimum medical and health standards adopted by the Spokane County Civil Service Commission for the position.

(g) Any employee requesting transfer to a position other than Deputy Sheriff, must meet the minimum requirements of that classification as specified elsewhere in the rules.

3. Any employee of the police department of the contracting city or town who requests a transfer will be required to pass the entrance physical agility test required of all entry level employees for the Sheriff's Department for that classification; and will also be required to successfully complete the entry level written examination for that classification. Any transferring employee must be processed through the same background investigation as all other entry level employees including but not limited to such procedures as the Personal History Form, polygraph screening, and medical examinations. Any transferring employee shall be eligible for entrance level positions only.

4. Any employee holding a permanent position in the police department of the contracting city or town who meets the minimum requirements of Civil Service as set forth in Paragraphs 1, 2 and 3 above may request a transfer to the Sheriff's Department. Such request for transfer must be filed with the Spokane County Civil Service Commission and the legislative authority of the contracting city or town within 90 days after the effective date of the contract and must be in writing on forms provided by the Spokane County Civil Service Commission. Any employee failing to file a written request to transfer within the 90-day period shall forfeit any rights under RCW 41.14.250 through 41.14.280. The city or town shall, upon receipt of notice of transfer, transmit to the Spokane County Civil Service Commission a record of the employee's service in the police department of the city or town which shall be credited to such employee as a part of his period of employment in the Spokane County Sheriff's Office as per 41.14.260 and Rule XVI.

5. Any person meeting the requirements of Section 1, Subsections 1 through 4, shall be certified to the Sheriff for appointment to whatever duties in that entry level classification the Sheriff feels are in the best interest of the Department and the individual. Only so many of the transferring employees shall be placed upon the payroll of the Sheriff's Office as the Sheriff determines are needed to provide the contracted services. These needed employees shall be taken in order of seniority and the remaining

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employees who request transfer as provided in this Rule shall head the list of their respective classification in order of their seniority to the end that they shall be the first to be employed when an appropriate position becomes available, being considered prior to any person on the entrance eligible list for that classification in compliance with Rule XII.

Section 3. Rights, Benefits and Privileges. A transferring employee shall be on probation for one year, the same as all entry-level employees as provided in RCW 41.14.130 and 41.14.260.

The transferring employee shall receive a salary at least equal to that paid other entry-level employees in that classification.

A transferring employee shall have all rights, benefits and privileges as provided for in the Spokane County Code and these rules to which he would have been entitled had he been an employee of the Spokane County Sheriff's Office from the beginning of his employment with the police department of the contracting city or town less any vacation time, sick leave, etc. already used or lost.

The transferring employee, who upon completion of his one year of probation, has a total of more than three consecutive years of service, may be eligible to take the next promotional examination for Detective-Corporal or the first promotional examination for the classification to which appointed. (Min. 1-22-82)

RULE XXIX. SEVERABILITY CLAUSE

If any section, sentence, clause or phrase of these rules should be held to be invalid or unconstitutional, the validity or constitutionality thereof shall not affect the validity, or constitutionality of any other section, sentence, clause or phrase of these rules. (Min. 3-8-82)

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SPOKANE COUNTY CIVIL SERVICE COMMISSIONERS

Howard Braham
Burke Jackowich
Rick Mendoza
Jim Nicks
Steve Twiggs

CHIEF EXAMINER

Nancy J. Paladino

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RULES AND REGULATIONS
of the
SPOKANE COUNTY CIVIL SERVICE COMMISSION

AS PROVIDED FOR IN

RCW 41.14.060

Revised and Reprinted – June 8, 2016t



CITY OF BATTLE GROUND

CIVIL SERVICE RULES

REVISED:
DECEMBER 6, 2016

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CHAPTER 1 – GENERAL PROVISIONS

1.01 AUTHORITY AND APPLICATION.

These rules are promulgated pursuant to the authority granted by RCW Chapter 41.12. These rules are applicable to proceedings before the Civil Service Commission and should be read in conjunction with the specific provisions of RCW Chapter 41.12, and the enabling ordinance providing for the civil service.

1.02 SCOPE AND PURPOSE.

These rules solely govern the continuing administration of the Civil Service System of the City of Battle Ground. The purpose of these rules is to assure that the Civil Service System in the City of Battle Ground is administered in accordance with the ordinances of the City of Battle Ground and that all proceedings before the Commission are conducted in an orderly, fair and timely manner.

1.03 PRESUMPTION OF VALIDITY.

The Civil Service System implemented by these rules substantially accomplishes the purposes of RCW Chapter 41.12. Variation from state models are based on local conditions and are intended to maintain the purposes of civil service systems: merit selection, tenure and an independent Civil Service Commission. These rules are presumed to be valid and shall be upheld unless in direct conflict with the purposes of RCW Chapter 41.12.

CHAPTER 2 – ADMINISTRATION AND OPERATIONS

2.01 MEMBERSHIP.

The members of the Civil Service Commission shall serve without compensation. Each must be a citizen of the United States and a resident of the City of Battle Ground for at least three (3) years immediately preceding such appointment and must be a qualified elector of Clark County. The City Manager, pursuant to RCW 41.12.030, appoints three members.

2.02 TERM OF OFFICE.

If any Civil Service Commissioner resigns before the end of his or her term, a new Commissioner shall be appointed to serve the remainder of such term. Members may be re-appointed. The term of office shall be for six (6) years.

2.03 QUORUM.

Two members of the Commission shall constitute a quorum. The votes of any two members of such Commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the Commission. Votes ending in a tie are presumed to fail.

2.04 ORGANIZATION.

- 2.04.01 CHAIR. The position of Chair shall rotate every two years between the Commissioners in order of position number. The Commission functions under applicable statutes and consistent with the rules herein or hereinafter adopted. These rules are promulgated pursuant to RCW 41.12.030 and apply to the civil service system for the police department. Should the Chair resign or be removed from the position prior to the expiration of his/her term, the Vice-Chair shall be appointed to the position of Chair to serve the remaining term.
- 2.04.02 VICE-CHAIR. The Vice-Chair shall be the member who will serve as the next Chair. In the absence of the Chair, the Vice-Chair shall preside over the meeting.

2.05 POWERS AND DUTIES.

The Civil Service Commission shall:

- 2.05.01 Convene regular meetings or special meetings as needed.
- 2.05.02 Adopt rules and regulations not inconsistent with Washington State Law for regulations of personnel administration within the classified services.
- 2.05.03 Appoint a Civil Service Examiner-Secretary in conformity with RCW 41.12.040 and the rules herein.
- 2.05.04 Maintain minutes of meetings and records of proceedings and actions.
- 2.05.05 Provide for the holding of competitive tests under the supervision of the Secretary to determine the relative qualifications of persons for employment in the classified services, and prepare lists of eligible candidates for vacancies and certify same.
- 2.05.06 Assure that employees are selected or promoted from lists provided by the Commission.
- 2.05.07 Hear and determine appeals arising from the administration of Chapter 41.12 RCW, and these rules and regulations.
- 2.05.08 Investigate and report on all matters relating to the enforcement and effect of Chapter 41.12 RCW, and those rules and regulations.
- 2.05.09 Exercise such powers and duties as are imposed upon the Commission by Chapter 41.12 RCW.

2.06 MEETINGS.

In the necessary conduct of its work, the Commission shall meet on the first Tuesday of each month at 12:30 p.m. in the Battle Ground City Hall Council Chambers unless there is no pending business requiring Commission action. Special meetings of the Commission may be held at such times and places as may be determined from time to time by the Commission, provided that the determination to hold the special meeting, and the specific agenda items are the only matters which shall be acted upon by the Commission at such special meetings. All activities of the Commission shall be conducted in a manner which is in compliance with the Open Public Meetings Act, as amended, by the State of Washington, Chapter 42.30 RCW. All Commission meetings or hearings, regular or as required, shall be open to the public provided, however, that the Commission may meet in Executive Session as authorized by the Open Public Meetings Act (RCW 42.30.140 (1) and (2)).

2.07 RULES OF ORDER.

Robert's Rules of Order shall be final authority on all questions of procedure and parliamentary law not otherwise provided by these rules. However, with the concurrence of two Commissioners such rules may be waived or modified. In quasi-judicial proceedings, the Commission shall be guided, but not bound by, the Civil Rules for Superior Court.

2.08 COMMISSIONERS – CHALLENGE.

Any challenge to Commissioner participation at a hearing shall be made by an interested party prior to the commencement of a hearing. The unchallenged Commissioners shall review and rule on the challenge prior to proceeding with the hearing. Failure to timely raise a challenge shall constitute a waiver of the challenge by the party unless, in the exercise of reasonable diligence, a basis for challenge is unknown by a party prior to commencement of a hearing.

2.09 COMMISSIONERS – CHALLENGE – NECESSITY.

If, as a result of disqualification(s) pursuant to Rule 2.08, there is no longer a lawfully constituted quorum available, then by reason of necessity, the Commission would allow for a temporary appointment to be made for that hearing.

2.10 OFFICE HOURS.

The office and address of the Civil Service Commission is 109 SW 1st Street, Suite 221, Battle Ground, WA 98604. The regular office hours of the Civil Service Examiner-Secretary shall be 8:00 a.m. to 5:00 p.m.

2.11 PUBLIC RECORDS.

Public records of the Commission shall be available for inspection and copying during the regular office hours of the Commission staff.

No fee will be charged for inspection of public records. Inspection will be permitted during office hours in a space provided by the Commission staff, and under its supervision, and must be accomplished without excessive interference with the essential functions of the Commission. Copies will be made available at actual cost or as provided by City ordinance.

2.12 RECORD OF PROCEEDINGS.

The Commission shall keep a record of its proceedings. The record of the Commission will not include a written verbatim report of proceedings unless ordered. The Commission may retain a court reporter to record all or part of a proceeding. In addition, a party to a proceeding, at his/her own expense, may have a court reporter record all or part of a proceeding. On appeal or review, costs of transcription may be recovered by the Commission, of a prevailing party, at the discretion of the reviewing court or the Commission. Upon appeal or review, transcription and certification of a record or proceedings shall be arranged by the Civil Service Examiner-Secretary.

2.13 REPORTS – CHIEF OF POLICE.

The Chief of Police shall immediately report to the Civil Service Examiner-Secretary in such detail and on such forms as the Civil Service Examiner-Secretary may prescribe:

- 2.13.01 Every appointment, transfer, promotion, demotion, reduction, layoff, reinstatement, suspension, leave of absence without pay, return to duty, change of title, change of compensation;
- 2.13.02 Every separation from service with the reasons therefore;
- 2.13.03 Every refusal or failure to accept appointment by a person whose name has been certified.

CHAPTER 3 – CIVIL SERVICE EXAMINER-SECRETARY

3.01 CIVIL SERVICE EXAMINER-SECRETARY – APPOINTMENT.

A Civil Service Examiner-Secretary (hereinafter, “Secretary”) shall be appointed by the Commission pursuant to RCW 41.12.040.

3.02 SECRETARY – DISCIPLINE.

The Secretary may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case of members of the classified service.

3.03 SECRETARY – AUTHORITY.

In addition to acting as Secretary of the Commission, the Secretary shall:

- 3.03.01 Be the general manager and executive officer of the Civil Service Department, responsible to the Commission, and shall direct the activities of all personnel in the Civil Service Department, (hereinafter, “Department”), including their appointments and removals;
- 3.03.02 Delegate duties where necessary and supervise the work of all persons employed in the Department, including the preparation, conduct, and scoring of examinations, and maintenance of the classification plan;
- 3.03.03 Report to the Commission from time to time as directed concerning the details of the work of the Department;
- 3.03.04 Prepare the Civil Service budget for the Department, approve accounts, and administer expenditure of funds appropriated for the operation of the Department;
- 3.03.05 Classify all Civil Service positions in the classified service, maintain a schematic list of all such classes in the classification plan, and prepare and maintain specifications for each class;
- 3.03.06 Determine which examinations shall be conducted, the minimum qualifications of applicants, the subjects to be covered in each examination, methods of testing, and the relative weights to be given to the various parts of the examination; supervise the conduct of the examinations, appointing such experts, special examiners, and other persons he or she may deem necessary; decide all questions relating to the eligibility of applicants, the admissibility of applicants to the examinations, extension of time and all

questions arising during the course of an examination; prepare and submit a report prior to and after each examination to the Commission, together with a report on all appeals from rulings or appeals from any part of the examination; and [Note: see Rule 8.01, "Ordering Examinations."]

- 3.03.07 Perform all other functions necessary for the proper carrying-out of these rules and the provisions of law relating to the Civil Service System, and such additional duties as may be assigned to the Secretary from time to time by the Commission.

3.04 REVIEW OF AND APPEAL FROM ACTIONS OR DECISIONS OF THE SECRETARY.

- 3.04.01 The Commission on its own motion may review or modify any action or decision of the Secretary.
- 3.04.02 Any person adversely affected by any action or decision of the Secretary may request the Commission to review the action or decision. Such request shall be in writing setting forth the reasonable certainty of the action objected to, the grounds supporting the request, and the relief sought, and must be made within ten (10) business days from the date of the notice of such action unless established otherwise in the Rules. The Commission shall thereupon, if in its opinion good cause is shown, conduct a hearing thereon.

CHAPTER 4 – DEFINITIONS

The following words and phrases shall have the meanings hereinafter described unless the context in which they are included clearly indicates otherwise.

- 4.01 ACTUAL SERVICE. Time in which a given employee has been engaged under Civil Service appointment in the performance of the duties of a position or positions and shall include absences with pay.
- 4.02 ALLOCATION. The locating or placing in the classified service of a position in the class appropriate to it on the basis of duties and responsibilities and required qualifications of such position.
- 4.03 APPLICANT. Anyone who has filed an application to take a Civil Service examination.
- 4.04 APPOINTING AUTHORITY. The person or persons authorized to hire, promote or discharge employees.
- 4.05 APPOINTMENT
 - 4.05.01 APPOINTMENT – REGULAR. The appointment of a certified eligible.
 - 4.05.02 APPOINTMENT – PROVISIONAL. A limited appointment of (a) certified [or non-certified] person to a classified position which is not vacant, but is currently unfilled due to an authorized leave of absence; or (b) a non-certified person to a classified position for which there is no current eligible roster.
 - 4.05.03 APPOINTMENT – TEMPORARY. A limited appointment other than from an eligible list for the purpose of performing work belonging in the classified service. A reduction of a regular employee is not a temporary appointment. Temporary appointment includes emergency appointment.
- 4.06 ASSIGNMENT. An employee may be assigned to a position which carries additional salary and additional limited responsibilities and is within the scope of the specification for the class from which assignment is made.
- 4.07 BREAK IN SERVICE. A separation from Civil Service status with a loss of accumulated service credit as occasioned by a “quit”, “resignation”, “discharge” or “retirement”.
- 4.08 CANDIDATE. Any applicant who has completed, or is in the process of completing, a Civil Service examination.

- 4.09 CAUSE. Cause shall mean good, sufficient or just cause as determined by the Commission; exercised by the appointing authority in good faith and without discrimination on the basis of religion, politics or other protected classification; and, in consideration of the total context of a disciplinary action, including procedural fairness and consideration of an employee's work record.
- 4.10 CERTIFICATION. [Certified Eligible List] A list of names from an eligible list transmitted by the Civil Service Commission to an appointing authority from which such appointing authority may fill a vacancy.
- 4.11 CERTIFY. Verification to the appointing authority that a list of names of candidates for employment has been selected from the list of persons tested and found eligible for employment.
- 4.12 CITY. The City of Battle Ground.
- 4.13 CIVIL SERVICE EMPLOYEE. Any employee who has Civil Service status.
- 4.14 CIVIL SERVICE LIST. See Eligible List.
- 4.15 CLASS. A position or group of positions designated by the Commission as having similarity in duties and responsibilities, by reason of which the same examination may be used for each position in the group.
- 4.16 CLASS SERIES. Two or more classes which are similar as to line of work but which differ as to degree of responsibility and difficulty and which have been arranged in a ladder of steps in a normal line of promotion, such as [Police Officer, Police Sergeant, Police Lieutenant].
- 4.17 CLASS SPECIFICATION. A description of the essential characteristics of a class and the factors and conditions that separate it from other classes, written in terms of duties, responsibilities and qualifications.
- 4.18 COMMISSION. The Civil Service Commission. "Commissioner" means any one member of the Commission.
- 4.19 CONTINUOUS SERVICE. Employment without interruption, except for absences on approved leave or absence to serve in the armed forces of the United States.
- 4.20 DEMOTION. Removal of an employee, for cause, from a higher to a lower class of employment or salary step within a class.

- 4.21 DEPARTMENT. Any department of the City subject to Civil Service as established by ordinance. The legal head of any such department is the “Department Head” or Department Head’s designee.
- 4.22 DISCHARGE. Termination, separation, dismissal, or removal from the service for cause.
- 4.23 ELIGIBLE. Anyone qualified for a given class through examination and places on the proper eligible list; also, “Certified list.”
- 4.24 ELIGIBLE LIST. A list of successful examinees for a given class from which certification may be made to fill vacancies in such class; also, “List of Eligibles.”
- 4.25 EMPLOYEE. Anyone holding a position in the Civil Service System of the City.
- 4.25.01 EMPLOYEE – REGULAR. Any employee who has been appointed from a certification and who has satisfactorily served the full probationary period.
- 4.25.02 EMPLOYEE – TEMPORARY. Any employee appointed to fill an emergency, temporary or short-term need [or to fill a position for which no list is available].
- 4.25.03 EMPLOYEE – EXEMPT. Any employee in a position of employment which is not subject to Civil Service rules and regulations, and in which one serves at the discretion of the appointing authority.
- 4.25.04 EMPLOYEE – PROBATIONARY. A person appointed from a certification who has not yet completed the specified trial period of employment.
- 4.25.05 EMPLOYEE – PROVISIONAL. Any employee appointed provisionally to a position.
- Note: A regular employee is the only employee with rights under Rule 19.01.
- 4.26 EXAMINATION. The process of testing the fitness and qualifications of applicants for positions in a class.
- a. EXAMINATION – OPEN [or ENTRANCE]. An examination open to any member of the public meeting the requirements as stated in the official bulletin announcing the examination.

- b. **EXAMINATION – PROMOTIONAL.** An examination limited to employees meeting the requirements stated in the official bulletin announcing examination.
- 4.27 **EXAMINATION BULLETIN.** An examination announcement containing basic information about the class of position, the requirements for filing, how to apply, and the other pertinent information. The examination announcement shall be posted in the City Hall breakroom, Police Department breakroom and on the public notice board.
- 4.28 **FINAL EXAMINATION SCORE.** Total of earned exam score plus additional veteran's preference or service credit points for which an applicant is eligible.
- 4.29 **IN-HOUSE LIST.** A list of the names of civil service employees, in the order of final examination rating, who have passed an examination for an entrance position or class.
- 4.30 **LAYOFF.** The interruption of service and pay of any regular or temporary employee because of lack of work or funds, except that the term shall also apply to the separation of temporary employees who have completed the stipulated period of employment.
- 4.31 **OFFICIAL NEWSPAPER.** The newspaper designated as official by the City, or as otherwise designated by the Commission.
- 4.32 **POSITION.** Any group of duties and responsibilities in the service of the City which one person is required to perform as full [or part-time] employment, and which is included in the City budget.
 - a. **POSITION – REGULAR.** A position included in the official annual budget that is neither specified as seasonal employment, nor limited for a period of less than the budget year, unless the Department Head certifies to the Civil Service Commission that such position will not be continued in the succeeding year's budget.
 - b. **POSITION – PERMANENT PART-TIME.** Employment in a permanent position for work on a basis of less than eight hours a day or less than forty hours a week, but on a regular schedule.
- 4.33 **PROBATION OR PROBATIONARY.** The status of an employee during a trial period following a permanent appointment from an eligible list. This trial period is part of the examination process and is a working test during which an employee is required to demonstrate, by actual performance of the duties, fitness for the position to which certified and appointed.

- 4.34 PROMOTION. The appointment of an employee to a higher class or to a position of higher skill or responsibility level. Any change in employment other than by a temporary or provisional appointment (1) from a lower class to any position in any higher class in the same provisional series of classes as determined by the Commission, or (2) to a position which although an entrance position is of higher skill and/or responsibility, shall constitute a promotion.
- 4.35 QUIT. Any voluntary separation of an employee from City service without acceptance of a resignation by the appointing authority.
- 4.36 REALLOCATION. The allocation of a position to a different class in the Classification Plan.
- 4.37 REDUCTION. The removal of an employee from a higher class to a lower class of employment for reasons other than cause.
- 4.38 LIST. A list of candidates for employment who have passed an employment examination, whose names may be chosen and certified by the Commission for submission to the appointing authority for consideration for employment. See 4.24 "Eligible List."
- 4.39 REINSTATEMENT. Reappointment of a regular employee to a position in a class in which the employee was a regular employee.
- 4.40 REINSTATEMENT LIST. A list of names of persons who were regular employees in a given class and who were laid off and are entitled to reinstatement in such class. A reinstatement list may also include former employees on disability retirement who are capable mentally and physically for reinstatement.
- 4.41 RESIGNATION. A written request by an employee for separation from a class or from the City service. To be valid, such requests must show written approval of the appointing authority.
- 4.42 RETENTION CREDIT. The employee's service credit in a given class or position and any higher position in a series or any other credit used by the Commission to determine order of lay-off.
- 4.43 RETIREMENT. The termination of employment for service or disability pursuant to applicable retirement laws.
- 4.44 SECRETARY. Civil Service Examiner-Secretary as defined in Chapter 3.
- 4.45 STANDING – REGULAR. The full Civil Service status of a regular employee.

- 4.46 SUSPENSION. Temporary removal of an employee from employment with or without pay, for cause, or pending determination of charges against the employee which could result in demotion or discharge.
- 4.47 UNCLASSIFIED SERVICE. The positions in the City that are not subject to civil service and are identified as exempt positions, assignment levels, or other position authorized by law.
- 4.48 VETERAN'S PREFERENCE. Preference in examinations and employment, based on military service, as provided and defined by applicable laws.

CHAPTER 5 – RULE-MAKING

5.01 AMENDMENTS OF RULES.

The Commission may amend these rules or adopt new rules by majority vote of the Commission at any regular or special meeting of the Commission.

5.02 EFFECTIVE DATE OF RULES.

All rules and amendments shall become effective immediately upon their adoption by the Commission, unless some later date is specified therein.

5.03 COPIES OF RULES.

A copy of these rules and a copy of all subsequent rules or amendments shall be sent as soon as practical after adoption to the City Clerk and to each affected department of the City. A copy shall be maintained in the office of the Secretary for public inspection, and copies shall be available for free public distribution as required by state law.

5.04 EFFECT OF RULES.

The terms and conditions of Civil Service employment are governed by these rules, and applicable statute and ordinance. No employee shall have a property interest in or as a result of these rules. These rules, and rules the Commission may enact, regulate the mode and appointment of tenure in the Civil Service, and employees are subject to these rules and amendments thereto.

CHAPTER 6 – CLASSIFICATION

6.01 CLASSIFICATION PLAN.

A class specification shall be prepared and maintained for each class in the Civil Service System. Such specifications shall describe generally the class, distinguish it from other classes, give examples of typical duties of the class, and contain, when applicable, a statement of those qualifications for applicants for positions in the class not otherwise provided in these rules.

6.02 ADMINISTRATION OF POSITION CLASSIFICATION.

The Secretary will make, or cause to be made, position classification studies of individual positions or groups of positions whenever it is deemed necessary; whenever the duties or responsibilities of existing positions have undergone significant changes; whenever notification is received that new positions are to be established by the City Council; or upon request of an appointing authority or an affected employee if title classification of such position has not been reviewed within the last 12 months.

6.03 CLASSIFICATION OF POSITIONS.

6.03.01 Each position in the classified service shall be classified at the direction of the Secretary and allocated to its appropriate class in accordance with the character, difficulty, and responsibility of its designated duties. Positions shall be allocated to a given class when:

- a. The same descriptive title may be used to designate each position in the class;
- b. The same level of education, experience, knowledge, ability, and other qualifications may be required of incumbents; and
- c. Similar tests may be used to select incumbents.

6.03.02 All classes involving the same character of work but differing as to level of difficulty and responsibility shall be assembled into a class series.

6.03.03 Compensation or salary shall not be a factor in determining the classification of any position or the standing of any incumbent.

6.03.04 In allocating any position to a class, the specification for the class shall be considered as whole. Consideration shall be given to the general duties,

the specific tasks, and the responsibilities, the required and desirable qualifications for such position, and the relationship to other classes. The examples of duties in a specification shall not be construed as exclusive or restrictive, and an example of a typical task or a combination of two or more examples shall not be taken, without relation to all parts of the specification, as determining that a position should be included within a class.

6.04 EFFECT OF CLASSIFICATION CHANGES ON INCUMBENT.

- 6.04.01 Whenever the title of a class is changed without a change in duties or responsibilities, the incumbent shall have the same status in the retitled class as held in the former class.
- 6.04.02 Whenever a position is reclassified from one class to a higher class, the incumbent shall not continue in the same position, except temporarily, without gaining eligibility for the new class by examination and receipt of an appointment in accordance with these rules.
- 6.04.03 Whenever a position is reclassified from one class to a lower class, the regular incumbent may, with the concurrence of the appointing authority and the Commission, elect to take a voluntary reduction to the lower class or, at the employee's option and with the concurrence of the appointing authority and the Commission, may remain in the reclassified position for a temporary period as limited by the Commission only until transfer can be made to another position in the class in which the employee has regular standing.

6.05 POSITIONS EXEMPT FROM CIVIL SERVICE

Police Chief
Administrative Assistant to the Chief of Police

CHAPTER 7 – APPLICATIONS AND APPLICANTS

7.01 GENERAL REQUIREMENTS FOR FILING APPLICATIONS.

- 7.01.01 All applicants for examinations for positions in the classified Civil Service must file a written application on a form prescribed by the Secretary; no one shall be admitted to any examination without having first filed an application on the proper form, giving fully, truthfully, and accurately all information required.
- 7.01.02 In order to file an application for examination, the applicant must:
- a. Meet the requirements specified in these rules and in the official examination bulletin as of the closing day of the official filing period;
 - b. Produce evidence of education, training, experience, or any lawful requirement for a class, as directed by the Secretary.
- 7.01.03 Time for filing applications:
- a. All applications for examination shall be filed with the Secretary during office hours and within the time limit fixed in the official announcement of the examination. Applications received by mail in the office of the Secretary must be postmarked on or before the closing date.
 - b. The time for filing applications may be extended by the Secretary as the needs of the service require, provided that the examination shall then be re-advertised in the official newspaper.
- 7.01.04 ENTRY LEVEL APPLICANTS. Prior to completion of an application, those interested in applying as entry level must go through Public Safety Testing. Upon receipt of the Public Safety Testing score the Secretary shall add the written score to the active Entry Level Public Safety Testing List. The list will be maintained from the highest score to the lowest score received. When it is deemed necessary by the Chief of Police, the Secretary will notify the highest scoring applicants to begin the City's application process.

7.01.05

LATERAL APPLICANTS:

Positions may be filled by the use of lateral entry applicants from other law enforcement agencies. The minimum qualifications for lateral entry applicants into the Battle Ground Police Department are as follows:

- a. Applicant shall have successfully completed an approved basic law enforcement academy within the state where they served and served as a Commissioned Law Enforcement Officer for at least two years. However, if there has been a break in full-time law enforcement employment of twenty-four (24) months or greater, the applicant shall be ineligible for lateral entry and would need to apply as an Entry Level Applicant (7.01.04).

7.02 PROMOTIONAL EXAMINATIONS.

7.02.01

An application shall be accepted from any regularly appointed employee in the classes from which promotion is allowed who, in addition to meeting the requirements of Rule 7.01.01, has the required service credit designated in the official bulletin and promotional eligibility as defined below:

a. Promotional Eligibility

1. Two (2) years experience as a full time police officer.
2. Notwithstanding the requirements noted above, to be admitted for a promotional examination, a candidate must have:
 - i. Passed probation with the Battle Ground Police Department.
 - ii. Served at least two (2) years in the next lower grade.

7.02.02

When designated in the official bulletin, the Secretary may permit regular employees and probationers to file for and take a promotional examination for delayed eligibility if within thirty days of accepting applications; they meet lower specified minimum service requirements in the classes from which promotion is allowed.

7.02.03

In the event less than three (3) eligible candidates are available from within the City of Battle Ground Police Department, or in the event no one attains a passing score on the promotional examination given, the

commission may direct the Examiner to advertise the examination to include personnel outside the City of Battle Ground.

7.03 SPECIAL REQUIREMENTS.

7.03.01 The Secretary may prescribe such limits and such other specific requirements, physical or otherwise, as in the Secretary's judgment are required by the work to be performed.

7.04 CONDITIONAL ADMISSION.

If there is reasonable doubt as to whether the applicant meets the minimum requirements, the Secretary may order that the applicant be admitted to the examination on the condition that the particular requirements are met to the satisfaction of the Secretary before the applicant is enrolled on an eligible list.

7.05 REJECTION OF APPLICANT OR ELIGIBLE.

The Secretary may reject an applicant for examination, withhold from a list or from certification the name of an eligible, or remove from a list the name of an eligible if the applicant or eligible:

- 7.05.01 Does not meet the requirements set forth in these rules or in the bulletin announcing the examination;
- 7.05.02 Is physically or mentally unfit to perform the duties of the position sought;
- 7.05.03 Has been convicted of any felony or a misdemeanor involving moral turpitude (see Chapter 9.96A RCW);
- 7.05.04 Has been dismissed or has resigned in lieu of discharge from any position, public or private, for any cause which would be a cause for dismissal from City service or has an unsatisfactory record of employment in the City service or with any other agency or firm;
- 7.05.05 Has made any material false statement or has attempted any deception or fraud in connection with this or any other Civil Service examination;
- 7.05.06 Fails to appear for fingerprinting or other investigation as required;
- 7.05.07 Has assisted in preparing the examination for which application is sought or has in any other manner secured confidential information concerning

such examination which might give an unfair advantage over other applicants in the examination;

- 7.05.08 After notification, did not promptly appear at the time and place designated for the examination;
- 7.05.09 Has been discharged from the armed forces under dishonorable conditions;
- 7.05.10 Fails the physical agility test;
- 7.05.11 Answers yes to any of the automatic disqualifiers identified by the City in the application packet;
- 7.05.12 For other material reasons.

7.06 DEBARMENT FROM EMPLOYMENT.

- 7.06.01 No one who has been dismissed from the Service for cause involving moral turpitude shall be allowed to again enter the Service, and anyone dismissed for other good cause shall be allowed to again enter the Service only by express consent of the Secretary.
- 7.06.02 Any applicant for appointment, promotion, reemployment, increase of salary, or other personal advantage, who shall directly or indirectly pay or promise to pay any money or other valuable thing to anyone whatever for or on account of such actual or prospective advantage, shall be ineligible for any further employment in the Civil Service.

7.07 NOTICE OF NON-ACCEPTANCE.

Anyone against whom action is taken under Rule 7.05 shall be notified promptly by the Civil Service Department of the reasons therefore by either oral notice at the time of filing the application and/or written notice mailed to the applicant or eligible.

7.08 ADMISSION TO EXAMINATION PENDING APPEAL.

The Secretary may admit to the examination anyone whose application was not accepted, pending final disposition of an appeal, such admission to be without prejudice to either the City or the applicant.

7.09 AMENDMENT OF APPLICATION.

The Secretary may permit any applicant, before or after acceptance of the application form, to amend the application or to file an amended application.

7.10 APPLICATIONS NOT RETURNED.

All applications when completed and filed become the property of the Commission and thereafter may not be returned to the applicant.

7.11 APPLICATION FEE. [Reserved.]

CHAPTER 8 – EXAMINATIONS

8.01 ORDERING EXAMINATIONS.

An examination shall be ordered whenever it is deemed to be in the best interest of the City. The Secretary shall administer examinations as provided by these rules.

8.02 TYPES OF EXAMINATIONS.

8.02.01 NOTICE OF EXAMINATION.

Examination notices shall be posted in the City Hall breakroom, Police Department breakroom, and on the public notice board no less than fourteen (14) days preceding the examination.

8.02.02 CONTINUOUS TESTING ELIGIBILITY LIST.

The Secretary, following the approval of the Commission, shall establish an initial eligibility list for use by applicants testing through and certified for eligibility through the continuous testing process. Continuous testing lists may be established for both entry level and lateral hire.

8.02.03 CONTINUOUS TESTING DEFINED.

Continuous testing shall mean a written and/or oral examination and may include a standardized physical fitness/agility test conducted pursuant to set and commonly applied standards whose results shall be valid for a period of one year from the date of certification by the Commission to a continuous testing entry level or lateral hire eligibility list.

8.02.04 CERTIFICATION.

Applicants certified pursuant to a continuous testing process shall be placed on a continuous testing entry level or lateral hire eligibility list. As each applicant is placed in accordance with his or her scores the placement of all others on the list shall be adjusted.

8.05 CHARACTER OF EXAMINATIONS.

All examinations shall be competitive, impartial, and practical in their character. They shall be designed to qualify and rank applicants in terms of their relative fitness to perform the duties of the class for which the examination was ordered. An examination

shall be deemed to be competitive when applicants are tested as to their relative qualifications and abilities, or when a single applicant is scored against a fixed standard.

8.06 CONTENT OF EXAMINATION.

Examinations may include written tests, personal qualifications, physical or performance tests, or evaluations of training and experience, interviews, any other suitable evaluation of fitness, or any combination of such tests. Such tests may evaluate education, experience, aptitude, knowledge, skill, physical condition, personal characteristics and other qualifications to determine the relative fitness of the candidates.

8.07 PARTS AND WEIGHTS.

Each examination shall contain one or more parts to which percentage weights shall be assigned, which weights shall total 100%. Each part shall be graded independently. This earned grade shall be multiplied by the percentage weight assigned to such part, and the sum of the resulting products shall be called the examination grade.

8.08 PASSING GRADE.

- 8.08.01 The name of the examinee shall not be entered on an eligible list without the examinee having attained a passing grade in the examination as established by the Secretary.
- 8.08.02 Entry-level applicants who complete the initial written test administered by Public Safety Testing, shall be graded with 100% as the maximum and with 70% representing the passing grade for such test. The physical fitness test is a graded on a pass fail basis. Both must be passed to be eligible.
- 8.08.03 Promotional testing for the Sergeant's exam shall be graded with 100% as the maximum and with 60% representing the passing grade. All other remaining tests throughout the process shall be graded with 100% as the maximum and with 75% representing the passing grade for such tests.
- 8.08.04 Except as provided in the rules above, the Secretary shall, before identification of papers, authorize a grading schedule for tests with a minimum passing score which represents an acceptable degree of fitness on such subjects for the class of positions.

8.09 QUALIFYING GRADE.

Where any part or parts of an examination relate to qualifications deemed essential to the proper performance of the duties of the class, the Secretary may determine the minimum qualifying grade for each such part or parts. Failure to attain such grade shall disqualify an examinee, without regard to overall examination grade, and shall disqualify the examinee from participation or rating on other parts of the examination.

8.10 PROMOTIONAL EXAMINATIONS.

Vacancies in the higher positions of a class shall be filled by promotion, whenever practicable in the judgment of the Commission. Upon showing from a department that special training and knowledge gained within a department is essential to the proper filling of the vacancy; the Commission may limit an examination to a promotion within a department only.

8.11 OPEN GRADED EXAMINATIONS.

An examination may be advertised as open graded when, in the judgment of the Commission, it is in the best interest of the service.

8.12 VETERANS' CREDIT.

Veterans who have passed an examination shall be entitled to credit pursuant to Chapter 41.04 RCW, or other law. It is the candidate's responsibility to submit appropriate documentation of veteran's status to receive points.

8.13 RESERVE OFFICER CREDIT. [Reserved.]

8.14 EXAMINATION – PROTEST.

8.14.01 An individual that participates in the exam process may file a protest of the exam based on the following grounds:

- a. The Commission failed to follow the City ordinance, state law or its own rules in the administration of the exam and/or the exam process;
- b. The exam was not valid, e.g., was not job related;
- c. The examiners were not impartial;
- d. A clerical error was made in scoring the exam; (This does not include disagreement with the number of points or score awarded by a rater(s); or

- e. The exam or exam process was discriminatory as defined under state and/or federal law.

Except for reasons stated in 8.14.01, there is no protest available under the rules for any action taken by the Secretary or Commission outlined in this rule.

- 8.14.02 Any exam administered after the certification such as: Background, polygraph, psychological or medical is not subject to protest.

8.15 PROCEDURES FOR FILING EXAM PROTESTS.

The following procedures must be followed for filing an exam protest:

- a. Notice of protest must be in writing and filed with the Secretary of the Commission.
- b. The notice of protest must contain a brief description of the facts giving rise to the protest, a concise statement of the reason for the protest and the desired remedy. In addition the protest must list what rule under 8.14.01 was violated.
- c. The notice must be received by the Secretary of the Commission within ten (10) business days following the action being protested. Failure to file a protest within this time period is a waiver of any right to protest the exam that is established by these rules.
- d. Any protest that does not meet the above criteria will not be considered valid.

8.16 REEXAMINATION.

- 8.16.01 No one shall be reexamined for the same class within one year of the effective date of such examination, unless authorized by the Secretary upon determination that it would be in the best interest of the City.
- 8.16.02 If an entry level applicant takes a succeeding examination through Public Safety Testing for the same class, the result of such examination shall replace the current score on the eligibility list already established. Eligibility attained by the second examination shall be entered on the list, and the eligibility will reflect the most current Public Safety Testing score.

8.17 EXAMINATIONS PAPER.

Examination papers of each eligible shall be kept on file in the office of the Secretary until expiration of eligibility and in accordance with state retention guidelines.

8.18 ADDITIONAL EXAMINATION.

- 8.18.01 Eligibles certified pursuant to Rule 9 shall be subject to medical, physical, or psychological examination and to such other examinations administered by the Secretary as authorized and approved by the Commission. Such other examinations include, but are not limited to, background examination and polygraph, provided, however, polygraph examination shall be allowed only for applicants applying for a position with a law enforcement agency under RCW 49.44.120. Reports of such examination shall be filed with the Commission in the event the findings of the examination recommend that the eligible be rejected. The Secretary shall consider such recommendation, may require further examination, and may order the eligible's name dropped from the eligible list.
- 8.18.02 The Secretary may designate a limited number of certified eligibles for additional examination as provided in Rule 8.18.01, in order to maintain an ability to certify lists pursuant to Rule 10.
- 8.18.03 Before the appointing authority refers an eligible for medical (including mental health) examination, a conditional offer of employment must be made.

8.19 MULTI-PART EXAMINATION.

Where an examination consists of two or more parts, the Secretary may:

- 8.19.01 Set a minimum score to be required in any part of such examination, and any applicant who fails to attain such minimum score shall be considered as having failed in the entire exam and shall not be entitled to take the balance of the exam;
- 8.19.02 Assigns weights to each part of the examination, with the examinee's earned examination score equaling the weighted average of the scores on each part;
- 8.19.03 Limit the number to be further considered or tested to a group of the highest scoring applicants, depending on the number of applicants who meet the minimum requirements for a position;
- 8.19.04 Employ all or any of the above options for multi-part examinations in any examination.

8.21 NUMBER OF APPLICANTS – LIMITATIONS.

The Secretary may restrict the number of qualified applicants to be examined whenever an examination for a position is likely to attract large numbers of qualified applicants, and when job related testing processes are prohibitively costly or impractical to administer to all qualified applicants, or may have adverse impact on protected groups.

CHAPTER 9 – LISTS AND ELIGIBILITY

9.01 ESTABLISHMENT OF ELIGIBLE LISTS.

After each examination, an eligible list for the class shall be prepared on which the names of successful candidates shall be ranked as follows:

- 9.01.01 On a promotional list: relative rank shall be determined by the examination rating or grade.
- 9.01.02 On an open graded list: relative rank shall be determined by the examination grade, plus percentage allowed by law for veterans' preference.
- 9.01.03 Priority of time of examination shall not give any preference in rank on the list.
- 9.01.04 The preference in rank of eligibles having equal final general averages shall be determined as follows, in the order stated:
 - a. The one who qualifies for veterans' preference in accordance with Washington state law. Eligibles on a promotional (and not open) list do not qualify.
 - b. When the examination is composed of two or more parts with separate grades, the one who has:
 - 1. The highest grade on the most heavily weighted part of the examination; if a tie still exists, then the highest grade on the next most heavily weighted part, and so on for as many parts as the examination contains.
 - 2. The highest grade on the written test if all parts are weighted equally.

c. When the examination has only one part or the candidates have the same standing under (a) and (b) above:

1. As between examinees who are City employees, the one having the greater service credit with the City, regardless of class;
2. If one is a regular or probationary City employee and the others are not, the regular City employee has preference.

9.01.05 If an applicant is permitted to file for and take an examination for delayed eligibility, and if such applicant is successful in the examination, eligibility shall be held in abeyance until the candidate meets the requirements for eligibility, which must be reported in writing. If otherwise eligible, the candidate's name shall be placed on the list in accordance with the final examination grade. Any such eligibility shall expire with that of other eligibles from the same examination.

9.02 RETURN TO LIST FOLLOWING LAYOFF.

On layoff, an employee's name shall be placed on the proper eligible list for the class [ranked by seniority/service credit] for one (1) year from the date of such layoff.

9.03 RETURN TO LIST AFTER RESIGNATION OR RETIREMENT.

9.03.01 A former employee who resigned or retired may request return of his or her name to the proper open graded eligible list for the class. Such request must be made within one (1) year from the date of resignation or retirement.

9.03.02 Any request for return to list following resignation or retirement must be supported by written recommendation of the former employing department;

9.03.03 A former employee whose eligibility is reinstated under this rule shall be certified in accordance to Civil Service rules. However, the name of such an eligible need be considered only by the department which recommends the return of the name to list.

9.03.04 The name of a former employee who resigned or retired may not be returned to a promotional list, unless recommended by the head of the former employing department and approved by the Civil Service Commission within one year from the date of resignation or retirement.

9.04 APPOINTMENT WITHOUT EXAMINATION.

Except as provided in 9.02, 9.03, and 9.06, any return to the Civil Service shall be by examination only.

9.05 DURATION OF ELIGIBILITY LISTS.

- 9.05.01 Entry-level eligibility lists shall be valid for twelve (12) months following certification by the Commission.
- 9.05.02 Lateral eligibility lists shall be valid for twelve (12) months following certification by the Commission.
- 9.05.03 Promotional eligibility lists shall be valid for eighteen (18) months following certification by the Commission.

The commission may schedule examinations prior to the expirations of the eligibility lists, or extend the expiration date of the eligibility list if it is deemed to be in the best interests of the service. It is the intent of the commission to establish and maintain appropriate eligibility lists to certify names for appointments as the needs of the services arise.

9.06 ESTABLISHMENT OF REINSTATEMENT LISTS.

- 9.06.01 The names of regular employees who have been laid off, as defined by Rule 4.30 or reduced, as defined by Rule 4.37, when requested in writing by the appointing authority, shall be placed upon a reinstatement list for the same class and for the same department from which laid off or reduced, for a period of one year from the date of layoff or reduction; the reinstatement list shall supersede any other eligibility lists.
- 9.06.02 Upon the request of an appointing authority, the Secretary may approve the certification of anyone on such a reinstatement list as eligible for appointment on an open competitive basis in the department requesting certification.
- 9.06.03 Anyone on a reinstatement list who becomes a regular employee in another department shall lose reinstatement rights in the former department.

- 9.06.04 Anyone accepting a permanent appointment in the class from which laid off and in a department other than that from which laid off is not to be certified to the former department unless eligibility for that department is restored.

9.07 AVAILABILITY OF ELIGIBLES.

- 9.07.01 It shall be the responsibility of an eligible to notify the Secretary in writing immediately of changes in address, telephone number, change of name through marriage or otherwise, or any changes which may affect availability for employment.
- 9.07.02 The name of an eligible who submits a written statement restricting the eligibility for employment shall be withheld from certifications if the restrictions do not meet the conditions specified for appointment. New written statements may be filed at any time within the duration of an eligible list modifying conditions under which employment would be accepted.

9.08 CANCELLATION OF ELIGIBILITY.

- 9.08.01 Anyone's name may be removed from an eligible list for failure to pass a required examination or upon receipt of proof of bad character or other unfitness; fraudulent conduct; false statements by the eligible or by others with the eligible's collusion; material physical or mental disability; or, other disqualifying factor connection with any application, examination for, or securing of an appointment.
- 9.08.02 A previous unsatisfactory work record with the City or dismissal from the service, or dismissal from any position, public or private, for any cause which would be a cause for dismissal from City service shall be deemed cause for cancellation of eligibility;
- 9.08.03 Failure to pass a required examination or test;
- 9.08.04 Separation from the service will terminate any promotional eligibility;
- 9.08.05 Upon report of an appointing authority that an eligible refused to accept employment, the Secretary may strike the eligible's name from the list;
- 9.08.06 Failure to respond when required within five (5) business days of a call or other contact by the Secretary or appointing authority;

- 9.08.07 Refusal to accept reemployment in a position shall constitute separation from the service;
- 9.08.08 Such action contemplated by this rule may also be taken for other material reasons.

9.09 RESTORATION OF NAMES TO ELIGIBLE LISTS.

The name of an eligible which has been removed from a list may be restored upon written request to the Secretary for such restoration. The request must specify the reasons for the requested restoration. The Secretary may approve the request if it is deemed that the evidence submitted justifies such approval.

CHAPTER 10 – CERTIFICATION AND APPOINTMENT

10.01 GENERAL PROVISIONS.

Vacancies in the classified Civil Service shall be filled by reinstatement, promotional appointment, assignment, original appointment, transfer, reduction, or demotion. In the absence of an appropriate list, the Secretary may authorize a temporary or provisional appointment.

10.02 REQUEST FOR CERTIFICATION.

Whenever an appointing authority wishes to fill a vacancy, a request for certification shall be submitted to the Secretary. The request shall show the number of positions or vacancies to be filled, the class title, tenure of work to be performed, cause of the vacancy, or if a new position, authority for the appointment and any other details for full description of the position to be filled.

10.03 CERTIFICATION.

10.03.01 ELIGIBLE LIST. Certification to fill a vacancy shall be made by the Civil Service Department from lists in the following order and as provided in this rule:

1. Reinstatement
2. Promotional
3. Original

10.03.02 ORDER OF REINSTATEMENT – ELIGIBLE.

- a. If a vacancy is to be filled from the reinstatement list, the following shall be the order of certification:
 1. Regular employees in the order of their length of service. The regular employee on such list who has the most service credit shall be first reinstated.
 2. Probationers, without regard to length of service. The names of all probationers upon the reinstatement list shall be certified together.

- b. Upon request from the appointing authority, the Secretary may authorize reinstatement out of such regular order upon a showing of efficiency or that such action is for the good of the service, after giving the employees adversely affected an opportunity to be heard.
 - c. Nothing in this rule shall prevent that reinstatement of any regular or probationary employee for the purpose of transfer to another department, either for the same class or for voluntary reduction in class, as provided in these rules.
- 10.03.03 MULTIPLE VACANCIES. If two or more vacancies are to be filled from any of the above lists other than the reinstatement list, the name of one additional person shall be certified for each additional person.
- 10.03.04 ADDITIONAL NAMES. If an appointing authority makes an acceptable showing that any of the eligibles certified are not available or that they do not respond, sufficient additional names shall be furnished to complete the certification.
- 10.03.05 SPECIAL SKILLS. Where a certification of eligibles with special experience, training, or skills is requested in writing by the appointing authority as being necessary for satisfactory performance in a particular position, and the Secretary determines that the reasons given fully justify the request, a certification may be made of only the highest ranking eligibles that possess the special qualifications.
- 10.03.06 PRIOR SERVICE. If a temporary vacancy is to be filled from an open or promotional list, those eligibles with three months of service who are shown on the list as having been laid off within the last twelve (12) months from the department in which the vacancy exists shall be placed in grade order at the head of the list of eligibles for certification according to rule.
- 10.03.07 APPLICATION/EXAMINATION. The application and the examination papers of a certified eligible shall be available for inspection by the appointing authority.

10.04 DEFERMENT OF CERTIFICATION.

The Secretary may grant deferment of certification of an eligible, upon receipt from the eligible, of a written request with satisfactory reason therefore. Such deferment will thereafter prevent certification of such eligible until the next vacancy occurring after the

eligible has given written notice of his or her desire to be returned to the list, and such return has been approved by the Secretary.

10.05 REGULAR APPOINTMENT.

A regular appointment to fill a vacancy must be made from the names contained on the official certification. The official appointment report shall show the name of the person appointed, the effective date, the salary, the nature or duration of the appointment, and any other information required.

10.06 TEMPORARY APPOINTMENT.

Where there is no suitable eligible list from which certification can be made, the Secretary may allow the appointing authority to make a temporary appointment. The individual serving in a temporary appointment may not work more than 1040 hours in a calendar year.

CHAPTER 11 – PROBATION

11.01 PROBATIONARY PERIOD.

- 11.01.01 After each full-time or part-time regular appointment from an eligible list, the employee appointed shall serve a complete period of probation before the appointment is deemed complete. The purpose of the probationary period is to provide a trial period during which the department may observe the performance of the probationary employee before civil service status is acquired.
- 11.01.02 If a probationer transfers in the same class from one department to another, the receiving department may, with the approval of the Secretary, require that a complete probationary period be served in that department.

11.02 LENGTH OF PROBATIONARY PERIOD – ENTRY-LEVEL.

The entry-level probationary period shall be from the date of hire, plus one (1) year after the successful completion of the police academy. Training school time shall not be deducted in computing the probationary period. Minor absences due to vacations, annual military leave, illnesses, etc. shall not be construed as interrupting the probationary period unless an absence or absences are considered to be excessive to the extent that the Secretary will approve a departmental request for an extension of the probationary period.

11.03 LENGTH OF PROBATIONARY PERIOD – LATERAL.

The lateral probationary period shall be for a period of twelve (12) months. Minor absences due to vacations, annual military leave, illnesses, etc. shall not be construed as interrupting the probationary period unless an absence or absences are considered to be excessive to the extent that the Secretary will approve a departmental request for an extension of the probationary period.

11.04 LENGTH OF PROBATIONARY PERIOD – PROMOTIONAL.

Any promotional appointment probationary period shall be for a period of twelve (12) consecutive months from the date the eligible was first appointed. Minor absences due to vacations, annual military leave, illnesses, etc. shall not be construed as interrupting the probationary period unless an absence or absences are considered to be excessive to the extent that the Secretary will approve a departmental request for an extension of the probationary period.

11.05 INTERRUPTION OF PROBATIONARY PERIOD BY MILITARY SERVICE.

A probationer who engages in active military service on an extended basis shall be considered as having an interrupted probationary period. Such employee may continue the probationary period following return from military leave.

11.06 REMOVAL OF PROBATIONER.

- 11.06.01 **GROUND.** The appointing authority, by assigning in writing to the Commission the reasons therefore, may discharge any probationer. Such reasons need not constitute just cause and shall not otherwise be reviewed by the Commission.
- 11.06.02 **PROCEDURE.** The Department Head must file a prescribed form stating the reasons for the removal with the Secretary prior to the end of the probationary period. Notice must be mailed to or personally served on the employee and proof of notice filed with the Secretary.
- 11.06.03 **RIGHTS RETAINED.** A promotional probationer, unless discharged for cause, retains all civil service rights to the position from which appointed. Such rights shall be retained whether promotion is to an entrance or promotional position.

11.07 DEMOTION.

A probationer may be demoted for inability to perform satisfactorily the duties of the position to which he/she was appointed, in accordance with Rule 17.03 on demotion, or may be allowed eligibility for another position in the same class, for which he is deemed qualified by the appointing authority, subject to approval by the Commission.
A probationer demoted to a class in which he or she has not held regular standing shall start a new period of probation.

11.08 PROTESTS.

Any probationer may file a written protest with the Secretary protesting a termination of probationary status or demotion. All protests must be filed within ten (10) business days of notice of the action taken. The Secretary will give due consideration to and take appropriate action on all timely-filed protests. Probationers may appeal a decision of the Secretary to the Commission under Rule 17.

CHAPTER 12 – SERVICE CREDIT

12.01 Service credit in a class for a regular employee shall be computed to cover all service subsequent to regular appointment in that class and shall be applicable in the department in which employed.

12.02 DETERMINATION.

12.02.01 The determination of a regular employee's earned service credit shall be made on the basis of the available payroll, personnel and other records. If payroll records are not available for any particular period, it shall be presumed that each regular employee employed during such period, as shown by other records, earned full service credit in the particular class and department in which employed, for the entire length of such period.

12.02.02 Following the requisite probationary period and upon appointment or reappointment, the seniority and service credit of the employee shall begin anew and be computed without benefit or credit of any prior service except as the Commission may otherwise authorize for the good of the service.

12.03 REQUESTS FOR CONFIRMATION.

12.03.01 REQUESTS. Any regular employee, or an association or union on behalf of such employee, or the head of an employee's department may request a determination of the employee's earned service credit as of a designated date in any specified class and department in which he has served. If the request is made at a reasonable time and interval, and subject to such directives as may be then in effect, the Secretary shall as soon as practicable but within ten (10) business days ascertain the requested computation, and shall so notify the requesting employee, association, and union or department head in writing.

12.03.02 PROTESTS. If any employee, association, union or department head has cause to object to the computation of the employee's service credit, written protest may be filed with the Secretary setting forth with particularity the reason and basis for the objection. Such protests must be filed within ten (10) business days. The Secretary shall give due consideration to all timely-filed protests and take such action as deemed appropriate.

12.04 SERVICE COVERED.

- 12.04.01 **GENERALLY.** Once a regular employee acquires regular Civil Service status and regular standing in any given class in a particular department, the employee shall receive full service credit for the entire length of time served in such class and department, whether such service is continuous or interrupted.
- 12.04.02 **PROBATIONARY PERIOD.** After completion of an original or promotional probationary period, a regular employee shall receive credit for actual service during such period. If a probationer fails to complete satisfactorily the required probationary period and is returned to the former regular class, actual service during such period shall be credited to the former class.
- 12.04.03 **TEMPORARY OR PROVISIONAL APPOINTMENT.** If a temporary or provisional appointment is followed by a regular appointment to the same class, such employee shall receive credit in such class for actual, continuous service during the temporary or provisional appointment. A regular employee shall receive service credit in the regular class for the period after the regular appointment, served under a temporary or provisional appointment to another class or department or to an exempt position, if the employee returns to the regular class after the expiration or termination of such service.
- 12.04.04 **ON ASSIGNMENT.** A regular employee shall be credited to the regular class for the entire length of time served under an assignment.
- 12.04.05 **LEAVES WITH PAY.** A regular employee shall receive full credit for any leave with pay.
- 12.04.06 **LEAVES WITHOUT PAY.** No service credit shall be allowed for any time that an employee is on any leave of absence without pay.
- 12.04.07 **SUSPENSION.** No service credit shall be allowed while an employee is on a suspension without pay, unless the suspension is modified, reversed or nullified on appeal.

12.05 CHANGE IN CLASS OR DEPARTMENT.

- 12.05.01 **GENERALLY.** No service credit earned by a regular employee in any one class and department shall be carried over upon appointment, promotion, reinstatement, transfer, demotion or voluntary reduction to or from another class or department, but such service credit shall be

permanently retained in and be credited to the class and department in which it was earned, unless expressly provided by these Rules.

12.05.02 ABOLITION OF CLASS. In the event that a regular employee's former class is abolished or changed, all service credit earned in such class prior to its abolition or change and not lost or forfeited shall be credited to another class in the same department which is substantially similar to, and is neither higher nor lower than, the abolished or changed class.

12.05.03 COMBINATION – COMPUTATION. Whenever the service credit of a regular employee earned in two or more classes, or in the same class in different departments, is to be combined under these Rules as hereinafter prescribed, the service credit earned and not lost or forfeited in each such class and department shall be computed separately and shall be added together, and the total sum shall represent the employee's service credit for the particular purpose in question.

12.06 PROMOTION – COMPUTATION OF CREDIT.

Upon completion of the probationary period for a promotional position, an employee shall receive credit for all service in the promotional class and particular department, which shall be credited to that class and department. All prior service credit earned in the lower class and department shall be retained by the employee, but such service credit shall be credited only to that latter class and department.

12.07 TRANSFER – COMPUTATION OF CREDIT.

A regular employee shall be entitled to retain all service credit earned in any class and department prior to an authorized transfer there from, which shall be credited to such former class and department. Service credit earned in the new class or department to which transferred shall be credited to such new class or department, from the effective date of the transfer. If the transfer becomes regular, the required trial period, if any, shall be credited to the new class or department. Otherwise such trial period as served shall be credited to the former class or department.

12.08 DEMOTION – COMPUTATION OF CREDIT.

Upon involuntary demotion of an employee in accordance with these Rules, all service credit earned in the class and department from which demoted, up to the effective date of the demotion shall be retained by the employee, unless otherwise provided in the demotion order and approved by the Commission. From that time, the employee shall be entitled to such service credit earned in the lower class to which demoted, plus whatever service credit formerly earned in such class and department and not lost or forfeited.

12.09 VOLUNTARY REDUCTION – COMPUTATION OF CREDIT.

Upon the voluntary reduction of a regular employee to a lower class in the same or different department as provided by these Rules, such employee shall retain all earned retention credit in the higher class and department from which reduced, prior to such reduction, if not lost or forfeited.

12.09.01 **SIMILAR CLASSES.** If a regular employee's position is reallocated to a different class which is substantially equivalent to the former class, all the service credit previously earned in the former class and same department and not lost or forfeited shall be credited to the new class. In addition thereto, the employee shall receive all service credit subsequently earned in the new class and the same department.

12.09.02 **DISSIMILAR CLASSES.** If the position is reallocated to a class which is not substantially similar, the service credit earned in the former class shall be credited only to such former class and department.

12.10 LAYOFF – COMPUTATION OF CREDIT.

No service credit shall accrue or be allowed during the period in which an employee is laid off, but all service credit earned and not lost or forfeited up to the effective date of the layoff shall be retained by the employee during the period of time the employee remains on the reinstatement list and the period of re-employment if appointed from the reinstatement list. Retained service credit is forfeited if the laid-off employee fails to accept appointment from the reinstatement list or eligibility for the reinstatement list expires.

12.11 SERVICE CREDIT UPON SEPARATION FROM SERVICE.

Upon separation from the service, no credit shall be given or allowed for any prior service or employment up to the time of such separation and except as otherwise specifically provided by these Rules, service credit shall be forfeited and not be reinstated upon reemployment by the City.

CHAPTER 13 – TRANSFER – REDUCTION

13.01 GENERAL.

The transfer of an employee shall not constitute a promotion in the service, except as provided in Rule 13.03.04.

13.02 INTRA-DEPARTMENTAL TRANSFERS.

An appointing authority may transfer an employee from one position to another position in the same class in the same department without prior approval of the Secretary but must report any such transfer to the Civil Service Department within five (5) business days of its effective date.

13.03 PROCESS.

Transfers may be made upon consent of the department head and with the Secretary's approval as follows:

- 13.03.01 Transfer in the same class from one department to another; such a transfer may be made concurrent with the appointment of an employee to another class;
- 13.03.02 Transfer to another class in the same or a different department in case of injury in line of duty either with the City service or with the armed forces in time of war, resulting in permanent partial disability, where showing is made that that transferee is capable of satisfactorily performing the duties of the new position;
- 13.03.03 Transfer, in lieu of layoff, may be made with limited standing to a single position in another class in the same or a different department, upon showing that the transferee is capable of satisfactorily performing the duties of the position and that a regular employee or probationer is not displaced. Regular standing in the new class may be attained by the employee only through examination and permanent regular appointment.
- 13.03.04 Transfer, in lieu of layoff, may be made with limited standing to a single position in another class when such transfer would constitute a promotion or advancement in the service; provided, a showing is made that the transferee is capable of satisfactorily performing the duties of the position and that a regular employee or probationer is not displaced and when transfer in lieu of layoff under Rule 13.03.03 is not practicable.

Regular standing in the new class may be attained by the employee only through examination and permanent regular appointment.

- 13.03.05 The Secretary may approve a transfer under this Rule 13.03 with the consent on the appointing authority of the receiving department only, upon a showing of circumstances justifying such action.

13.04 LIMIT OF RULE.

These rules have no authority or effect on positions or departments not subject to the Civil Service. Transfer to or from positions or departments not subject to the Civil Service are unaffected by these rules.

13.05 REDUCTION.

- 13.05.01 AUTHORIZED. As defined in Rule 4.37, a reduction is the movement of an employee from a higher class to a lower class of employment for reasons other than cause. A reduction may be made only upon an employee's written request, and consistent with these Rules.

- 13.05.02 APPLICABLE CLASSES. A reduction may be approved for
- a. The next lower or any lower class in the Class Series containing the class from which reduced;
 - b. Any lower class in which the employee has previously acquired regular standing, provided there has been no intervening forfeiture; or
 - c. Any lower class which is substantially similar to any lower class (in the employee's current class series) in the position classification plan; or
 - d. Employees seeking return to employment or reemployment from a disability, to a vacant position in another permissible class or department for which the employee qualifies.

- 13.05.03 PROCEDURE.
- a. A request for reduction must be submitted in writing to the Secretary. The request must include statement of justifiable or satisfactory reason, including a showing that the employee meets the qualifications of the lower class.

- b. The reduction must be approved by the Human Resources Department and the City Manager, and reported to the Commission.
- c. The reduction shall take effect on the date ordered by the Secretary.

13.05.04 EFFECT OF REDUCTION.

- a. Upon the effective date, or following satisfactory completion of any trial period, the reduction shall be complete and the employee shall have regular standing in the lower class and department to which reduced.
- b. An employee reduced shall be able to return to the former position only by examination and regular appointment. In the event of a recovery from disability, an employee reduced in class may be eligible for appointment from a reinstatement list.

13.05.05 REDUCTION AVAILABLE.

- a. By Employee. A voluntary reduction may be sought by an employee for any vacant position in a class under Section 13.05.02.
- b. By Department.
 - 1. Employees with Standing. Reduction involuntarily of an employee from a higher civil service class to a lower civil service class is governed by Rule 14, Layoff. Return of an employee from an exempt position to a civil service position is governed by Rule 15, Leaves of Absence.
 - 2. Employees without Standing. When an employee is reduced from an exempt position, the employee may petition in writing the Commission within ten (10) business days of the end of employment in the exempt position for placement on a reinstatement list for a class for which the employee is deemed eligible. In considering the

placement of the employee, the Commission may consider the employee's experience, the record of City employment, or such other factors as deemed in the best interest of the system. The Commission's decision shall be deemed permissive and discretionary, and an employee shall have no claim or cause for denial of placement on a reinstatement list.

- 13.05.06 The Commission may, in its judgment and discretion, provide in the order granting or approving any reduction that the employee shall serve a designated trial period, not to exceed one (1) month's service from the effective date of the reduction, in the position to which reduced for the sole purpose of satisfying the Commission that employee is capable of satisfactorily performing the functions and duties of such position or class.
- Provided, the Commission may for cause shown, at any time during the prescribed trial period, extend, shorten, modify or waive in whole or in part the duration or balance of such period.

14.01 In a given class in a department, the following shall be the order of layoff:

- 14.01.01 Provisional appointees;
- 14.01.02 Temporary or intermittent employees not earning service credit;
- 14.01.03 Probationers (except as their layoff may be affected by military service during probation);
- 14.01.04 Regular employees in the order of their length of service, the one with the least service being laid off first.

14.02 LAYOFF OUT OF ORDER.

The Secretary may grant permission for layoff out of the regular order, upon showing by the department head of a necessity therefore in the interest of efficient operation of the department, after giving any affected employee or employees an opportunity to be heard.

14.03 REDUCTION IN LIEU OF LAYOFF.

At the time of any layoff, a regular employee or a promotional probationer, shall be given an opportunity to accept reduction to the next lower class in a series of classes in his department, or he may be transferred as provided by Rule 13.03.03.

14.04 TRANSFER IN LIEU OF LAYOFF.

An employee so reduced shall be entitled to credit for any previous regular service in the lower class and to other service credit in accordance with Service Credit Rule 12.

14.05 REINSTATEMENT.

Reinstatement of a laid-off employee through appointment from a reinstatement list is governed by Rules 9.02, 9.06 and 10.03.

CHAPTER 15 – LEAVES OF ABSENCE

15.01 REQUESTS FOR LEAVE OF ABSENCE.

15.01.01 Leave of absences may be granted for employees in accordance with City policy or collective bargaining agreement.

15.02 CANCELLATION/REVOCATION.

Any or all leaves of absence without pay within a department may be cancelled whenever any necessity arises in the good faith judgment of the department head. A department head may revoke an individual employee's leave without pay if it is found that the employee is using the leave for purposes other than that for which it was granted. Employees may be ordered to return to work immediately or as soon as possible on written notice from the department head of the cancellation or revocation of leave. A copy of such notice shall be filed with the Secretary.

15.03 RETURN FROM LEAVE.

At the expiration of the authorized leave of absence, a probationer or regular employee shall resume the same class of work with standing and service credit as determined by these rules.

15.04 MILITARY LEAVE.

See City policy and state and federal law relating thereto.

15.05 FILLING VACANCY.

All temporary employment caused by leave of absence shall be made pursuant to Rule 10.

15.06 PROTESTS.

All protests to any action pertaining to leaves of absence shall be filed with the Secretary within ten (10) business days of notice of such action. The Secretary shall give due consideration to and take appropriate action on all timely filed protests.

CHAPTER 16 – RESIGNATION

16.01 HOW SUBMITTED.

Resignation of any employee from the service shall be made in writing and filed with the Secretary after approval by the appointing authority. An employee may resign from a civil service position by presenting his/her resignation in writing to the appointing authority. To resign in good standing, an employee shall give at least two calendar weeks' notice, unless, because of extenuating circumstances, the appointing authority agrees to permit a shorter period of notice. The appointing authority may make or cause to be made such investigation as it deems warranted, for the purpose of verifying reasons for each resignation. An employee's resignation and the circumstances pertinent to it shall be recorded in his/her personnel file.

16.02 INVOLUNTARY RESIGNATION.

Any resignation may be voided and set aside and the employee reinstated or restored to active duty by order of the Commission upon its determination that the resignation was made involuntarily or under duress or coercion, after giving the department head reasonable notice and an opportunity to be heard on the matter. Such action by the Commission may only be taken upon the written petition of the resigned employee filed with department head or the Human Resources Department within ten (10) business days from the effective date of the resignation. If no such petition is filed within the ten (10) business day limit, a resignation shall be conclusively presumed to have been made voluntarily and without duress or coercion.

16.03 IMPLIED RESIGNATION.

The department head may presumptively consider any employee to have impliedly resigned upon finding that such employee has been absent from duty without leave or authorization or has failed to report for duty following the expiration or termination of any suspension for five (5) or more consecutive working days or has quit or "orally resigned" and has been absent from duty for three (3) or more consecutive working days without leave or authorization. An employee will not be determined to have resigned under this rule until five (5) days after proof of service of a written notice by delivery or by registered or certified mail to the employee's last known address as filed with the Human Resources Department. No resignation order shall take effect if, prior thereto, the employee reports for active duty, applies for restoration or reinstatement, or otherwise gives notice to the department head or the Human Resources Department which, in the judgment of the Commission, rebuts the presumption of resignation.

16.04 RETURN TO ELIGIBLE LIST FOLLOWING RESIGNATION.
(See Rule 9.02)

CHAPTER 17 – DISCIPLINE AND DISCHARGE

17.01 GENERAL.

- 17.01.01 All disciplinary actions shall be made in good faith and for cause.
- 17.01.02 Written record of each official reprimand, suspension, demotion and discharge shall be served on the employee personally or by certified mail and filed with the Human Resources Department for placement in the employee's personnel file.

17.02 SUSPENSION.

- 17.02.01 A department head may suspend a subordinate, with or without pay, for a period not to exceed thirty (30) days for cause.
- 17.02.02 Any deprivation by a department head of any vacation or other paid leave, compensatory time-off or other privilege involving pay or compensation either directly or indirectly, to which an employee is otherwise entitled under law and these Rules, shall be deemed to be a suspension without pay and shall be subject to the above provisions.

17.03 DEMOTION.

- 17.03.01 The department head may demote an employee to a lower class for cause. An employee so demoted shall lose all rights to the higher class. If the employee has not had previous standing in the lower class, such demotion shall not displace any other regular employee or any probationer.
- 17.03.02 The Secretary shall be satisfied as to the ability of such demoted employee to perform the duties of the lower class. The demoted employee may be required to actually serve a trial period in the class to which demoted, for such time and upon such terms and conditions as the head of the department may provide in the demotion order, for the sole purpose of determining the capability to satisfactorily perform the functions and duties of such class.
- 17.03.03 Upon satisfactory completion of the prescribed trial period or upon the effective date of the demotion if no such period is required, the demoted employee shall have the status, rank and standing of the lower class to which demoted, and such class and department shall be deemed to be the employee's regular class and department for purposes of these Rules

until an authorized change is made.

17.04 DISCHARGE.

An employee who is discharged for reasons other than physical or mental disability shall lose all rights to City employment and shall not be eligible for placement on a reinstatement list.

17.05 DISCIPLINE – CAUSE – ILLUSTRATED.

The following are declared to illustrate adequate causes of discipline; discipline may be made for any other cause:

- 17.05.01 Incompetency, inefficiency, inattention to, or dereliction of duty;
- 17.05.02 Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any other act of omission or Commission tending to injure the public service, or any other willful failure on the part of the employee to properly conduct himself;
- 17.05.03 Mental or physical unfitness for the position which the employee holds;
- 17.05.04 Dishonest, disgraceful, or prejudicial conduct;
- 17.05.05 Drunkenness or use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under Civil Service;
- 17.05.06 Conviction of a felony, or a misdemeanor involving moral turpitude;
- 17.05.07 False or fraudulent statements or fraudulent conduct by an applicant, examinee, eligible, or employee, or such actions by others with his or her collusion;
- 17.05.08 Willful or intentional violation of any lawful and reasonable regulation, order or direction made or given by a superior officer;
- 17.05.09 Willful or intentional violation of any of the provisions of these rules.
- 17.05.10 Absence from duty without leave or authorization.

- 17.05.11 Gross negligence or recklessness in the use of City property.
- 17.05.12 Unauthorized taking, damaging, destroying or altering of City property or records.
- 17.05.13 Any other cause, act or failure to act which, under law or these Rules, or the judgment of the Commission, is grounds for or warrants dismissal, discharge, removal or separation from the service, demotion, suspension, forfeiture of service credit, deprivation of privileges or other disciplinary action.

CHAPTER 18 – PREDISCIPLINARY HEARING

18.01 PREDISCIPLINARY HEARING – REQUIRED.

A department head shall provide and arrange for a predisciplinary hearing prior to demotion, suspension, or discharge of a subordinate. The hearing under this Rule 18 is not subject to Rule 19, and does not require witnesses, presentation of evidence or other formalities. It is an opportunity for an employee to present to the appointing authority the employee's response prior to the decision on discipline.

18.02 PREDISCIPLINARY HEARING – STANDARDS/NOTICE OF DISCIPLINE.

- 18.02.01 An employee shall be provided, in writing, with a notice of the charge and an explanation of the department's evidence. The employee shall be given an opportunity to respond to the charges, orally or in writing, as to why the department's proposed action should not be taken.
- 18.02.02 The employee may have legal counsel or union representative present at a predisciplinary hearing.
- 18.02.03 The department's explanation of the department's evidence at the predisciplinary hearing shall be sufficient to apprise the employee of the basis for the proposed action. This rule, however, shall be not be construed to limit the employer at subsequent, post-disciplinary hearing from presenting a more detailed and complete case, including presentation of witnesses and documents not available at the predisciplinary hearing.
- 18.02.04 Should the appointing authority determine to discipline following the predisciplinary procedure, written notice of discipline shall be given to the employee. Such notice shall include the charges against the employee and a general statement of the evidence supporting the charges.
- 18.02.05 The Commission shall not consider, on appeal, any basis for disciplinary action not previously presented to an employee.

CHAPTER 19 – HEARINGS

19.01 HEARINGS – APPEALS.

- 19.01.01 Any regular employee who is demoted, suspended or terminated may appeal such action to the Commission.
- 19.01.02 Any employee who is alleged to be probationary by the disciplining department may only appeal to the Commission issues regarding probationary status and whether the procedures for discharge of probationers, as found in these rules, were properly followed.
- 19.01.03 Any employee, or department, who is adversely affected by an alleged violation of Civil Service or City [ordinance/policy] may appeal such violation to the Commission.

19.02 APPEALS – TIME – FORM.

A notice of appeal shall be filed with the Secretary within ten (10) business days of the action that is the subject of appeal. The notice of appeal shall be in writing and include the mailing address and street address where service of process and other papers may be made upon the appellant. The notice of appeal shall also contain a brief description of the facts giving rise to the appeal and a concise statement of the reason for the appeal.

19.03 EXHAUSTION OF ADMINISTRATIVE REMEDIES.

- 19.03.01 The Secretary may, when not inconsistent with the terms of the collective bargaining agreement, direct the employee to exhaust available administrative procedures regarding a disciplinary matter before scheduling the matter for hearing before the Commission.
- 19.03.02 If the employee exhausts the available administrative procedures and continues to believe that cause has not been shown, the employee may within ten (10) business days after the final step of the procedure request the Secretary to return the appeal to the Commission for hearing.

19.04 AUTHORITY OF CIVIL SERVICE EXAMINER-SECRETARY AND STAFF.

- 19.04.01 The Secretary to the Commission shall have the authority to make orders of preliminary matters, including motions for discovery and to compel discovery, continuance, protective orders, and other similar matters. Such orders may be appealed to the Commission. The Secretary may also

conduct pre-hearing settlement conferences (in order to encourage resolution of contested matters), issue subpoenas for depositions and for hearings.

- 19.04.02 The Commission may authorize the Commission staff to investigate any reports or appeals relating to the enforcement or application of the Civil Service or those rules which do not involve a disciplinary proceeding. The staff shall report the results of the investigation to the Commission in an open meeting. On the basis of such report, the Commission shall either dismiss the report or appeal as being without basis or set the matter for a full hearing.
- 19.04.03 As an aid to investigations authorized by the Commission, the Secretary may subpoena any documents that would be discoverable for purposes of hearing preparation and may take depositions by tape recorder or otherwise of any person who may have relevant knowledge. Depositions so taken shall be kept as part of the records of the Commission.
- 19.04.04 The Commission may direct a hearing officers of its selection to carry out the proceedings, including activities of the Secretary, under Rule 19.

19.05 APPEALS – INTIAL REVIEW.

The Secretary shall review all appeals to determine whether the employee has timely filed an appeal and whether the action appealed is a final action. Upon a determination that the appeal is not timely, the Secretary shall issue a written order of dismissal with prejudice, setting forth the basis of dismissal. In the case of an action that is not final, the appeal shall be stayed until such action becomes final. Such orders may be appealed to the Commission.

19.06 APPEALS – NOTICE OF HEARING.

Upon receipt of a notice of appeals, the Commission staff shall forward a copy of the notice to the other affected parties. As soon as possible thereafter, but in any event within ten (10) business days, a scheduling/pre-hearing conference before the Commission shall be set, with each party to be afforded not fewer that ten (10) business days' notice of such hearing. Subsequent hearings on the same appeal shall have at least one week's notice unless waived by the parties. All parties may agree to waive the notice provisions and time limits provided by this section.

19.07 APPEALS – AUTHORITY OF DEPARTMENT.

The exercise of jurisdiction by the Commission over a matter does not preclude the party from withdrawing, modifying or otherwise compromising the matter prior to the

matter going to hearing. Upon resolution of a matter prior to hearing, any party may request the dismissal of the matter. A stipulation signed by both parties should be submitted to the Commission prior to such dismissal.

19.08 SERVICE OF PROCESS – PAPERS.

- 19.08.01 The Commission staff shall cause to be served all orders, notices, and other papers issued by the Commission, together with any other papers that the Commission is required by these rules to serve. Every other paper shall be served by the party filing the notice, document or paper.
- 19.08.02 All notices, documents or papers served by either the Commission or a party shall be served upon all counsel of records at the time of such filing and upon parties not represented by counsel. Service of papers shall be by personal service, by registered or certified mail, or by regular mail with written acknowledgement of such mailing attached to the papers so served. Written acknowledgement shall be by affidavit of the person who mailed the papers or by certificate of any attorney or Secretary.
- 19.08.03 Service upon parties shall be regarded as complete when personal service has been accomplished or by mail, upon properly stamped and addressed deposit in the mail system.
- 19.08.04 Papers required to be filed with the Commission shall be deemed filed upon actual receipt of the papers by the Secretary's office. All papers except the original appeal notice shall be served with the original and three copies. Briefs and memoranda must be filed with the Commission at least three (3) business days prior to any hearing involving matters discussed in such brief or memoranda. Documentary evidence is not required to be filed but, rather, provided at the hearing.
- 19.08.05 An appellant or petitioner is responsible for notifying the Commission in writing of any change in mailing or street address and telephone number. Failure to so notify the Commission shall constitute a waiver of service and notice under these rules.

19.09 DISCOVERY.

- 19.09.01 Parties to a proceeding are required to provide to each other reasonable access to and discovery of all relevant information concerning the matter before the Commission. Any questions concerning relevancy or access shall be resolved by order of the Secretary.

- 19.09.02 Upon the failure of any party to comply with an order of the Secretary compelling discovery, the Secretary shall schedule the matter before the Commission for review and determination of appropriate sanctions.

19.10 SUBPOENAS.

- 19.10.01 Every subpoena shall identify the Commission and the title of the proceedings, if any, and shall command the person to whom it is directed to attend, at a specified time and place, and give testimony or produce designation books, documents, or things under that person's control.
- 19.10.02 Upon application of any party or his/her representative, the Secretary shall issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence of such proceeding. The party requesting the subpoena is responsible for having the subpoena properly served. Requests for subpoenas shall be submitted to the Secretary's office at least three (3) business days prior to the hearing.
- 19.10.03 Service of subpoena shall be made by serving a copy of the subpoena on the person named therein.
- 19.10.04 The person serving the subpoena shall make proof of service by filing the subpoena at the Secretary's office, and if such service has not been acknowledged by the witness, the person serving the subpoena shall make an affidavit of service. Failure to file proof of service does not affect the validity of service.
- 19.10.05 Upon a motion promptly made by a party or by the person to whom the subpoena is directed, and upon notice to the party on whose behalf the subpoena was issued, the Commission may:
1. Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or
 2. Condition denial of a motion to quash or modify upon just and reasonable conditions.

19.11 BURDEN OF PROOF.

At any hearing on appeal from a demotion, suspension or termination, the disciplinary authority shall have the burden of showing by a preponderance of the evidence that its action was for cause. At any other hearing, the petitioner or appellant shall have the burden of proof by a preponderance of the evidence.

19.12 EVIDENCE.

- 19.12.01 Subject to other provisions of these rules, all competent and relevant evidence shall be admissible. In passing upon the admissibility of evidence, the Commission shall give consideration to, but shall not be bound to follow, the rules of evidence (ER) governing civil proceedings in the superior courts of the State of Washington.
- 19.12.02 A witness in any hearing may be examined orally, under oath or affirmation and shall be subject to cross-examination by opposing parties and the Commission.
- 19.12.03 When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The Commission may exclude inadmissible evidence and may order cumulative evidence discontinued in its discretion, either with or without objection. A party objecting to the introduction or exclusion shall state the grounds of such objection at the time such evidence is offered or excluded. No such objection shall be deemed waived by further participation in the hearing.
- 19.12.04 At any hearing before the Commission when documentary exhibits are to be offered into evidence, copies shall be furnished to the opposing party, to each Commission member and to the Secretary.
- 19.12.05 Parties are encouraged to stipulate to the admissibility of documentary exhibits. To further this end, parties will make request of other parties for such stipulation no later than three (3) business days in advance of the hearing, barring unusual circumstances. The party of whom the request is made shall respond no later than one (1) business day prior to the hearing.
- 19.12.06 An employee has the right to appear before the Commission with or without counsel and to be heard in the employee's defense.

19.13 DELIBERATION.

The Commission may deliberate in closed (executive) session when taking a disciplinary or other quasi-judicial case under advisement. Deliberations by the Commission shall otherwise be subject to Chapter 42.30 RCW. No person other than the Secretary and legal counsel to the Commission shall be present during deliberation. No person shall attempt to convey any information or opinion to the Commission concerning any matter on appeal, other than in open hearing.

19.14 REMEDIES.

The Commission may issue such remedial orders as deemed appropriate.

19.15 RECONSIDERATION.

A party may move for reconsideration by the Commission only on the basis of fraud, mistake, or misconception of facts. Such motion must be filed with the Commission within ten (10) business days of the decision of the Commission. Such motion for reconsideration shall be decided on affidavits, absent special showing that testimony is necessary.

19.16 WAIVER.

Upon stipulation of all parties to a proceeding, and upon a showing that the purposes of the rules or ordinances of the City would be better served, the Commission may waive the requirements of any of these rules.

CHAPTER 20 – RETIREMENT AND DISABILITY

20.01 RETIREMENT.

Employees of the City who are members of pension fund systems as provided by law shall be retired on account of service or disability in accordance with provisions of law.

20.02 REINSTATEMENT AFTER DISABILITY RETIREMENT.

20.02.01 **PROCEDURE.** The Secretary shall review any report from a retirement system showing that a former employee who is on disability retirement has regained his/her health to the extent employable. Upon being satisfied that the employee is physically and mentally competent to perform the duties of the regular class, the Secretary shall:

- a. Order return of the employee to former employment status as if a leave of absence had been granted; or
- b. Place the name on the reinstatement list for an available class and department.

Provisions of reinstatement for members of the LEOFF retirement system are set forth in RCW 41.26.

20.02.02 **DISCHARGE FOR CAUSE – EXCEPTION.** The provisions of this rule shall not apply in the event an employee is discharged from service, whether or not the employee receives a disability retirement.

CHAPTER 21 – MISCELLANEOUS

21.01 REPEALS AND SAVINGS.

All matters shall be subject to these rules, and to that extent, all previous Civil Service rules are hereby replaced.

21.02 COMPUTATION OF TIME.

- 21.02.01 In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or City legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a City legal holiday. When the period of time prescribed or allowed is five (5) days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- 21.02.02 Any period of time except for the stated period of time set forth in Rules 19.02 and 19.06 may be extended by the Secretary for no more than fourteen (14) days upon written notice to the Commission and a showing of good cause. The motion for extension of time must be filed with the Secretary's office prior to the end of the applicable time period.
- 21.02.03 The date of notice for purpose of these rules shall be the date on which notice of an action is posted in the Secretary's office; (a) as provided in these Rules; (b) is mailed or (c) delivered personally to a party to a proceeding.

21.03 CIVIL SERVICE AND COLLECTIVE BARGAINING.

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW ("Act") provides for collective bargaining agreements between the City and the labor organization(s) representing employees. The Act and collective bargaining agreements prevail over these rules in the event of conflict.

KELSO CIVIL SERVICE RULES AND REGULATIONS



**CIVIL SERVICE COMMISSION
KELSO, WASHINGTON**

REVISED 2014

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CIVIL SERVICE RULES
CITY OF KELSO**

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*The Civil Service Rules and Regulations of the City of Kelso, Washington pertaining to Commissioned personnel of the Kelso Police Department were amended by unanimous vote of the Kelso City Service Commission on March 25, 1996. Revised March 2007. Revised May 28, 2013 Rule 10.01; 10.08.01. Revised 2014.

1.00 GENERAL PROVISIONS

1.01 AUTHORITY AND APPLICATION: In accordance with the provisions of the laws of the State of Washington pertaining to Civil Service, these rules are applicable to all commissioned employees of the Police Department covered by the City's Civil Service System. The City of Kelso hereby adopts the following rules for carrying out the purpose of said laws.

1.02 SCOPE AND PURPOSE:

1.02.01 These rules govern the continuing administration of the Civil Service System of the City and their terms and conditions of Civil Service employment with the Police Department. The City of Kelso's entry level/lateral entry hiring procedures and promotional procedures for the Police Department follow the Rule of 3 for eligibility. The purpose of these rules is to assure that the Civil Service System in the City is administered in accordance with applicable City Charter and Ordinances, and that all proceedings before the Commission are conducted in an orderly, fair, and timely manner. No employee shall have a property interest in or as a result of these rules.

1.02.02 The Kelso Civil Service System and the principles of Civil Service incorporated therein are hereby declared to be in the public interests of efficient and economical city government (1) by ensuring that appointments to and promotions in are based on fitness, competency, and merit; (2) for the primary purpose of inducing the most competent persons to enter and to remain in the service of the City and thereby enabling the City to perform its functions and to render its services in the most efficient and economical manner.

1.02.03 The Civil Service Commission provides general rules and regulations governing positions and employees subject to the Classified Civil Service System, including:

1. Competitive, job relevant, selection processes designed to fairly evaluate candidates' relative fitness for employment at entrance and promotional levels.

2. Preparation and maintenance of a Preliminary Eligibility Register and Certified Hiring Register for positions in the Police Department. The Certified Hiring Register shall contain the names of the three (3) highest ranking eligible candidates and shall be referred to the appointing authority for consideration of employment.

3. Performance evaluation processes, as they may affect decisions such as an officer's probationary status, eligibility for promotion and disciplinary measures.

4. Disciplinary processes, including suspension, demotion, and discharge of city police officers for cause,

5. Methods of handling complaints, grievances, and appeals to insure fair treatment of officers.

6. Such other functions as are necessary to meet Commission responsibility and authority provided by state law and city ordinance.

7. Insofar as practicable, by eliminating and by preventing discrimination on the basis of personal favoritism, political and other non-job related consideration in the selection, employment, and retention of such employees.

1.03 SEVERABILITY — CONFLICT:

1.03.01 If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end, any section or word is declared to be severable.

1.03.02 In the event of conflict between these rules and a collective bargaining agreement under Chapter 41.56 RCW, the provisions of the collective bargaining agreement shall prevail.

1.04 CONSTRUCTION OF RULES:

The Commission intends that these rules shall be construed in accordance with other governing law and shall be construed and applied liberally, reasonably, equitably, and practically, in their entirety.

2.00 ADMINISTRATION AND OPERATIONS

2.01 COMMISSION — MEETING — QUORUM: The Commission shall meet at least once each month at a place and time set by the Commission and regularly scheduled and posted. Special meetings may be held upon call of the Chair, Chief Examiner, or any member of the Commission. Notice of special meetings shall be provided as required by the Open Meetings Act (Chapter 42.30 RCW, as amended). At a special meeting, no business shall be transacted except that specified in the call and notice thereof. The Commission shall conduct hearings as required. Notice of hearings shall be provided as required by these rules. Two members of the Commission shall constitute a quorum. All commission meetings or hearings, regular or as required, shall be open to the public. Provided, however, that the Commission may meet in executive session at such times as authorized by the Open Public Meetings Act.

2.02 CHAIR: At the first regular meeting in January of each year, the Commission shall elect one of its members to serve as Chair and Chair Pro Tem for a term of one year. Should a Chair or Chair Pro Tem be removed from the position by a majority of the Commission, or resign or be removed from office prior to the expiration of a term, the Commission, upon appointment of a new member, shall proceed to the election of a new Chair or Chair Pro Tem. Unless otherwise provided by the Rules or the Commission, the Chair shall preside at all meetings and hearings held by the Commission, and shall perform such other duties as authorized by these rules or assigned by the Commission from time to

time. The Chair Pro Tem shall preside at all meetings and hearings held by the Commission in the absence of the Chair.

2.03 RULES OF ORDER: Robert's Rules of Order shall be final authority on all questions of procedure and parliamentary law not otherwise provided by these rules, unless dispensed with by unanimous vote.

2.04 COMMISSIONERS — CHALLENGE: Any challenge to a Commissioner's sitting at a hearing shall be made by an interested party by submitting a written affidavit to the Chief Examiner at least ten (10) days prior to the commencement of a hearing or as soon as possible after the party learned of the alleged interest, prejudice or close relationship which is the basis of the challenge. The Commission shall review the affidavit and vote on the challenge prior to proceeding with the hearing. Upon the Commission's finding of cause for disqualification, the challenged commissioner shall take no part in the hearings. Failure to timely raise a challenge shall constitute a waiver of the challenge by the party unless, in the exercise of reasonable diligence, a basis for challenge is unknown to a party prior to commencement of a hearing.

2.05 COMMISSIONERS — CHALLENGE — MEMBER PRO TEMPORE: If, as a result of disqualification(s) pursuant to Section 2.04, there is no longer a lawfully constituted quorum available, then the remaining commissioner, if any, shall request the City Manager in writing to appoint additional qualified persons to act as members of the commission pro tempore for the purpose of hearing and deciding the particular proceeding only. Alternatively, the remaining commissioners may, with the written consent of the City Manager and the employee (or employee's representative), appoint a member or members pro tempore.

2.06 OFFICE HOURS: The Commission offices shall be the office of the Police Department. The address of the Civil Service Commission is 201 S Pacific, Suite 102, Kelso, WA 98626. The regular office hours and address for receipt of Commission correspondence and notices shall be 8:00 A.M. to 5:00 P.M., Monday through Friday (excluding City holidays) at the office of the Police Department.

2.07 PUBLIC RECORDS: Public records of the Commission shall be available for inspection and copying during the regular office hours of the Police Department. No fee will be charged for inspection of public records. Inspection will be during office hours in a space provided by the Commission, under its supervision, and must be accomplished without excessive interference with the essential functions of the City. Copies will be made available at charges established by the City Council or City Clerk. Copies of these rules shall be printed for free public distribution.

2.08 RECORD OF PROCEEDINGS: The Commission shall keep a record of its proceedings. The record of the Commission shall not include a written verbatim report of proceedings unless ordered. The Commission may retain a court reporter to record all or part of a proceeding. In addition, a party to a proceeding, at such party's own expense, may have a court reporter record all or part of a proceeding. On appeal or review, costs of transcription may be recovered by the Commission or a prevailing party, at the discretion of the reviewing court or the Commission. Upon appeal or review,

transcription and certification of a record of proceedings shall be arranged by the City Manager or Chief Examiner.

2.09 REPORTS — APPLICANTS, ELIGIBLES, EMPLOYEES: Each applicant, eligible, and employee shall, through City procedures (where applicable), keep the Commission informed, by a written notice, of current address and telephone number, and shall report any change of name through marriage or otherwise.

2.09.01 Each eligible shall keep the Commission informed, in writing, regarding availability and any refusal to accept appointment or promotion and the reasons therefor. Failure to give such notice shall constitute cause for striking an eligible's name from a Preliminary Eligibility Register.

3.00 CHIEF EXAMINER

3.01. EXAMINER AUTHORITY: The Chief Examiner shall, subject to Commission approval:

3.01.01 Formulate and conduct practical and competitive tests for positions within the Police Department.

3.01.02 Determine minimum qualifications and eligibility of applicants.

3.01.03 Establish and maintain Preliminary Eligibility Registers and Certified Hiring Registers for entry level and lateral entry police officer positions.

3.01.04 Other duties as prescribed by the Commission.

3.02 REVIEW OF AND APPEAL FROM ACTIONS OR DECISIONS OF THE CHIEF EXAMINER:

3.02.01 The Commission on its own motion may review or modify any action or decision of the Chief Examiner.

3.02.02 Any person adversely affected by an action or decision of the Chief examiner may request the Commission to revise or modify such action or decision. Such requests shall be in writing, setting forth with reasonable certainty the action objected to, the grounds supporting the request, and the relief sought, and must be made within ten (10) days from the date notice of such action unless established otherwise in these rules. The Commission may thereupon conduct an investigation or grant a hearing on the matter or take such action as it deems appropriate consistent with law and these rules.

4.00 DEFINITIONS

4.01 ACTUAL SERVICE: See Service Credit Section 10.

4.02 APPLICANT: Anyone who has filed an application to take a Civil Service examination with the Police Department.

4.03 APPOINTING AUTHORITY: City Manager or his designee.

4.04 APPOINTMENT:

- 4.04.01 APPOINTMENT — REGULAR:** The appointment of an eligible to a position in the Police Department.
 - 4.04.02 APPOINTMENT — TEMPORARY:** A limited appointment when there is no current hiring register for a vacant position,
 - 4.04.03 APPOINTMENT — PROVISIONAL:** A temporary appointment of an officer to a position which is not vacant, but is currently unfilled due to an authorized leave of absence.
- 4.05 ASSIGNMENT:** The placement of an officer in a position which may carry additional salary and additional limited responsibilities and is within the scope of the specification for the position from which assignment is made.
- 4.06 CANDIDATE:** Any applicant who has completed, or is in the process of completing, a Civil Service examination for consideration of employment with the Police Department.
- 4.07 CAUSE:** Cause shall mean good cause, justifiable or just cause, "in good faith for cause," adequate cause or sufficient cause, as such terms are commonly understood. There is no difference among these various phrases.
- 4.08 CERTIFIED HIRING REGISTER:** A list (certification) of names from a Preliminary Eligibility Register transmitted by the Civil Service Commission to the City Manager from which the department head may fill a vacancy.
- 4.09 CERTIFY:** Verification to the City Manager that a list of names of candidates for employment has been selected from the list of persons tested and found eligible for employment and/or additional testing for consideration of employment.
- 4.10 CIVIL SERVICE — CIVIL SERVICE SYSTEM — SERVICE:** The personnel system of the City of Kelso governing positions within the Police Department.
- 4.11 CIVIL SERVICE COMMISSION:** The Civil Service Commission of the City or the Civil Service Board of Commissioners appointed by the City Manager in accordance with the City Charter.
- 4.12 CIVIL SERVICE REGISTER:** Preliminary Eligibility Register.
- 4.13 COMPUTATION OF TIME:** Method used in computing any period of time prescribed or allowed by these Rules or by any applicable statute.

4.14 CONTINUOUS SERVICE: Employment without interruption, except for absences on approved leave with pay or absence due to service in the armed forces of the United States.

4.15 DEMOTION: Removal of an employee, for cause, from a higher to a lower class of employment or salary step within the Police Department.

4.16 DISCHARGE/DISMISSAL: Removal from the Service for cause.

4.17 EARNED EXAMINATION SCORE: Total score of an applicant earned on an examination for a position with the Police Department.

4.18 ELIGIBLE: Anyone qualified for consideration of employment with the Department through examination and placed on the proper hiring register; also "Certified Eligible."

4.19 PRELIMINARY ELIGIBILITY REGISTER: A register or list of successful candidates for consideration of employment with the Police Department from which certification may be made to fill vacancies in the department; also "Register of Eligibles."

4.20 OFFICER:

4.20.01 OFFICER — REGULAR: Any employee in the Police Department under the Civil Service System who has been appointed from a hiring register and who has satisfactorily served the full probationary period.

4.20.02 OFFICER — TEMPORARY: An employee of the Police Department appointed to fill an emergency, temporary or short term need, or to fill a position for which no register is available.

4.20.03 OFFICER — PROVISIONAL: An employee of the Police Department appointed provisionally to a position.

4.20.04 OFFICER — PROBATIONARY: A person appointed from a Certified Hiring Register who has not yet completed the probationary period of employment in that position.

4.21 EXAMINATION: The process of testing the fitness and qualifications of applicants for positions in the Police Department.

4.21.01 EXAMINATION — ENTRANCE: An examination open to members of the public meeting the requirements stated in the bulletin and application packet announcing the examination.

4.21.02 EXAMINATION — LATERAL ENTRY: An examination limited to police officers and other members of the public meeting the requirements stated in the bulletin and/or application packet announcing the examination.

- 4.21.03 EXAMINATION — PROMOTIONAL:** An examination limited to police officers meeting the requirements stated in the bulleting and/or announcement of the examination.
- 4.22 EXAMINATION BULLETIN:** An examination announcement containing basic information about the position, the requirements for filing, how to apply, and other pertinent information. The examination announcement shall be posted in the Police Department and in other suitable locations.
- 4.23 FINAL EXAMINATION SCORE:** Total of earned exam score plus additional veteran's preference or service credit points for which an applicant is eligible.
- 4.24 LAYOFF:** The interruption of service and pay of any regular officer in the Police Department because of a lack of work or funds.
- 4.25 OFFICE:** The term "office" as used in these rules shall include a position of employment.
- 4.26 OFFICIAL NEWSPAPER:** The newspaper designated as official by the City or as otherwise designated by the Commission in which all official notices and bulletins required to be published shall appear.
- 4.27 PROBATION OR PROBATIONARY:** The status of an employee during the period following appointment from a Certified Hiring Register. This trial period is part of the examination process and is a working test during which an employee is required to demonstrate, by actual performance of the duties, fitness for the position to which certified and appointed.
- 4.28 PROMOTION:** The appointment of an officer to a higher position within the department through a temporary or provisional appointment, or through competitive examination as determined by the Commission.
- 4.29 REINSTATEMENT:** Re-appointment of an officer to a position in which the officer was a regular employee.
- 4.30 REINSTATEMENT REGISTER:** A list of names of persons who were regular employees of the Police Department and who were laid off and are entitled to reinstatement as a regular officer. A reinstatement register may also include former employees on disability retirement who are capable mentally and physically for reinstatement.
- 4.31 RETIREMENT:** The termination of employment for service or disability pursuant to applicable retirement laws.
- 4.32 RULE OF 3:** After testing has been completed, the top three candidates shall be placed on the Certified Hiring Register. The Certified Hiring Register shall then be forwarded to the appointing authority. The appointing authority shall pick one name from the Certified Hiring Register to fill the position. The appointing authority shall take into consideration written test scores, physical fitness, interviews, personal qualifications, and any other suitable

evaluations in filling the position. For promotions, employee evaluations, training and experience, and community service shall also be taken into consideration.

- 4.33 SUSPENSION:** Temporary removal of an officer from employment with or without pay, for cause, or pending determination of charges against the officer which could result in demotion or discharge.
- 4.34 TENURE OR TENURED APPOINTMENT:** The employment status following an appointment after the satisfactory completion of any probationary or trial period whereupon the employee acquires full Civil Service status in the position.
- 4.35 VETERAN'S PREFERENCE:** Preference in examinations and employment based on military service, as provided and defined by applicable laws.

5.00 RULE MAKING

- 5.01 AMENDMENT:** Unless upon emergency declared by all Commissioners present, any amendment to these rules shall be considered in at least two meetings prior to adoption and may be adopted at the second meeting at which the amendment is considered. Upon declaration of an emergency, an amendment may be adopted at the meeting at which it is first proposed. However, the Commission shall review the amendment at its next regular meeting.
- 5.02 PROPOSED AMENDMENTS:** Any officer, or any association thereof, or any other interested person may petition the Commission in writing requesting the adoption and promulgation of any proposed amendment to these rules. The petition shall set forth the proposed amendment, shall give the reasons therefor, and shall be signed by the petitioning party. All such petitions shall be considered by the Commission. The Commission shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition.
- 5.03 EFFECTIVE DATE OF RULES:** All rules and amendments shall become effective immediately upon their adoption by the Commission, unless some later date is specified therein.
- 5.04 FILING/POSTING OF RULES:** These rules and any amendments hereto shall be filed with the City Clerk and retained as a permanent and public record. Notice of each filed amendment shall be posted immediately in the Police Department, with the employee union and/or association, as soon as practicable.

6.00 APPLICATIONS AND APPLICANTS

6.01 GENERAL REQUIREMENTS FOR FILING APPLICATIONS:

- 6.01.01 APPLICATIONS REQUIRED:** All applicants for examinations for positions with the Police Department in the classified Civil Service must timely file written applications on a form prescribed by the Chief Examiner; and no one shall be admitted to any examination without

having first filed an application on the proper form, giving fully, truthfully, and accurately all information required.

6.01.02 TIME LIMITATIONS: All applications for examination shall be filed with the Chief Examiner during office hours and within the time limit fixed in the official notice of examination. Applications received by mail must be postmarked on or before the closing date. Late applications may be accepted only upon written evidence of extenuating circumstances acceptable to the Chief Examiner. Time for filing applications may be extended by the Chief Examiner as the needs of the service require, in which case the examination shall then be re-advertised in the official newspaper.

6.01.03 CONTENTS: Each application shall include statements of fact by the applicant regarding personal data as deemed necessary to determine whether the applicant meets the minimum requirements as described in the examination announcement. The application shall be signed by the applicant with such signature deemed to be made under oath and to certify the truth of all statements made in the application.

6.02 ENTRY LEVEL POSITION/POLICE OFFICER:

6.02.01 EXAMINATION: The examination for entry level police officer shall be practical and impartial, shall consist of subjects which fairly determine the capacity of persons examined to perform the duties of the position and shall include tests of physical fitness and/or manual skill. Scoring for entry level examinations: 60% of earned Oral Board score and 40% of earned written score will determine applicants' final total t is earned score.

6.02.02 QUALIFICATIONS:

1. Must be a citizen of the United States.
2. Shall be able to read and write the English language.
3. Minimum age for appointment is 21.
4. Shall possess a valid Washington Driver's License within two weeks of appointment.
5. Must have graduated from an accredited high school or possess a certificate of equivalency.
6. Shall be required to complete and submit to the employing agency a comprehensive application form.

7. Shall possess a good character as determined by a thorough background investigation.

8. Shall have and successfully pass a written examination, physical agility and/or ability test and an oral interview, to be administered by the employing authority or its representatives.

9. The Civil Service Commission reserves the right to restrict oral interviews to those applicants achieving a satisfactory level of score performance. This performance cut-off level shall be determined by the Chief Examiner and approved by the Commission prior to the examination.

10. Those applicants who are successful in attaining a position on the Preliminary Eligibility Register shall, prior to further consideration of a position on a Certified Hiring Register, have a thorough physical examination by a licensed physician or surgeon approved by the Commission to insure that the applicant is free from conditions which might affect the performance of the applicant's duties as a law enforcement officer and will be subject to a psychological examination and thorough background investigation. Such medical and physical examinations shall also be taken by all probationary appointees before they enter upon their employment and by all applicants for reinstatement before they are reinstated.

6.02.03 POLYGRAPH/VOICE STRESS ANALYSIS EXAMINATION: The polygraph/voice stress analysis examination shall be made.

6.03 LATERAL ENTRY POSITION/POLICE OFFICER:

6.03.01 EXAMINATION: The applicant must have been employed as a full-time, paid, sworn officer eighteen (18) months of the immediate past twenty-four (24) months. Testing shall include and is not limited to: Oral Board, Polygraph/voice stress analysis, *Psychological Examination, Medical Examination, and Background Investigation. The City reserves the right to require any additional tests it deems necessary. (*This requirement may be waived by the hiring authority).

6.03.02 QUALIFICATIONS:

1. Must be a citizen of the United States.
2. Shall be able to read and write the English language.
3. Minimum age at time of appointment is 21.
4. Shall possess a valid Washington Driver's License within two weeks of appointment.

5. Must have graduated from an accredited high school or possess a certificate of equivalency.

6. Shall be required to complete and submit to the employing agency, a comprehensive application form.

7. Shall possess a good character as determined by a thorough background investigation.

8. The applicant shall have successfully completed and received a certificate of completion from the Washington State Training Commission.

The applicant shall have successfully completed the Washington State Basic Law Enforcement Academy and shall hold current Washington State police officer certification. If from out of state, the applicant shall have completed the Basic Academy and shall hold the equivalent certificate(s) from the state in which the applicant is currently, or was most recently employed.

Out-of-state Applicants: The applicant must participate in the first available Equivalency Academy following their date of hire unless such Academy falls within the initial 60 day period for employment. The applicant must meet all the eligibility requirements for participation in the basic equivalency process as set forth in WAC 139-05-210, or as hereafter amended.

9. The applicant must have been employed as a full-time, paid, sworn officer for eighteen (18) months of the immediate past twenty-four (24) months at the time of application.

10. The applicant will be required to participate in an Oral Board examination and other examinations that may be required by the Chief Examiner.

11. Those applicants who are successful in attaining a position on the Preliminary Eligibility Register shall, prior to further consideration of for a position on a Certified Hiring Register, have a thorough physical examination by a licensed physician or surgeon approved by the Commission to insure that the applicant is free from conditions which might affect the performance of the applicant's duties as a law enforcement officer and will be subject to a polygraph/voice stress analysis examination, psychological examination and thorough background investigation.

6.03.03 POLYGRAPH/VOICE STRESS ANALYSIS EXAMINATION: The polygraph/voice stress analysis examination shall be made.

6.04 ADMISSION TO EXAMINATION/PROMOTIONAL:

- 6.04.01** The applicant shall be admitted to the examination if it clearly appears that the applicant meets all the minimum requirements.
- 6.04.02** Minimum qualifications and eligibility for examination shall be determined as of the date of closing as set by the Examination Bulletin, provided, however, for promotional examinations, minimum qualifications and eligibility shall be satisfied by an applicant within thirty (30) days of closing.

6.05 QUALIFICATIONS:

6.05.01 POLICE CAPTAIN

1. Must have served at least two (2) years at the rank of Police Sergeant or above — at least one (1) of which must have been as a Kelso Police Sergeant.
2. Must possess 135 quarter credits from an accredited college or University in law enforcement studies.
3. Must be in good health.
4. Must submit a precis of experience.
5. Must pass a written examination and oral interview and/or Assessment Center test.

6.05.02 POLICE SERGEANT

1. Must have a minimum of three (3) years experience with the Kelso Police Department.
2. Must have an Associates of Arts or Sciences Degree from an accredited college, or the equivalent semester/quarter hours from a 4 year accredited institution.
3. Must be in good health.
4. Must submit a precis of experience.
5. Must pass a written examination and oral interview and/or Assessment Center test.

- 6.05.03** Examination for promotion shall be practical in character and shall embrace such subjects as will test the general intelligence, accuracy and qualifications of the applicant for the position involved. Appointments

and promotions as a result of promotional examinations shall be probationary for one (1) year effective the date of appointment.

6.05.04 Any person who fails to attain an earned score of seventy-five percent (75%) of complete proficiency on any part of the promotional multi-pail examination shall be deemed ineligible. Grading for promotional examinations: Sixty percent (60%) of the earned score for oral board examination; forty percent (40%) of earned score for written examination. An Assessment Center test shall not be subject to factored scoring.

6.06 CONDITIONAL ADMISSION: If there is reasonable doubt as to whether the applicant meets the minimum requirements, the Chief Examiner may order that the applicant be admitted to the examination on condition that the particular requirements are met to the satisfaction of the Chief Examiner and Commission before the applicant is enrolled on a hiring and/or promotional register.

6.07 REJECTION OF APPLICATION OR ELIGIBLE: The Chief Examiner may reject an applicant for examination, withhold from a register or from certification, or remove from a register the name of an eligible under the following circumstances:

6.07.01 FAILURE TO MEET REQUIREMENTS: If it clearly appears that the applicant does not meet the minimum requirements set forth in these rules or in the public notice of the examination. The Chief Examiner must specifically state the reasons for rejecting the application.

6.07.02 FALSE STATEMENT: The applicant has intentionally made a material false statement or has attempted any deception or fraud in connection with this or any other Civil Service examination.

6.07.03 FAILURE TO APPEAR: The failure of an admitted applicant or conditionally admitted applicant to appear at a scheduled examination or any scheduled test or part thereof shall be considered as though the applicant failed the examination or test.

6.07.04 NOTICE OF NON-ACCEPTANCE: Anyone against whom action is taken under Rule 6.07.01 shall be notified promptly by the Chief Examiner of the reasons therefor by oral notice at the time of filing the application or written notice mailed to the applicant or eligible.

6.07.05 PROTEST — ADMISSION TO EXAMINATION PENDING: Any aggrieved applicant whose application to an examination has been rejected may file a protest with the Chief Examiner. Such protest must be in writing and filed within five (5) days of notice of rejection. The Chief Examiner shall give due consideration to all timely filed protests and shall take appropriate action. Pending final disposition of such protest, the Chief Examiner may admit the applicant to the examination, such admission to be without prejudice to either the City or the applicant.

6.07.06 AMENDMENT OF APPLICATION: The Chief Examiner may permit

any applicant before or after acceptance of the application form to amend the application or to file an amended application. The amended application must be re-filed with the Chief Examiner prior to the last date for filing applications for that examination.

- 6.07.07 APPLICATION NOT RETURNED:** All applications when completed and filed become the property of the Commission and thereafter may not be returned to applicant.
- 6.07.08 APPLICATION FEE:** Test application fees may be set by the Chief Examiner and Commission after review of examination purchase and test administration costs. The application fee is to be paid by an applicant at the time of filing of an application and is non-refundable. Failure to pay any required examination fee shall result in the rejection of an application or an eligible.
- 6.07.09 UNFAIR ADVANTAGE:** The applicant has secured confidential information concerning the examination, which might give them an unfair advantage over other applicants.
- 6.07.10 DISMISSAL FOR CAUSE:** No person who has been dismissed for cause from any civil service position, whether it be any municipal, county, state, or federal employment, may apply or qualify for a position within the Classified Service of the City. This subsection includes any out-of-state employment that would be subject to the civil service provisions if in Washington State.
- 6.07.11 RESIGNATION IN LIEU OF DISMISSAL OR PROBABILITY OF DISMISSAL:** No person who has resigned in lieu of dismissal or probability of dismissal from any civil service position, whether it be any municipal, county, state, or federal employment, may apply for or qualify for a position within the classified service of the city. This subsection includes any out-of-state employment that would be subject to the civil service provisions if in Washington State.
- 6.07.12 PAY OR PROMISE TO PAY:** Any applicant for appointment, promotion, re-employment, increase in salary, or other personal advantage who shall directly or indirectly pay or promise to pay any money or any other valuable thing to any person to achieve such appointment, promotion, re-employment, or other personal advantage, shall be ineligible for any further employment in the Classified Service of the City.
- 6.07.13 DISMISSAL FOR CAUSE WHILE EXAMINATION IN PROGRESS:** If any employee is dismissed for cause from the Civil Service position while their examination is in progress, such dismissal shall be deemed cause for rejection of their application and cancellation of examination or any eligibility they may have attained.

7.00 EXAMINATIONS

7.01 ORDERING EXAMINATIONS: An examination shall be ordered whenever it is deemed to be in the best interest of the Department. The Chief Examiner shall administer examinations as provided by these rules.

7.02 EXAMINER — RESPONSIBILITIES: Under the general direction of the Commission and subject to its review, the Chief Examiner shall:

7.02.01 Determine which examinations shall be conducted, the minimum qualifications of applicants, the subjects to be covered in each examination, methods of testing, and the relative weights to be given to the various parts of the examination.

7.02.02 Supervise the conduct of the examinations, appoint such experts, special examiners, and other persons the Chief Examiner deems necessary.

7.02.03 Decide all questions relating to the eligibility of applicants, the admissibility of applicants to the examinations, extension of time and all questions arising during the course of the examination.

7.02.04 Prepare and submit a report after each examination to the Commission, together with a report on all appeals from rulings or appeals from any part of the examination.

In exercising the authority set forth herein, the Chief Examiner shall assure that all phases of the examination process are job related and valid measures of the qualifications for the position.

7.03 EXAMINATION — ANNOUNCEMENT:

7.03.01 PUBLICATION: Public notice of entrance examinations shall be given by the Chief Examiner in the official newspaper at least ten (10) days preceding such examination and in any other publications which the Chief Examiner may direct.

7.03.02 AMENDMENTS: The Chief Examiner may amend any published announcement with notice as otherwise required by these rules.

7.04 EXAMINATIONS — CONTINUOUS: A continuous or periodic examining program may be ordered and administered by the Chief Examiner for positions with the Department. Filing will be open, applications received, and the examinations administered according to the needs of the Department. The names of qualified eligibles resulting from the examinations shall be entered on the hiring register. Names of eligibles from successive examinations shall be entered on the hiring register at the appropriate places as determined by final scores. Names may be withheld from certification or removed from such hiring registers in the same manner and for the same

reasons as from any hiring register. Except as provided below, the rules applicable to the department's examinations shall apply to continuous and periodic examinations.

7.04.01 NOTICE: Public notice of continuous examinations shall state that the period for filing applications and taking examinations shall remain open until further order and notice. Qualified applicants may take the examination at such times and places as posted in the official newspaper and/or selected publications.

7.04.02 DURATION AND CLOSING: Any open filing and examination period, may be closed by order of the Chief Examiner upon giving notice of the order by:

1. Publication at least once in the official newspaper; and
2. Posting a copy in the Police Department at least seven (7) days prior to the date of closing.

7.05 EXAMINATIONS — CHARACTER: All examinations shall be competitive, impartial, and practical in their character. They shall be designed to qualify and, when appropriate, rank applicants in terms of their relative fitness to perform duties of the Department. An examination shall be deemed to be competitive when applicants are tested as to their relative qualifications and abilities, or when a single applicant is scored against a fixed standard.

7.06 EXAMINATIONS — CONTENT: Examinations may include written tests, physical or performance tests, assessment centers, interviews, or evaluations of personal qualifications, training and experience, or any other suitable evaluation of fitness, or any combination of such tests. Such tests may evaluate education, experience, aptitude, knowledge, skill, physical or mental condition, personal characteristics and other qualifications to determine the relative fitness of the candidates.

7.07 EXAMINATIONS — MINIMUM SCORES: In the event that a final minimum passing score is required, the score shall be determined by the Chief Examiner and approved by the Commission prior to any examination.

7.08 EXAMINATIONS — VETERAN CREDIT: Veterans who have passed an examination shall be entitled to credit pursuant to Chapter 41.04 RCW. (Entry Level Only)

7.09 MULTI-PART EXAMINATIONS: Where an examination consists of two or more parts, the Chief Examiner may:

7.09.01 Set a minimum score to be required in any part of such examination, and any applicant who fails to attain such minimum score shall be considered as having failed in the entire exam and shall not be entitled to take the balance of the exam.

- 7.09.02** Assign weights to each part of the examination, with the examinee's earned examination score equaling the weighted average of the scores on each part.
- 7.09.03** Limit the number to be further considered or tested to a group of the highest scoring applicants, depending on the number of applicants who meet the minimum requirements for a position.
- 7.09.04** Employ all or any of the above options for multi-part examinations in any examinations.

7.10 EXAMINATION — PROTEST:

- 7.10.01** Any protest against the scope, content, or practicality of any part of an examination shall be filed in writing with the Chief Examiner within five (5) days immediately following the administration of such part, or within the time limit specified on the examination instruction sheet.
- 7.10.02** When a qualifying grade is required on any part of an examination, those who fail to receive the qualifying grade shall be notified and any protest or appeal must be filed in writing within five (5) days after the notice of results have been mailed.
- 7.10.03** Any protest against scoring or any allegation of clerical error in the final results of an examination must be filed in writing within five (5) days after the notices of results have been mailed.
- 7.10.04** All protests filed in accordance with this rule shall be considered by the Chief Examiner and all proper corrections made. If authorized corrections are applicable to other examinees, the corrections shall be made on all examination papers affected.

7.11 CORRECTION OF CLERICAL ERRORS: Any clerical error shall be corrected by the Chief Examiner upon discovery at any time during the life of the Hiring Register, but no such correction shall affect an appointment made from a certification made prior to the correction.

7.12 CONFIRMATION OF RESULTS:

- 7.12.01** **PROCEDURE:** As soon as practicable following the completion of an examination, the Commission shall review the examination bulletin, testing procedure, test scores, and examination scores of all examinees as computed by the Chief Examiner, together with the submitted report and recommendations, and all timely protests and other relevant matters that may be presented to the Commission. The Commission may conduct such

investigation, and take such final or interlocutory action as it may deem appropriate in accordance with law and these rules.

7.12.02 ACTION WHICH COMMISSION MAY TAKE: Upon review and consideration of the matters aforementioned, the Commission may by its order, at any time prior to notification of examination results, take any of the following actions:

1. Approve and confirm the examination in its entirety as administered and the Chief Examiner's computations and report with regard to the results thereof;

2. Strike certain questions, problems or parts contained in the written test, or strike any of the factors or component parts tested in the oral, physical agility, practical performance, training and experience evaluation or other tests given in the examination if found to be ambiguous, impractical, discriminatory, unfair, too difficult or beyond the scope of the examination or particular test, or otherwise inappropriate for any reason, and order all the examination papers or rating sheets for that particular test to be re-scored and re-graded accordingly;

3. Change, substitute, add to, or delete any of the answers contained in the answer key or otherwise as used in scoring found to be improper, erroneous, incomplete or inappropriate, and order all such papers to be re-scored and re-graded accordingly;

4. Nullify and vacate the entire examination and all of its results for any cause and either (1) order the examination and such component tests or parts as the commission may deem appropriate to be rescheduled and be retaken by all the existing examinees at a specified time and place and upon appropriate notice, or (2) order the percentage weights assigned to the other tests to be readjusted and further order the earned examination score and the final examination score of each examinee to be corrected accordingly;

5. Take any other action or no action as the Commission may deem proper, necessary or appropriate under the particular circumstances involved consistent with law and these Rules.

7.13 CONFIRMATION ORDER: Pursuant to such final action as the Commission may take, the Commission shall make and enter in the minutes an appropriate order confirming the Civil Service examination and the results thereof, which shall take effect immediately on such entry or on such later date as specified in the order. Thereupon, the examination and its results shall become final and conclusive and no changes of any kind may be made therein; subject only to:

- 7.13.01** Medical or other examination, if required;
- 7.13.02** Correction of clerical errors made in the marking, scoring, or grading of the individual examination papers or rating sheets, or made in the computation of an examinee's earned examination average;
- 7.13.03** Correction of errors of fact or law made in the computation of an examinee's final examination rating; and
- 7.13.04** The final disposition of any matters pending with regard to an individual application or examinee.

7.14 NOTIFICATION OF RESULTS: As soon as practicable after the effective date of the confirmation order, the Chief Examiner shall, by mail, give written notice to every examinee of individual examination results, indicating whether the examinee passed, showing both the earned examination score and final examination score and rank as computed in accordance with the final confirmation order.

7.15 EFFECTIVE DATE OF EXAMINATION RESULTS: Results of an examination shall become effective on the date of confirmation by the Commission. Appropriate entry thereof shall be made in the Civil Service Preliminary Eligibility Register.

7.16 EXAMINATION PAPERS: Examination papers of each eligible shall be maintained consistent with examination administration procedures, or otherwise consistent with applicable record retention laws.

7.17 ADDITIONAL EXAMINATIONS: Eligibles certified pursuant to Section 8 shall be subject to background, medical, physical, polygraph/voice stress analysis, psychological examination and to such other examinations administered by the Chief Examiner as authorized and approved by the Commission. Reports of such examination shall be filed with the Chief Examiner in the event the findings of the examination indicate that the eligible be rejected. The Chief Examiner shall consider such recommendation, may require further examination, and may order the eligible's name dropped from the Preliminary Eligibility Register.

7.18 MEDICAL EXAMINATIONS:

APPLICANTS/APPOINTEES: Medical examinations shall be required of all original appointees to entry-level and lateral-entry police officer positions.

7.18.01 EMPLOYEES

1. Order for Examination. Subject to sick leave, disability allowance, and benefits, and disability retirement as provided by law, a police officer may be ordered at any time by the Commission at the recommendation of the Chief of Police, in its discretion, for cause, after at least five (5) days

written notice to such employee, to submit to a medical examination by a physician designated by the Commission for the purpose of determining physical and mental fitness of the employee to perform the duties of the position of police officer.

2. Complaint — Hearing. The Chief of Police, upon good faith belief that any police officer is not physically or mentally competent to perform the duties of the position, may file a written complaint with the Commission setting forth the facts with particularity requesting a medical-examination order. Such complaint may be filed in the absence of or in connection with, or as part of a complaint for dismissal or demotion.

3. Complaint by Another Police Officer. Any police officer, upon good faith belief that a fellow officer's physical safety or welfare is in jeopardy by reason of another officer's physical or mental incompetency, and if all departmental remedies with regard thereto have been exhausted, may file a written complaint with the Commission to the same extent and subject to the same requirements and procedures as provided in subdivision 2 of this rule.

8.00 REGISTERS AND ELIGIBILITY

8.01 PRELIMINARY ELIGIBILITY REGISTERS: After each examination, the Chief Examiner shall prepare a Preliminary Eligibility Register for the Department. The names of successful candidates shall be ranked on both entrance/lateral and promotional registers according to their final examination score.

8.02 PREFERENCE IN CASE OF TIE: The preference in rank of eligibles with equal final examination ratings shall be determined by the earned examination score of those candidates. If this does not resolve the tie, the candidates shall be accorded the same standing on the register. The Commission may order further examinations in order to break such ties before certification of names for appointment. Priority of time of examination shall not be given any preference in determining rank.

8.03 REINSTATEMENT REGISTER: A reinstatement register shall be kept, which shall contain the names of those laid off because of curtailment of expenditures, reduction of force and for like causes, who shall head the list in order of their seniority, and shall be the first to be re-employed.

8.04 CONDITIONAL ELIGIBILITY:

8.04.01 Except when specified, the Commission may grant conditional eligibility to any eligible who is not of the required minimum age, or who lacks any other qualification which may be satisfied prior to the expiration of the register, or whose requisite qualification or disqualification is in doubt. An appropriate notation shall be made on the register whenever the

eligibility of an eligible is conditional. Until such time as the eligible attains the required age, or the particular contingent event or condition occurs is satisfied, and until the eligible reports such fact in writing to the satisfaction of the Chief Examiner and/or Commission, eligibility shall be held in abeyance, and the eligible shall have no standing on the register and shall not be certified for any position with the Department.

8.04.02 Whenever the condition to which a conditional eligible is subject is satisfied, an appropriate notation shall be made on the register and, thereupon, the eligible shall be entitled to full eligibility to the same extent and with the same standing on the register, as if such condition had not been present.

8.04.03 Any eligibility granted under this Section shall expire with that of other eligibles from the same examination.

8.05 DURATION OF REGISTERS: All registers shall continue in effect and all enrollees shall remain eligible for the following periods of time, unless otherwise ordered by the Commission:

8.05.01 One year for Entrance/Lateral Registers

8.05.02 Two years for Reinstatement Registers

8.05.03 One year for Promotional Registers.

A Preliminary Eligibility Register may be cancelled by the Commission when the Register no longer contains three (3) eligibles or is one (1) year old.

8.06 APPOINTMENT WITHOUT EXAMINATION: Except as provided in subsection 8.03, any return to the Civil Service shall be by examination only.

8.07 REINSTATEMENT REGISTERS: Reinstatement registers shall be established for the Department and shall contain the names of the following persons in the order below ranked according to their retention credit:

8.07.01 Officers who have been displaced or laid off or, when requested in writing by the City Manager, probationary officers who have been laid off;

8.07.02 Any former officer on disability retirement from the Department;

8.07.03 Refusal to accept appointment from a reinstatement register shall terminate all rights granted under these Rules.

8.08 AVAILABILITY OF ELIGIBLES:

8.08.01 CERTIFICATION WITHHELD: The name of an eligible who is unavailable for appointment shall be withheld during the period in which it is officially known that the candidate is unavailable. Unless excused or granted a deferment by the Chief Examiner, such non-availability shall constitute cause for striking the eligible's name from the register.

8.08.02 LEAVE OF ABSENCE: A promotional eligible on an authorized leave of absence may be certified for a promotional appointment if such leave will terminate within a reasonable time or may be granted a deferment of certification during the leave period.

8.08.03 MILITARY SERVICE: Any eligible in the military service who gives notice shall be granted a deferment of certification for a period not to exceed forty-five (45) days immediately following.

8.09 CANCELLATION OF ELIGIBILITY — CAUSES: Anyone's name may be removed from a Preliminary Eligibility Register or Certified Hiring Register for:

8.09.01 Failure to pass a required examination or upon receipt of proof of material physical or mental disability, bad character or other unfitness, fraudulent conduct, or false statements by the eligible or by others with the eligible's collusion, in connection with any application, examination for, or securing of an appointment.

8.09.02 A previous unsatisfactory work record with the City or dismissal from City service, or dismissal from any position, public or private, for any cause which would be a cause for dismissal from City service.

8.09.03 Separation from City service will terminate any promotional eligibility.

8.09.04 Failure to respond to the canvass of an entrance register within ten (10) days from such canvass; failure to respond to call, or refusal to accept employment.

8.10 CANCELLATION OF ELIGIBILITY — NOTICE TO ELIGIBLE: Prior to striking an eligible's name from a register, the Chief Examiner must give the eligible written notice setting forth the cause of removal. Within five (5) days after the date of mailing or serving such notice, the eligible may file a written statement with the Chief Examiner explaining or justifying the causes set forth in the notice. The Chief Examiner shall consider all timely filed statements and take such action as is appropriate. Notice under this section shall not be required in the event of an eligible's voluntary removal from a Preliminary Eligibility Register or Certified Hiring Register.

8.11 CERTIFICATION:

8.11.01 CERTIFIED HIRING REGISTER: Whenever a vacancy is to be filled by regular appointment, the City Manager shall request a certified list from which to make a selection for appointment. The Chief Examiner shall respond to the request by either notifying the City Manager that a certification cannot be made at the time and providing a certified list from registers in the following order and as provided in this rule:

1. Reinstatement.
2. Entrance/Lateral.
3. Supplemental.

8.11.02 NUMBER OF CERTIFIED ELIGIBLES

1. Reinstatement Register. If a vacancy is to be filled from a Reinstatement Register, the certified eligibles list shall contain the name of the one available eligible with the highest standing on the register.
2. If a vacancy is to be filled from other than a Reinstatement Register, the Chief Examiner shall certify to the City Manager names of the three (3) available eligibles who stand highest on the appropriate register.

8.11.03 APPLICATION/EXAMINATION: The application and the examination papers of a certified eligible shall be available for inspection by the City Manager.

8.12 TEMPORARY APPOINTMENT:

8.12.01 AUTHORITY: Where there is no current Preliminary Eligibility Register from which selection can be made, the City Manager may make a temporary appointment. A temporary appointment may be made for a period of one hundred twenty (120) days and may be extended by the Commission for a longer period of time upon a showing of cause by the City Manager. An extension beyond the limits provided in this section may be granted by the Commission upon satisfactory written showing by the City Manager.

8.12.02 QUALIFICATIONS: Temporary appointments may be from (1) Kelso Police Reserve Officers; (2) Available eligibles; and (3) Regular Officers.

8.13 PROVISIONAL APPOINTMENT:

8.13.01 AUTHORITY: Upon written request, the City Manager may authorize a provisional appointment for a period not to exceed ninety (90) days to any entrance or promotional position from which a regular or probationary

employee is absent for any authorized reason but which is not declared vacant.

8.13.02 QUALIFICATIONS: The qualifications for provisional appointees are the same as for temporary appointees outlined in subsection 8.12.

9.00 PROBATION

9.01 PROBATIONARY PERIOD: After each appointment from a Certified Hiring Register to a full-time or part-time position, the officer appointed shall serve a complete period of probation before the appointment is deemed complete. The purpose of probationary employment is to provide a trial period during which the Department may observe the performance of the probationary employee before conferring the rights of Civil Service status.

9.02 LENGTH OF PROBATIONARY PERIOD: Newly hired and promoted employees shall serve a probationary period. All probationary periods commence on the effective date of appointment to the position. An entry-level employee's probationary period shall end six (6) months after successful completion of the Field Training Officer (FTO) Program. A lateral-level employee's probation shall end one (1) year from the hire date. Promotional appointees shall serve a six (6) month probationary period. This probationary period may be extended for a maximum of ninety (90) additional days.

The Employer shall have no responsibility to re-employ or continue the employment of probationary employees. Probationary employees may be disciplined or discharged without access to any appeal process established by the Agreement or by Civil Service. Regular officers on promotional probation retain their Civil Service rights as a regular officer.

9.03 INTERRUPTION OF PROBATIONARY PERIOD: Minor absences due to vacations, annual military leave, illnesses, etc. shall not be construed as interrupting the probationary period unless an absence or absences are considered to be excessive to the extent that the Chief Examiner will approve a request of the City Manager for an extension of the probationary period, and subject to Commission approval. Any other interruption of service during the probationary period, including but not limited to, any leave of absence without pay, suspension or layoff shall not be counted as pail of the probationary period. Provided, that in cases of necessity or public interest and subject to Commission approval, a probationer may be granted temporary leave from his/her position to serve under a temporary or provisional appointment in another class and the City Manager and Commission may agree to apply such service to the appointee's probationary period.

9.04 SATISFACTORY PERFORMANCE/END OF PROBATIONARY PERIOD: Not later than ten (10) days prior to the expiration of the probationary period of every appointee, the City Manager shall file a written report with the Chief Examiner notifying the Commission whether the services of the probationer will be given a tenured

appointment. If no final report is filed and the probationary period has expired, favorable performance shall be conclusively presumed and the probationer will be entitled to tenured appointment. As soon as practicable after the filing of a favorable period, the Commission shall confirm the Civil Service appointment and the Chief Examiner shall notify the probationer.

9.05 REMOVAL OF PROBATIONER:

9.05.01 **GROUND:** The City Manager, by assigning in writing the reasons therefore, may remove any probationer. Such reasons need not constitute cause and shall not otherwise be reviewed by the Commission.

9.05.02 **PROCEDURE:** The City Manager must file a written document stating the reasons for the removal with the Chief Examiner prior to the end of the probationary period. Notice must be mailed to or personally served on the employee and proof of notice filed with the Chief Examiner.

10.00 SERVICE CREDIT

10.01 SERVICE CREDIT: Service credit shall be computed on the basis of total length of time that a regular officer has served or been employed in the Department, whether such service or employment has been continuous or has been interrupted.

10.02 RETENTION CREDIT: Retention credit is the total of the officer's accumulated service credit in the position to which regularly appointed and any other position within the same classification of positions and any other credit as allowed by the Civil Service Commission. Retention credit is used to determine displacement and order of lay-off.

10.03 COMPUTATION — SERVICE CREDIT MONTHS AND YEARS:

10.03.01 **SERVICE CREDIT MONTH:** A "service credit" month for the purpose of these Rules shall constitute one (1) calendar month in which the officer is paid for fifteen **(15)** or more workdays, including vacation leaves, sick leaves, compensatory time off, and all other leaves for which service credit is accrued in accordance with these Rules. A "service credit" month for regular part-time officers shall constitute a minimum of 120 hours paid time, but these should not accrue at a rate exceeding once credit month per calendar month.

10.03.02 **FRACTION OF MONTH:** No service credit shall be given for any fraction of a calendar month.

10.04 EXAMINATION POINTS/REGULAR OFFICERS: Officers eligible to take promotional examinations shall receive 1/10 point for each service credit month earned for a promotional examination up to a maximum of ten (10) points.

10.05 EXAMINATION POINTS/RESERVE OFFICERS: Reserve officers who have served not less than two full years with the Department shall receive an additional 5% of the earned examination score for an entry level examination.

10.06 DETERMINATION:

10.06.01 The determination of an officer's earned service credit shall be made on the basis of the available payroll and other records. If payroll records are not available for any particular period, it shall be refutably presumed that each officer employed during such period, as shown by other records, earned full service credit in the Department for the entire length of such period.

10.07 REQUESTS FOR CONFIRMATION:

10.07.01 REQUESTS: Any officer, or an association or union on behalf of such officer, may request a determination of the officer's earned service credit as of a designated date. If the request is made at a reasonable time and interval, and subject to such directives as may be then in effect, the Chief Examiner or City Manager shall, as soon as practicable but within ten (10) days, ascertain the requested computation, and shall so notify the employee, association, or union representative in writing.

10.07.02 PROTESTS: If an officer, association, or union has cause to object to the computation of the officer's service credit, written protest may be filed with the Chief Examiner setting forth with particularity the reasons and basis for his objection. Such protests must be filed within ten (10) days. The Chief Examiner shall give due consideration to all timely filed protests and take such action as deemed appropriate.

10.08 SERVICE COVERED:

10.08.01 GENERALLY: Once an officer acquires tenured Civil Service status in the Department, the officer shall receive full service credit for the entire length of time served in the Department, whether such service is continuous or interrupted.

10.08.02 PROBATIONARY PERIOD: After completion of an original or promotional probationary period, an officer shall receive credit for actual service during such period.

10.08.03 TEMPORARY OR PROVISIONAL APPOINTMENT: If a temporary or provisional appointment is followed by a regular appointment to the same class, such officer shall receive credit in the position for actual, continuous service during the temporary or provisional appointment.

10.08.04 ON ASSIGNMENT: A regular officer shall be credited to the regular class for the entire length of time served under an assignment.

10.08.05 LEAVES WITH PAY: A regular officer shall receive full credit for any leave with pay.

10.08.06 LEAVES WITHOUT PAY: No service credit shall be allowed for any time that an officer is on any leave of absence without pay.

10.08.07 SUSPENSION: No service credit shall be allowed while an officer is on a suspension without pay, unless the suspension is modified, reversed or nullified on appeal.

10.09 PROMOTION — COMPUTATION OF CREDIT: Upon completion of the probationary period for a promotional position, an officer shall receive credit for all service in the promotional class, which shall be credited to that class. A prior service credit earned in the lower class or position shall be retained by the officer, but such service credit shall be credited only to the latter class.

10.10 LAYOFF — COMPUTATION OF CREDIT: No service credit shall accrue or be allowed during the period in which an officer is laid off, but all service credit earned and not lost or forfeited up to the effective date of the layoff shall be retained by the officer.

10.11 DISCIPLINARY PENALTY: As a disciplinary penalty in lieu of dismissal, demotion or other penalty, or in addition to such penalty, the Commission may by its order, at its discretion, forfeit or deduct all or a designated portion of the service credit that the officer has earned up to the date of the order, in terms of service credit months or years.

10.12 SERVICE CREDIT UPON SEPARATION FROM CITY SERVICE: Upon separation from service, no credit shall be given or allowed for any prior service or employment up to the time of such separation, and except as otherwise specifically provided by these Rules, service credit shall be forfeited and not be reinstated upon re-employment by the City.

11.00 LAYOFF

11.01 GENERAL REQUIREMENTS: No regular officer or promotional probationer shall be laid off, displaced and laid off, or transferred or reduced to another position in lieu of layoff except for cause exercised in good faith and only after notice to the officer and an opportunity for a hearing.

11.02 CAUSE FOR LAYOFF: The following shall constitute cause for layoff or reduction in lieu of layoff:

- 11.02.01** Lack or insufficiency of funds, or lack or curtailment of work, where the City Council or the City Manager acts to reduce the number of employees in the Department.
- 11.02.02** An officer's position has been filled and there is no vacancy as a result of return of a regular officer from an extended leave of absence; restoration to active duty of an officer or probationer from a disability, military, public health or Peace Corps leave of absence; or reinstatement of a former employee from disability retirement.
- 11.02.03** Restoration of a promotional probationer to a former position where there is no vacancy in the position; or, in any displacement case authorized by these Rules, where there is no vacancy in the Department to which the officer is reduced, or demoted.
- 11.02.04** Any other cause under law or these Rules necessitating a reduction in the number of regular or probational officers or the displacement thereof.

11.03 GOOD FAITH: In all cases involving the layoff of a regular officer or promotional probationer, or any voluntary reduction in lieu of such layoff, the Commission must first find after investigation, hearing or other evidence that the layoff is in good faith and not for an improper purpose.

11.04 ORDER OF LAYOFF: In the Police Department, the following shall be the order of layoff:

- 11.04.01** Temporary or provisional officers.
- 11.04.02** Probationary officers in the order of their length of actual probationary service, the one with the least service being laid off first.
- 11.04.03** Regular officers in the order of their Retention Credit at the time of layoff, the one with the least credit being laid off first.

11.05 LAYOFF OUT OF ORDER: The Commission may grant permission for layoff out of the regular order, upon showing by the City Manager of cause therefore in the interest of efficient operation of the Department, after giving any officer affected an opportunity to be heard by the Commission.

11.06 REDUCTION OR TRANSFER IN LIEU OF LAYOFF: At the time of any layoff, a regular officer or a promotional probationer shall be given an opportunity to accept a reduction to the next lower position, or, in the case of a promotional probationer, restored to the probationer's former position. All requests for voluntary reduction in lieu of layoff

must be filed with the Chief Examiner within ten (10) days following notification to the officer of the intended layoff unless excused by the Commission.

11.07 DISPLACEMENT: If there is no vacancy in the Department to which an officer is being reduced or transferred to in lieu of layoff, the Chief Examiner shall authorize the displacement of the probationer or regular officer in that Department in the position with the least retention credit so long as the retention credit and probationary service of the officer being reduced or transferred as of the date of the layoff exceeds that of the displaced employee.

11.08 NOTICE/PUBLIC HEARING: Whenever layoffs are proposed to the City Council, each officer shall be notified. Each such notice shall contain the following: (1) retention credit of the officer in the Department; (2) displacement options in the Department; (3) rights under these Rules; and (4) the date of any hearing before the Commission. A public hearing shall be held before the Commission according to these Rules when so requested by an affected officer.

12.00 LEAVES OF ABSENCE

12.01 GENERAL POLICY: Leaves of absence with or without pay may be granted to Civil Service employees to the extent authorized by law, applicable City-labor agreements and these Rules. Officers desiring such a leave must submit a written request to the City Manager setting forth the type of leave, the reasons therefore and the time requested. The City Manager shall file written notice of any leaves granted with the Chief Examiner. Any unauthorized absence of an officer shall constitute grounds for disciplinary action or separation from the service.

12.02 LEAVES WITH PAY:

12.02.01 AUTHORIZED: Leaves with pay, including administrative leave, may be granted when authorized by law or applicable City-labor agreements, including but not limited to, leaves for the following:

1. Education and training;
2. Temporary appointment with federal, state or other governmental agencies pursuant to Washington law;
3. To exercise any legal civil duties during scheduled working hours, including service as a juror or witness, or as an association or union representative when authorized by a collective bargaining agreement;

4. To take a Civil Service examination or required medical or other examination;
5. Authorized annual vacations;
6. Sick and disability leaves;
7. Annual military training; and
8. Such other reason in the interest of the City service.

12.02.02 EFFECT: Leaves with pay shall have no effect on the officer's Civil Service status, rank or rights, and service credit. Leaves with pay shall have no effect on the eligibility of an officer for certification.

12.03 LEAVES WITHOUT PAY:

12.03.01 AUTHORIZED: The City Manager may grant regular and probationary officers leaves of absence without pay for any cause or reason not detrimental to the City's interests. However, no officer shall be given leave to take a position outside the Department except where it appears in the best interest of the Department.

12.03.02 DURATION: A leave of absence without pay for a period not exceeding thirty (30) consecutive days may be granted by the City Manager, who shall give notice of such leave to the City Clerk and Chief Examiner. A request for a leave of absence longer than thirty (30) days but less than ninety (90) days bearing the favorable recommendation of the Chief of Police may be granted by the Commission and City Manager under such terms as the Commission and City Manager deems in the best interest of the Department.

12.03.03 EXTENDED LEAVES WITHOUT PAY: Extended leaves of absence without pay beyond a single period of ninety (90) calendar days may be granted to officers by the City Manager when approved by the Commission, and only when the Department will benefit from such leave. Examples of valid reasons for an extended leave are travel, study, or other educational purposes. This rule does not apply to disability, public office, or military leaves or leaves to take another position within the Service.

12.03.04 RETURN FROM EXTENDED LEAVES: Officers on extended leave without pay will only be restored to their regular position at the termination of their leave if the position: (1) has not been declared vacant; or (2) has been declared vacant, but is not currently filled. If the position has been filled by regular appointment, the officer on leave will be granted layoff status and placed on an appropriate reinstatement register.

12.03.05 CANCELLATION/REVOATION: Any or all leaves of absence without pay within the Department may be cancelled whenever any necessity arises in the good faith judgment of the City Manager. The City Manager may revoke an individual officer's leave without pay if it is found that the officer is using the leave for purposes other than that for which it was granted. Officers may be ordered to return to work immediately or as soon as practicable on written notice from the City Manager of the cancellation or revocation of their leave, A copy of such notice shall be filed with the Chief Examiner and City Clerk immediately.

12.04 RETURN FROM PAID/UNPAID LEAVE: Except as provided in 12.03.04, at the expiration of the authorized leave of absence, a probationer or regular officer shall resume the same class of work with standing and service credit as determined by these Rules. Failure to return upon the expiration, cancellation, or revocation of a leave of absence shall be cause for disciplinary action or separation from the Service unless excused or mitigated by the City Manager upon written request and for a cause.

13.00 RESIGNATION:

13.01 HOW SUBMITTED: In order to resign, an officer must submit a written resignation stating the reasons for and the effective date of resignation to the City Manager at least ten (10) clays prior to the effective date. The City Manager must concur that the termination is not for cause and may waive full notice where justified.

13.02 INVOLUNTARY RESIGNATION: Any resignation may be voided and set aside and the officer reinstated or restored to active duty by order of the Commission upon its determination that the resignation was made involuntary or under duress or coercion, after giving the City Manager reasonable notice and an opportunity to be heard on the matter. Such action by the Commission may only be taken upon the written petition of the resigned officer filed with the Chief Examiner within ten (10) days from the effective date of the resignation. If no such petition is filed within the ten (10) clay limit, resignation shall be conclusively presumed to have been made voluntarily and without duress or coercion.

13.03 WITHDRAWAL OF RESIGNATION: The Chief Examiner may permit the withdrawal of a resignation only upon a written request filed within ninety (90) days from the effective date of the resignation and if such request for withdrawal bears the favorable recommendation of the City Manager,

13.04 IMPLIED RESIGNATION: The City Manager may presumptively consider any officer to have impliedly resigned upon finding that such officer has been absent from duty without leave or authorization or has failed to report for duty following the expiration or termination of any suspension for five (5) or more consecutive working days or has quit or "orally resigned" and has been absent from duty for three (3) or more consecutive working days without leave or authorization. An officer will not be

determined to have resigned under this rule until five (5) days after proof of service of a written notice by registered or certified mail to the officer. No resignation order shall take effect if, prior thereto, the officer reports for active duty, applies for restoration or reinstatement, or otherwise gives notice to the City Manager or the Chief Examiner which, in the judgment of the Commission, rebuts the presumption of resignation.

14.00 DISCIPLINE AND DISCHARGE

14.01 REPRIMAND FOR CAUSE:

14.01.01 PREREQUISITES: Any official reprimand of an officer by the Chief of Police shall be made only in good faith and for cause. An official reprimand shall be:

1. In writing, signed and dated by the Chief of Police and setting forth the reprimand and the reasons therefore with reasonable particularity;
2. Immediately filed by the Chief of Police with the Chief Examiner for inclusion in the officer's personnel file; and
3. A copy mailed or otherwise served by the Chief of Police to or upon the officer.

14.01.02 No reprimand by the Chief of Police shall be recognized by the Commission for any purpose under the Civil Service System unless and until all the above requirements have been substantially fulfilled.

14.01.03 REPRIMAND RECORDS: Recorded official reprimands which are in substantial accordance with the aforementioned prerequisites may be used for any disciplinary or other relevant and pertinent purpose within the purview of the Civil Service System when not inconsistent with law or any applicable rule.

14.02 SUSPENSION: The City Manager may, for cause, suspend an officer with or without pay for a reasonable period not to exceed fifteen (15) calendar days for a single penalty or thirty (30) calendar days in any one calendar year as an accumulation of penalties.

14.02.01 No officer shall be suspended more than once for the same incident, except as incident to a pre-disciplinary investigation or review.

14.02.02 Any deprivation by the City Manager of any vacation or other paid leave, compensatory time off or other privilege involving pay or compensation, either directly or indirectly, to which an officer is otherwise entitled under these Rules shall be deemed to be a suspension without pay and shall be subject to the above provisions.

14.03 DISCHARGE/DEMOTION:

- 14.03.01** The City Manager may discharge an officer or demote an officer for cause. An officer so demoted shall lose all rights to any higher position. If the officer has not had previous standing in a lower position, such demotion shall not displace any other regular officer or any probationer.
- 14.03.02** The Chief Examiner shall be satisfied as to the ability of such demoted employee to perform the duties of the lower position. The demoted officer may be required to actually serve actively a trial period in the position to which demoted, for such time and upon such terms and conditions as the City Manager may provide in the demotion order, for the sole purpose of determining that he is capable of satisfactorily performing the functions and duties of such position.
- 14.03.03** Upon the satisfactory completion of the prescribed trial period or upon the effective date of the demotion if no such period is required, the demoted officer shall have the status, rank and standing of the lower position to which demoted, and such position shall be deemed to be his regular position and department for purposes of these Rules until an authorized change is made.

14.04 DISCIPLINE — CAUSE — ILLUSTRATED: The following are declared to illustrate causes for discipline:

- 14.04.01** Incompetency, inefficiency, or inattention to or dereliction of duty.
- 14.04.02** Physical or mental unfitness for the position which the employee holds.
- 14.04.03** Absence from duty without leave or authorization, or failure without leave or authorization to report to duty.
- 14.04.04** Drunkenness on the job or duty, or use of intoxicating liquors, narcotics, or any other drug, liquid, or preparation to such extent as to interfere with the efficiency or the physical or mental fitness of the officer, or that precludes the officer from properly performing the functions and duties of his position.
- 14.04.05** Conviction of any felony or gross misdemeanor, or any misdemeanor involving moral turpitude.
- 14.04.06** Willful violation of any lawful and reasonable regulation, order or direction made or given by the Chief of Police or supervisor, where such violation has amounted to insubordination or breach of proper discipline, or has resulted in loss or injury to the City, to a citizen or taxpayer or to the public.

- 14.04.07** Willful violation of any order of the Commission relating to the Civil Service System.
- 14.04.08** Willfully inducing or attempting to induce another employee or other person to commit a violation within the purview of sections 14.04.06 or 14.04.07.
- 14.04.09** Criminal or dishonest conduct, or other act of commission or omission which tends to injure or impair the City service.
- 14.04.10** Malicious conduct or language toward the public or fellow employee.
- 14.04.11** Negligence or recklessness in the use of City property.
- 14.04.12** Intentional false statement as to any material fact, or any intentional deception or fraud or attempted deception or fraud, whether as an applicant, examinee, eligible, appointee, probationer, regular employee or former employee, or by another person with his connivance.
- 14.04.13** Fraudulently obtaining or attempting to obtain sick leave or sick leave benefits, or any other leave, leave of absence or special benefits or privileges.
- 14.04.14** Bribery or attempted bribery in any form.
- Defeating, deceiving or obstructing any person in respect of his right or privilege of examination, registration, eligibility, certification, appointment, promotion, reinstatement, employment, change of employment or status, or re-employment under law and these Rules.
- 14.04.16** Furnishing to any person any special or secret information for the purpose of improving, injuring, or otherwise affecting the rights, privileges, prospects or chances of any person with respect to any of the aforementioned matters.
- 14.04.17** Making any false statement, mark, grade, rating, certificate, report or representation concerning any of the aforementioned matters.
- 14.04.18** Unlawfully, or without proper authorization, taking, misappropriating, removing, falsifying, altering, concealing, obliterating, utilizing, misusing, injuring or destroying any City property, or any property, record, book, document, notice, report, paper or other thing of value appertaining to the Commission.
- 14.04.19** Any other cause, act or failure to act which, under law or these Rules or the judgment of the Commission, is grounds for or warrants dismissal, discharge, removal or separation from the service, demotion, suspension, forfeiture of service credit, deprivation of privileges or other disciplinary action.

15.00 HEARINGS

15.01 APPEALS — BY WHOM:

15.01.01 Any regular officer who receives an official reprimand under Rule 14.01.01, or who is demoted, suspended or terminated, may appeal such action to the Commission.

15.01.02 Any officer who is on probation may be discharged without cause.

15.01.03 Any officer adversely affected by any action or decision of the Chief of Police, City Manager or Chief Examiner may appeal such action or decision to the Commission as provided in subsection 3.02.02.

15.01.04 Any officer who is adversely affected by an alleged violation of Civil Service rules may appeal such violation to the Commission as provided by these Rules.

15.02 APPEALS — TIME — FORM: A notice of appeal shall be filed with the Chief Examiner within ten (10) days of the action that is the subject of the appeal. The notice of appeal shall be in writing and include the mailing address and street address where service of process and other papers may be made or effected upon the appellant. The notice of appeal shall also contain a brief description of the facts giving rise to the appeal and a concise statement of the reason for the appeal.

15.03 EXHAUSTION OF ADMINISTRATIVE REMEDIES:

15.03.01 The Chief Examiner may direct the officer to exhaust available administrative procedures before the Commission hears the matter.

15.03.02 If the officer exhausts the available administrative procedures and continues to believe that cause has not been shown, the officer may, within ten (10) days after the final step of the procedure, request the Chief Examiner to return the appeal to the Commission for hearing.

15.04 AUTHORITY OF HEARING EXAMINER:

15.04.01 The Hearing Examiner shall have the authority to make orders of preliminary matters, including motions for discovery, and to compel discovery, continuance, protective orders, and other similar matters. Such

order may be appealed to the Commission. The Hearing Examiner may also conduct pre-hearing and settlement conferences in order to encourage resolution of contested matters, issue subpoenas, and note depositions.

15.04.02 The Commission may authorize the Hearing Examiner to investigate any reports or appeals relating to the enforcement of application of the Civil Service or those rules which do not involve a disciplinary proceeding. The Hearing Examiner shall report the results of the investigation to the Commission in an open meeting. On the basis of such report, the Commission shall either dismiss the report or appeal as being without basis or set the matter for a full hearing.

15.04.03 The Hearing Examiner shall prepare an official record of the hearing.

15.04.04 As an aid to investigations authorized by the Commission, the Hearing Examiner may subpoena any documents that would be discoverable for purposes of hearing preparation and may take depositions by tape recorder of any person who may have relevant knowledge. Depositions so taken shall be kept as part of the records of the Commission.

15.04.05 The Commission may designate the City Attorney or appoint any other qualified attorney as a hearing Examiner to rule on all matters of procedure and evidence at any formal hearing, subject to the control of the Commission.

15.05 APPEALS — INITIAL REVIEW: The Chief Examiner shall review all appeals to determine whether the officer has timely filed an appeal and whether the action appealed is a final action. Upon a determination that the appeal is not timely, the Hearing Examiner shall issue a written order of dismissal with prejudice, setting forth the basis of the dismissal. In the case of an action that is not final, the appeal shall be stayed until such action becomes final. Such orders may be appealed to the Commission.

15.06 APPEALS — NOTICE OF HEARING: Upon receipt of a notice of appeal, the Chief Examiner shall forward a copy of the notice to other affected parties. As soon as possible thereafter, but in any event within ten (10) days, a hearing before the Commission shall be set, with each party to be afforded not less than twenty (20) days notice of such hearing. The initial hearing before the Commission may be limited to the setting of a schedule for a subsequent hearing. If all parties agree, the notice provisions and time limits provided by this section may be waived.

15.07 APPEALS — AUTHORITY OF CITY: The exercise of jurisdiction by the Commission over a matter does not preclude the party from withdrawing, modifying or otherwise compromising the matter prior to the matter going to hearing. Upon resolution of a matter prior to hearing, any party may request the dismissal of the matter. A stipulation signed by both parties should be submitted to the Commission prior to such dismissal.

15.08 SERVICE OF PROCESS — PAPERS:

- 15.08.01** The Chief Examiner shall cause to be served all orders, notices, and other papers issued by the Commission, together with any other papers that the Commission is required by these rules to serve. Every other paper shall be served by the party filing the notice, document or paper.
- 15.08.02** All notices, documents or papers served by either the Commission or a party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel. Service of papers shall be by personal service, by registered or certified mail, or by regular mail with written acknowledgement of such mailing attached to the papers so served. Written acknowledgement shall be by affidavit of the person who mailed the papers, or by certificate of any attorney or the Chief Examiner.
- 15.08.03** Service upon parties shall be regarded as complete when personal service has been accomplished; or by mail (US or intra-city memoranda), upon deposit in the mail properly stamped and addressed.
- 15.08.04** Papers required to be filed with the Commission shall be deemed filed upon actual receipt of the papers at Commission offices. All papers, except the original appeal notice, shall be served with the original and three (3) copies. Briefs and memoranda must be filed with the Commission at least three (3) days prior to any hearing involving matters discussed in said brief or memoranda. Documentary evidence is not required to be filed, **but** rather provided at the hearing.
- 15.08.05** An appellant or petitioner is responsible for notifying the Commission in writing of any change in mailing or street address and telephone number. Failure to so notify the Commission shall constitute a waiver of service and notice under these Rules.

15.09 DISCOVERY:

- 15.09.01** Parties to a proceeding are required to provide to each other reasonable access and discovery to all relevant information concerning the matter before the Commission. Any questions concerning relevancy or access shall be resolved by order of the Hearing Examiner,
- 15.09.02** Upon the failure of any party to comply with an order of the Hearing Examiner compelling discovery, the Chief Examiner shall schedule the matter before the Commission for review and determination of appropriate sanctions.

15.10 SUBPOENAS:

- 15.10.01** Every • subpoena shall identify the Commission and the title of the proceedings, if any, and shall command the person to whom it is directed to attend, at a specified time and place, and give testimony or produce designated books, documents, or things under that person's control.
- 15.10.02** Upon application of any party or such party's representative, the Hearing Examiner shall issue to such party subpoenas requiring attendance and testimony of witnesses or the production of evidence in such proceeding. The party requesting subpoenas is responsible for having the subpoenas properly served, Such requests for subpoenas shall be submitted to the Commission offices at least three (3) days prior to the hearing.
- 15.10.03** Service of subpoena shall be made by serving a copy of the subpoena on the person named therein.
- 15.10.04** The person serving the subpoena shall make proof of service by filing the original subpoena at the Commission office; and if such service has not been acknowledged by the witness, the person serving the subpoena shall make an affidavit of service. Failure to file proof of service does not affect the validity of service.
- 15.10.05** Upon a motion promptly made by a party or by the person to whom the subpoena is directed, and upon notice to the party on whose behalf the subpoena was issued, the Commission may:
1. Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or
 2. Condition denial of a motion to quash or modify upon just and reasonable conditions.

15.11 BURDEN OF PROOF:

- 15.11.01** At any hearing on appeal from a demotion or termination, the City Manager shall have the burden of showing that its action was for cause. At any other hearing, the petitioner or appellant shall have the burden of proof by a preponderance of the evidence.
- 15.11.02** On review of removal, suspension, discharge, or demotion, the Commission will not substitute its judgment for the reasonable and discretionary judgment of the City Manager, and will reverse, nullify, vacate, modify, or otherwise interfere with the removal, suspension, discharge or demotion only upon a determination of whether the judgment or order of removal, discharge, demotion or suspension made was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

15.12 EVIDENCE:

- 15.12.01** An officer has the right to appear before the Commission with or without counsel and to be heard in the officer's own defense.
- 15.12.02** Subject to other provisions of these Rules, all competent and relevant evidence shall be admissible. In passing upon the admissibility of evidence, the Commission shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in the superior courts of the State of Washington.
- 15.12.03** Witnesses in any hearing may be examined orally, under oath or affirmation, and shall be subject to cross-examination by opposing parties and the Commission.
- 15.12.04** When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The Commission may exclude inadmissible evidence and may order cumulative evidence discontinued in its discretion, either with or without objection. A party objecting to the introduction or exclusion of evidence shall state the grounds of such objection at the time such evidence is offered or excluded. No such objection shall be deemed waived by further participation in the hearing.
- 15.12.05** At any hearing before the Commission when documentary exhibits are to be offered into evidence, copies shall be furnished to the opposing party, to each Commission member, Chief Examiner and Hearing Examiner.
- 15.12.06** Parties are encouraged to stipulate to the admissibility of documentary exhibits. To further this end, parties will make requests of other parties for such stipulation no later than three (3) days in advance of the hearing, barring unusual circumstances. The party of whom the request is made shall respond no later than one (1) day prior to the hearing.

15.13 DELIBERATION: The Commission may deliberate in closed (executive) session when taking a disciplinary case or other quasi-judicial matter under advisement, or as otherwise permitted by Chapter 42.30 RCW. Except as determined by the Commission, no person other than the legal counsel to the Commission shall be present during deliberation. No person shall attempt to convey any information or opinion to the Commission concerning any matter on appeal other than in open hearing.

15.14 DECISION: In any appeal, the Commission shall issue a decision, including findings of fact, conclusions of law, and an order, to each party or counsel of record for each party. Such decision shall be issued within ten (10) days of the closing of the hearing.

15.15 REMEDIES: The Commission may issue such remedial orders as deemed appropriate, and shall include reinstatement without penalty if the charges against an employee are not upheld by the Commission.

15.16 RECONSIDERATION: A party may move for reconsideration by the Commission only on the basis of fraud, mistake, newly discovered evidence or miscarriage of justice. Such motion must be filed with the Commission within ten (10) days of the decision of the Commission. Such motion for reconsideration shall be decided on affidavits, absent special showing that testimony is necessary.

15.17 WAIVER: Upon stipulation of all parties to a proceeding, and upon a showing that the purposes of the rules or ordinances of the City would be better served, the Commission may waive the requirements of this Section.

16.00 RETIREMENT AND DISABILITY

16.01 RETIREMENT: Officers of the Department who are members of pension system provided by law shall be retired in accordance with the pertinent provisions of law.

16.02 REINSTATEMENT AFTER DISABILITY RETIREMENT:

16.02.01 PROCEDURE: The Chief Examiner shall review any report from a retirement system showing that a former officer who is on disability retirement has regained health to the extent employable. Upon being satisfied that the officer is physically and mentally competent to perform the duties of the Department, the Chief Examiner shall:

1. Order return of the officer to former employment status as if a leave of absence had been granted; or
2. Place the name on the reinstatement register for a position in which the officer held tenured status.

16.02.02 EFFECT: If such an officer's name is placed on a reinstatement register, service credit acquired prior to retirement shall be continued. The officer shall be reinstated from such register and reduced in grade according to rules. Eligibility rights shall not expire as prescribed in case of layoff. Any reinstatement in a position other than that in which last employed shall not result in a promotion. No service credit for a promotional exam will be accrued during any period of retirement, including disability retirement.

16.02.03 DISCHARGE FOR CAUSE — EXCEPTION: The provisions of this rule shall not apply in the event an officer is discharged for cause from the service, whether or not the officer receives a disability retirement.

17.00 MISCELLANEOUS

17.01 REPEALS AND SAVINGS: All matters shall be subject to these Rules, and to that extent, all previous Civil Service rules are hereby repealed.

17.02 COMPUTATION OF TIME:

17.02.01 In computing any period of time prescribed or allowed by these Rules, the day of the act, or event, or default, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

17.02.02 Any period of time except for the stated period of time set forth in 15.02 and 15.06 may be extended by the Chief Examiner or City Manager for no more than fourteen (14) days upon written motion to the Commission offices and a showing of cause. The motion for extension of time must be filed with the Commission offices prior to the expiration of the applicable time period.

17.02.03 For those actions requiring notice to a party pursuant to these Rules, the date of action or notice of action shall be the date on which notice of the action is mailed to the party, whichever occurs first, except as otherwise specifically provided in these Rules. For those actions not requiring notice to a party, the date of action or notice of action shall be the date the action is taken; provided that, if posting of notice of action in the Department is required under these Rules, the date of action or notice of action shall be the date of posting.

17.03 DECLARATORY RULINGS:

17.03.01 Any person may petition the Commission for a declaratory ruling with respect to the validity, construction, interpretation, applicability or operation of these Rules. The determination to consider a petition for declaratory ruling shall be at the absolute discretion of the Commission.

17.03.02 In the event the Commission considers a petition for declaratory ruling, it shall do so in a public meeting. Following such consideration, the Commission may issue a declaratory ruling, decline to issue a declaratory ruling, schedule further meetings or hearings, or take such other action the Commission may determine in the exercise of its discretion.

- 17.03.03** Declaratory rulings shall be prospective only in their operation and effect and shall not be retroactive.

17.04 RECORDS RETENTION — PSYCHOLOGICAL EVALUATIONS

- 17.04.01** Except as required by the General Records Retention Schedule regarding unhired applicants, psychological evaluations shall be removed and destroyed upon completion of an employee's probationary period.

DES MOINES CIVIL SERVICE COMMISSION RULES AND REGULATIONS

**Des Moines Civil Service Commission
City Of Des Moines
21630 11TH Avenue So., Suite C
Des Moines, WA 98198
(206) 870-6553**

**ADOPTED NOVEMBER 1, 1994
AMENDED JANUARY 5, 1995
AMENDED APRIL 12, 1995
AMENDED SEPTEMBER 13, 1995
AMENDED OCTOBER 4, 1995
AMENDED NOVEMBER 1, 1995
AMENDED DECEMBER 7, 1995
AMENDED MARCH 6, 1996
AMENDED MARCH 5, 1997
AMENDED MAY 5, 1997
AMENDED APRIL 7, 1999
AMENDED APRIL 21, 1999
AMENDED JANUARY 10, 2001
AMENDED JANUARY 23, 2001
AMENDED AUGUST 22, 2001
AMENDED MARCH 31, 2004
AMENDED MAY 16, 2005
AMENDED JULY 11, 2006
AMENDED JULY 27, 2006
AMENDED AUGUST 14, 2007
AMENDED SEPTEMBER 11, 2007
AMENDED JANUARY 8, 2008
AMENDED FEBRUARY 12, 2008
AMENDED OCTOBER 14, 2008
AMENDED AUGUST 14, 2012
AMENDED JUNE 11, 2013
AMENDED SEPTEMBER 10, 2013
AMENDED MARCH 10, 2015**

DES MOINES CIVIL SERVICE RULES AND REGULATIONS

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RULES AND REGULATIONS DES MOINES CIVIL SERVICE COMMISSION

Rule I. Definition of Terms

Sec. 1.01. Academy Graduate Entry. Academy Graduate Entry means and refers to the employment of an applicant who has successfully completed the Washington State Criminal Justice Training Academy (WSCJT) and who holds a current and valid certification through the Washington State Criminal Justice Commission (WSCJTC) as of the date of their employment, or who holds a current and valid certification from a state that has a reciprocity with WSCJTC and who passes WSCJTC's equivalency academy within six months of hire as a full-time commissioned police officer in the state of Washington.

Sec. 1.02. Academy Graduate Entry Eligibility List. Academy Graduate Entry Eligibility List means and refers to a list consisting of applicants who are either a) graduates of the WSCJT Academy; or b) trainees attending the WSCJT Academy who have successfully completed the Academy mid-term examination and are scheduled for graduation from the Academy within sixty (60) days of applying to be placed on the Academy Graduate Entry Eligibility List; or c) eligible candidates who hold current and valid certification from a state that has reciprocity with WSCJTC and who passes WSCJTC's equivalency academy within six months of hire as a full-time commissioned police officer in the state of Washington.

Sec. 1.1. Applicant. Anyone who has filed an application to take a Civil Service examination.

Sec. 1.2. Appointee. Appointee means an individual in the Classified Service serving his or her probationary period. (Same as "probationer").

Sec. 1.3. Appointing Authority. Appointing Authority means the City Manager of the City of Des Moines or the City Manager's authorized agent.

Sec. 1.4. Background Investigation. Background investigation means and includes, but is not limited to, a credit and reference check, a review of driving record, a record check of local, county, state, and federal agencies, and work history with prior employers or agencies where the applicant performed voluntary services.

Sec. 1.5. Candidate. An applicant who has completed, or is in the process of completing, a Civil Service examination.

Sec. 1.6. Class. Class means a group of positions sufficiently similar with respect to duties and responsibilities so that the same title may reasonably be used for each, the same qualifications may be required, and the same salary range may be applied with equity.

Sec. 1.7. Classified Service. Classified Service means all positions in the City service which are subject to the provisions of these rules and regulations as defined by state law and including all full-paid members of the Police Department.

Sec. 1.8. Commission. Commission means the Civil Service Commission for the Police Department of the City of Des Moines.

Sec. 1.9. Compensation. Compensation means any allowance, fee, salary, wage or fringe benefits paid to an employee for performing the duties and responsibilities of his or her position.

Sec. 1.9.1. Continuous Testing. Continuous Testing means a written examination or a standardized physical fitness/agility test conducted pursuant to set and commonly applied standards, or a combination of both, the results of which shall be certified to a Continuous Testing Initial Candidate List prior to being forwarded to the Civil Service Commission. Continuous Testing may, at the discretion of the Commission, be offered through the Secretary/Chief Examiner or pursuant to a Subscription Testing Service Agreement.

Sec. 1.9.2. Continuous Testing Initial Candidate List. Continuous Testing Initial Candidate List means a list of successful eligible examinees for a given class that has been certified by the Testing Service Examiner or Secretary/Chief Examiner and forwarded to the Civil Service Commission for optional additional testing and certification to a Continuous Testing Eligibility List. The Initial Candidate List shall remain effective for a maximum of one (1) year.

Sec. 1.9.3. Continuous Testing Eligibility List. Continuous Testing Eligibility List means a list of successful Continuous Testing examinees for a given class that have been certified by the Secretary/Chief Examiner which shall be forwarded to the Appointing Authority and used to fill vacancies in such class. A Continuous Testing Eligibility List shall remain effective for a maximum of one (1) year.

Sec. 1.10. Demotion. Demotion means a reduction in employment status to a class having a lower maximum rate of compensation.

Sec. 1.11. Discharge. Discharge means the separation of a regular employee from the Classified Service for cause.

Sec. 1.11.1. Education Preference. Education preference means a preference status accorded to entry level police officer candidates who have acquired a college degree from an institution accredited by either the Northwest Association of Schools & Colleges (NASC), or by any other regional accreditation association formally recognized by NASC.

Sec. 1.12. Eligible. Eligible means the meeting of all standards set for qualification for a position in the Classified Service.

Sec. 1.13. Eligibility List. A list of successful examinees for a given class from which certification may be made to fill vacancies in such class.

Sec. 1.14. Emergency Appointment. Emergency appointment means the appointment to a position in the Classified Service made by the Appointing Authority under conditions which threaten life or property, limited to the duration of the emergency period but not to exceed sixty (60) days, and made without reference to the requirements of Civil Service law or these Rules and Regulations.

Sec. 1.15. Examination. Examination means and includes, but not limited to, written, oral, and physical agility tests where the type of examination is not specified.

Sec. 1.16. Full-paid. Full-paid means the employees in the Classified Service who are paid regularly by the City and who devote their full time to police duty.

Sec. 1.17. Gender, Number, and Tenses. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular. The present tense includes the past and future tenses, and the future tense includes the present tense.

Sec. 1.18. Lay-off. Lay-off means the termination of employment because of the lack of funds, lack of work, or because of material change in the organization of the Classified Service.

Sec. 1.18.5.

(a) Lateral – Police Officer. Lateral entry for Police Officer means the employment of a commissioned law enforcement officer who has been employed on a full-time basis for a period of time exceeding twelve (12) consecutive months and not had a lapse of employment as a full-time commissioned law enforcement officer in good standing for a period exceeding the previous twenty-four (24) months, calculated from the day of appointment.

(b) Lateral – Records Specialist. Lateral entry for Records Specialist means the employment of a Records Specialist who has been employed on a full-time basis for a period of time exceeding twelve (12) consecutive months and not had a lapse of employment as a Records Specialist for a period exceeding the previous twelve (12) months, calculated from the day of appointment.

(c) Lateral – Community Service Officer. Lateral entry for Community Service Officer means the employment of a Community Service Officer who has been employed on a full-time basis for a period of time exceeding twelve (12) consecutive months and not had a lapse of employment as a Community Service Officer for a period exceeding the previous twelve (12) months, calculated from the day of appointment.

Sec. 1.19. [Reserved].

Sec. 1.20. [Reserved].

Sec. 1.21. Position. Position means any employment or office in the Classified Service.

Sec. 1.22. Probationary Period. Probationary period means that trial service time prior to attaining regular status during which an employee is subject to rejection without a hearing.

Sec. 1.23. Promotion. Promotion means a change in rank to a position with a higher maximum rate of pay. It does not include a change of title or assignment, such as detective, master patrol officer, or command ranks higher than Commander which is purely discretionary with the Chief of Police.

Sec. 1.24. Provisional Appointment. Provisional appointment means a non-competitive appointment to a position in the Classified Service made in the absence of an Eligibility List, pending the establishment of an Eligibility List for the class and not to exceed four (4) months in duration.

Sec. 1.25. Public Notice. Public notice means, at a minimum, giving notice by posting three (3) public buildings and by publication in a newspaper of general circulation in the City.

Sec. 1.25.1. Regular Employee. Regular employee means an employee who has attained regular status.

Sec. 1.25.2. Regular Status. Regular status means the status of an employee who has acquired rights to a hearing upon discharge by reason of the successful completion of his or her probationary period.

Sec. 1.26. Relative. Relative means father, mother, spouse, brother or sister (full, half, or in-law), son or daughter (blood, foster, step, adopted, or in-law), aunt, uncle, niece, nephew, or first cousin.

Sec. 1.26.1. Reserve Academy Candidate. Reserve Academy Candidate means an applicant who has graduated from a Reserve Academy approved by the Appointing Authority and recognized by the state Criminal Justice Training Commission.

Sec. 1.26.2. Reserve Academy Eligibility List. Reserve Academy Eligibility List means a list of examinees who have graduated from a Reserve Academy approved by the Appointing Authority and recognized by the state Criminal Justice Training Commission, and who have been screened and successfully tested using the same criteria as an Entry Level Candidate. After certification by the Secretary/Chief Examiner, this List may be forwarded to the Appointing Authority to fill vacancies in such class.

Sec. 1.26.3. Subscription Testing Service. Subscription Testing Service means a person or organization offering a service that tests and maintains Initial Candidate Lists for Classified Service prior to forwarding to the Commission for optional additional testing and certification to an Eligibility List.

Sec. 1.27. Suspension. Suspension means the temporary separation of an employee from the Classified Service with or without pay for investigative or disciplinary purposes.

Sec. 1.28. Temporary Appointment. Temporary appointment means an appointment to the Classified Service not to exceed nine (9) months in duration and as extended by the Civil Service Commission.

Sec. 1.29. Written Notice. Written notice, as required under these rules, means the service of a notice in writing either to the person directly or by certified mail, return receipt requested. If by mail, the service shall be deemed completed at the time of deposit with the Post Office.

Rule II. The Civil Service Commission

Sec. 2.1. Organization. The three Commissioners shall be appointed by the Appointing Authority for staggered six (6) year terms. Each Commissioner shall be given a position designation; that is position No. 1, No. 2, or No. 3. Each position shall have a termination date, and termination dates shall be separated by two (2) year increments. A Chair shall be selected upon appointment of a new member or reappointment of a member. All meetings of the Commission shall be conducted in compliance with the “Open Public Meetings Act of 1971”, RCW Chapter 42.30. Two (2) members shall constitute a quorum and all action of the Commission shall be by majority vote. The Commission shall keep record of all proceedings and such minutes shall become a part of the permanent files of the Commission. *Robert’s Rules of Order Newly Revised* shall be the final authority on all questions of procedure and parliamentary law not otherwise provided by these *Rules*.

Sec. 2.2. Removal. Members of the Civil Service Commission may be removed from office for the following reasons: incompetency, dereliction of duty, or malfeasance. The Appointing Authority shall have the power to remove the member, subject to the right of the member to a public hearing before the City Council. Such public hearing before the City Council shall be in the nature of an appeal from the decision of the Appointing Authority and the request shall be filed in writing within ten (10) days after receipt of the notice of removal by the Commissioner. The City Council by majority vote shall have the authority to affirm or reverse the decision of the Appointing Authority.

Sec. 2.3. Powers and Duties. The Civil Service Commission shall:

(1) Adopt rules for the regulation of personnel matters within the Classified Service.

(2) Appoint a Secretary and Chief Examiner based on the result of a competitive examination open to employees of the City. The position of Secretary and Chief Examiner shall be held by one person, henceforth referred to as "Secretary." The Commission shall appoint one member of the Commission the Chief Hearing Officer, and appoint another Commissioner to be responsible for drafting amendments to *Rules and Regulations* for the consideration of the Commission.

(3) Approve the minutes of its meetings and maintain records of Commission business.

(4) Provide for the holding of competitive tests under the supervision of the Secretary and act as a committee of the whole to determine the relative qualifications of persons for employment in the Classified Service.

(5) Begin and conduct all civil suits that may be necessary for the proper enforcement of actions within its authority and the *Rules* of the Commission. The Commission shall be represented in such suits by the Chief Legal Officer of the City, or the Commission may in any case be represented by special counsel appointed by it.

(6) Hear and decide appeals arising from the administration of the Civil Services Acts and these *Rules*.

(7) Investigate and report on all matters touching the enforcement and effect of matters within its authority and these *Rules* and have such powers as will facilitate such investigations, including subpoena power, the power to administer oaths, and the power to take depositions.

(8) Ensure that all appointments to and promotions in the Classified Service shall be made solely on the basis of merit, efficiency, and fitness, which shall be ascertained by open, competitive examination and impartial investigation.

(9) Ensure that no person shall be discharged, demoted, suspended, reinstated, or transferred from any position contrary to these *Rules*.

(10) Make available to the members of the Classified Service copies of its *Rules* and amendments thereto.

Sec. 2.4. Meetings. The regular meeting of the Commission shall be held on the second Tuesday of each month, unless canceled by motion of the Commission at an earlier date. If the second Tuesday is a holiday, then the regular meeting shall be held on the day following in accordance with state law.

Rule III. The Secretary/Chief Examiner

Sec. 3.1. Qualifications. The Secretary/Chief Examiner of the Commission shall be an employee of the City of Des Moines.

Sec. 3.2. Term of Office. The Secretary/Chief Examiner shall serve indefinitely at the pleasure of the Commission.

Sec. 3.3. Duties. The Secretary/Chief Examiner shall:

- (1) Provide proper notice of regular and special meetings of the Civil Service Commission.
- (2) Schedule hearings and notify all parties of hearing schedules.
- (3) Attend all meetings of the Civil Service Commission and take minutes of all Commission actions.
- (4) Schedule Civil Service examinations.
- (5) Keep all records for the Commission.
- (6) Preserve reports made to the Commission.
- (7) Superintend and keep all records of Commission examinations.
- (8) Perform other duties that are assigned by the Commission.

Rule IV. Hearings and Investigations

Sec. 4.1. Hearing Authority. Hearings and investigations that the Commission is authorized to conduct may be conducted by the Commission as a whole, or may be delegated to a single member, but no official decision of the Commission shall be rendered until at least two members have reviewed the evidence and concurred in an opinion. Any hearing resulting from a request by a regular employee must be conducted by the Commission as a whole.

Sec. 4.2. Procedure. The procedure of a hearing or investigation shall not be restricted so as to deny the introduction of evidence that the Commission deems pertinent. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Oral evidence shall be taken under oath or affirmation. Only the evidence presented during the hearing or investigation shall be considered. A person pressing a claim or defending a privilege before the Commission shall appear for all sessions and shall not be excused from answering questions and supplying information except upon claim of privilege. The Washington Rules of Civil Procedure shall apply when an individual pressing a claim or defending a privilege is incapacitated. Parties are entitled to be heard personally and be

represented by counsel. No evidence introduced before the Commission shall be used to establish liability in a civil action or criminal prosecution.

Sec. 4.3. Rights of Parties. Whenever a hearing is granted, all parties shall be entitled to:

- (1) Testify under oath or affirmation.
- (2) Subpoena witnesses to testify in his or her behalf.
- (3) Cross-examine all witnesses testifying against him.
- (4) Present such affidavits, exhibits, and other evidence as is deemed pertinent.
- (5) Argue his or her case.

Sec. 4.4. Burden of Proof. The Appointing Authority shall have the burden of showing by material and substantial evidence that the action taken was done in good faith for cause.

Sec. 4.5. Petition for Rehearing. In an appeal heard by less than a quorum of the Commission, any person aggrieved by any resultant decision of the Commission may file a petition for reconsideration with the Commission. Such petition shall be filed within fifteen (15) calendar days of the date of issuance of the Commission decision and shall be accompanied by a transcript of the hearing, which shall be furnished by the petitioner at his or her sole cost and expense. The petition shall contain all the petitioner's arguments for reconsideration, and copies of the petition shall be served by certified mail, return receipt requested, upon all parties to the hearing. Upon receipt of the petition and transcript, the Commission shall, upon ten (10) days notice to the petitioner and all parties to the appeal, hold a regular or special meeting at which the Commission shall consider the petition and written arguments of all parties submitting the same to the Commission and shall determine whether to reconsider its decision. If the Commission determines not to reconsider its decision, that decision shall be deemed its final decision for the purposes of judicial review. If the Commission decides to reconsider its decision, it shall at the meeting enter findings of fact, conclusions, and its final decision, which for purposes of judicial review shall be deemed the final decision of the Commission.

Sec. 4.6. Report of Commission. All decisions, opinions, and recommendations arising from a hearing or investigation by the Commission shall be written and subscribed to by the members concurring and shall be filed as a permanent record. Any member may submit a minority or supplemental decision or report, which shall be filed as a matter of record.

Sec. 4.7. Judicial Review. Any person aggrieved by a final decision of the Commission may file for review in an appropriate court of law. Such petition shall be filed within thirty (30) days of the date of issuance of the Commission's final decision.

Rule V. Classification

Sec. 5.1. Procedure and Effect. The Appointing Authority shall classify all positions in the Classified Service. The classification plan so developed shall be transmitted to the Commission. Additional classes may be established and existing classes may be divided, combined, or abolished in the same manner as originally adopted. No reclassification of an existing class to a class having either a greater or lower maximum salary range shall be effective unless recommended by the Appointing Authority and unanimously approved by the Commission. Reclassification shall not be used for the purpose of avoiding demotions or promotions.

Rule VI.

[RESERVED]

Rule VII. Employment Applications

Sec. 7.1. Announcement of Vacancy. Whenever there is need, the Commission shall give public notice inviting qualified persons to apply for appointment in the Classified Service and for admission to the examination scheduled to select the most competent. Public notice of the examination shall specify the title and salary range of the position, a brief outline of the requirements of the position, the minimum qualifications, and the final date upon which applications will be received. Persons desiring to compete for positions in the Classified Service shall file applications on forms supplied by the Commission; or, when using a Subscription Testing Service, applications shall be filed following the Subscription Testing Service procedure.

Sec. 7.2. Candidates: Minimum Qualifications.

(1) In order to file an application for examination, the applicant must:

(a) Meet the requirements specified in these *Rules* and in the official examination bulletin as of the closing day of the official filing period and

(b) Produce evidence of education, training, experience, or other lawful requirements for a class, as directed by the Secretary.

(2) Time for filing applications. Applications for examination shall be filed with the Secretary during office hours and within the time limit fixed in the official announcement of the examination. Applications received by mail in the Office of the Commission must be postmarked on or before the closing date.

Sec. 7.3. Rejection of Applications. If the Secretary determines that an applicant does not meet the minimum qualifications agreed to by the Appointing Authority and the Commission, or if he or she concludes that the applicant should not be allowed to compete in the examination for some other appropriate reason, the applicant shall be notified promptly, in writing, sufficiently prior to the scheduled examination so the applicant may attempt to supply additional information to the Secretary prior to the examination. If the matter cannot be settled prior to the examination, the applicant shall be allowed to compete in the examination and the Commission shall make the final decision as to whether or not his or her name shall be included on the Eligibility List at the time the Commission approves the establishment of the Eligibility List.

Sec. 7.4. Continuous Testing. Sections 7.1, 7.2, and 7.3 need not be exercised if the Commission elects to participate in a Continuous Testing Program.

Rule VIII. Examinations

Sec. 8.1. Conduct May Be Delegated. The Secretary shall arrange for the use of public buildings and equipment for the conducting of examinations. The Commission may conduct and score the examination or any part thereof, or may name any qualified person or agency to do so. All tests, including tests of physical fitness, shall be practical and shall consist only of subjects that will fairly determine the capacity of applicants to perform the duties of the position to which appointment is to be made. All examinations shall be proctored by at least one member of the Commission; except that proctoring by a member of the Commission is not required when testing is done by a Subscription Testing Service.

Sec. 8.2. Qualifying Grade and Lateral/Academy Graduate Screening/Scoring. In all physical agility tests, all portions must be passed. In all written examinations, the minimum grade or standing for which eligibility may be earned shall be 70%, or a passing score based on scoring criteria provided by a contract test provider when a contract testing provider is engaged. In all oral examinations, the minimum grade or standing for which eligibility may be earned shall be 60%. The cut off point may be established at a higher score to meet other criteria. Failure in one part of the examination shall be grounds for declaring the applicant as failing the entire examination. Lateral entry candidates shall be screened in accordance with Appendix A for Police Officers, with Appendix E for Records Specialists; or with Appendix F for Community Service Officers, and Academy Graduate candidates shall be screened in accordance with Appendix A1 for Police Officers; which are attached to these *Rules* and incorporated by reference. Notice of results of screening and acceptance or rejection for placement on the Lateral or Academy Graduate Eligibility Lists shall be sent to applicants.

Sec. 8.3. Written Examination Procedure. The identity of persons taking competitive written tests shall be concealed from the examiners by the use of an identification number, which shall be used on all test papers. Any test paper having the name of the applicant or any identifying mark other than the official identification number shall be rejected and the applicant so notified.

Sec. 8.4. Oral Examination Procedure. Applicants obtaining a qualifying grade on the written examination may be notified to appear before an Oral Examination Board selected by the Commission.

Sec. 8.5. Physical Agility Tests. RCW 41.12.040(2) provides that tests to fill positions may include tests of physical fitness and/or manual skill. If such tests are to be used to determine fitness for the position, the Commission must be involved in the makeup, administration, and scoring of such examinations.

Sec. 8.6. Preparation of an Eligibility List. The names of persons successful in the examination shall be arranged in order of their earned ratings.

Sec. 8.7. Scoring Criteria Status for Veterans. A Scoring Criteria Status shall be accorded to veterans by adding to the veteran's final cumulative score a percentage of such score in accordance with the requirements of RCW 41.04.010. The term veteran means any person who satisfies the definition in RCW 41.04.005.

If a police officer candidate claiming veteran's Scoring Criteria Status also has education and/or reserve preference, the police officer candidate will have the highest preference percentage added to the cumulative score. Preference points are not cumulative.

Sec. 8.8. Preference for Service as Police Reserve. In an open graded examination for police officer, candidates who receive a passing grade and who have served satisfactorily at least two (2) consecutive years as a police reserve in the Des Moines Police Department shall have five percent (5%) of their final examination grade added to their final cumulative score.

If a police officer candidate claiming police reserve preference also has education and/or Scoring Criteria Status, the candidate will have the highest preference percentage added to the cumulative score. Preference points are not cumulative.

Sec. 8.8.1. Education Preference. In an open graded examination for entry level police officer, a preference status shall be accorded to candidates who have received passing grades on their written and oral board examinations, and who have previously acquired a college degree from an institution accredited by either the Northwest Association of Schools & Colleges (NASC) or any other regional accreditation association formally recognized by NASC, as follows:

MA, MS, MPA, or MBA	10% of their final cumulative score
BA or BS	8% of their final cumulative score
AA, AS, or AAS	5% of their final cumulative score

In the case where a candidate has one or more college degrees, veterans' Scoring Criteria Status, and reserve preference, or any combination thereof, the candidate shall receive the incentive with the highest percentage only. Incentive points are not cumulative.

Sec. 8.9 Notification of Results. Each applicant shall be notified of the results of the examination, his or her final earned rating, and the relative position on the Eligibility List.

Sec. 8.10. Review of Examination Papers and Challenges. Within seven (7) working days after notice of his or her final score has been mailed, any applicant may review his or her examination papers and have his or her score reviewed and corrected if an error is identified. Should an applicant wish to challenge any part of the examination, he or she shall submit to the Secretary, within fifteen (15) days after notice of his or her final score has been mailed, authoritative written proof of the validity of his or her claim. All such challenges shall be considered by the Commission. If the Commission is satisfied as to the validity of any such challenges, it shall order an appropriate revision of the examination scores, a restructuring of the Eligibility List, and the mailing of notices to candidates on the Eligibility List indicating the action ordered and its effect on their individual standing.

Sec. 8.11. Promotional Examinations. Promotions shall be made solely on merit, efficiency, and fitness, which shall be ascertained by competitive examination and impartial investigation. All applicants for promotion must be regular employees in the Classified Service of the City of Des Moines (except as provided otherwise in this section) and must possess the minimum qualifications or other specifications of the class to which promotion is sought. The selection process shall conform to Rule X, and the probationary period contained in Rule XI shall apply. Provided, that should the Commission certify, in accordance with Rule XI, fewer than five (5) eligible individuals, the Appointing Authority shall have the option of selecting from among those certified or requesting the Commission to conduct another examination, either (1) among those individuals who did not attain the minimum score or (2) among any and all individuals who possess the minimum qualifications. In any event, those persons previously certified shall remain on the Eligibility List. A promotional Eligibility List shall remain in effect one (1) year and may be extended pursuant to section 9.2(2) of these *Rules*.

Sec. 8.12. Non-Commissioned Examinations. All applicants for non-commissioned positions must be tested as provided by Civil Service *Rules and Regulations*. The selection process shall conform to Rule X, and the probationary period contained in Rule XI shall apply. Provided that should the Commission certify, in accordance with Rule XI, fewer than five eligible individuals, the Appointing Authority shall have the option of selection from among those certified or requesting an open competitive examination. A non-commissioned position Eligibility List shall remain in effect for one (1) year and may be extended pursuant to section 9.2(2) of these *Rules*.

Rule IX. Eligibility Lists

Sec. 9.1. Order of Names on a List. Names on the Eligibility Lists shall be in order of preference according to the final earned ratings of the examination, including veterans' Scoring Criteria Status and Des Moines Police Department Reserve credits, except that employees laid off from a position in that class shall be given preference over new applicants in inverse order of lay-off. When two or more persons have equal claim to a

position on an Eligibility List, except for laid-off candidates whose position on an Eligibility List is governed by Sec. 12.2, their names shall be arranged according to the time and date of receipt of application. Candidates certified to the Appointing Authority under the Rule of Five, and not selected for appointment, shall remain on the Eligibility List in the order of their earned points.

Sec. 9.2. Effective Life of an Eligibility List.

(1) Eligibility Lists shall become effective upon attestation thereof by the Secretary that the list was legally prepared and represents the relative ratings of the names appearing thereon. All Eligibility Lists, including but not limited to Entry, Lateral, Promotional, and Non-Commissioned, shall remain in effect for one (1) year and may be extended by the Commission pursuant to this section. Names appearing on a list by virtue of lay-off shall remain effective for a maximum of two (2) years pursuant to section 12.2 of these *Rules*. Any list may expire when the number of persons thereon still available for appointment is less than five (5) or when such list is revoked pursuant to section 9.3 of these *Rules*.

(2) A current Eligibility List with more than five (5) names may be extended by action of the Commission for a maximum of two (2) consecutive six-month increments, not to exceed a total extension of twelve (12) additional months. The Commission must extend a list prior to the expiration of the current list.

(3) A new Sergeant, Commander, or other Promotional Eligibility List may be extended by action of the Commission pursuant to section 9.2(2) of these *Rules*, regardless of the number of remaining names that appear on the List.

Sec. 9.2.1. Removal of Lateral and Academy Graduate Candidates from Eligibility Lists. The Commission shall remove a lateral or academy graduate candidate's name from a Lateral or Academy Graduate Eligibility List after one (1) year or when a lateral or academy graduate candidate no longer remains eligible or available for employment.

Sec. 9.3. Revocation of a List. Eligibility Lists may be revoked and another examination ordered, only upon approval of the Commission, when such action is deemed advisable on account of fraud, errors, or for obviously inappropriate standards prescribed in connection with the examination or the plainly inadequate results obtained therefrom, or due to the opening of an application period for the purpose of creating a new list. No lists shall be altered or revoked except upon written notice to all persons whose standing may be affected and upon entry of the reasons therefore in the minutes of a regular or special Commission meeting.

Sec. 9.4. Removal of names from a List. The Commission may remove a candidate's name from an Eligibility List for the following reasons:

(1) The Commission shall make an availability inquiry of candidates on a regular basis but not later than six (6) months following the last Commission action affecting the

Eligibility List. Candidates responding negatively to an availability inquiry, or failing to respond within ten (10) days of the mailing of such inquiry, or responding but subsequently failing to comply with background investigations and further hiring procedures, shall be removed from the Eligibility List.

(2) The Commission may remove a candidate's name from an Eligibility List if at any stage of the hiring procedure he or she fails to meet the criteria for appointment set forth under Rule X. In this instance, the Appointing Authority shall provide the Commission with written request for the removal of a candidate's name from a list and the reasons for such request.

(3) The Commission shall remove a Lateral candidate's name from a Lateral Eligibility List after one (1) year [or as extended pursuant to section 9.2(2)] or when a candidate no longer remains eligible or available for employment.

When a candidate's name is removed from a list, the Commission shall cause a written notice to be sent to the candidate advising the action that has been taken and the reasons for such action. The written notice shall be sent by certified mail, return receipt requested, to the candidate's last known address. The candidate shall have the right to file a petition for reinstatement to the list by sending written request to the Civil Service Secretary within ten (10) working days of receiving the written notice. The name of the candidate so removed may be reinstated only if satisfactory explanation of the circumstances is made to and approved by the Commission. If the reinstatement occurs after another person has been hired, the reinstated name shall be placed in an appropriate position on the Eligibility List based on his or her earned ratings, but shall not affect the appointment.

Rule X. Appointments

Sec. 10.1. Basis for Appointments. All appointments within the Classified Service shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation.

Sec. 10.2. Hiring Procedure. Whenever a vacancy exists, the Appointing Authority may 1) request the names of the top five (5) candidates on the Entry Level Eligibility List; 2) request the names of the top five (5) candidates on the Continuous Testing Eligibility List; 3) request the names from the Lateral Eligibility List; 4) request the names of the top five (5) names from the Academy Graduate Entry Eligibility List; 5) request the names from the top five (5) candidates on the Reserve Academy Eligibility List, and/or 6) request any combination of all of the above lists.

When the request is for the Entry Level Eligibility List, Continuous Testing Eligibility List, or Reserve Academy Eligibility List, the top five (5) candidates will be certified to the Appointing Authority on separate and respective Lists in accordance with the Rule of Five. The Commission shall thereupon certify the names of such persons highest on

the Entry Level, Continuous Testing, and Reserve Academy Eligibility Lists who are willing to accept employment.

When the request is for the Lateral Eligibility List, the entire list will be certified to the Appointing Authority.

When the request is for the Academy Graduate Entry Eligibility List, the entire list of applicants satisfying the definition of such term will be certified to the Appointing Authority.

In all circumstances, the Appointing Authority shall conduct an appropriate background investigation and consider the experience, training, education, and other relevant criteria regarding the various candidates.

It shall be a mandatory prerequisite for employment for an applicant to:

(1) Meet the LEOFF minimum medical health standards if the applicant is eligible for LEOFF I; or

(2) Meet the Medical Selection Standards & Guidelines, developed by the Systems Design Group for the Washington State Criminal Justice Training Commission, which are adopted by reference; and

(3) Meet the Pre-employment Physical Fitness Screening Test Standards, which are adopted by reference; and

(4) Such other minimum requirements as stated in Section 7.2. Failure to meet such standards prior to an offer of appointment shall result in removal from the applicable Eligibility List. The Appointing Authority is further empowered to by-pass the Rule of Five and may select anyone on the applicable Eligibility List to comply with the provisions of the City's Affirmative Action Policy.

Sec. 10.2.1. Background Investigation Criteria. A candidate's name may be removed from an Eligibility List if it is determined through the background investigation that a candidate possesses or has demonstrated any of the following qualities or tendencies during prior employments or in his or her personal life:

(1) Incompetency, inefficiency, or inattention to or dereliction of duty;

(2) Insubordination; discourteous treatment of the public, or a fellow employee, or any other act of omission or commission that would tend to injure the public service; or any other willful failure on the part of the candidate to properly conduct himself;

(3) Mental or physical unfitness for the position;

(4) Dishonest, disgraceful, immoral, or prejudicial conduct;

(5) Use of narcotics or drugs not prescribed by a licensed medical practitioner; or drunkenness;

(6) Conviction of a felony; or conviction of a misdemeanor involving moral turpitude; or

(7) Any other act or failure to act which, in the judgment of the Civil Service Commissioners, is sufficient to show the candidate to be an unsuitable, undesirable, or unfit person to be employed in the Classified Service.

Sec. 10.3. Failure to Respond. Candidates failing to comply with pre-appointment investigations as requested by the Appointing Authority, or failing to answer a notification of appointment within five (5) days, or failing without due cause to accept appointment when offered, excluding a provisional, emergency, or temporary appointment, shall be deemed to have declined appointment. If a candidate accepts appointment within the period outlined above and then fails without due cause to report for duty within one (1) day of the reporting date specified in the notice, he or she shall be deemed to have declined appointment. Any person so declining appointment shall also be permanently dropped from the Eligibility List on which his or her name appears unless he or she presents satisfactory cause to the Commission for his or her action or failure to act.

Sec. 10.4. Provisional Appointment. The Appointing Authority may make provisional appointments. As soon as possible following a provisional appointment, the Commission shall announce and conduct an examination and shall certify the five (5) highest eligible names for regular appointment. No provisional appointment shall be continued for longer than four (4) months and no provisional appointee shall be appointed more than twice in the same year unless he or she qualifies by competitive examination and is appointed in the regular manner. Time spent as a provisional appointee shall not be credited to the probationary period or be utilized for computing any privilege accruing under Civil Service law or these regulations.

Sec. 10.5. Emergency Appointment. To meet the immediate requirements of an emergency condition that threatens life or property, the Appointing Authority may employ any person or persons whom he or she may be legally empowered to appoint without restriction of Civil Service law and these regulations. Such employment shall be limited to the duration of the emergency period and is not to exceed sixty (60) days under any circumstances. Time spent as an emergency appointee shall not be credited to any probationary period or be utilized for computing any privilege accruing under Civil Service law or these regulations.

Sec. 10.6. Appointment to Fill a Temporary Vacancy. A temporary vacancy exists when a member of the Classified Service is granted a leave of absence or is temporarily assigned to duties with another agency or is on an extended sick or disability leave, and the Appointing Authority has reasonable grounds to believe the member will return to service. The Appointing Authority is authorized to make an appointment to fill a temporary vacancy under the following conditions:

(1) The appointee shall be certified as having successfully completed the Basic Law Enforcement Academy of the Washington State Criminal Justice Training Commission.

(2) The appointment shall be for a term not to exceed nine (9) months.

(3) The nine-month appointment may be extended in additional increments, each increment not to exceed six (6) months, with the approval of the Civil Service Commission.

(4) Time spent as a temporary appointee shall not be credited to any probationary period or be utilized for computing any privilege accruing under Civil Service law or these regulations.

Rule XI. Probationary Period

Sec. 11.1. Length of Period. No entry level or lateral appointee shall attain regular status in a position until they have satisfactorily completed a probationary period with the City of Des Moines of twelve (12) months following certification by the State of Washington Criminal Justice Training Commission. Re-employed persons who have formerly acquired regular status in the class shall not be subject to probation unless two (2) years have elapsed since their former employment with the City of Des Moines Police Department.

Sec. 11.2. Termination of a Probationer. During the probationary period the Appointing Authority, at his or her discretion, may terminate the employment of a probationary employee. Written notice of such termination shall be given the probationer and a copy shall be forwarded to the Commission.

Sec. 11.3. Attainment of Permanent Status. The Commission shall notify the Appointing Authority fourteen (14) days prior to the completion of the probationary period. At the end of the probationary period, the Appointing Authority shall report to the Commission on the probationer's service and efficiency. No salary or other compensation shall be paid for the services of any probationer following expiration of the probationary period until the Appointing Authority has filed a written statement with the Commission that the performance of the probationary employee is satisfactory and that his or her retention in the service is desired.

Sec. 11.4. Cancellation of Promotion During Probationary Period. An appointee who has his or her promotion canceled during the probationary period shall be restored to the position from which he or she was promoted.

Rule XII. Lay-Offs and Furloughs

Sec. 12.1.1.

[RESERVED]

Sec. 12.2. Lay-Off. Whenever the Appointing Authority contemplates a reduction of staff because of a shortage of funds, lack of work, or material reorganization of the Classified Service, notice thereof shall be sent by the Appointing Authority to the Commission. When the Appointing Authority determines which position or positions are to be abandoned, employees holding positions within a class shall be laid off in inverse order of their lengths of service. Any complaint by a regular employee that the lay-off was in bad faith shall be investigated by the Commission. If the Commission finds that the lay-off was not made in good faith in accordance with these *Rules and Regulations*, it may order the reinstatement of the regular employee or employees.

Notice of lay-off shall be given to the affected employees and the Commission at least fourteen (14) days before the effective date thereof. Rights of rehire for a laid-off employee shall depend on whether an Eligibility List exists on the rehire date. If such a list exists, the laid-off employee shall automatically become one of the candidates certified to the Appointing Authority under Rule IX for a period of two (2) years following lay-off, providing the laid-off employee is qualified for the announced position. If such a list does not exist, the Appointing Authority shall have two options in his or her sole discretion: (a) summarily reinstate the employee if the rehire date is within two (2) years of lay-off, or (b) request the Commission to provide a new Eligibility List, in which event the laid-off employee shall automatically become one of the candidates certified to the Appointing Authority under Rule IX if the projected hire date is within two (2) years of lay-off.

Sec. 12.3. Furloughs. The Appointing Authority may from time to time furlough an employee or employees for up to sixty (60) days due to projected budgetary deficits. In developing furlough policy, the Appointing Authority shall exercise good faith and best efforts to minimize furlough impact on any one individual, and may elect to spread the furlough impact among more than one employee without regard to hire dates. No benefits, except salary and salary-related benefits, shall be lost during the furlough period.

Rule XIII. Suspensions, Demotions, Discharge

Sec. 13.1. Requirement of Cause. No person in the Classified Service who has attained regular status in the Classified Service shall be suspended or demoted, or discharged except for cause.

Sec. 13.2. Suspension. The Appointing Authority may suspend a regular employee without pay for a period not to exceed thirty (30) days or may revoke earned vacation leave not to exceed twenty (20) days in any twelve (12) month period for disciplinary purposes. Notification of such disciplinary action shall be communicated to the employee in writing stating the charges and shall be delivered to the employee by the Appointing Authority. Such action shall be immediately reported to the Commission. Such an employee may, within ten (10) days of the date of receipt of such notification, file with the Commission a written request for an investigation and hearing, which request, shall provide for holding a hearing at which the employee and the Appointing Authority shall have the right to be heard. Within ten (10) days of the conclusion of the hearing, the Commission

shall render its decision. If the decision orders a modification of the disciplinary action, it shall be accompanied by a supporting statement detailing where the Commission believes prejudice was practiced, poor faith exemplified, or cause was lacking.

Sec. 13.3. Demotion and Discharge. The Appointing Authority may demote or discharge a regular employee for inefficiency or other just cause. In all such cases, written reasons shall be furnished the employee and such action shall be immediately reported to the Commission. Within ten (10) days after the date of the notice of demotion or discharge, the employee may file a written request for an investigation and hearing before the Commission. The Commission, within fifteen (15) days of the receipt of such request, shall provide for holding a hearing at which the employee and the Appointing Authority shall have the right to be heard. Within ten (10) days of the conclusion of the hearing, the Commission shall render its decision. If the Commission finds that the demotion or discharge was not made in good faith for cause, it shall order the reinstatement of such individual and may order such other provisions as the Commission deems necessary and fair. The Commission shall file a report of the Commission's findings and orders.

Sec. 13.4. Cause for Discharge or Demotion. The following may be declared cause for discharge from or demotion in the Classified Service, although such action may be based on causes other than those specifically enumerated here:

- (1) Incompetency, inefficiency, inattention to or dereliction of duty;
- (2) Dishonesty, intemperance, insubordination, or discourteous treatment of the public or fellow employees; or any other act of commission or omission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself; or failure to obey any lawful or reasonable direction when such failure or violation amounts to a serious breach of discipline; or any willful violation of these *Rule and Regulations*, other official order, state law, or City ordinance;
- (3) Mental or physical unfitness for the position that the employee holds;
- (4) Drunkenness, or use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such an extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of his or her position under Civil Service;
- (5) Conviction of a violation of the Uniform Controlled Substances Act;
- (6) Conviction of a crime involving moral turpitude;
- (7) Acceptance for personal use of anything of value in the course of work when given in the expectation of receiving a better treatment than that accorded the public generally;
- (8) Failure to pay just debts if scandal is caused the service as a result thereof;

(9) Conduct subversive to public order and sustained conduct detrimental to the efficiency or morale of the service; and

(10) Any other act, or failure to act, which in the judgment of the Commission is sufficient to show the employee to be unsuitable for the position held in the Classified Service.

Rule XIV. Leaves and Resignations

Sec. 14.1. Leaves of Absence without Pay. The Appointing Authority, subject to the approval of the Commission, may grant a regular employee a leave of absence without pay for a period not to exceed the time permitted for a temporary appointment as provided in Section 10.6. No leave without pay shall be granted except upon written request by the Appointing Authority, and a copy shall be filed with the Commission. Upon the expiration of a regularly approved leave without pay, the employee shall be reinstated to the position held at the time leave was granted.

An employee on approved leave of absence shall notify the Appointing Authority, fourteen (14) days prior to the expiration of his or her leave, of his or her intention to return to duty. Failure to so notify the Appointing Authority may be cause for discharge.

Sec. 14.3. Resignations. An employee desiring to leave the Classified Service of the City in good standing shall file with the Appointing Authority, at least fourteen (14) days before leaving, a written resignation stating the effective date and the reason for leaving. The resignation shall be forwarded to the Commission, with a statement by the Appointing Authority commenting on the resigned employee's service, performance, and any pertinent information concerning the cause for resignation. Failure to comply with this rule shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give proper notice thereof shall be immediately reported to the Commission by the Appointing Authority.

Sec. 14.4. Reinstatement. Within two (2) years from resignation, a resigned regular employee, with the approval of the Appointing Authority and the consent of the Commission, may be reinstated in the position of the same or comparable class, or with the approval of the Commission, may be placed among the highest five (5) on the Eligibility List for the class to which his or her former position was allocated. In the event the resigned employee is so placed on the Eligibility List, the name previously fifth on such list shall drop to sixth. No person resigning during his or her probationary period may be reinstated, but with the approval of the Commission, may be placed on the list from which he or she was certified and appointed, provided such Eligibility List is in effect. Time of service shall determine order of an Eligibility List for employees who have resigned.

Rule XV. Records and Reports

Sec. 15.1. Personnel Files. The Commission shall maintain or have access to a personnel file for each employee in the Classified Service showing the name, position held, division, assignment, salary, employment status, leaves, and all other pertinent information. Access to these files shall be restricted to the Appointing Authority, department head, Secretary, and the Commission, except in accordance with the Open Public Records Act, RCW 42.17.240 et. seq.

Sec. 15.2. Examination Records. The Civil Service Commission shall maintain an examination record for every applicant, giving the name, address, date, and title of the examination, ratings earned, and the grade obtained.

Sec. 15.3. Access to Public Records. The minutes of all Commission meetings shall be open to the public during City office hours and may be inspected upon application to the Secretary of the Commission.

Sec. 15.4. Destruction of Records. Examination records and roster or payroll cards and the minutes of the Commission meetings shall be kept permanently. All other records pertaining to applicants not employed, including applications, correspondence, examinations, and records may be destroyed in the manner provided by law.

Sec. 15.5. Reports. The Appointing Authority shall report to the Commission in writing and upon forms prescribed by the Commission all employments and all changes in the status of personnel, supplying the name of the new appointee, the title of the position, date of commencement of service, and any change recommended or made therein and shall report from time to time as may be required by the Commission on additional data covering the Classified Service, including reports of employee performance. Any performance report or rating shall be available for inspection by the employee concerned, who may discuss it with the official making the report or rating and may file with the Commission a statement in explanation of any adverse report or rating. Such an employee's statement shall be made part of the employee's record.

Sec. 15.6. Annual Report. The Commission shall prepare an annual report of the Commission activities for the year for submission to the Appointing Authority upon request.

Rule XVI. Complaints

Sec. 16.1. Procedure. Any person may file a complaint with the Commission protesting any action involving the Classified Service. Any person may file a petition of support for any privilege or right of the Classified Service. The Commission may investigate, hold a hearing on the matter, and may issue a recommendation or directing order thereon.

Rule XVII. Amendments

Sec. 17.1. Procedure. After adoption, these rules may be amended by submission and reading of the proposed amendment at any meeting of the Commission. Notice of the proposal shall be given to the Appointing Authority and a vote thereon shall be taken at the next meeting. If approved by at least two (2) members of the Commission, the amendment shall be adopted and shall be in immediate effect. A copy of the amended regulation shall be provided the Appointing Authority and all members of the Classified Service.

Rule XVIII. Continuous Testing Process

Sec. 18.1. Purpose. The purpose of this Rule is to provide the Civil Service Commission an optional process for screening and testing candidates for a specific class. Continuous Testing may be used in addition to, or in place of, standard testing as provided for in Rule VIII. Continuous Testing, at the discretion of the Civil Service Commission, shall be offered by a Subscription Testing Service or by the Secretary/Chief Examiner, and may include written examination and/or a standardized physical fitness/agility test approved by the Commission, or both, and conducted pursuant to set and commonly applied standards whose results shall be valid for a maximum of six (6) months from the date of certification to a Continuous Testing Initial Candidate List.

Sec. 18.2. Continuous Testing Initial Candidate List Certification.

(1) Applicants certified pursuant to a continuous testing process shall initially be placed on a Continuous Testing Initial Candidate List. Certification to the Continuous Testing Initial Candidate List shall be in accordance with the *Rules and Regulations* of this Commission. As each applicant is placed on a list in accordance with his or her scores and education preference (if applicable), reserve preference (if applicable), and Veterans' Scoring Criteria Status (if applicable), the placement of all others on the list shall be adjusted.

(2) Candidates qualified for appointment pursuant to the procedures established in this Rule shall be placed on a separate register, entitled Continuous Testing Eligibility List. Provided, however, that candidates rejected by the Commission for (1) not satisfying any test requirement; (2) not completing probation; or, (3) following certification, not responding to the Appointing Authority for consideration, shall be removed from the Eligibility List.

Sec. 18.3. Additional Testing. Candidates qualified pursuant to Continuous Testing and placed upon a Continuous Testing Initial Candidate List shall be subject to such additional testing as may be required by the Commission or the Appointing Authority.

Sec. 18.4. Removal of Names from the Continuous Testing Initial Candidate List. The names of candidates certified to the Continuous Testing Initial Candidate List shall remain on the List until either certified to a Continuous Testing Eligibility List following oral board or other testing as established by the Commission, the expiration of one (1) year from the date of certification, or until the candidate has been hired by another public safety

organization. Names may be removed upon notification by the candidate, upon the written notification of another public safety employer, or an entity providing subscription testing.

Sec. 18.5. Continuous Testing Eligibility List.

(1) Applicants certified pursuant to the procedure set forth in the contract with the Subscription Testing Service or the Commission's *Rules and Regulations* and placed on a Continuous Testing Initial Candidate List shall be reviewed and approved by the Commission prior to placement on a Continuous Testing Eligibility List and prior to referral to the Appointing Authority. Following qualification of candidates, candidates shall be placed on the Eligibility List.

(2) By motion or other approval, the Commission may delegate to the Secretary the review and approval of candidates. Upon such delegation, the Secretary shall verify that candidates for placement on the final Continuous Testing Eligibility List meet the minimum eligibility requirements for employment.

(3) Candidates qualified for appointment pursuant to the procedures established in this Rule shall be placed on the Continuous Testing Eligibility List in the same rank and order as maintained by the Subscription Testing Service, with Reserve Academy Graduates being placed on a separate Reserve Academy Eligibility List. Provided, however that candidates rejected by the Commission for (1) not satisfying any test requirement; (2) not completing probation; or, (3) following certification, not responding to the Appointing Authority for consideration, shall be removed from any Continuous Testing Eligibility List, pursuant to Sec. 18.6 and Sec. 9.4 of the *Rules*. As each applicant is placed, or removed, in accordance with his or her scores, education preference (if applicable), and Veteran's Scoring Criteria Status and/or reserve's preference (if applicable), the placement of all others on any Continuous Testing Eligibility List shall be adjusted.

Sec. 18.6. Subscription Testing Services Authorized. The Secretary/Chief Examiner, following approval by the Commission, may enter into contracts with one or more Subscription Testing Service.

Sec. 18.7. Process Verification. The Secretary/Chief Examiner shall verify that the Subscription Testing Service provides qualified testing resources that are content valid and job-related.

Sec. 18.8. Rules 1 through 17 and attached Appendices of the *Rules and Regulations* shall control any and all matters not specifically identified in Rule 18 or in the Subscription Testing Service Contract.

POLICE PATROL OFFICER/LATERAL ENTRY SCREENING CHECK-OFF LIST

Candidate	Address	Phone	
		Home	
		Work	
		Cell:	
SS #:			
DOB:			

Yes	☐	No	☐	1. Application Form
Yes	☐	No	☐	2. Application Questionnaire
Yes	☐	No	☐	3. Personal History Statement
Yes	☐	No	☐	4. Minimum Qualifications
Yes	☐	No	☐	a. 21 Years of Age
Yes	☐	No	☐	b. High School Diploma or GED
Yes	☐	No	☐	c. Academy Graduate w/Current Certification
Yes	☐	No	☐	d. Washington State Driver's License
Yes	☐	No	☐	5. Commissioned Police Officer who has been employed on a full-time basis by a law enforcement agency for a period of time exceeding twelve consecutive months and not had a lapse of employment as a full-time commissioned law enforcement officer in good standing for a period exceeding the previous twenty-four months, calculated from the date of appointment.

Rater: _____

Date: _____

Appendix A, Cont'd.

I. YEARS OF EXPERIENCE IN LAW ENFORCEMENT

<u>Years</u>	<u>Points</u>	
0 – 1	3 points	
1+ - 2	6 points	
2+ - 4	9 points	
4+ - 6	12 points	
6+	15 points	Maximum: 15 points _____

II FORMAL EDUCATION

College Degrees		
AA/AS	5 points	
BA/BS	8 points	
Masters	10 points	Maximum: 10 points _____

III OTHER EDUCATION – In-service or other Police-sponsored classes.

Any law enforcement classes/training of a Duration of a month or more (full-time). This does not include a totaling of short-term training of less than a month's duration. Rate of .5 for each month.

Maximum: 2 points _____

IV PROMOTIONAL POSITIONS

Sergeant	1 point	
Commander	2 points	
Captain (or above)	3 points	Maximum: 3 points _____

V MEETS MINIMUM QUALIFICATIONS

(Automatic 70 points awarded)

Maximum: 70 points 70

Total Possible Points - 100

**POINTS
AWARDED** _____

**POLICE PATROL OFFICER/ACADEMY GRADUATE
SCREENING CHECK-OFF LIST**

Candidate	Address	Phone	
		Home	
		Work	
		Cell:	
SS #:			
DOB:			

Yes	☐	No	☐	1.	Application Form
Yes	☐	No	☐	2.	Application Questionnaire
Yes	☐	No	☐	3.	Personal History Statement
Yes	☐	No	☐	4.	Minimum Qualifications
Yes	☐	No	☐	a.	21 Years of Age
Yes	☐	No	☐	b.	High School Diploma or GED
Yes	☐	No	☐	c.	Academy Graduate w/Current Certification
Yes	☐	No	☐	d.	Washington State Driver's License

Rater: _____

Date: _____

I. YEARS OF EXPERIENCE IN LAW ENFORCEMENT

<u>Years</u>	<u>Points</u>
0 – 1	3 points
1+ - 2	6 points

Maximum: 6 points _____

II FORMAL EDUCATION

College Degrees

AA/AS 5 points

BA/BS 8 points

Masters 10 points

Maximum: 10 points _____

III OTHER EDUCATION – In-service or other law enforcement seminars/conferences

Any law enforcement seminar/conference of a duration of eight hours or more. This does not include a totaling of short-term seminars/conferences of less than eight hours duration each. Rate of .5 for each.

Maximum: 2 points _____

IV MEETS MINIMUM QUALIFICATIONS

(Automatic 82 points awarded)

Maximum: 82 points 82

Total Possible Points - 100

**POINTS
AWARDED** _____

MINIMUM QUALIFICATIONS – SERGEANT CANDIDATES

I. Candidates for the position of Police Sergeant must:

- (a) Be currently certified by the Washington State Law Enforcement Officers Training Commission; or
- (b) Be currently certified in a law enforcement program for which recognition and certification can be granted, or be accredited by the Washington State Law Enforcement Officers Training Commission.

II. Candidates for the position of Sergeant must also:

- (a) Be a certified law enforcement officer in the State of Washington for five (5) continuous years with a minimum of three (3) years as police officer or investigator; or
- (b) Have a two-year degree in police administration or a four-year degree in public administration and have served four (4) continuous years as a certified law enforcement officer in the position of police officer or investigator; or
- (c) Have held the rank of Sergeant, or higher, a minimum of one (1) continuous year and have been certified law enforcement officer for a minimum of four (4) continuous years.

MINIMUM QUALIFICATIONS –COMMANDER CANDIDATES

I. Candidates for the position of Police Commander must:

- (a) Be currently certified by the Washington State Law Enforcement Officers Training Commission; or
- (b) Be currently certified in a law enforcement program for which recognition and certification can be granted, or be accredited by the Washington State Law Enforcement Officers Training Commission.

II. Candidates for the position of Commander must also:

- (a) Have been a certified law enforcement officer for the State of Washington for five (5) continuous years, with a minimum of two (2) years as Sergeant; or
- (b) Have a two-year degree in police administration, or a four-year degree in public administration and have served two (2) continuous years as a certified law enforcement officer in the position of Sergeant; or
- (c) Have held the rank of Commander, or higher, a minimum of one (1) continuous year and have been a certified law enforcement officer in the position of Sergeant a minimum of two continuous years.

HOW TO PREPARE FOR THE TESTS

The following guidelines are presented based on a twelve (12) week period preceding prescreening.

- Preparing for the **MUSCULAR ENDURANCE** test:

The progressive routine is to do as many bent-leg sit-ups (hands behind the head or hands on ears with someone holding your feet – **NOTE:** Must use same hand placement throughout test) as possible in one minute. At least three times per week do three sets (three groups of the number of repetitions you did in one minute).

- Preparing for the **FLEXIBILITY** test:

Performing sitting types of stretching exercises daily will increase this area. There are two recommended exercises:

Sit-and-reach. Do five repetitions of the exercise. Sit on the ground with legs straight. Slowly extend forward at the waist and extend the fingertips toward the toes while keeping the legs straight. Hold for ten seconds.

Towel stretch. Sit on the ground with the legs straight. Wrap a towel around the feet holding the ends with each hand. Lean forward and pull gently on the towel extending the torso toward the toes.

- Preparing for the **MUSCULAR ENDURANCE OF THE UPPER BODY** test:

Determine how many push-ups you can do in one minutes. At least three times per week do three sets of the amount you can do in one minute.

- Preparing for the **CARDIOVASCULAR CAPACITY** test:

Below is a gradual schedule that would enable you to perform a maximum effort for the 1.5 mile run. If you can advance the schedule on a weekly basis, then proceed to the next level. If you can do the distance in less time, then that is encouraged.

WEEK	ACTIVITY	DISTANCE (Miles)	TIME (Minutes)	FREQUENCY (Week)
1	Walk	1	17-20	5
2	Walk	1.5	25-29	5
3	Walk	2	32-35	5
4	Walk	2	28-30	5
5	Walk/Jog	2	27	5
6	Walk/Jog	2	26	5
7	Walk/Jog	2	25	5
8	Walk/Jog	2	24	4
9	Jog	2	23	4
10	Jog	2	22	4
11	Jog	2	21	4
12	Jog	2	20	4

APPENDIX C

PRE-EMPLOYMENT PHYSICAL FITNESS TEST BATTERY

Minimum Scores for Employment as Police Officer
(Scores Indicate 40th Percentile of Fitness)

SIT-UP MUSCULAR ENDURANCE. The score is the number of bent-leg sit-ups performed in one minute.

FLEX FLEXIBILITY. The “sit-and-reach” test measures the flexibility of the lower back and hamstrings. The test involves stretching out to touch the toes and beyond with extended arms from the sitting position. The score is in inches reached in a yardstick with the 15-inch mark being at the toes.

PUSH-UP MUSCULAR ENDURANCE OF UPPER BODY.
(1) Subject’s hands are placed about shoulder width apart on the floor.
(2) Start from the up position (elbows fully extended), the subject must keep the back straight at all times and lower the upper body until chest touches the floor. Subject then returns to the up position. This is one repetition. The modified push-up (for females) is performed on the hands and knees with the back straight and hands slightly ahead of the shoulders in the up position.
(3) The total number of correct push-ups in one minute is recorded as the subject’s score.

1.5 MI. RUN CARDIOVASCULAR CAPACITY. 1.5 MILE RUN. The score is in minutes:seconds.

TEST

AGE/SEX:

MALE	SIT-UP	FLEX	PUSH-UP	1.5 MI. RUN
20-29	38	16.5	29	12:51
30-39	35	15.5	24	13:36
40-49	29	14.3	18	14:29
50-59	24	13.3	13	15:26

FEMALE	SIT-UP	FLEX	PUSH-UP	1.5 MI. RUN
20-29	32	19.3	23	15:26
30-39	25	18.3	19	15:57
40-49	20	17.3	13	16:58
50-59	14	16.8	12	17:55

DOCTOR'S CERTIFICATION OF FITNESS TO PERFORM AGILITY TEST

I have reviewed the four elements of the Washington State Criminal Justice Training Commission Physical Agility Test (see the reverse side of this form) and find that the candidate identified below can / cannot (circle one) perform the elements of the test safely.

Candidate's Name: _____

Agency to Which
Application Is Made: City of Des Moines Police Department

Date of Examination: _____

Doctor's Signature: _____

Doctor's Printed Name: _____

THIS "DOCTOR'S CERTIFICATION OF FITNESS TO PERFORM AGILITY TEST"
MUST BE RETURNED NO LATER THAN _____ P.M., _____.
FAILURE TO DO SO WILL EXCLUDE YOU FROM THE TESTING PROCESS.

CS:DRCERTIF

CIVIL SERVICE COMMISSION RULES AND REGULATIONS

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APPENDIX D
TO
DES MOINES CIVIL SERVICE COMMISSION
RULES AND REGULATIONS

Sec. D.1. Purpose and application of Appendix D.

(1) Appendix D shall apply to adjudicative proceedings authorized to be conducted under the authority of the Commission.

(2) Appendix D applies to adjudicative proceedings begun on or after the effective date of Appendix D in investigations and hearings administered by the Commission. For purposes of this section, "begun" shall mean the receipt by the appropriate office of an application for an adjudicative proceeding, including investigations and hearings. These rules shall be the exclusive rules governing adjudicative proceedings under the jurisdiction of the Commission.

(3) Where a provision of Appendix D conflicts with another chapter of the Civil Service Commission *Rules and Regulations*, the provision of Appendix D shall prevail.

(4) Where a provision of Appendix D conflicts with a provision of the Revised Code of Washington, the statute shall prevail.

(5) For purposes of this Appendix, the phrase "investigations and hearing" as used in sections 13.2 and 13.3 of the Commission *Rules and Regulations* may be referenced as "adjudicative proceeding" or "appeal" and shall have the same intent and meanings.

Sec. D.2. Definitions. As used in these rules of practice and procedure, the following terms shall have the meaning set forth in this section unless the context clearly indicates otherwise. Other terms shall have their ordinary meaning unless defined elsewhere in Appendix D.

"Adjudicative proceeding" or "hearing" shall mean a proceeding required by statute or Civil Service Rules which provides an opportunity to be heard by the Commission prior to the entry of a final order under this Appendix.

"Appellant" shall mean an aggrieved party under the jurisdiction of the Civil Service Commission who is named in an initiating document.

“Brief adjudicative proceeding” shall mean an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in Appendix D.

“Commission” shall mean the Des Moines Civil Service Commission or the Commission’s designee.

“Docket” or “docketing” shall mean the list or calendar of causes set to be heard at a specified time, prepared by the Civil Service Secretary/Chief Examiner for the use of the Commission.

“Filing” shall mean receipt by the Des Moines Civil Service Commission Secretary/Chief Examiner.

“Initiating document” shall mean a written appeal which initiates an investigation or hearing on a matter subject to the jurisdiction of the Civil Service Commission.

“Presiding Officer” shall mean the person who is assigned to conduct an adjudicative proceeding and who may either be a member of the Commission or an individual appointed by the Commission pursuant to this Appendix.

“Protective order” shall mean an order issued under Appendix D which limits the use of, access to, or disclosure of information or evidence.

“Secretary” shall mean the Civil Service Commission Secretary/Chief Examiner.

“Summary action” shall mean a Commission action to address an immediate danger to the public health, safety, or welfare and shall include, but not be limited to, a cease and desist order, an order of summary suspension, and an order of summary restriction of duties for any member of the Civil Service system.

Sec. D.3. Signature authority.

(1) A person designated by the Commission shall sign all initiating documents issued under Appendix D.

(2) All final orders shall be signed by a member of the panel of Commission members who heard the matter.

(3) All other orders shall be signed by the Presiding Officer conducting the proceeding.

(4) Authority to sign shall be indicated by designation of the title of the person signing and shall not require any other affirmation, affidavit, or allegation.

Sec. D.4. Appearance of parties. If an Appellant requests an adjudicative proceeding to contest the action, that party shall appear at all stages of the proceeding except as otherwise provided in this section.

(1) If the Appellant is represented as provided in Appendix D, the Appellant shall appear personally at the hearing and at any scheduled settlement conference but need not appear at the prehearing conference or at presentation of motions.

(2) Parties may be represented by counsel at all proceedings.

(3) The Appellant may appear by telephone at any portion of the proceedings conducted by telephone, in the discretion of the Presiding Officer following reasonable advance notice to the Presiding Officer and to the opposing party.

(4) The requirement of personal appearance may be waived for good cause in the discretion of the Presiding Officer.

(5) Failure to appear as provided in Appendix D shall be grounds for taking final action by default.

Sec. D.5. Computation of time.

(1) When computing a period of time prescribed or allowed by an applicable statute or rule, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

(2) The last day of the computed period shall be included unless the last day is a Saturday, Sunday, or legal holiday.

(3) When the last day is a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(4) When the period of time prescribed or allowed is seven days or less, any intermediate Saturday, Sunday, and legal holiday shall be excluded from the computation.

Sec. D.6. Notarization, certification, and authentication.

(1) A person's sworn written statement, declaration, verification, certificate, oath, or affidavit may be authenticated by an unsworn written statement which is executed in substantially the following form:

I, [insert name of declarant], under penalty of perjury under the laws of the State of Washington, declare that the foregoing/following is true.

Dated this _____ day of _____, _____, at _____, ____.

(2) Documents or records may be authenticated by a certification, as provided in subsection (1) of this section, from the custodian of the records or other qualified person that the documents or records are what they purport to be.

(3) Signature of any attorney shall be accompanied by and authenticated by that attorney's Washington State Bar Association number.

(4) Documents prepared and submitted by a party who is not represented by an attorney shall be signed and dated by that party and shall include that party's current address.

(5) Signature by a party or an attorney on a document shall constitute a certificate by the party or attorney that he or she has read the document, believes there are grounds to support it, and has not submitted the document for the purpose of delay, harassment, or needless increase in the cost of a proceeding.

(6) Compliance with certification requirements of subsections (1) and (2) of this section creates a rebuttable presumption that a document is authentic.

Sec. D.7. Current address. Each respondent or aggrieved party shall provide a current mailing address and all subsequent address changes to the Commission. Whenever service upon any such person is required by these rules, the most recent address provided may be used unless the Commission has actual knowledge that the person resides at a different address.

Sec. D.8. Representation. An Appellant and/or respondent may be represented subject to the following conditions:

(a) A party in an adjudicative hearing may represent himself/herself or may be represented by an attorney who has complied with the admission to practice rules of the supreme court of the state of Washington;

(b) Every attorney representing a party in a hearing shall file a notice of appearance with the Commission Secretary upon commencing representation, and shall file a notice of withdrawal of counsel with the Commission Secretary upon terminating representation.

Sec. D.9. Service and filing.

(1) A party filing a pleading, brief, or paper other than an initiating document or application for an adjudicative proceeding as required or permitted by these rules, shall serve a copy of the paper upon the opposing party or any designated representative of the opposing party prior to or simultaneous with filing.

(2) Unless otherwise provided by law, filing and service shall be made by personal service; first class, registered, or certified mail.

(3) Filing shall be complete upon actual receipt during normal business hours at the Commission Secretary's office, unless filing is directed in writing to be made to another address.

(4) Electronic telefacsimile transmissions shall not be accepted as filing unless acceptance is pre-authorized in writing by a recipient. In the case of a pre-authorized telephonic telefacsimile transmission, the following shall apply:

(a) The maximum length of papers acceptable for submission is ten (10) pages;

(b) The party sending papers by electronic telefacsimile transmission is responsible for confirming the material was complete and legible when received by the Commission Secretary; and

(c) The Commission Secretary may require mailing of the original papers to the Commission.

(5) Service shall be complete when personal service is made; mail is properly stamped, addressed, and deposited in the United States mail. Service must include a Declaration or Return of Service as provided in the following subsection.

(6) Proof of service shall consist of filing as required by these rules, together with a certificate of service including the date the papers were served, the parties upon whom served, the signature of the serving party, and a statement that service was completed by:

(i) Personal service; or

(ii) Mailing in the United States mail a copy properly addressed with postage and fees prepaid to each party and each designated representative.

Sec. D.10. Service of process—Continuances.

(1) Postponements, continuances, extension of time, and adjournments may be ordered by the Presiding Officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, showing good and sufficient cause therefor.

(2) A request for a continuance made prior to the hearing date may be oral or written and shall state that the party seeking the continuance has notified all other parties of the request and that either all other parties agree to the continuance or that all parties do not agree to the continuance. If all parties do not agree to the continuance, the Presiding Officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

Sec. D.11. Jurisdiction. The Commission has jurisdiction to investigate and hear matters as provided in Chapter 41.12 RCW and Chapter 4.32_ DMMC.

Sec. D.12. Telephone proceedings.

(1) The Presiding Officer may conduct all or part of the proceedings or permit a party or witness to appear by telephone or other electronic means if each participant in the proceedings has an opportunity to participate in, hear, and, if technically and economically feasible, see the entire proceeding while it is taking place. Cost of such appearance may be assessed to the party so appearing or on whose behalf the witness appears.

(2) If all or part of the proceedings is conducted as provided in subsection (1) of this section, the parties shall file and serve copies of all documentary evidence no less than three days prior to the proceeding. The Presiding Officer may, for good cause, allow exceptions to this requirement.

Sec. D.13. Hearing location. The Presiding Officer shall designate sites for the conduct of proceedings taking into account accessibility, efficiency, and economy.

Sec. D.14. Good faith requirement. Good faith shall be the standard for compliance with these rules. Failure to make a good faith effort to comply with these rules shall be grounds for sanctions as provided in this Appendix.

Sec. D.15. Expenses and witness fees.

(1) Fees and expenses shall be paid at the following rates to witnesses appearing under subpoena by the party requesting the appearance:

(a) Fees shall be paid at the daily rate established for jurors in district court of King County; and

(b) Expenses shall be paid subject to prior written approval of the Commission, or as otherwise required by law.

(2) Fees for an expert witness shall be negotiated by and paid by the party requesting services of the expert.

(3) All expenses incurred in connection with proceedings under Appendix D shall be paid by the party incurring the expense.

(4) The Commission shall pay expenses associated with:

(a) The facility in which proceedings are conducted; and

(b) Recording of the proceedings which shall be by electronic audio or video equipment, unless a party files a written request to have the proceedings recorded by a certified court reporter, in which case the Commission may require the requesting party to pay the costs of such court reporter.

(5) Expenses related to preparation and distribution of the transcript of proceedings shall be paid by the party filing a motion or request for review of an initial order or petition for reconsideration, appealing a final order, or otherwise requesting the transcript.

Sec. D.16. Sanctions.

(1) Orders may include sanctions against either party.

(2) Grounds for sanctions may include, without limitation:

(a) Failure to comply with these rules or orders of the Presiding Officer;
and

(b) Willful interference with the progress of proceedings.

(3) Sanctions may include:

(a) Dismissal of the matter;

(b) Proceeding in default; and

(c) Other sanctions as appropriate.

- (4) The order shall state the grounds upon which any sanctions are imposed.

Sec. D.17. Form of pleadings and orders.

(1) Pleadings, orders, and other papers filed, served, or entered under Appendix D shall be:

(a) Captioned with the name of the Des Moines Civil Service Commission and the title and cause number, if any, of the proceeding; and

(b) Signed by the person filing, serving, or entering the document. When that person is an attorney representing a party, the signature block shall include the attorney's Washington State Bar Association number.

(2) All orders shall comply with RCW 34.05.461 and the requirements of Appendix D.

Sec. D.18. Notice to limited-English-speaking parties. When the Commission or the Secretary is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and, if necessary, responding to the notice.

Sec. D.19. Interpreters.

(1) A "hearing impaired person" means a person who, because of a hearing impairment or speech defect cannot readily understand or communicate in spoken language. A "hearing impaired person" includes a person who is deaf, deaf and blind, or hard of hearing.

(2) A "limited-English-speaking person" means a person who because of a non-English speaking cultural background cannot readily speak or understand the English language.

(3) If a hearing impaired person or a limited-English-speaking person is involved in an adjudicative proceeding and a need for an interpreter is made known to the Commission Secretary, the Presiding Officer shall appoint an interpreter who is acceptable to the parties or, if the parties are unable to agree on an interpreter, the Presiding Officer shall select and appoint an interpreter.

(4) Before beginning to interpret, an interpreter shall take an oath or make affirmation that:

(a) A true interpretation shall be made to the impaired person of all the proceedings in a language or in a manner the impaired person understands; and

(b) The interpreter shall repeat the statements of the impaired person to the Presiding Officer, in the English language, to the best of the interpreter's skill and judgment.

(5) When an interpreter is used in a proceeding:

(a) The interpreter shall translate all statements made by other participants in the proceeding;

(b) The Presiding Officer shall ensure sufficient extra time is provided to permit translation; and

(c) The Presiding Officer shall ensure that the interpreter translates the entire proceeding to the hearing impaired person or limited-English-speaking person to the extent that the person has the same opportunity to understand the statements made as would a person not requiring an interpreter.

(6) An interpreter appointed under this section shall be entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The Commission shall pay the interpreter fee and expenses incurred for interpreters for license holders, applicants, or recipients of benefits. The party on whose behalf a witness requiring an interpreter appears shall pay for interpreter services for that witness.

(7) All proceedings shall be conducted consistent with chapters 2.42 and 2.43 RCW.

Sec. D.20. Subpoenas.

(1) The Commission, through the Presiding Officer, or other designated person, and attorneys for parties may issue subpoenas to residents of the state of Washington, to relevant witnesses, and to other persons or entities subject to the jurisdiction of the Commission.

(2) The Presiding Officer shall issue subpoenas pursuant to RCW 34.05.446(1) for parties not represented by counsel upon request of the party and upon a showing of relevance and reasonable scope of the testimony or evidence sought. Requests for issuance of subpoenas must be made in writing to the Presiding Officer stating the relevance and the scope of testimony or evidence sought.

(3) The person on whose behalf the subpoena is issued shall pay any witness fees and expenses as provided in WAC 246-11-140 or costs for interpreters for such witnesses as provided in WAC 246-11-210.

(4) Attendance of persons subpoenaed and production of evidence may be required at any designated place in the state of Washington.

(5) Every subpoena shall:

(a) Comply with WAC 246-11-190;

(b) Identify the party causing issuance of the subpoena;

(c) State the title of the proceeding; and

(d) Command the person to whom the subpoena is directed to attend and give testimony and/or produce designated items under the person's control at a specified time and place.

(6) A subpoena may be served by any suitable person eighteen years of age or older by:

(a) Giving a copy to the person to whom the subpoena is addressed;

(b) Leaving a copy at the residence of the person to whom the subpoena is addressed with a person of suitable age and discretion;

(c) Sending a copy by mail to the current address on file with the Commission if the person is a member of the Civil Service; or

(d) Sending a copy by certified mail with proof of receipt if the person is not a member of the Civil Service System.

(7) Proof of service may be made by:

(a) Affidavit of personal service;

(b) Certification by the person mailing the subpoena; or

(c) Return or acknowledgment showing receipt by the person subpoenaed or his or her representative. Any person accepting certified or registered mail at the last known address of the person subpoenaed shall be considered an authorized representative.

(8) The Presiding Officer, upon motion made promptly and before the time specified for compliance in the subpoena, may:

(a) Quash or modify the subpoena if the subpoena is unreasonable or requires evidence not relevant to any matter at issue; or

(b) Condition denial of the motion upon just and reasonable conditions, including advancement of the reasonable cost by the person on whose behalf the subpoena is issued of producing the books, documents, or tangible things; or

(c) Issue a protective order under RCW 34.05.446.

(9) The Commission may seek enforcement of a subpoena under RCW 34.05.588(1) or proceed in default pursuant to WAC 246-11-280.

Sec. D.21. Presiding officer and panel members.

(1) The Commission may appoint one or more persons as Presiding Officer for brief adjudicative proceedings as provided in WAC 246-11-430(1).

(2) The Commission shall authorize one of the following to serve as Presiding Officer for adjudicative proceedings:

(a) A Commission member; or

(b) An individual nominated by the City Attorney and confirmed by the Commission.

The compensation for a Commission-appointed Presiding Officer shall be the same as that provided for pro tem judges in Des Moines Municipal Court.

(3) The Commission may designate certain of its members to hear a matter as a hearing panel as provided by law.

(4) Any party may file a written petition with the Secretary to disqualify the Presiding Officer, or a member of the Commission hearing the matter, based upon specific, written allegation(s) of bias, prejudice, interest, or any other cause for which a judge may be disqualified from hearing a matter.

(5) When the individual whose disqualification is requested is a member of the Commission, the individual member shall determine whether to grant the petition, stating facts and reasons for their determination. In the case of a Presiding Officer designated by the Commission, the full Commission shall determine whether to grant a petition to disqualify, stating facts and reasons for the Commission's determination.

Sec. D.22. Form and content of initiating documents. As provided in Civil Service Rules 13.2 and 13.3, an aggrieved employee may, within ten (10) days of the date of receipt of notification of a disciplinary suspension, demotion or discharge, file with the Commission a written request for an investigation and hearing appealing the disciplinary decision.

The Commission may reject or dismiss any appeal (1) sought by a person not given the right to file an appeal with the Commission; (2) pertaining to a subject or subjects outside the Commission's jurisdiction; (3) any untimely appeal; or (4) any incomplete appeal.

An appeal will be considered incomplete if it fails to provide the following:

- (1) The Appellant's name, address, telephone number and fax line, and other information which would facilitate prompt communications with the Appellant;
- (2) A copy of the administrative decision that is the subject of the appeal;
- (3) A detailed statement identifying specifically the error of fact, law or procedure made by the administrative decision-maker, and the effect(s) of the alleged error(s) on the decision that is the subject of the appeal; and
- (4) A statement of the redress sought by the Appellant.

Sec. D.23. Default.

(1) If a party requests an adjudicative proceeding but fails to appear, without leave to do so, at a scheduled prehearing conference, the Presiding Officer may issue an order of default. The order shall include notice of opportunity to request that the default order be vacated within the time period and under the process provided in RCW 34.05.440(3). Unless vacated, a default order under this subsection shall be grounds for the Commission to proceed to decide the matter in the absence of the respondent and without additional notice to the respondent and to issue a final order.

(2) If a party requests an adjudicative proceeding but fails to appear at the hearing, the Presiding Officer may issue an order of default in the same manner as subsection (1) of this section, or may proceed to hear the matter in the absence of the party and issue a final order.

(3) Final orders entered under this section shall contain:

- (a) Findings of fact and conclusions of law based upon prima facie proof of the allegations contained in the initiating documents;
- (b) Proof of service of or a good faith attempt to serve hearing notice or similar documents and other appropriate notices;

(c) A finding that there is no reason to believe that the party in default is in active military service;

(d) The penalties or conditions imposed by the order; and

(e) Notice of the opportunity to request reconsideration pursuant to RCW 34.05.470.

(4) Final and default orders entered under this section shall be served upon the parties in accordance with WAC 246-11-080.

Sec. D.24. Scheduling orders.

(1) Within fifteen (15) days, or the next regularly-scheduled meeting of the Commission, whichever is longer, after receipt of the application for adjudicative proceeding, the Commission or designee thereof, shall:

(a) Approve the application for full adjudicative procedure and issue and serve on the parties a scheduling order or other scheduling mechanism establishing timelines for discovery, settlement, and scheduled hearings; or

(b) Approve the application for a brief adjudicative procedure and issue and serve a notice of the date by which any additional written materials are to be submitted for consideration; or

(c) Deny the application according to RCW 34.05.416.

(2) If a scheduling order is issued:

(a) The scheduling order shall specify:

(i) The date, time, and place of a settlement conference, a prehearing conference, and the hearing;

(ii) The deadlines for completion of discovery and submission of prehearing motions; and

(iii) The name, address, and telephone number of the Civil Service Commission or other representative who will represent the Commission in the matter.

(b) The scheduling order may be modified by order of the Presiding Officer upon his or her own initiative or upon motion of a party. Any request for change of the scheduling mechanism or order shall be made by motion as provided in WAC 246-11-380.

(c) The Presiding Officer may waive establishing dates for the settlement conference, completion of discovery, submission of prehearing motions, and the prehearing conference, if, in the discretion of the Presiding Officer, those proceedings are not necessary or appropriate in a particular matter or type of case. However, either party may request by motion to the Presiding Officer that any or all of the dates be set.

(d) Dates contained in the scheduling order may be changed by the Commission Secretary upon written request of either party made within fifteen days of issuance of the first scheduling order. All other changes must be made by motion pursuant to WAC 246-11-380.

Sec. D.25. Discovery. The parties are encouraged to exchange information and documents related to the case prior to the adjudicative proceeding. Formal discovery is obtained as follows:

(1) Methods, scope and limits:

(a) Parties may obtain discovery by production of records or things; deposition upon oral examination; requests for admission; or, if ordered by the Presiding Officer, written interrogatories.

(b) Unless otherwise limited by order of the Presiding Officer in accord with these rules, the scope of discovery shall be as follows:

(i) Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter in the pending action. It is not grounds for objection that the information sought will be inadmissible at the adjudicative proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(ii) The frequency or extent of use of the discovery methods set forth in these rules shall be limited by the Presiding Officer if the Presiding Officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive; or

(B) The party seeking discovery has had an ample opportunity by discovery to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations of the parties' resources, and the importance of the issues at stake.

(iii) The Presiding Officer may limit discovery upon his or her own initiative after reasonable notice or pursuant to a motion submitted by a party.

(2) Production of records, documents, or things:

(a) Upon written request of a party the opposing party shall identify experts and other witnesses to be called at the hearing and shall provide other information necessary to enable the party to conduct depositions of the witnesses.

(b) Any party may serve on any other party a request, which must be signed by the party or designated representative:

(i) To produce and permit the party making the request or designee to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of discovery and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) To permit entry onto designated land or other property which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or designated object or operation thereon which is within the scope of discovery.

(c) Any party who produces documents for inspection shall produce them as they are kept in the usual course of business or may, if the parties agree, organize and label them to correspond with the categories in the request.

(d) The party upon whom a request is made may, by motion to the Presiding Officer, move for an order denying the request to produce or modify the conditions of the request. Denial of the request of change in the conditions of the request shall be within the discretion of the Presiding Officer and shall be made by written order.

(3) Depositions may be taken subject to the following conditions:

(a) Within the United States or a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the state of Washington or of the place where the examination is held. A Presiding Officer may, in his or her discretion or following motion of a party, preside at the deposition. Within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice-consul or consular agent of the United States, or a person designated by the Presiding Officer or agreed upon by the parties by stipulation in writing filed with the Presiding Officer, if any, and otherwise with the disciplining authority. Except by stipulation, no deposition shall be taken before any person who is a party or a privy of a party, or a privy of a representative of a party, or who is financially interested in the proceeding.

(b) A party desiring to take the deposition of a person upon oral examination shall give reasonable notice of not less than five days in writing to the person to be deposed and to the opposing party. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a description sufficient to identify the person to be examined or the particular class or group to which the person to be examined belongs. On motion of a party upon whom the notice is served, the Presiding Officer may for cause shown, lengthen or shorten the time.

(c) After notice is served for taking a deposition, or upon motion of the Presiding Officer, or upon motion reasonably made by any party or by the person to be examined, and upon notice and for good cause, the Presiding Officer may issue an order that the deposition shall not be taken or that it be taken subject to specified restrictions, conditions, or limitations.

(d) Depositions shall be recorded.

(i) The officer before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under the officer's direction and in the officer's presence, record the testimony.

(ii) The officer or person acting under the officer's direction shall transcribe the testimony at the request of any party, provided that any expenses shall be paid by the requesting party.

(iii) The transcribed testimony shall be submitted to the person deposed for review and signature, unless review and signature are waived by that person. The officer shall append to the transcript any changes in form or substance that may be submitted by the parties.

(iv) Copies of the transcribed and, unless review and signature has been waived, signed testimony shall be served upon the person deposed and upon the parties.

(e) If the parties so stipulate in writing or on the record, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken, may be used as any other deposition.

(4) Following motion of a party and opportunity for response by the opposing party, the Presiding Officer may order a party to respond to written interrogatories and may order that the interrogatories be subject to specified restriction, condition, or limitation.

Sec. D.26. Motions.

(1) The Presiding Officer shall rule on motions. The Presiding Officer may rule on motions without oral argument or may request or permit the parties to argue the motion in

person or by telephone. Oral argument may be limited in time at the discretion of the Presiding Officer.

(2) All prehearing motions, including discovery and evidentiary motions, shall be made in writing and filed prior to the dates set in the scheduling order. Filing shall be at the Commission Secretary, unless filing is directed in writing to be made at another address.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the Presiding Officer for good cause.

(4) The Presiding Officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the Presiding Officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, with the Commission's office and with the Presiding Officer, and shall serve the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, on all other parties.

(7) The opposing party shall file with the Commission Secretary, and serve upon the moving party, a responsive memorandum, and accompanying affidavits and photographic or documentary evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the Presiding Officer.

(8) The moving party may file with the Commission Secretary, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the Presiding Officer.

(9) Unless otherwise ordered by the Presiding Officer, all motions shall be decided without oral argument. A party requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the Presiding Officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions shall be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the Presiding Officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the Presiding Officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit or a memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the Presiding Officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the Presiding Officer grants the motion to shorten time, the Presiding Officer shall notify the parties of the date by which the responsive memorandum to the underlying motion shall be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the Presiding Officer will not decide the motion within this time, the Presiding Officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-11-080, then three days shall be added to the time within which the opposing party must file and serve the responsive or reply memorandum. Service by electronic telefacsimile transmission (FAX) shall not be accepted unless acceptance is pre-authorized in writing by the recipient, with proof of confirmation of service by electronic telefacsimile transmission to be filed with the Presiding Officer. In the case where a telefacsimile transmission filing is pre-authorized, section D.9(4), (5) and (6) of this Appendix shall apply.

(13) All computations of time shall be calculated pursuant to WAC 246-11-040.

(14) Commission motions for summary actions are exempted from all requirements of this section.

Sec. D.27. Prehearing conference.

(1) If a scheduling order is issued, the parties shall be notified of the time and place of the first prehearing conference in the scheduling order. If another scheduling mechanism is issued, a prehearing conference will be held upon motion of either party, unless Commission policy provides otherwise.

(2) The Presiding Officer shall determine whether the prehearing conferences will be conducted in person or by telephone conference call.

(3) The Presiding Officer shall conduct the prehearing conference and shall issue rulings related to prehearing motions and evidentiary issues. The rulings shall govern the conduct of subsequent proceedings.

(4) The prehearing conference may be recorded as ordered by the Presiding Officer. All offers of proof and objections concerning matters raised at the prehearing conference must be made on the record at the prehearing conference.

(5) Following the final prehearing conference, the Presiding Officer shall issue a written prehearing order which will:

(a) Identify the issues to be considered at the hearing and indicate which party has the burden of proof on these issues;

(b) Specify the facts which are admitted or not contested by the parties;

(c) Identify those documents and exhibits that will be admitted at hearing and those which may be distributed prior to hearing;

(d) Identify expert and lay witnesses that may be called at hearing and the issues to which those witnesses may testify;

(e) Rule on motions;

(f) Accept amendments to the pleadings;

(g) Address such other issues or matters as may be reasonably anticipated to arise and which may aid in the disposition of the proceedings; and

(h) Rule on objections made in any preserved testimony.

(6) Following the prehearing conference, the Presiding Officer may issue an order directing that the matter be heard as a brief adjudicative proceeding, pursuant to WAC 246-11-420 through 246-11-450.

(7) Documentary evidence not offered in the prehearing conference shall not be received into evidence at the adjudicative proceeding in the absence of a clear showing that the offering party had good cause for failing to produce the evidence at the prehearing conference.

(8) Witnesses not identified during the prehearing conference shall not be allowed to testify at the adjudicative proceeding in the absence of a clear showing that the party offering the testimony of such witness had good cause for failing to identify the witness at the prehearing conference.

(9) If the authenticity of documents submitted at the prehearing conference is not challenged at the prehearing conference, the documents shall be deemed authentic. However, a party shall be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to object at the prehearing conference.

(10) Nothing in these rules shall prohibit the Presiding Officer from conducting a conference at any time, including during the hearing. The Presiding Officer shall state on the record the results of such conference.

(11) A party bound by a stipulation or admission of record may withdraw it in whole or in part only upon a determination by the Presiding Officer or hearing officer that:

(a) The stipulation or admission was made inadvertently or as a bona fide mistake of fact or law; and

(b) The withdrawal will not unjustly prejudice the rights of the other parties.

(12) In an appeal to superior court involving issues addressed in the prehearing order, the record of the prehearing conference, written motions and responses the prehearing order and any orders issued by the Presiding Officer pursuant to WAC 246-11-380, shall be the record.

Sec. D.28. Protective orders. The Presiding Officer may issue a protective order at his or her discretion:

(1) To protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense;

(2) To preserve confidentiality related to health care records or provider-client information;

(3) To protect examination processes;

(4) To protect the identity of a person supplying information to the Commission where the person indicates a desire for nondisclosure unless that person testifies or has been called to testify at an adjudicative proceeding; or

(5) To comply with applicable state or federal law.

Sec. D.29. Notice of adjudicative proceeding. Notice of an adjudicative proceeding shall be issued in a timely manner and shall provide information as directed by the Commission. The content of such notice shall substantially comply with RCW 34.05.434.

Sec. D.30. Conduct of adjudicative proceeding.

(1) The adjudicative proceeding shall be conducted as provided in RCW 34.05.449 through 34.05.455.

(2) The Presiding Officer may take the following actions to the extent not already determined in a prehearing order:

(a) Conduct the hearing de novo;

(b) Determine the order of presentation of evidence;

(c) Administer oaths and affirmations;

(d) Issue subpoenas;

(e) Rule on procedural matters, objections, motions, and offers of proof;

(f) Receive relevant evidence;

(g) Interrogate witnesses called by the parties in an impartial manner to develop any facts necessary to fairly and adequately decide the matter;

(h) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(i) Take any appropriate action necessary to maintain order during the adjudicative proceeding;

(j) Determine whether to permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Permit photographic and recording equipment at hearing subject to conditions necessary to preserve confidentiality and prevent disruption;

(l) Permit a person to waive any right conferred upon that person by chapter 34.05 RCW or Appendix D, except as precluded by law; and

(m) Take any other action necessary and authorized by applicable law or rule.

(3) On procedural matters, the Presiding Officer shall:

(a) Apply as the first source of law governing an issue those statutes and rules deemed applicable to the issue;

(b) If there is no statute or rule governing the issue, resolve the issue on the basis of the best legal authority and reasoning available, including that found in federal and Washington Constitutions, statutes, rules, and court decisions; and

(c) Not declare any statute or rule invalid.

(4) If the validity of any statute or rule is raised as an issue, the Presiding Officer may permit arguments to be made on the record concerning the issue for the purpose of subsequent review.

(5) Members of the Commission hearing the matter may ask questions of any witness and may call additional witnesses.

(6) A party may move to disqualify the Presiding Officer or any member of the Commission pursuant to Sec. D.21(4) and (5).

Sec. D.31. Evidence.

(1) The Presiding Officer shall rule on objections to the admissibility of evidence pursuant to RCW 34.05.452 unless those objections have been addressed in the prehearing order.

(2) The refusal of a witness to answer any question ruled proper shall be grounds for the Presiding Officer, at his or her discretion, to strike some or all prior testimony by that witness on related matters or to grant a continuance to allow a party to seek a court order to compel the witness to answer.

(3) Each person called as a witness in an adjudicative proceeding shall swear or affirm that the evidence about to be given in the adjudicative proceeding shall be the truth under the provisions of RCW 5.28.020 through 5.28.060.

Sec. D.32. Proposed order. At the conclusion of the hearing or by a date specified by the Presiding Officer, the Presiding Officer may require each party to submit to the Presiding Officer proposed findings of fact and conclusions of law and a proposed order.

Sec. D.33. Issuance of final order. If the adjudicative proceeding is heard by the Commission or a panel of the Commission the Presiding Officer and Commission or panel of the Commission shall:

(1) Issue a final order containing findings of fact and conclusions of law and an order; and

(2) Cause the Commission Secretary to serve a copy of the order on each party and any designated representative of the party.

Sec. D.34. Standard of proof. The Appointing Authority shall have the burden of showing by material and substantial evidence that the action taken was done in good faith for cause.

Sec. D.35. Consolidated proceedings.

(1) When two or more applications for adjudicative proceeding involve a similar issue, the applications may be consolidated by the Presiding Officer and the hearings conducted together. The Presiding Officer or hearings officer may consolidate on his or her own motion or upon the request of a party.

(2) A party scheduled for a consolidated proceeding may request to withdraw from the consolidated proceeding in favor of an individual proceeding. The Presiding Officer may grant a motion to withdraw from a consolidated proceeding at any time when good cause is shown.

(3) Each respondent in a consolidated proceeding shall retain the right to representation.

Sec. D.36. Initial order.

(1) If the adjudicative proceeding is not heard by the Commission or panel of the Commission the Presiding Officer shall:

(a) Issue an initial order containing proposed findings of fact, conclusions of law, and a proposed order;

(b) Cause the Commission Secretary to serve a copy of the initial order on each party and any designated representative of a party; and

(c) Forward the initial order and record of the adjudicative proceeding to the Commission Secretary.

(2) Initial orders on brief adjudicative proceedings shall become final orders as provided in WAC 246-11-540.

(3) Following receipt of initial orders in matters other than brief adjudicative proceedings, the Commission shall review the initial order and the record as provided in RCW 34.05.464, and issue a final order as provided in WAC 246-11-560.

Sec. D.37. Appeal from initial order.

(1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-11-430 or WAC 246-11-540 stating the specific grounds upon which exception is taken and the relief requested.

(2) Petitions for administrative review must be served upon the opposing party and filed with the Commission Secretary within twenty-one days of service of the initial order.

(3) The opposing party may file a response to a petition for administrative review as provided in this section. The response shall be filed at the place specified in subsection (2) of this section. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-11-430, the response will be filed within ten days of service of the petition. In all other matters, the response will be filed within twenty days of service of the petition.

Sec. D.38. Final orders.

(1) The form and content of final orders shall be as follows:

(a) Final orders shall contain findings of fact, conclusions of law, and an order. All final orders shall be signed by a member of the panel of Commission members who heard the matter.

(b) Final orders may adopt by reference the initial order in whole or in part.

(c) Final orders may modify or revise the initial order in whole or in part.

(2) Final orders shall be served upon the parties and their representatives as provided in WAC 246-11-080.

(3) Final orders shall be issued following:

(a) A review of the record;

(b) A review of the initial order, if any;

(c) A review of any request for review of the initial order and any response thereto; and

(d) Consideration of protection of the public health and welfare.

(4) Unless a later date is stated in the final order, final orders shall be effective when entered but a party shall not be required to comply with a final order until the order is served upon that party.

(5) Final orders may contain orders that specified portions of the agency record shall not be disclosed as public records if necessary to protect privacy interests, the public welfare, or vital governmental functions. Such orders shall include but are not limited to protective orders issued during the proceeding or pursuant to WAC 246-11-400.

Sec. D.39. Stay of final orders. No final order will be stayed except by its own terms or by order of a court of competent jurisdiction.

Sec. D.40. Reconsideration of final orders.

(1) Within ten days of service of a final order, either party may file a petition for reconsideration, stating the specific grounds upon which reconsideration is requested and the relief requested.

(2) Grounds for reconsideration shall be limited to:

(a) Specific errors of fact or law; or

(b) Implementation of the final order would require Commission activities inconsistent with current Civil Service practice; or

(c) Specific circumstances render the person requesting the reconsideration unable to comply with the terms of the order.

(3) Petitions for reconsideration must be served upon the opposing party and filed with the Commission Secretary within ten days of service of the final order.

(4) If reconsideration is requested based on an error of fact, the request for reconsideration shall contain specific reference to the record. If reconsideration is requested based on testimony of record, the request for reconsideration shall contain specific reference to the testimony. The Presiding Officer may require that the party requesting reconsideration submit a copy of the transcript of the adjudicative proceeding and provide specific reference to the transcript.

(5) The petition for reconsideration is denied if, within twenty days of the date the petition is filed, the Presiding Officer:

- (a) Denies the petition;
- (b) Does not act upon the petition; or
- (c) Does not serve the parties with notice of the date by which he/she will act on the petition.

(6) If the Presiding Officer determines to act upon the petition, the opposing party shall be provided at least ten days in which to file a response to the petition.

(7) Disposition of petitions for reconsideration shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings.

Sec. D.41. Agency record of adjudicative proceedings.

(1) The Commission shall maintain an official record of each adjudicative proceeding.

- (2) The record shall include:
- (a) Notices of all proceedings;
 - (b) Any prehearing order;
 - (c) Any motions, pleadings, briefs, petitions, and requests filed, and rulings thereon;
 - (d) Evidence received or considered;
 - (e) A statement of matters officially noted;

- (f) Offers of proof and objections and rulings thereon;
- (g) Any proposed findings, requested orders, and exceptions;
- (h) Any recording of the adjudicative proceeding and any transcript of all or part of the adjudicative proceeding considered before final disposition of the matter;
- (i) Any final order, initial order, or order on reconsideration; and
- (j) Matters placed on the record following an ex parte communication, if any.

(3) The record shall be subject to disclosure as provided by RCW 42.17.250 through 42.17.340, and by WAC 246-11-130, except as limited by protective orders and provisions contained in the final order.

(4) The cost of transcribing any portion of a record shall be borne by the individual seeking such record.

Sec. D.42. Judicial review.

(1) Any person aggrieved by a final decision of the Commission may file for review in an appropriate court of law. Such petition shall be filed within thirty (30) days of the date of issuance of the Commission's final decision.

(2) Notice of the opportunity for judicial review shall be provided in all final orders.

(3) Following a request for judicial review, the record forwarded to the reviewing court shall be those portions of the agency record designated by the parties within the time period set by the Commission.

(4) A party seeking judicial review of a Commission decision shall not be permitted to prepare a transcript of any portion of a record that is at issue. Transcripts of Commission proceedings shall be prepared and certified by the Secretary or designee, who shall be a person or firm commonly employed for the transcription and preparation of recorded evidence and testimony. The cost of preparing any transcript of Commission proceedings shall be borne by the party requesting such record and payment must be made to the Commission before a transcript will be forwarded to a reviewing court.

Sec. D.43. Vacating an order for reason of default or withdrawal.

(1) A party may petition to vacate a default order entered against that party for failing to attend an adjudicative proceeding requested by that party by:

(a) Specifying the grounds relied upon in the petition; and

(b) Filing the petition at the Commission Secretary within seven days of service of the default order.

(2) The Presiding Officer shall consider the petition and shall:

(a) Grant the motion to vacate and reinstate the application for adjudicative proceeding, and may impose conditions on aggrieved party pending final adjudication; or

(b) Deny the motion to vacate the default order.

Sec. D.44. Election of remedies. Under no circumstances will the Commission proceed with any appeal filed by an employee who also files a grievance on the same subject or matter under the terms of an applicable collective bargaining agreement. An appeal shall be dismissed by motion of the Commission at its next regular meeting following initial notice that a grievance is also being pursued on behalf of the same employee on the same subject or matter.

Sec. D.45. Effect of delays or continuances caused by an appellant. In an adjudicative hearing process conducted by the Civil Service Commission or designee, the Commission or designee shall have discretion to reduce or eliminate the amount of any backpay or other monetary sum awarded to an Appellant who might prevail in a Civil Service proceeding challenging a disciplinary action or other management decision that is alleged to have had a financial impact on the Appellant, where 1) a delay is caused by an Appellant and is without reasonable excuse or could have been avoided; or 2) a continuance is granted upon request by an Appellant.

Sec. D.46. Savings clause, severability, construction. If a section, subsection, paragraph, sentence, clause, or phrase of this Appendix is declared unconstitutional, unlawful or invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions. If the provisions of this Appendix are found to be inconsistent with other provisions of the Des Moines Civil Service Rules, this Appendix is deemed to control.

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**RECORDS SPECIALIST/LATERAL ENTRY
SCREENING CHECK-OFF LIST**

Yes	☐	No	☐	1.	Application Form
Yes	☐	No	☐	2.	Minimum Qualifications
Yes	☐	No	☐	a.	18 Years of Age
Yes	☐	No	☐	b.	High School Diploma or GED
Yes	☐	No	☐	c.	Ability to type a minimum of 45 words per minute
Yes	☐	No	☐	d.	Washington State Driver's License
Yes	☐	No	☐	3.	Records Specialist who has been employed on a full-time basis by a law enforcement agency for a period of time exceeding twelve consecutive months and not had a lapse of employment as a Records Specialist for a period exceeding the previous twelve months, calculated from the date of appointment.

APPENDIX F

**COMMUNITY SERVICE
OFFICER/LATERAL ENTRY**

SCREENING CHECK-OFF LIST

Yes ☐	No ☐	1.	Application Form
Yes ☐	No ☐	2.	Minimum Qualifications
Yes ☐	No ☐	a.	21 Years of Age
Yes ☐	No ☐	b.	High School Diploma or GED
Yes ☐	No ☐	c.	Washington State Driver's License
Yes ☐	No ☐	3.	Community Service Officer who has been employed on a full-time basis by a law enforcement agency for a period of time exceeding twelve consecutive months and not had a lapse of employment as a Community Service Officer for a period exceeding the previous twelve months, calculated from the date of appointment.

Scored by: _____

Date: _____

I. YEARS OF EXPERIENCE AS A COMMUNITY SERVICE OFFICER

Years	Points	
0 – 1	3 points	
1+ - 2	6 points	Maximum: 6 points _____

II FORMAL EDUCATION

College Degrees		
AA/AS	5 points	
BA/BS	8 points	
Masters	10 points	Maximum: 10 points _____

III OTHER EDUCATION – In-service or other law enforcement seminars/conferences

Any law enforcement seminar/conference of a duration of eight hours or more. This does not include a totaling of short-term seminars/conferences of less than eight hours duration each. Rate of .5 for each. Maximum: 2 points _____

IV MEETS MINIMUM QUALIFICATIONS

(Automatic 82 points awarded) Maximum: 82 points 82

POINTS:

Total Possible Points - 100 **AWARDED** _____

MODEL CIVIL SERVICE RULES
for
WASHINGTON STATE LOCAL GOVERNMENTS

P. Stephen DiJulio
Foster Pepper PLLC

Third Edition

Published by Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400

(Prior editions published by Washington Local Government Personnel Institute
1076 South Franklin Street, Olympia, Washington 98501)

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MODEL CIVIL SERVICE RULES

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INTRODUCTION

A. HISTORY

The development of Civil Service in response to patronage hiring in government has a long history in the United States. Military hero and President Andrew Jackson took full advantage of his position that “to the victor belongs the spoils.” However, Thomas Jefferson is as much responsible for institution of the spoils system as any American president. See Vaughn, *Principles of Civil Service Law* (1976); and E. Kaplan, *The Law of Civil Service* (1958).

The movement for reform in federal employment services was highlighted by the assassination in 1881 of President James A. Garfield by a disgruntled Republican party member whose demand for a patronage appointment had been disregarded. See Kaplan at 10. The Pendleton Act (Civil Service Act of 1883) created the Federal Civil Service and a Civil Service Commission to protect civil servants. Initially, approximately ten percent of the federal bureaucratic positions were selected on merit principles. By the twenty-first century, roughly 90 percent of positions were under the Civil Service protection. K. Brudney & J. Culver, *Critical Thinking and American Government*, 215 (1998). It took nearly 100 years for Congress to provide any significant modifications to the federal civil service. During the Carter administration, Congress enacted the Civil Service Reform Act of 1978. The Act established the Senior Executive Service to provide an executive or senior level of workers/officers serving in the federal service without conventional civil service job protections. The Reform Act of 1978 also established federal legislation to protect whistleblowers.

While the state of Washington may not be able to boast of such a colorful history in the development of its Civil Service, it nevertheless does have over 70 years of state involvement. The state mandates for city fire fighters and police systems, chapters 41.08 and 41.12 RCW, were enacted respectively in 1935 and 1937. And charter cities such as Seattle, Spokane and Tacoma have maintained civil service systems for over a century. As a result, many cases that address civil service issues predate the state-mandated systems.

B. LOCAL RULES

During the course of development of civil service systems throughout the state, commissions have adopted rules for their operation. While rules are uniform in many respects, agencies and consultants (such as the Local Government Personnel Institute) frequently receive requests from commissions for assistance concerning specifics of rules. In an effort to provide a ready reference to local Commissions and their personnel, the Institute initially directed the preparation of a set of model civil service rules. Subsequent editions have been prepared by the author.

These model rules are not intended to be implemented in the place of existing civil service rules without careful consideration of existing rules, procedures, and local conditions. However, the author believes that the rules provide a comprehensive system for the administration of a local civil service system and may be adopted in total if desired. A better approach would be to utilize these rules as a guide for development of a system that is most appropriate to a city, county or other municipality. Though most systems throughout

Washington are established for public safety personnel, the rules are intended to provide an administrative system covering employee classifications throughout a government structure.

The model rules are organized by chapter with each chapter followed by comments. Many comments incorporate references to legal authority. Local commissions should always consult with the city attorney, county prosecutor, or other legal advisor concerning current case law and statutory amendments.

We hope that you will find this publication to be a regular and useful source of reference.

Acknowledgement

This Third Edition of the Model Rules is published and released in conjunction with the twenty-fifth annual Civil Service Conference. The Conference was originally conceived and organized by the Association of Washington Cities; and later, by the AWC's Local Government Personnel Institute. The author has been fortunate to have worked with the Conference throughout its history. Many suggestions from Conference participants have contributed to the Model Rules.

We thank the Local Government Personnel Institute and the Washington State Bar Association for permission to use previously published materials that have been modified or adopted for this book. Additionally, the employment and labor attorneys at Foster Pepper PLLC are recognized for their support in the preparation of this Third Edition. Particularly, Rosa Fruehling-Watson is acknowledged for her work in edits to various chapters of these model rules.

1. GENERAL PROVISIONS.

- 1.01 AUTHORITY AND APPLICATION. These rules are promulgated pursuant to the authority granted by [Chapter 41.08 RCW, Civil Service for City Firemen/Chapter 41.14 RCW, Civil Service for City Police/Chapter 41.14 RCW, Civil Service for Sheriff's Office]. These rules are applicable to proceedings before the Civil Service Commission and should be read in conjunction with the specific provisions of [the referenced RCW chapter], and the enabling ordinance providing for the civil service.
- 1.03 SCOPE AND PURPOSE. These rules govern the continuing administration of the Civil Service System of [City/County]. The purpose of these rules is to assure that the Civil Service System in [City/County] is administered in accordance with the [Charter] and ordinances of [City/County], and that all proceedings before the Commission are conducted in an orderly, fair and timely manner.
- 1.05 PRESUMPTION OF VALIDITY. The Civil Service System implemented by these rules substantially accomplishes the purpose of [referenced RCW chapter]. Variation from state models are based on local conditions and are intended to maintain the purposes of civil service systems: merit selection, tenure, and an independent civil service commission. These rules are presumed to be valid and shall be upheld unless in direct conflict with the purposes of [referenced RCW chapter]. [Note, County use of this provision should be guarded. See Comments.]
- 1.07 SEVERABILITY. If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end, any section or word is declared to be severable.

COMMENTS TO RULE 1: GENERAL PROVISIONS

1.01

- A. Jurisdiction—General. Over 30 years before the State of Washington adopted its first statute requiring cities to provide civil service for firefighters, the Supreme Court had already discussed the extent of jurisdiction of a civil service commission. The occasions for the Supreme Court's analysis was the attempted termination of a Seattle Police Department "night clerk" by that city's civil service commission. Easson v. City of Seattle, 32 Wash. 405, 73 P.496 (1903). Easson had been accused by members of the public of mistreatment of prisoners in the City Jail. When the Chief of Police failed to act, the commission took it upon itself to terminate Easson's employment. Easson challenged the action. In its analysis, the Court began by distinguishing the authority of the commission from that of the "appointing authority." A decade earlier, the United States Supreme Court had occasion to consider a similar issue. In upholding the President's power to remove executive branch officers, the Court acknowledged the rule that the right of removal inheres in the right to appoint unless limited by constitution or statute. Shurtleff v. United States, 189 US 311 (1893); Easson v. Seattle, 32 Wash. at 411. In contrasting the appointing authority from commission authority, the *Easson* Court described generally the purpose and functions of civil service.

The object of the civil service regulations seems to be to provide a system for the selection of capable officers, uninfluenced by mere personal or political consideration. The test of efficiency is usually made by a system of examinations such as the civil service commission of the City of Seattle is authorized to conduct. These examinations relate to intellectual qualifications, and perhaps in some measure to other fitness in the way of personal character. As a result of the test, the commission prepares lists of names of those found to be qualified, and from such lists, the appointing officer selects and appoints. The function of the commission seems to be... to recommend the appointment... but the actual appointment... is made by another. Easson v. Seattle, 32 Wash. at 412-413.

The Court acknowledged that the commission is to act as a "check" on the appointing officer to ensure that the employee is not removed based on "mere personal, political, or other insufficient motives." Id.

Thus, the functions of the commission are such that the members thereof are evidently intended to be free from any consideration in connection with either appointments or removals, except those that are purely meritorious. That

they more fully discharge their duty in that spirit, they are not given the power of either actual appointment or removal. Easson v. Seattle, 32 Wash. at 413.

This foundation has been carried forward in subsequent decisions of the Supreme Court. See Reynolds v. Kirkland Police Commission, 62 Wn.2d 720, 384 P.2d 819 (1963), discussed below.

The Easson case also emphasizes that civil service in some communities predates the enactment of state legislation. The early charters of Seattle, Tacoma, Bellingham, and Spokane provided for civil service for city employees. It was those systems that formed the basis for the subsequent state legislation that mandated civil service for police and fire. Nevertheless, many of those charter systems remained in effect and provided for a merit system of employment for personnel throughout city government, not just in the police and fire services. These rules attempt to provide for a uniform system, whether for the public safety or other municipal service. However, it is recognized that the most common of the systems are applicable to police and fire.

The statutes are clear that civil service does not create positions or slots of employment. See, e.g., RCW 41.12.110. That authority rests with a government's legislative authority, acting through its budget and other administrative functions. Occasionally, there is conflict between the authority of a commission to classify positions and the authority of a government to create positions or to designate work. For example, each rank or position of employment in the government sector does not necessarily require a separate classification. See discussion at Chapter 6; State ex rel. Reilley v. Civil Service Commission, 8 Wn.2d 498, 112 P.2d 987 (1941). An obvious example is that of a police department's assignment of a police officer to perform the job of motorcycle officer. The position of motorcycle officer would not typically be considered a "classification." Rather, it is a position or assignment in the operating department. Motorcycle officer would have a civil service classification of "police officer." The job assignment, whether beat cop, motorcycle officer, or crime scene investigator does not affect the civil service classification or standing.

There are circumstances in which a system may provide for the appointment of personnel to positions that are outside of the classified service. For example, the Legislature by Chapter 143, Laws of 2002, amended RCW 41.12.050 to permit certain cities to create positions in an "unclassified service." The positions that the legislation authorize as "unclassified" include assistant chief, deputy chief, bureau commander and administrative assistant or administrative secretary. Similar to the provision of the County civil service statute (see RCW 41.14.070).

If a position initially selected by the police chief to be in the unclassified service is in the classified civil service at the time of the selection, and if the position is occupied, the employee occupying the position has the right to return to the next highest position or a like position in the classified civil service.

RCW 41.12.050(3). The provisions for return to the classified service from an appointment to the unclassified service are not uniform throughout all civil service systems. In many systems, the promotional appointment to a position outside of the classified civil service does not provide for automatic rights of return to the classified service, and, of course, in any case if the termination from the unclassified service is for cause, the employment relationship would be terminated (subject to whatever contract or appeal rights may exist between the employing agency and the officer or employee).

- B. Flexibility. The Civil Service System created by a city or town is not required to be identical to the system described by state law, so long as the city or town system substantially accomplishes the purposes of state law. For example, a state supreme court decision provides that a new employee can be selected from the top three names on a Civil Service list, even though the state law says only the top name can be selected. See discussion in Comments to Rule 10.05.

Counties are without the flexibility afforded to cities and towns in the creation of a civil service system. County systems must conform to all specific provisions of Chapter 41.14 RCW. Clallam County Deputy Sheriff's Guild v. Board of Clallam County Commissioners, 92 Wn.2d 844, 851, 601 P.2d 943 (1979). However, the general provisions of the county sheriff civil service statute will allow for some local variations and flexibility in system implementation.

- C. Purpose of Civil Service. The purpose of a Civil Service created pursuant to state law is to establish a system to:
- (1) provide for promotion on the basis of merit,
 - (2) give police officers tenure, and
 - (3) provide for a Civil Service Commission to administer the system, and to investigate by public hearing, removals, suspensions, demotions, and discharges by the appointing power to determine whether such action was or was not made for political or religious reasons and whether it was or was not made in good faith for cause.

Reynolds v. Kirkland Police Commission, 62 Wn.2d 720, 725, 384 P.2d 819 (1963). In considering a local Civil Service System, the standards enunciated in Reynolds must be followed. The system must provide for promotion on the basis of merit, tenure to employees in the system, administration of the system by the Commission and authority of the Commission to investigate the system and hear appeals from employees subject to discipline. In Reynolds, Chief Reynolds and a sergeant challenged their demotions. The court reviewed the City of Kirkland's attempt to implement the provisions of Chapter 41.12 RCW, "Civil Service for City Police." The court found that the Police Commission created by the City of Kirkland recommended discipline to the appointing authority but also sat as an appeal board to determine if the action, taken in accordance with its recommendations, was or was not made for political or religious reasons and if it was or was not made in good faith for cause. The board recommended discipline and then ruled on appeals from the discipline imposed. The Commission was also authorized to sit as a policy board in matters relating to the Kirkland Police Department. The Supreme Court found that the Kirkland system did not establish a Commission to conduct the investigative hearings required by the state statute, but rather established a police Commission with inconsistent functions.

D. Coverage.

- (1) Scope of Coverage—Civilians. Local variations in the types of employees covered by a Civil Service System is not generally accepted. See Teamsters v. City of Moses Lake, 70 Wn. App. 404 853 P.2d 951 (1993). There, the court held that the exclusion of non-commissioned (civilian) members of the police department from the Civil Service System was invalid). Commissions should generally defer to the enabling legislation of the local government on this issue.
- (2) Scope of Coverage—Chiefs. A city or town may deny Civil Service status to any fire chief appointed after July 1, 1987, or to a Chief of Police appointed after July 1, 1987, if the police department includes six or more commissioned officers.

Part-time employees are not "full paid" and are not entitled to Civil Service status if the city wishes to exclude them.

Prior to legislation allowing cities to exempt the position of chief from civil service, the court in Samuels v. City of Lake Stevens, 50 Wn. App. 475, 749 P.2d 187 (1988) ruled that the city's effort to exclude the position of chief of police violated Chapter 41.12 RCW. The decision did not analyze the City of Lake Stevens' system to determine its consistency with civil service purposes

under Reynolds. Rather, the court applied a narrow review, more consistent with the approach seen in Clallam County Deputy Sheriff's Guild. Other systems continue to follow a more traditional approach of allowing a limited number of positions exempt from civil service. See, E. Kaplan, *The Law of Civil Service*, Chapter IV (1958); RCW 41.06.070 (state civil service) and RCW 41.14.070 (county civil service). A rule that holds more flexible city systems to a standard more stringent than preemptive state or state-mandated systems does not appear warranted.

- (3) Scope of Coverage—Exempt Assignments. County Sheriff Civil Service has long provided for a certain number of exempt personnel. See RCW 41.14.070. And, the state civil service exempts nearly all of the top four or five levels of department administration from the application of the state personnel system. City fire chiefs subject to Chapter 41.08 RCW and police chiefs subject to Chapter 41.12 RCW were permitted to be exempted from Civil Service by Chapter 339, Laws of 1987. See RCW 41.08.050 and RCW 41.12.050. In 2002, the legislature further amended RCW 41.12.050 to authorize creation of police positions in an “unclassified service.” Chapter 143, Laws of 2002. The initial selection of positions to be in the unclassified service and therefore exempt from Civil Service are to be made by the police chief. The chief then notifies the Civil Service Commission of the selection of the unclassified positions. RCW 41.12.050(3). The Civil Service Commission has no jurisdiction to review or approve the chief’s designation. Subsequent changes in the designation of positions not in the unclassified service are subject to the approval of city administration **and** the Civil Service Commission, after an open meeting. Persons with regular standing in a lower classification prior to appointment to an unclassified position are provided with return rights by the statute. RCW 41.12.050(3).
- (4) Grandfathering. If a city has not had a Civil Service requirement before and must create one, some employees will become Civil Service employees automatically. Any chief and all officers who have held their positions for at least six months when Civil Service is enacted become Civil Service employees automatically. They are not required to take tests or to be reappointed, and they are regular, not probationary employees.

1.03 When a Civil Service System Is Mandatory. Civil Service Systems are required by state law for the following:

- A. Police Departments. Cities and towns are required to have Civil Service Systems whenever their police force includes fully paid police officers.

- B. Fire Departments. Cities and towns are required to have Civil Service Systems whenever they have any full-time paid officers or fire fighters.

State law does not require other cities or towns to provide Civil Service Systems for their police or fire departments, but local ordinances or charters may apply and require the system. Thus, for example, a part-time fire chief who commanded a volunteer force or a police officer in a department consisting of only the chief and part-time officer assisted by a volunteer reserve force would not be entitled to have Civil Service protection under state law. However, a city or town ordinance may give them Chief Civil Service status anyway.

Cities organized as Code cities under Chapter 35A RCW may enact Civil Service Systems for other employees. Similarly, a city organized under a charter as contemplated by RCW 35.21.600 can authorize a Civil Service System if the charter calls for Civil Service.

- C. Counties. Civil service is provided for county deputy sheriffs and other employees of a county sheriff as a result of a 1958 voter initiative. Initiative Measure No. 23 (November 4, 1958), codified at Chapter 41.14 RCW. Unlike cities, county systems are far more constrained in establishing local variations. In Clallam County Deputy Sheriff's Guild v. Board of Clallam County Commissioners, 92 W.2d 844, 601 P.2d 943 (1979), the court noted the distinctions between the city statutes (Chapters 41.08 and 41.12 RCW) and the county law (Chapter 41.14 RCW) in finding preemptive effect of state law when there was conflict with the county personnel system.
- D. Fire Districts. RCW 52.30.040 authorizes fire districts to provide for Civil Service. The Washington Supreme Court found this authority permissive, not mandatory. Roberts v. Clark County Fire Protection District No. 4, 44 Wn. App. 744, 723 P.2d 488 (1986) (holding that a fire district employee's termination after 10 months of probationary employment does not violate the six-month probation standard in RCW 41.08.100). Fire districts are not mandated to maintain Civil Service. Roley v. Pierce County Fire Protection District No. 4, 869 F.2d 491 (9th Cir. 1989).

Further, should a fire district provide for Civil Service, it needn't comply completely with RCW 41.08:

[T]he Legislature did not intend to require that a district comply in every respect with RCW 41.08 when adopting a civil service system. RCW 41.08.010 provides that civil service system provisions for city firemen shall not be applicable to those departments whose own regulations substantially accomplish the purpose of RCW 41.08. If the Legislature believed it acceptable for cities to adopt regulations for their fire departments that substantially

comply with RCW 41.08, surely they did not intend to require fire districts to follow RCW 41.08 explicitly. It is more reasonable and consistent with the fair reading of the statutes in question to authorize fire districts to have their own regulations, if those rules substantially accomplish the purposes of RCW 41.08.

Roberts, 44 Wn. App. at 748. The court's recognition that Chapter 41.08 and 41.12 RCW need not be explicitly followed provides support for continuing efforts to improve civil service systems through innovative measures. Such efforts are to be directed at furthering civil service purposes of merit, tenure, and commission independence. Reynolds.

- E. Ports. A careful reading of RCW 41.12.030 suggests that the provisions for civil service for police officers may extend beyond cities and towns. The statute reads: "There is hereby created in every city, town or **municipality**..." Some unions have argued, and municipalities agreed, that the provisions of the statute require a municipality (even if not a city or town) to provide a civil service system for police officers employed by that municipality.

1.05

Chapter 41.08 RCW creates a Civil Service System for city fire fighters. The chapter provides, however, that local charter or regulations may be enacted so long as the local regulations substantially accomplish the purpose of Chapter 41.08. Chapter 41.12 RCW includes the same authority for local government when creating a Civil Service System for city police. Chapter 41.14 RCW concerning county sheriffs does not contain the same language. Instead, Class AA counties have been authorized to assign powers and duties of Civil Service to other county agencies or departments. RCW 41.14.065.

While the courts have acknowledged the local authority granted by RCW 41.08.010 and 41.12.010, the courts have not hesitated to scrutinize with a certain zealously the particulars of a system. [See discussions concerning the period of probation in comments to Rule 11, and discussion of the "Rule of 3" in comments to Rule 10.] Because the courts have looked at the particulars of the system instead of the system in total, cities must also be cautious in adoption of rules that vary substantially from the outline provided by state statute. This approach tends to inhibit creativity, innovation, and system improvement and development. It is recommended that Commissions who are seeking through innovative methods to accomplish the three purposes of Civil Service, as discussed in Reynolds, document the purpose and foundation for such programs in order to educate a reviewing court.

2. ADMINISTRATION AND OPERATIONS.

- 2.01 COMMISSION—MEETINGS—QUORUM. In the necessary conduct of its work, the Commission shall meet on the [specific date] of each month, at [specific time], in [specific place] unless there is no pending business requiring Commission action. Notice of special meetings shall be provided as required by the Open Public Meetings Act (Chapter 42.30 RCW, as amended). The Commission shall conduct hearings as required. Notice of hearings shall be provided as required by these rules. Two members of the Commission shall constitute a quorum. No action of the Commission shall be effective unless two members concur therein. All Commission meetings or hearings, regular or as required, shall be open and public provided, however, that the Commission may meet in executive session as authorized by the Open Public Meetings Act. See RCW 42.30.140(1) and (2).
- 2.03 CHAIR—VICE CHAIR. At the first regular meeting in January of each year, the Commission shall elect one of its members as Chair and another member to serve as Vice Chair for a term of one year. Should a Chair and/or Vice Chair resign or be removed from the position prior to the expiration of his/her term, the Commission, upon appointment of a new member, shall proceed to the election of a new Chair and/or Vice Chair.
- 2.05 RULES OF ORDER. [Roberts/Reeds/. . .] Rules of Order shall be final authority on all questions of procedure and parliamentary law not otherwise provided by these rules. However, with the concurrence of two commissioners such rules may be waived or modified. In quasi-judicial proceedings, the Commission shall be guided, but not bound by, the Civil Rules for Superior Court.
- 2.07 COMMISSIONERS—CHALLENGE. Any challenge to a Commissioner's participation at a hearing shall be made by an interested party prior to the commencement of a hearing. The challenged Commissioners shall review and rule on the challenge prior to proceeding with the hearing. Failure to timely raise a challenge shall constitute a waiver of the challenge by the party unless, in the exercise of reasonable diligence, a basis for challenge is unknown by a party prior to commencement of a hearing.
- 2.08 COMMISSIONERS—CHALLENGE—NECESSITY. If, as a result of disqualification(s) pursuant to Rule 2.07, there is no longer a lawfully constituted quorum available, then by reason of necessity, the disqualified Commissioners(s) shall return and proceed with the hearing.
- 2.09 OFFICE HOURS. The office [and post office] address of the Civil Service Commission is _____. The regular office hours of the Commission [secretary/staff] shall be _____.
- 2.11 PUBLIC RECORDS. Public records of the Commission shall be available for inspection and copying during the regular office hours of the Commission staff.

No fee will be charged for inspection of public records. Inspection will be permitted during office hours in a space provided by the Commission staff, and under its supervision, and must be accomplished without excessive interference with the essential functions of the Commission. Copies will be made available at actual cost or as provided by [City/County] ordinance. These rules shall be printed for free public distribution.

- 2.13 RECORD OF PROCEEDINGS. The Commission shall keep a record of its proceedings. The record of the Commission will not include a written verbatim report of proceedings unless ordered. The Commission may retain a court reporter to record all or part of a proceeding. In addition, a party to a proceeding, at his/her own expense, may have a court reporter record all or part of a proceeding. On appeal or review, costs of transcription may be recovered by the Commission, or a prevailing party, at the discretion of the reviewing court or the Commission. Upon appeal or review, transcription and certification of a record of proceedings shall be arranged by the Secretary.

2.15 REPORTS—APPLICANTS, ELIGIBLES, EMPLOYEES.

- 2.15.01 Each applicant, eligible and employee shall keep the Commission informed, by written notice to the Secretary, of current address and telephone number, and shall report any change of name through marriage or otherwise.

- 2.15.02 Each eligible shall keep the Secretary informed, in writing, regarding availability and any refusal to accept appointment or promotion and the reasons therefor.

- 2.17 REPORTS—DEPARTMENT HEADS. A department head shall immediately report to the Secretary in such detail and on such forms as the Secretary may prescribe:

- 2.17.01 Every appointment, transfer, promotion, demotion, reduction, layoff, reinstatement, suspension, leave of absence without pay, return to duty, assignment, change of position within a class or within an assignment title, change of title, change of compensation;

- 2.17.02 Every separation from the service with the reasons therefor;

- 2.17.03 Every refusal or failure to accept appointment by a person whose name has been certified.

COMMENTS TO RULE 2: ADMINISTRATION AND OPERATIONS

2.

GENERAL COMMENTS.

- A. Commission Tenure. These rules do not address, or provide for, issues concerning appointment, tenure, or removal of civil service commissioners. The enabling ordinance of the city or county should provide for such actions, consistent with the applicable statutory provision. See RCW 41.08.030, 41.12.030, and 41.14.030. Because the Commission cannot provide for its own existence, the enabling legislation and not Commission rules need to be considered. In the absence of local provisions, the provisions of the applicable State statute will govern.
- B. Structure. The Civil Service Commission is at least a three-member panel. Some cities provide for five commissioners. Additionally, some systems (e.g., City of Federal Way) provide for *pro tem* commissioners in the absence of a regularly appointed commissioner. Such authority must be found in a city's ordinance. Commissions cannot adopt rules providing for commissioner appointment (or for that matter, removal).
- C. Eligibility. Commissioners must be citizens of the United States, and they must have been residents of the city or town they serve for at least three years before their appointment to the Civil Service Commission. ("Residence" generally means dwelling place. Commissioners should ask their attorneys if having a business place in the city is "residence" for Civil Service purposes.) Each Commissioner must be an elector (registered voter) of the county in which the Commissioner resides.

Note, RCW 41.08.030 and 41.12.030 provide that at the time of appointment, only two of the three Commissioners can belong to the same political party. This rule is of questionable use today, and is regularly ignored.
- D. Appointment; No Confirmation. Commissioners are appointed by the same person who is authorized to select, appoint or employ the fire chief or police chief. That may be either the Mayor or City Manager. For example, in a fourth class town, the Mayor appoints the "Town Marshall" and so would appoint the Commission. Council confirmation of the appointment is not required by state law.
- E. Term. State law suggests commissioners are to serve for six-year staggered terms. Many commissions are established with shorter terms in recognition of the difficulty of securing a long-term volunteer commitment from qualified candidates for appointment.
- F. Compensation. Commissioners serve without compensation. However, nothing prohibits reimbursement for expenses incurred in service as a commissioner.

- G. Removal. Commissioners cannot be removed until (1) they have been served a written notice of charges against them, (2) they are given notice of a hearing, and (3) a full hearing has been convened.

The civil service statutes do not specify who may file charges against a Commissioner or who convenes the hearing involving a Commissioner. We can infer from the statute only that the removal procedure must be fair and open to public scrutiny. Perhaps, like the U.S. Congress, a Commission could regulate its own membership. However, because a commissioner may not fairly accuse a fellow Commissioner of misconduct and then convene a hearing to rule on the accusation, the better approach is for the same authority who appoints a Commissioner (whether Mayor or Town Manager, etc.) to be the charging party. The City or Town Council could serve as a hearing body. In case of a problem in removing a Commissioner, the City Attorney should be consulted for a detailed opinion.

- H. Commission Attorney. The Commission is entitled to representation by the City or Town Attorney or to appoint its own special counsel in any case. Commissioners should consult the City Attorney about whether they are entitled to a separate lawyer if no "case" is pending. In counties the prosecutor is charged with enforcement of commission rules and suits.

- I. Commission Budgets. The city or county is required to supply the Commission with a meeting place, supplies, and the clerical help necessary to allow the Commission to conduct its business.

- J. Duties of the Commission. The duties of a Civil Service Commission are to:

- Appoint a Chair
- Convene regular meetings
- Appoint a Secretary-Chief Examiner
- Make rules to implement the Civil Service system
- Authorize the conduct and grading Civil Service tests
- Investigate complaints about enforcement of the Civil Service System
- Conduct hearings regarding discipline of Civil Service employees
- Assure that employees are selected or promoted from lists provided by the Commission
- Keep records
- Certify payrolls

- 2.01 A. Monthly Meetings and Extra Meetings. Civil Service Commissions organized under state law are required to meet at regular monthly meetings. RCW 41.08.040, 41.12.040, and 41.14.050.

The Commission is required to elect a chairperson and to convene meetings at least monthly. Even if no business needs to be done, the Commission should maintain a schedule of monthly meetings. The Secretary may be authorized to adjourn the meeting in the absence of business (and presumably in the absence of commissioners). The Commission must convene additional meetings if they are necessary for the Commission to conduct its business.

- 2.05 A Commission should designate a specific set of parliamentary procedures to govern questions not otherwise provided by the rules. However, because of the informality of most Commission proceedings, rules of parliamentary procedure need not be necessary or appropriate. Because the chair makes procedural rulings, only if the other commissioners disagree would the rules of parliamentary procedure be involved.

- 2.07 This rule is to prevent, if at all possible, an issue from arising on appeal that was not raised before the Commission initially.

In 1984, the state legislature enacted RCW 42.36.060. The statute placed limitations on the application of the appearance of fairness doctrine. The statute states the standard rule that no member of a decision-making body, while engaged in a quasi-judicial proceeding, may engage in ex parte communications with opponents or proponents with respect to the proposal that is the subject of the proceeding. The statutory provision does provide exceptions to that rule. It is strongly recommended that a Commission NOT rely on those exceptions. Ex parte communications (which means without the other party being present) should be avoided, absolutely. Should there be ex parte communications, inadvertently or otherwise, a Commissioner should place on the Commission record the substance of the communication at the earliest available time.

- 2.11 Civil Service rules must be provided at no cost, as authorized by Chapters 41.08, 41.12, and 41.14 RCW.

- A. Scope of Public Records. Certain limited exemptions to the State's public disclosure laws are listed in Chapter 42.56 RCW. The following exemptions may have application to Civil Service records:

RCW 42.56.230(2): Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

RCW 42.56.240(1): Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to

discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

RCW 42.56.240(2): Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the [public disclosure] commission, if disclosure would endanger any person's life, physical safety, or property: If at the time the complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the [public disclosure] commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

RCW 42.56.250: (1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

- (2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;
- (3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contract information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;
- (4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW [Washington Law Against Discrimination] against the person; and (b) requests his or her identity or any identifying information not be disclosed;
- (5) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice

under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

B. Certain Cases.

- (1) The public employee's record exemption of was considered in Seattle Firefighters Union Local No. 27 v. Hollister, 48 Wn. App. 129, 737 P.2d 1302 (1987). In Hollister, a union sought an injunction to prevent the State Department of Retirement Systems from releasing disability records of retired fire fighters and police officers. Although exempt, the court was required by the statute to determine if release of the records would violate the personal privacy rights of the retirees. The court noted that in Hearst Corp. v. Hoppe, 90 Wn.2d 123, 580 P.2d 246 (1978), the information protected from public disclosure by the privacy right is that information which a reasonable person would find highly offensive to disclosure and which is not of public interest. Hollister, 48 Wn. App. at 134. The retirees' records contained information concerning back injury, asthma, emphysema, ulcers, and possible arterial problems. These were not the kinds of illnesses considered to be "unpleasant, disgraceful, humiliating," or otherwise "highly offensive to reasonable people." Therefore the records did not meet the test for a violation of the right to privacy and were not exempt under RCW 42.17.310. Id. at 136. Further, deletion of information identifying individual retirees was not required since none of the records met the Hearst test for violation of privacy. Id. at 137-48.
- (2) Several other recent cases have reviewed the provision for disclosure of public records in light of employees' privacy concerns. The Washington Supreme Court found that the public employee exemption did not apply to the records of law enforcement officers against whom complaints had been sustained. Cowles Publishing Co. v. State Patrol, 109 Wn.2d 712, 748 P.2d 597 (1988). The court determined that the "law enforcement" exemption did apply when the nondisclosure of certain officers' names (but not the records and reports) was essential to effective law enforcement and the integrity of the law enforcement agency in the minds of the public. In another case, the appellate court has ruled that a records release waiver signed by a sheriff's deputy as part of the application process waived the employee's rights only under the Federal Privacy Act and not the State Public Disclosure Act. Read v. Pierce County Civil Service Comm'n for Sheriff's Employees, No. 11568-9-II, slip op. (Wn. App. Div. II Aug. 21, 1989). Accordingly, the court ordered the release of the

employee's records upon his request. See also Barfield v. City of Seattle, 100 Wn.2d 878, 676 P.2d 438 (1984).

- (3) Public records include emails on the government's system. Tiberino v. Spokane County, 103 Wn. App. 680, 13 P.3d 1104 (2000). In Tiberino, an employee of the Spokane County prosecutor's office was discharged for excessive personal use of email. The county printed the emails in preparation for litigation. The local paper sought copies of the emails. The Court, in evaluating the public records request, determined that the emails were public records (they were on the County computer system). However, the emails themselves contained personal information and were not disclosed. The employee was not terminated because of the content of the email, but the extent of the personal email. See also Dawson v. Daly, 120 Wn.2d 782, 845 P.2d 995 (1993) (information in the prosecutor's file compiled in case preparation were public records).
- (4) In Yakima Newspapers v. City of Yakima, 77 Wn. App. 319, 890 P.2d 544 (1995), the Court approved release of the settlement agreement concerning termination of a city employee. Similarly, in Limstrom v. Ladenburg, 136 Wn.2d 595, 963 P.2d 869 (1998), prosecutor's personnel files were found to be public records.

2.13

Chapter 41.08, 41.12, and 41.14 RCW require the Commission to certify the transcript of its proceedings, upon an appeal being filed in the Superior Court. See, e.g., RCW 41.14.120. Under similar systems, but interpreting different statutory language, the courts have determined that the personnel authority is responsible for the cost of the transcript used on appeal. Zoutendyk v. State Patrol, 95 Wn.2d 693, 628 P.2d 1308 (1981); Pryse v. Yakima School District No. 7, 30 Wn. App. 16, 632 P.2d 60 (1981). The proposed rule preserves the Commission's opportunity to recover costs of transcript preparation, should a court determine that recovery is authorized. The rule also provides for recovery if the cost of transcription is for court "review," as distinguished from "appeal," of matters other than discipline. Because it is possible that the Commission will be required to prepare a transcript in a case arising other than from an appeal of discipline, the Commission may argue that the rule in Zoutendyk does not apply. In light of the previously referenced cases, it is likely that the courts will continue to require the Commission to bear the initial responsibility for costs of transcript preparation when cases arise on appeal. In cases that subject the Commission to review other than by appeal, a court should find that review is analogous to that discussed in Portage Bay-Roanoke Park Community Council v. Shorelines Hearings Board, 92 Wn.2d 1, 593 P.2d 151 (1979), and allow a Commission to recover costs of transcript preparation.

3. SECRETARY-CHIEF EXAMINER.

3.01 SECRETARY-CHIEF EXAMINER—APPOINTMENT. A Secretary-Chief Examiner (hereinafter, "Secretary") shall be appointed by the Commission.

3.03 The Secretary shall be appointed as a result of a competitive examination, which examination

[City: may be either original and open to all properly qualified citizens of the city, or promotional and limited to persons already in the service of the police, fire or other city department as the Commission may decide.]

[County: must be open to all properly qualified citizens of the County, provided that no appointee of the Commission, either as Chief Examiner or as an Assistant to the Chief Examiner, shall be an employee of the Sheriff's Department.]

3.05 SECRETARY—DISCIPLINE. The Secretary may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case of members of the classified service.

3.07 SECRETARY—AUTHORITY. In addition to acting as Secretary of the Commission, the Secretary shall:

3.07.01 Be the general manager and executive officer of the Civil Service Department, responsible to the Commission, and shall direct the activities of all personnel in the Civil Service Department, including their appointments and removals;

3.07.02 Delegate duties where necessary and supervise the work of all persons employed in the Department, including the preparation, conduct, and scoring of examinations, and maintenance of the classification plan;

3.07.03 Report to the Commission from time to time as directed concerning the details of the work of the Department;

3.07.04 Prepare the budget for the Department, approve accounts, and administer generally the expenditure of funds appropriated for the operation of the Department;

3.07.05 Classify all Civil Service positions in the classified service, maintain a schematic list of all such classes in the classification plan, and prepare and maintain specifications for each class;

3.07.06 Determine which examinations shall be conducted, the minimum qualification of applicants, the subjects to be covered in each examination, methods of testing, and the relative weights to be given to the various parts of the examination; supervise the conduct of the examinations, appointing such experts, special examiners, and other persons he or she may deem

necessary; decide all questions relating to the eligibility of applicants, the admissibility of applicants to the examinations, extension of time and all questions arising during the course of an examination; prepare and submit a report prior to and after each examination to the Commission, together with a report on all appeals from rulings or appeals from any part of the examination; and [Note: see Rule 8.01, "Ordering Examinations."]

3.07.07 Perform all other functions necessary for the proper carrying-out of these rules and the provisions of law relating to the Civil Service System, and such additional duties as may be assigned to the Secretary from time to time by the Commission.

3.09 REVIEW OF AND APPEAL FROM ACTIONS OR DECISIONS OF THE SECRETARY.

3.09.01 The Commission on its own motion may review or modify any action or decision of the Secretary.

3.09.02 Any person adversely affected by any action or decision of the Secretary may request the Commission to revise or modify such action or decision. Such request shall be in writing setting forth with reasonable certainty the action objected to, the grounds supporting the request, and the relief sought, and must be made within ten (10) days from the date of notice of such action unless established otherwise in these Rules. The Commission shall thereupon, if in its opinion good cause is shown, conduct a hearing thereon.

COMMENTS TO RULE 3: SECRETARY-CHIEF EXAMINER

- 3.01 The Commission's staff includes at least the Secretary-Chief Examiner and may include other employees or consultants if Commission business requires their services and the city or town budgets for them.

The position of Secretary-Chief Examiner is specifically authorized by statute. See RCW 41.08.040, 41.12.040, and 41.14.050. RCW 41.12.040 with RCW 41.14.050 provide for differing selection criteria for the examination and selection of the Secretary-Chief Examiner.

- 3.03 The Secretary-Chief Examiner is appointed by the Commission. The Commission may appoint the Commissioner either by convening a competition for an entry-level appointment from among all applicants who live in the city or town; or, the Commission may promote a Secretary-Chief Examiner from among employees already serving the police or fire departments of the town or city. (Although the statute limits eligibility for the position of Secretary-Chief Examiner, a local system may vary from the statutory scheme so long as the purposes of the State civil service program are served.) For example, the Secretary-Chief Examiner position may be held by one person or divided into two positions—one to serve as Secretary and one to serve as Chief Examiner.

- 3.05 The Secretary-Chief Examiner may be suspended, demoted or discharged only in good faith for cause. The Secretary-Chief Examiner can be disciplined only according to the same procedures that the Commission provides for disciplining police officers or fire fighters.

- 3.07 The duties of the Secretary-Chief Examiner are to:

- Keep records for the Commission
- Preserve reports made to the Commission
- Superintend and keep records of Commission examinations
- Perform other duties that are assigned by the Commission

Other appropriate duties for the Secretary-Chief Examiner may include:

- Keeping minutes of Commission meetings
- Providing proper notice of regular and special meetings of the Commission
- Scheduling hearings and notifying all parties of hearing schedules

A skillful Secretary-Chief Examiner may also research Civil Service rules and recommend rule amendments to the Commission.

- A. Independent Investigation. Civil Service Commissions frequently will direct chief examiners to conduct investigations of employee or

departmental conduct. The authority of a Commission to conduct, or order, an independent investigation is challenged in AGO 1986 No. 9. The Skamania County Prosecuting Attorney asked the following question:

May a police Civil Service Commission investigate allegations of misconduct in the performance of police duties made by a citizen against an individual police officer?

The Attorney General answered the question in the negative. In analyzing the matter, the Attorney General reviewed the provisions of Chapter 41.12 RCW, and particularly RCW 41.12.090. That section provides in pertinent part that:

No person in the classified Civil Service who shall have been permanently appointed or inducted into Civil Service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer...

The opinion contains the great understatement that "this section is not a model of clarity in all respects." The Attorney General concluded that "the police Civil Service Commission's investigatory power does not authorize it to conduct an initial investigation respecting the conduct of classified personnel. The Commission's right to investigate does not arise until a written demand for an investigation has been filed, following removal, suspension, demotion or discharge, as provided in RCW 41.12.090."

One of the compelling reasons for the Attorney General's conclusion is the policy against a Commission sitting as an accuser in and a judge of the same controversy. Should a Commission undertake an investigation, the conflict naturally arises. The Attorney General's conclusion is dictated by an attempt to eliminate such a potential conflict.

- B. Residence of Secretary. In AGO 1989 No. 20, the Attorney General concluded that RCW 41.08.040 and 41.12.040 required the person filling the position of secretary/chief examiner to be either an existing employee of the city or a city resident. The opinion traced the various amendments to the civil service laws that have resulted in the prohibition on residency requirements for police and firefighters. Those same amendments were found not to have impacted the statutes' section regarding secretary qualifications. This opinion is another example of conflicting readings of the city civil service statutes. These shifts between flexibility and strict adherence continue to pose difficulties for cities, many of whom do not maintain residency requirements for the position of secretary.

As discussed previously, the purpose of Chapters 41.08 and 41.12 RCW is to establish a civil service system to provide promotion on the basis of merit, tenure in employment, and an independent commission to administer the system and investigate employee discipline. Reynolds v. Kirkland Police Commission, 62 Wn.2d 720, 384 P.2d 819 (1963). In deciding whether a civil service system providing for the appointment of a non-resident Examiner would substantially accomplish these purposes, a city may consider a number of factors.

First, restrictions on employment are generally disfavored as contrary to the merit principles that are at the base of civil service systems. See Eggert v. City of Seattle, 81 Wn.2d 840, 505 P.2d 801 (1973) (civil service preference for one-year residents of Seattle invalidated); and see Bjorseth v. City of Seattle, 15 Wn. App. 797, 551 P.2d 1372 (1976). Second, a city is required to administer a personnel system far more intricate and complex than that in existence in the mid-1930's when RCW 41.08.040 and RCW 41.12.040 were enacted. Third, the pool of qualified applicants for secretary is not limited by city limits or other political or geographic constraints. Fourth, most civil service testing is done through use of non-resident consultants or examinations prepared by non-resident organizations. Fifth, the legislature has expressed its opposition to residency requirements in Chapters 41.08 and 41.12 RCW, and in the general laws governing city personnel administration. See, RCW 35A.13.110 (residency within a code city shall not be a requirement for appointments made by or under the authority of a city manager). Therefore, the appointment of a non-resident secretary may not be contrary to any of the purposes of the state civil service laws.

4. DEFINITIONS.

The following words and phrases shall have the meanings hereinafter described unless the context in which they are included clearly indicates otherwise.

4.01 ACTUAL SERVICE. Time in which a given employee has been engaged under Civil Service appointment in the performance of the duties of a position or positions and shall include absences with pay.

4.03 ALLOCATION. The locating or placing in the classified service of a position in the class appropriate to it on the basis of duties and responsibilities and required qualifications of such position.

4.05 APPLICANT. Anyone who has filed an application to take a Civil Service examination.

4.07 APPOINTING AUTHORITY. The person or persons authorized to hire, promote or discharge employees.

Alternatives:

[A person who is authorized to employ others on behalf of the City, which means: (1) the Fire Chief with respect to any Fire Department position included in this system, or (2) the Chief of Police with respect to any Police Department position included in this system.]

[The County Sheriff is invested by law with power and authority to select, appoint, or employ any deputy, deputies or other employees included in this system.]

4.09 APPOINTMENT

4.09.01 APPOINTMENT—REGULAR. The appointment of a certified eligible.

4.09.02 APPOINTMENT—PROVISIONAL. A limited appointment of (a) certified [or non-certified] person to a classified position which is not vacant, but is currently unfilled due to an authorized leave of absence; or (b) a non-certified person to a classified position for which there is no current eligible register.

4.09.03 APPOINTMENT—TEMPORARY. A limited appointment other than from an eligible register for the purpose of performing work belonging in the classified service. A reduction of a regular employee is not a temporary appointment. Temporary appointment includes emergency appointment.

- 4.11 ASSIGNMENT. An employee may be assigned to a position which carries additional salary and additional limited responsibilities and is within the scope of the specification for the class from which assignment is made.
- 4.13 BREAK IN SERVICE. A separation from Civil Service status with a loss of accumulated service credit as occasioned by a "quit," "resignation," "discharge" or "retirement."
- 4.15 CANDIDATE. Any applicant who has completed, or is in the process of completing, a Civil Service examination.
- 4.16 CAUSE. Cause shall mean good, sufficient or just cause as determined by the Commission; exercised by the appointing authority in good faith and without discrimination on the basis of religion, politics or other protected classification; and, in consideration of the total context of a disciplinary action, including procedural fairness and consideration of an employee's work record.
- 4.17 CERTIFICATION. [Certified Eligible List] A list of names from an eligible register transmitted by the Civil Service Commission to an appointing authority from which such appointing authority may fill a vacancy.
- 4.19 CERTIFY. Verification to the appointing authority that a list of names of candidates for employment has been selected from the list of persons tested and found eligible for employment.
- [4.21 CITY. The City of _____.]
- 4.23 CIVIL SERVICE EMPLOYEE. Any employee who has Civil Service status.
- 4.25 CIVIL SERVICE REGISTER. See Eligible Register.
- 4.27 CLASS. A position or group of positions designated by the Commission as having similarity in duties and responsibilities, by reason of which the same examination may be used for each position in the group.
- 4.29 CLASS SERIES. Two or more classes which are similar as to line of work but which differ as to degree of responsibility and difficulty and which have been arranged in a ladder of steps in a normal line of promotion, such as [Police Officer, Police Sergeant, Police Lieutenant].
- 4.31 CLASS SPECIFICATION. A description of the essential characteristics of a class and the factors and conditions that separate it from other classes, written in terms of duties, responsibilities and qualifications.
- 4.33 COMMISSION. The Civil Service Commission. "Commissioner" means any one member of the Commission.

- 4.35 CONTINUOUS SERVICE. Employment without interruption, except for absences on approved leave or absence to serve in the armed forces of the United States.
- [4.37 COUNTY. _____ County.]
- 4.39 DEMOTION. Removal of an employee, for cause, from a higher to a lower class of employment or salary step within a class.
- 4.41 DEPARTMENT. Any department of the City subject to civil service as established by ordinance. The legal head of any such department is the "Department Head" or Department Head's designee.
- 4.43 DISCHARGE. Termination, separation, dismissal, or removal from the service for cause.
- 4.45 ELIGIBLE. Anyone qualified for a given class through examination and placed on the proper eligible register; also, "Certified Eligible."
- 4.47 ELIGIBLE REGISTER. A register or list of successful examinees for a given class from which certification may be made to fill vacancies in such class; also, "Register of Eligibles."
- 4.49 EMPLOYEE. Anyone holding a position in the Civil Service System of the [City/County].
- 4.49.01 EMPLOYEE—REGULAR. Any employee who has been appointed from a certification and who has satisfactorily served the full probationary period.
- 4.49.03 EMPLOYEE—TEMPORARY. Any employee appointed to fill an emergency, temporary or short-term need [or to fill a position for which no register is available].
- 4.49.05 EMPLOYEE—EXEMPT. Any employee in a position of employment which is not subject to Civil Service rules and regulations, and in which one serves at the discretion of the appointing authority.
- 4.49.07 EMPLOYEE—PROBATIONARY. A person appointed from a certification who has not yet completed the specified trial period of employment.
- 4.49.09 EMPLOYEE—PROVISIONAL. Any employee appointed provisionally to a position.

Note: A regular employee is the only employee with rights under Rule 19.01.

- 4.51 EXAMINATION. The process of testing the fitness and qualifications of applicants for positions in a class.
- a. EXAMINATION—OPEN [or ENTRANCE]. An examination open to any member of the public meeting the requirements as stated in the official bulletin announcing the examination.
 - b. EXAMINATION—PROMOTIONAL. An examination limited to employees meeting the requirements stated in the official bulletin announcing the examination.
- 4.53 EXAMINATION BULLETIN [or OFFICIAL BULLETIN] An examination announcement containing basic information about the class of position, the requirements for filing, how to apply, and the other pertinent information. The examination announcement shall be posted in the [Personnel Department/Commission Office] and in other suitable locations.
- 4.55 FINAL EXAMINATION SCORE. Total of earned exam score plus additional veteran's preference or service credit points for which an applicant is eligible.
- [4.57 IN-HOUSE REGISTER. A list of the names of civil service employees, in the order of final examination rating, who have passed an examination for an entrance position or class.]
- 4.59 LAYOFF. The interruption of service and pay of any regular or temporary employee because of lack of work or funds, except that the term shall also apply to the separation of temporary employees who have completed the stipulated period of employment.
- 4.61 OFFICIAL NEWSPAPER. The newspaper designated as official by the [City/County], or as otherwise designated by the Commission.
- 4.63 POSITION. Any group of duties and responsibilities in the service of the [City/County] which one person is required to perform as full[- or part-time] employment, and which is included in the [City/County] budget.
- a. POSITION—REGULAR. A position included in the official annual budget that is neither specified as seasonal employment, nor limited for a period of less than the budget year; also any such position established during a given budget year, unless the Department Head certifies to the Civil Service Commission that such position will not be continued in the succeeding year's budget.
 - b. POSITION—PERMANENT PART-TIME. Employment in a permanent position for work on a basis of less than eight hours a day or less than forty hours a week, but on a regular schedule.

- 4.65 **PROBATION OR PROBATIONARY.** The status of an employee during a trial period following a permanent appointment from an eligible register. This trial period is part of the examination process and is a working test during which an employee is required to demonstrate, by actual performance of the duties, fitness for the position to which certified and appointed.
- 4.67 **PROMOTION.** The appointment of an employee to a higher class or to a position of higher skill or responsibility level. Any change in employment other than by a temporary or provisional appointment (1) from a lower class to any position in any higher class in the same promotional series of classes as determined by the Commission, or (2) to a position which although an entrance position is of higher skill and/or responsibility, shall constitute a promotion.
- 4.69 **QUIT.** Any voluntary separation of an employee from the [City/County] service without acceptance of a resignation by the appointing authority.
- 4.71 **REALLOCATION.** The allocation of a position to a different class in the Classification Plan.
- 4.73 **REDUCTION.** The removal of an employee from a higher class to a lower class of employment for reasons other than cause.
- 4.75 **REGISTER.** A list of candidates for employment who have passed an employment examination, whose names may be chosen and certified by the Commission for submission to the appointing authority for consideration for employment. See 4.47, "Eligible Register."
- 4.77 **REINSTATEMENT.** Reappointment of a regular employee to a position in a class in which the employee was a regular employee.
- 4.79 **REINSTATEMENT REGISTER.** A list of names of persons who were regular employees in a given class and who were laid off and are entitled to reinstatement in such class. A reinstatement register may also include former employees on disability retirement who are capable mentally and physically for reinstatement.
- 4.81 **RESIGNATION.** A written request by an employee for separation from a class or from the [City/County] service. To be valid, such request must show written approval of the appointing authority.
- 4.83 **RETENTION CREDIT.** The employee's service credit in a given class or position and any higher position in a series or any other credit used by the Commission to determine order of lay-off.
- 4.85 **RETIREMENT.** The termination of employment for service or disability pursuant to applicable retirement laws.
- 4.87 **SECRETARY.** Secretary-Chief Examiner as defined in Chapter 3.

- 4.89 **STANDING—REGULAR.** The full Civil Service status of a regular employee.
- 4.91 **SUSPENSION.** Temporary removal of an employee from employment with or without pay, for cause, or pending determination of charges against the employee which could result in demotion or discharge.
- 4.93 **UNCLASSIFIED SERVICE.** The positions in [City/County] that are not subject to civil service and are identified as exempt positions, assignment levels, or other position authorized by law.
- 4.95 **VETERANS' PREFERENCE.** Preference in examinations and employment, based on military service, as provided and defined by applicable laws.

COMMENTS TO RULE 4: DEFINITIONS

4.49

EMPLOYEE.

- A. Employee—Regular. Not all public employees are subject to Civil Service protection. A regular employee is an employee, who upon examination, appointment, and service of a probationary period attains status in the “civil” or “career service.” This status is a tenure in employment, and has as its main benefit for the public employee a protection from arbitrary or political treatment by the employer. A regular employee has a right to appeal the basis for disciplinary action to the Commission.
- B. Employee—Temporary or Provisional. Most public personnel systems allow for provisional, emergency, and temporary appointments for limited periods. Such appointments are generally subject to fewer requirements than a permanent or regular appointment. See 3 Eugene McQuillin, The Law of Municipal Corporations, Section 12.81a (4th ed. 1990). Employment rights seldom accrue due to provisional or temporary appointments. See Reiger v. City of Seattle, 57 Wn.2d 651, 359 P.2d 151 (1961). Compare, Scannell v. City of Seattle, 97 Wn.2d 701, 648 P.2d 435 (1982) (vacation benefits allowed by city charter for intermittent workers).

A related designation of employment status is that of day laborer or intermittent. Employment as a day laborer has few attributes of permanency. Work is on a day-to-day basis, as the need of the employer dictates. State ex rel. Cole v. Coates, 74 Wn. 35, 38-39, 132 P. 727 (1913). See also Butchek v. Collier, 174 Wash. 311, 24 P.2d 619 (1933); Scannell v. City of Seattle, 97 Wn.2d 701, 648 P.2d 435 (1982). RCW 49.44.160, enacted in 2002, prohibits public employers from “misclassifying employees, or taking other action to avoid providing or continuing to provide” employment benefits. The legislation is a further effort to address the use of “perma-temps” – personnel working full (or nearly full) time but without benefits.

- C. Employee—Probationary. See comments to Rule 11.
- D. Employee—Exempt or Discretionary Employees. Civil Service laws and protections do not apply to officers having a definite term of office (e.g., elected officials). They do not generally apply to heads of departments, deputies, assistants, “confidential” employees, attorneys, and other professionals. See 3 Eugene McQuillin, The Law of Municipal Corporations, Section 12.76 (4th ed. 1990); 15A Am. Jur. 2d Civil Service, § 18 (2d ed. 2000). Exempt positions are usually enumerated to provide clarification for governmental operations. It is more convenient to administer a system with all employees included in Civil Service and

some employees specifically excluded than to identify each employee who is subject to Civil Service status. Consequently, in many cases, controversy is focused on the propriety of a position's exemption, when the general rule of public employment presumes the opposite: there is no right to public employment absent a specific inclusion in Civil Service.

With respect to municipal court operations, the Supreme Court in Massie v. Brown, 84 Wn.2d 490, 527 P.2d 476 (1974), narrowly construed the provisions of RCW 35.30.131 to grant Civil Service rights only to the position of Director of the Traffic Violations Bureau in the City of Seattle. Warrant servers, under the immediate supervision of the Director, were ruled exempt from Civil Service because of their close relationship with the judicial process. The functions of the warrant servers were found to resemble those of bailiffs and probation officers, positions traditionally exempt from Civil Service.

For a decision dismissing application for review of the state personnel system's decision on position exemption, see Federation v. Personnel Board, 23 Wn. App. 142, 594 P.2d 1375 (1979).

In public safety Civil Service Systems, membership is specifically defined by statute. See RCW 41.08.050 and 41.12.050. The number of exempt employees authorized in a sheriff's office is specifically authorized in RCW 41.14.070; and in police departments in RCW 41.12.050.

5. RULE-MAKING.

5.01 AMENDMENTS OF RULES. The Commission may amend these rules or adopt new rules by majority vote of the Commission at any regular or special meeting of the Commission.

[Option: Unless upon emergency declared by all Commissioners present, amendment to these rules shall be first discussed in an open regular or special meeting at least one meeting prior to adoption. Upon declaration of emergency, a rule amendment may be adopted at the meeting at which the amendment is first proposed.]

5.03 EFFECTIVE DATE OF RULES. All rules and amendments shall become effective immediately upon their adoption by the Commission, unless some later date is specified therein.

5.05 COPIES OF RULES. A copy of these rules and a copy of all subsequent rules or amendments shall be sent as soon as practicable after adoption to [city clerk/county auditor/or other central government record center] and to each affected department of the [City/County]. A copy shall be maintained in the office of the Commission for public inspection, and copies shall be available for free public distribution as required by state law.

5.07 EFFECT OF RULES. The terms and conditions of Civil Service employment are governed by these rules, and applicable statute [and ordinance]. No employee shall have a property interest in or as a result of these rules. These rules, and rules the Commission may enact, regulate the mode and appointment of tenure in the Civil Service, and employees are subject to these rules and amendments thereto.

COMMENTS TO RULE 5: RULE-MAKING

- 5.01 ADOPTION—AMENDMENT. Commission practices differ widely in rule adoption practice. This is only one of many alternatives available for consideration.
- 5.05 FREE COPIES OF RULES. If the provisions of the state law are found binding, the Commission is required to duplicate its rules and make copies available to the public for free. (This is a specific statutory exemption from the general Public Disclosure law that allows a city or town to charge its costs for copies.)
- 5.07 In 1982, the State Court of Appeals confirmed that a Civil Service employee has no “right” to require a Civil Service Commission to maintain existing rules. In Greig v. Metzler, 33 Wn. App. 223, 653 P.2d 1346 (1982), the court reviewed Greig’s demotion from the position of sergeant. After Greig had been appointed sergeant, the Cowlitz County Civil Service Commission adopted a rule giving return rights to employees returning to the classified service from a non-classified position. Greig was “bumped” from his sergeant position when an employee returned to the sergeant’s classification from a non-classified position. Greig argued that he had a property interest in the continuation of his tenure as a sergeant. The court determined that Greig’s interest was defined by state law and the rules which the Commission adopted:

Terms and conditions of public employment are controlled by statute and not by contract. The legislature may enact statutes regulating the mode and appointment of tenure in public employment and employees are subject to statutory amendments. See, e.g., Association of Capitol Powerhouse Engineers v. State, 89 Wn.2d 177, 570 P.2d 1042 (1977). We hold these same principles apply to the rule promulgated here . . . although [the bumping] rule was promulgated after Greig’s appointment . . . it is our holding he is subject to the rule.

Greig v. Metzler, *supra*.

The State Supreme Court revisited this issue two years later. The Washington Federation of State Employees challenged the legislature’s amendment of the state Civil Service Law to provide for performance evaluation and other system changes. The public employees’ union contended that the state’s civil service laws formed the basis of a contractual relationship between the state and its public employees, and that the contract vested at the time the employee entered public service. The court rejected this position in State Employees v. State, 101 Wn.2d 536, 682 P.2d 869 (1984).

The rights challenged here are neither deferred benefits nor do they give rise to contractual expectancies. Rather, the effective provisions (certification, increment salary increases, lay-offs, and

re-employment from lay-offs) are best categorized as terms of public employment (tenure) and part of a system of personnel administration. See RCW 41.06.010; RCW 28B.16.010. Tenure is regulated by legislative policy.

While public employees' pension benefits have been determined to be contractual in nature and vest at the time the employee enters public service, Bakenhus v. City of Seattle, 41 Wn.2d 695, 296 P.2d 536 (1956), terms of public employment are not contractual and are subject to change by the public authority. Rule 5.07 clearly states that rule in order that employees do not have a question about the authority of the commission to amend rules.

6. CLASSIFICATION.

6.01 CLASSIFICATION PLAN. A class specification shall be prepared and maintained for each class in the Civil Service System. Such specifications shall describe generally the class, distinguish it from other classes, give examples of typical duties of the class, and contain, when applicable, a statement of those qualifications for applicants for positions in the class not otherwise provided in these rules.

6.03 ADMINISTRATION OF POSITION CLASSIFICATION. The Secretary will make, or cause to be made, position classification studies of individual positions or groups of positions whenever it is deemed necessary; whenever the duties or responsibilities of existing positions have undergone significant changes; whenever notification is received that new positions are to be established by the [City Council/County Council/Commissioners]; or upon request of an appointing authority or an affected employee if title classification of such position has not been reviewed within the last 12 months.

6.05 CLASSIFICATION OF POSITIONS

6.05.01 Each position in the classified service shall be classified at the direction of the Secretary and allocated to its appropriate class in accordance with the character, difficulty, and responsibility of its designated duties. Positions shall be allocated to a given class when:

- (a) The same descriptive title may be used to designate each position in the class;
- (b) The same level of education, experience, knowledge, ability, and other qualifications may be required of incumbents; and
- (c) Similar tests may be used to select incumbents.

6.05.02 All classes involving the same character of work but differing as to level of difficulty and responsibility shall be assembled into a class series.

6.05.03 Compensation or salary shall not be a factor in determining the classification of any position or the standing of any incumbent.

6.05.04 In allocating any position to a class, the specification for the class shall be considered as a whole. Consideration shall be given to the general duties, the specific tasks, the responsibilities, the required and desirable qualifications for such position, and the relationship to other classes. The examples of duties in a specification shall not be construed as exclusive or restrictive, and an example of a typical task or a combination of two or more examples shall not be taken, without relation to all parts of the specification, as determining that a position should be included within a class.

[OPTIONAL:

- e. No one whose position has been allocated to its appropriate class shall be assigned or required to perform duties generally performed by persons holding positions in other classes, except in case of emergency or for limited periods of time when approved by the Secretary, provided that nothing in this provision shall be construed as preventing the assignment of duties of a higher rank as part of a training period, or for relief periods, provided, further, the clause in any specification "and to perform related work as required" shall be liberally construed.]
- f. It shall be the duty of responsible administrative officers in the various departments to report to the Secretary any and all organizational changes which will abolish or effect changes in existing positions or establish new positions. When an appointing authority requests the establishment of any new or additional position of more than 60 days' duration, or a change in allocation of an existing position, a request for such consideration shall be addressed to the Secretary, accompanied by a statement of the duties, responsibilities and qualification requirements of the position. In those instances where gradual shifts in work emphasis or changing work conditions have effected material changes in existing positions, the Secretary shall be notified in writing by the Department before the end of the budget year. In those instances in which the duties of a position are materially changed for other reasons, the Secretary shall be notified immediately and not later than ten (10) days from the date of such change.
- g. ASSIGNMENT. An employee may be assigned to a position which carries additional salary and limited additional duties and responsibilities and is within the scope of the specification for the class from which assignment is made. If the duties of the position for which an assignment is proposed are beyond the scope of the official specification for the base class, such position must be separately classified and eligibility established by examination. No permanent or vested rights shall be acquired by reason of such assignment, and such assignments shall be subject to review and change by the appointing authority at any time.

[OPTIONAL:

6.07 RECORDS

- 6.07.01 Separate records of each position in the classified Civil Service shall be maintained by the Civil Service in the following manner:

- (a) Each position record shall include a notation of the authority for establishing the position, the name of each successive incumbent, all classification actions relating to it, its organizational and physical location in the department, and a current description of its duties.
- (b) A personnel record for each employee shall be kept with a record of the position occupied by the incumbent.
- (c) It shall be the duty of each appointing authority to supply to the Secretary, in writing, all necessary information to enable the Civil Service Department to maintain such records described in (1) and (2) above, including any significant change in the duties of the position to another position in the same or to a different class.

6.07.02 The Secretary shall report any classification action to the department head concerned and to the [City Council/County Commissioners]. The department head shall be responsible for notifying subordinates of any classification action affecting status or allocation of positions.]

6.09 EFFECT OF CLASSIFICATION CHANGES ON INCUMBENT [Short Form]

- 6.09.01 Whenever the title of a class is changed without a change in duties or responsibilities, the incumbent shall have the same status in the retitled class as held in the former class.
 - 6.09.02 Whenever a position is reclassified from one class to a higher class, the incumbent shall not continue in the same position, except temporarily, without gaining eligibility for the new class by examination and receipt of an appointment in accordance with these rules.
 - 6.09.03 Whenever a position is reclassified from one class to a lower class, the regular incumbent may, with the concurrence of the appointing authority and the Commission, elect to take a voluntary reduction to the lower class or, at the employee's option and with the concurrence of the appointing authority and the Commission, may remain in the reclassified position for a temporary period as limited by the Commission only until transfer can be made to another position in the class in which the employee has regular standing.
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6.09 EFFECT OF CLASSIFICATION CHANGES ON INCUMBENT [Long Form]

- 6.09.01 TITLE CHANGE. Whenever the title of a class is changed without a change in duties or responsibilities, the incumbent shall have the same status in the retitled class as held in the former class.

6.09.02 **UPGRADING OF POSITION.** Whenever a position is reclassified from one class to a higher class, the incumbent may continue in the same position temporarily but must gain eligibility for the new class by examination and receipt of an appointment thereto in accordance with these rules. Provided, that the Commission may authorize the appointment of the incumbent to the new position without examination after considering the particular facts involved. A regular employee shall be qualified to take the examination for the higher class regardless of an existing eligible register for that class. A regular employee who fails the examination or is not appointed shall have tenured status in the lower class and may be appointed to another position, transferred or voluntarily reduced according to these rules. A probationary employee may be permitted, upon approval of the Commission, to qualify for the higher class in the same manner as a regular employee. A probationary employee who is not permitted to take the examination or who is not appointed to the position, may be appointed to another position, transferred; or enrolled on an appropriate eligible register for the lower class.

6.09.03 **DOWNGRADING OF POSITION.** Whenever a position is reclassified from one class to a lower class, the incumbent employee shall retain Civil Service status in the class from which the position is reallocated and shall, if practicable, be appointed to another position in that class or voluntarily transferred in accordance with these rules. Otherwise, the employee shall be granted full status in the lower class and placed on a reinstatement register for the higher class. The probationer's name shall be enrolled on an appropriate eligible register for the higher class with the same standing as at the time of original certification.

COMMENTS TO RULE 6: CLASSIFICATION

6. GENERAL COMMENTS.

Classification is the organization of positions of employment according to their duties, functions and responsibilities. E. Kaplan, *The Law of Civil Service*, 120 (1958). A classification plan provides foundation for a comprehensive personnel system. Classification provides uniformity in work standards, and a guide to salary administration. It is an orderly means of regulating employee Civil Service status and is a readily identifiable career guide for employees.

While classifications vary, largely in the various jurisdictions, it would seem unquestioned that they must be on a basis of positions bearing a reasonable relation to each other. The duties of the position, and not the title, determine the proper classification.

3 Eugene McQuillin, The Law of Municipal Corporations, § 12.77 (4th ed. 1990). A Civil Service Commission's exercise of this classification authority is a ministerial or administrative action. 15A Am. Jur. 2d Civil Service, supra at Section 19; 1 Am. Jur. 2d Administrative Law 877 § 81 (1962). Even though a classification decision involves the exercise of a high degree of discretion and judgment, the decision is not in any sense judicial. McQuillin, supra; 1 Am. Jur. 2d, supra.

In responding to a court challenge to a classification, the court in State ex rel. Reilley v. Civil Service Commission, 8 Wn.2d 498, 112 P.2d 987 (1941) discussed prior court decisions in relation to its review of a Civil Service Commission's classification decision:

Our search of the authorities makes it clear to us that civil service commissions . . . have a discretionary power in the matter of classification, as will be noted in the following . . . :

It seems to me that the cases cited indicate the true extent to which the court should assume to supervise the action of the civil service commission. If the classification of the commission clearly violates the constitution or the statute, mandamus should issue a corrected classification. If the action of the commission is not palpably illegal, the court should not intervene.

Id., citing People ex rel. Schau v. McWilliams, 185 N.Y. 92, 77 N.E. 785 (1906). See also Leonard v. Civil Service Comm'n, 25 Wn. App. 699, 611 P.2d 1290 (1980).

- 6.01 Disparate Wage Scale. An employer may avoid Equal Pay Act liability for utilizing a job classification system which has a disparate wage scale if it is based on legitimate business-related considerations. Aldrich v. Randolph Central School District, 963 F.2d 520 (2d Cir. 1992).

- 6.05 A superior court decision has discussed the ability of a city to remove the power of the Civil Service Commission to classify positions. Tukwila Police Officers Assoc. v. City of Tukwila and Tukwila Civil Service Comm'n, No. 87-2-02161-1, slip. op. (King County, Wash. Sup. Ct. Sept. 26, 1989). The court held that Chapter 41.12 RCW mandates that the Civil Service Commission retain jurisdiction over classification of positions and that the City could not remove that power by ordinance. It also held that the City did not have authority to remove the Assistant Police Chief from the jurisdiction of the Civil Service Commission, following the decision in Samuels v. City of Lake Stevens, 50 Wn. App. 475, 749 P.2d 187 (1988), and that both clerical personnel and commissioned officers are subject to the Civil Service System, relying on RCW 41.12.050 ("The classified Civil Service . . . shall include all fully paid employees of the Police Department . . ."). Finally, the court held that lateral entry officers must test competitively under the Civil Service Commission process and be subject to the same rules and hiring process as other officers. See also discussion at Section 1, page 7.
- 6.07 This section is designated as optional. Such extensive recordkeeping may only be necessary in the largest of Civil Service Systems. Most jurisdictions should be able to maintain an audit on positions within the classified service without the need for this detailed reporting.
- 6.09 Reduction in Force Benefits upon Reclassification. In considering whether employees whose job classifications are downgraded are eligible for "reduction in force benefits" (e.g., the option available in lieu of "separation from service", such as bumping less senior employees), the Washington Court of Appeals held that an employee is not "separated from service" unless his employment, and not merely the position, is terminated and therefore downgraded employees are ineligible for such benefits. Terhar v. Department of Licensing, 54 Wn. App. 28, 771 P.2d 1180 (1989).

7. APPLICATIONS AND APPLICANTS.

7.01 GENERAL REQUIREMENTS FOR FILING APPLICATIONS.

7.01.01 All applicants for examinations for positions in the classified Civil Service must file a written application on a form prescribed by the Secretary; no one shall be admitted to any examination without having first filed an application on the proper form, giving fully, truthfully, and accurately all information required.

7.01.02 In order to file an application for examination, the applicant must:

- (a) Meet the requirements specified in these rules and in the official examination bulletin as of the closing day of the official filing period;
- (b) Produce evidence of education, training, experience, or any lawful requirement for a class, as directed by the Secretary.

7.01.03 Time for filing applications:

- (a) All applications for examination shall be filed with the Secretary during office hours and within the time limit fixed in the official announcement of the examination, provided that upon written evidence of extenuating circumstances acceptable to the Secretary, late applications may be accepted. Applications received by mail in the office of the Commission must be postmarked on or before the closing date.
- (b) The time for filing applications may be extended by the Secretary as the needs of the service require, provided that the examination shall then be re-advertised in the official newspaper.

7.03 APPLICATIONS FOR PROMOTIONAL EXAMINATIONS

7.03.01 An application shall be accepted from any regularly appointed employee in the classes from which promotion is allowed who, in addition to meeting the requirements of Rule 7.01, has the requisite service credit designated in the official bulletin.

7.03.02 When designated in the official bulletin, the Secretary may permit regular employees and probationers to file for and take a promotional examination for delayed eligibility if [on the last day for/within thirty days of/other appropriate time] accepting applications, they meet lower specified minimum service requirements in the classes from which promotion is allowed.

7.05 SPECIAL REQUIREMENTS.

7.05.01 The Secretary may prescribe such limits and such other specific requirements, physical or otherwise, as in the Secretary's judgment are required by the work to be performed.

7.05.02 When designated on the official bulletins, the Secretary may permit filing by an applicant not more than [one year] under the specified minimum age on an open graded/entrance examination and not more than [two years] under the specified experience on a promotional examination. A successful candidate will have delayed eligibility until the required minimum age or experience is attained.

7.07 CONDITIONAL ADMISSION. If there is reasonable doubt as to whether the applicant meets the minimum requirements, the Secretary may order that the applicant be admitted to the examination on the condition that the particular requirements are met to the satisfaction of the Secretary before the applicant is enrolled on an eligible register.

7.09 REJECTION OF APPLICANT OR ELIGIBLE. The Secretary may reject an applicant for examination, withhold from a register or from certification the name of an eligible, or remove from a register the name of an eligible if the applicant or eligible:

7.09.01 Does not meet the requirements set forth in these rules or in the bulletin announcing the examination;

7.09.02 Is physically or mentally unfit to perform the duties of the position sought;

[OPTIONAL:

7.09.03 Has been convicted of any felony or a misdemeanor involving moral turpitude (see Chapter 9.96A RCW)];

7.09.04 Has been dismissed or has resigned in lieu of discharge from any position, public or private, for any cause which would be a cause for dismissal from [City/County] service or has an unsatisfactory record of employment in the [City/County] service or with any other agency or firm;

7.09.05 Has made any material false statement or has attempted any deception or fraud in connection with this or any other Civil Service examination;

7.09.06 Fails to appear for fingerprinting or other investigation as required;

7.09.07 Has assisted in preparing the examination for which application is sought or has in any other manner secured confidential information concerning such examination which might give an unfair advantage over other applicants in the examination;

- 7.09.08 After notification, did not promptly appear at the time and place designated for the examination;
- 7.09.09 Has been discharged from the armed forces under dishonorable conditions;
- 7.09.10 For other material reasons.

See Rule 3.09, "Review and Appeal From Actions or Decisions of the Secretary."

7.11 DEBARMENT FROM EMPLOYMENT.

- 7.11.01 No one who has been dismissed from the Service for cause involving moral turpitude shall be allowed to again enter the Service, and anyone dismissed for other good cause shall be allowed to again enter the Service only by express consent of the Secretary;
- 7.11.02 Any applicant for appointment, promotion, reemployment, increase of salary, or other personal advantage, who shall directly or indirectly pay or promise to pay any money or other valuable thing to anyone whatever for or on account of such actual or prospective advantage, shall be ineligible for any further employment in the Civil Service.

7.13 NOTICE OF NON-ACCEPTANCE. Anyone against whom action is taken under Rule 7.09 shall be notified promptly by the Civil Service Department of the reasons therefor by either oral notice at the time of filing the application and/or written notice mailed to the applicant or eligible.

7.15 ADMISSION TO EXAMINATION PENDING APPEAL. The Secretary may admit to the examination anyone whose application was not accepted, pending final disposition of an appeal, such admission to be without prejudice to either the [City/County] or the applicant.

7.17 AMENDMENT OF APPLICATION. The Secretary may permit any applicant, before or after acceptance of the application form, to amend the application or to file an amended application.

7.19 APPLICATIONS NOT RETURNED. All applications when completed and filed become the property of the Commission and thereafter may not be returned to the applicant.

7.21 APPLICATION FEE. [Reserved.]

COMMENTS TO RULE 7: APPLICATIONS AND APPLICANTS

7. GENERAL COMMENTS.

This rule is, for the most part, mechanical and procedural. It may provide useful suggestions if current application procedures are not acceptable. If a current application process is performing satisfactorily, any suggested change should be carefully considered and reviewed.

- 7.01 Residency requirements may be imposed only upon candidates for the post of Secretary-Chief Examiner. See, e.g., RCW 41.08.075; NAACP v. Town of Harrison [New Jersey], 53 Fair Empl. Prac. Cas. (BNA) 1499 (N.J. 1990) (holding that town's requirement that its employees live within town limits violates Title VII of the Civil Rights Act of 1964); AGO 1989 No. 20 (stating that Secretary-Chief Examiner of Civil Service Commission must be either an existing city employee or a city resident).

Physical standards or physical agility requirements are particularly difficult for civil service management. For a case finding minimum height requirements for jail guards to be not job related, see Dothard v. Rawlinson, 433 U.S. 321 (1977). And in Fahn v. Cowlitz County, 93 Wn.2d 368, 610 P.2d 857 (1980), the Washington Supreme Court addressed an appeal from the Cowlitz County Civil Service Commission. The Commission attempted to defend its requirement that all applicants for the position of deputy sheriff be at least 5'9" tall. While the Court allowed the Commission to assert a bona fide occupational qualification (BFOQ) regarding the height standard, it is now well recognized that such a qualification would not be defensible.

- 7.03 Rule 7.03 provides for delayed eligibility. This allows a candidate who does not yet qualify, but will qualify during the term of an eligibility register, to take an examination. This rule is particularly useful in those jurisdictions that maintain eligibility registers for periods in excess of one year.

- 7.09 Rule 7.09 is a standard provision granting the Secretary the authority to reject applicants for examination or eligibles from certification. The standards for the exercise of this authority are set forth in the rule, and an affected party is provided the opportunity to have the Commission review the Secretary's decision.

- 7.21 While these rules contain no recommendation concerning an application fee, many Civil Service Commissions charge a minimal fee to offset the cost of purchase and administration of examinations.

8. EXAMINATIONS.

8.01 ORDERING EXAMINATIONS. An examination shall be ordered whenever it is deemed to be in the best interest of the [City/County]. The Secretary shall administer examinations as provided by these rules.

8.03 EXAMINATION ANNOUNCEMENT. Public notice of examinations shall be given by the Secretary in the official newspaper and in any other publications which the Secretary may direct at least [] days preceding such examination. The official bulletin shall be posted in the Commission's office and distributed to appropriate departments for posting at all employment centers. In addition to the public notice, promotional examination notices shall be posted in the Commission office and in department offices not fewer than [] days preceding the examination.

8.05 AMENDMENTS TO ANNOUNCEMENTS. The Secretary may amend any published announcement with appropriate public notice.

8.07 CONTINUOUS EXAMINATIONS. A continuous or periodic examining program may be ordered and administered by the Secretary for any class of positions [for other than promotional examinations]. Filing will be open, applications received, and the examinations administered according to the needs of the service. The names of qualified eligibles resulting from such examinations shall be entered on the eligible register, and certifications for appointments shall be made in the same manner as from any eligible register. Names of eligibles from successive examinations in the same program shall be entered on the eligible register for the class at the appropriate places and determined by final grades. Names may be withheld from certification or removed from such eligible registers in the same manner and for the same reasons as from any eligible register.

8.07.01 NOTICE. Public notice of continuous examinations shall state that the period for filing applications and taking examinations shall remain open until further order and notice. Qualified applicants may take the examination at such times and places as specified in announced schedules which shall be posted in all places and departments where public notice of the examination is or should be posted and, to the extent practicable, shall be included in the Examination Bulletin.

8.07.02 DURATION AND CLOSING. Any open filing and examination period may be closed by order of the Examiner upon giving notice of the order by:

- (a) publication at least once in the Official Newspaper; and
- (b) posting a copy in the Personnel Division Office at least seven (7) days prior to the date of closing.

8.07.03 To expedite certification and appointment and to maintain security of examination material, no keyed copy of the written test will be provided at any time. The eligible register may be promulgated immediately after the results are obtained.

8.07.04 Except as above provided, the rules applicable to other examinations shall apply to continuous and periodic examinations.

8.09 CHARACTER OF EXAMINATIONS. All examinations shall be competitive, impartial, and practical in their character. They shall be designed to qualify and rank applicants in terms of their relative fitness to perform the duties of the class for which the examination was ordered. An examination shall be deemed to be competitive when applicants are tested as to their relative qualifications and abilities, or when a single applicant is scored against a fixed standard.

8.11 CONTENT OF EXAMINATIONS. Examinations may include written tests, personal qualifications, physical or performance tests, or evaluations of training and experience, interviews, any other suitable evaluation of fitness, or any combination of such tests. Such tests may evaluate education, experience, aptitude, knowledge, skill, physical condition, personal characteristics and other qualifications to determine the relative fitness of the candidates.

ALTERNATIVE I:

8.13 PARTS AND WEIGHTS. Each examination shall contain one or more parts to which percentage weights shall be assigned, which weights shall total 100%. Each part shall be graded independently. This earned grade shall be multiplied by the percentage weight assigned to such part, and the sum of the resulting products shall be called the Examination Grade.

8.15 PASSING GRADES.

8.15.01 The name of an examinee shall not be entered on an eligible register without the examinee having attained a passing grade in the examination as established by the Secretary.

8.15.02 Tests consisting of interviews and evaluation of experience records shall be graded with 100% as the maximum [and with [70%] representing the passing grade for such tests].

8.15.03 [Except as provided in Rule 8.15.02], the Secretary shall, before identification of papers, authorize a grading schedule for tests with a minimum passing score which represents an acceptable degree of fitness on such subjects for the class of positions.

ALTERNATIVE II:

8.13 PARTS AND WEIGHTS. Each examination shall contain one or more parts to which a raw score, rank order, or percentage weight shall be assigned. One or more of the following options shall be utilized in scoring an examination.

8.13.01 A raw score (actual number of questions answered correctly) shall be the sole indicator of final score of a written examination, unless otherwise determined by the Commission prior to exam administration.

8.13.02 A rank order list shall be the final result of an assessment center or other type of examination approved by the [Secretary/Commission]. The rank ordering shall be determined by the number of points earned in an assessment center. Assessors retained by the Commission shall have the latitude and flexibility of recommending individuals for the promotion in addition to not recommending individuals for promotion, thus not including those individuals on the eligibility list who do not receive recommendations.

8.13.03 A percentage weight shall be determined by multiplying the weight assigned to one or more parts of an examination and the sum of the resulting products, to be called the "weighted average."

8.15 PASSING GRADES.

8.15.01 A final minimum passing score required shall be determined by the Commission [or Secretary if so authorized] prior to any examination in which a raw score is utilized.

8.15.02 Where an examination consists of two or more parts, the Commission may set a minimum score to be required in any part of such examination, and any applicant who fails to attain such minimum score shall be considered as having failed the entire exam and shall not be entitled to take the balance of the exam. The minimum score required and the part of the exam to which it is applicable shall be stated in the official bulletin or announced at the time of the examination.

[See also separate rule 8.41 for optional procedures regarding multi-part examinations.]

8.17 QUALIFYING GRADE. Where any part or parts of an examination relate to qualifications deemed essential to the proper performance of the duties of the class, the Secretary may determine the minimum qualifying grade for each such part or parts. Failure to attain such grade shall disqualify an examinee, without regard to overall examination grade, and shall disqualify the examinee from

participation or rating on other parts of the examination. [Note: not needed if Alternative II, Section 8.15.02, selected.]

- 8.19 PROMOTIONAL EXAMINATIONS. Vacancies in the higher positions of a class shall be filled by promotion, whenever practicable in the judgment of the Commission. Upon showing from a department that special training and knowledge gained within a department is essential to the proper filling of the vacancy, the Commission may limit an examination to a promotion within a department only.
- 8.21 OPEN GRADED EXAMINATIONS. An examination may be advertised as open graded when, in the judgment of the Commission, it is in the best interest of the service.
- 8.23 VETERANS' CREDIT. Veterans who have passed an examination shall be entitled to credit pursuant to Chapter 41.04 RCW, or other law.
- 8.25 RESERVE OFFICER CREDIT. [Reserved.]
- 8.27 SERVICE CREDIT IN PROMOTIONAL EXAMINATIONS [OPTIONAL]

[See Optional Chapter 12.]

OPTION I:

- 8.27.01 Regular appointed employees in the Civil Service who receive a passing grade on a promotional examination shall have service credit, computed as of the close of filing in accordance with Rule 12. Credit shall be given for a maximum of 20 years' service with a maximum of 10 points computed in the following manner:
- (a) 1 point for each full year for the first 4 years of service in excess of the minimum service specified for entrance to the examination;
 - (b) 1/2 point for each full year of the next 8 years of service; and
 - (c) 1/4 point for each additional full year of service.
- 8.27.02 Whenever the Secretary allows applicants below the next lower position to enter a promotional examination, the added point credits for service shall be proportionally reduced when a longer service is required for entrance from the second lower position, subject to the same maximum of 20 years' total extra service.

OPTION II:

- 8.27.01 Service credit in any promotional examination shall be given for a maximum of 20 years' service with a maximum of 10 points computed in the following manner:
- 1 to 3 years of service - no points
- after 3 years - 1/4 point for the next 4 years
- next 8 years - 1/2 point per year
- each year beyond - 1 point per year
- 8.27.02 No points will be given for a fractional part of a year. Anyone who attains the required minimum grade on a promotional exam will be entitled to the applicable points. Service points will not be awarded to any person not attaining the minimum grade.
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8.29 KEYED COPY INSPECTION AND EXAMINATION PROTEST. [OPTION I]

- 8.29.01 Any protest against the scope, content, or practicality of any part of an examination shall be filed in writing with the Secretary within three (3) working days immediately following the administration of such part or within the time limit specified on the examination instruction sheet.
- 8.29.02 When a keyed copy is provided, protests against the proposed keyed answers must be filed in writing within three (3) working days or the time limitation specified on the examination instruction sheet. No keyed copy will be provided for inspection on standardized tests or on continuous or periodic examinations.
- 8.29.03 When a qualifying grade is required on any part of an examination, those who fail to receive the qualifying grade shall be notified, and any protest or appeal must be filed in writing within three (3) working days after the notices of results have been mailed.
- 8.29.04 Any protest against scoring or any allegation of clerical error in the final results of an examination must be filed in writing within three (3) working days after the notices of results have been mailed.
- 8.29.05 All protests filed in accordance with this rule shall be considered, and any proper corrections made. If authorized corrections are applicable to other examinees, the corrections shall be made on all examination papers affected.

8.29 EXAMINATION—PROTEST. [OPTION II]

- 8.29.01 Any protest against the scope, content, or practicality of any part of an examination shall be filed in writing with the examiner within five (5) days immediately following the administration of such part, or within the time limit specified on the examination instruction sheet.
- 8.29.02 When a qualifying grade is required on any part of an examination, those who fail to receive the qualifying grade shall be notified and any protest or appeal must be filed in writing within five (5) days after the notices of results have been mailed.
- 8.29.03 Any protest against scoring or any allegation of clerical error in the final results of an examination must be filed in writing within five (5) days after the notices of results have been mailed.
- 8.29.04 All protests filed in accordance with this rule shall be considered by the Examiner and any proper corrections made. If authorized corrections are applicable to other examinees, the corrections shall be made on all examination papers affected.

8.31 CORRECTION OF CLERICAL ERRORS. Any clerical error may be corrected by the Secretary upon discovery at any time during the life of the eligible register, but no such correction shall affect an appointment made from a certification made prior to the correction.

8.33 EFFECTIVE DATE OF EXAMINATION RESULTS. Results of an examination shall become effective on the date official notice thereof is posted _____ [e.g., on the bulletin board/office of the Civil Service Department].

8.35 REEXAMINATION.

- 8.35.01 No one shall be reexamined for the same class within six months of the effective date of such examination, unless authorized by the Secretary upon determination that it would be in the best interest of the [City/County].
- 8.35.02 If an eligible takes a succeeding examination for the same class, the result of such examination shall not nullify any remaining eligibility already established. Eligibility attained by the second examination shall be entered on the register, and the eligibility that will provide the greatest advantage to the eligible shall be used.

8.37 EXAMINATION PAPERS. Examination papers of each eligible shall be kept on file in the office of the Commission until the expiration of eligibility.

8.39 ADDITIONAL EXAMINATION.

- 8.39.01 Eligibles certified pursuant to Rule 9 shall be subject to medical, physical, or psychological examination and to such other examinations administered by the [Secretary/Department] as authorized and approved by the Commission. Such other examinations include, but are not limited to, background examination and polygraph, provided, however, polygraph examination shall be allowed only for entry-level applicants under RCW 49.44.120. Reports of such examination shall be filed with the Commission in the event the findings of the examination recommend that the eligible be rejected. The [Secretary/Commission] shall consider such recommendation, may require further examination, and may order the eligible's name dropped from the eligible register.
- 8.39.02 The Secretary may designate a limited number of certified eligibles for additional Examination as provided in Rule 8.39a, in order to maintain an ability to certify registers pursuant to Rule 10.
- 8.39.03 Before the [Civil Service Department/Appointing Authority] refers a [candidate/eligible] for medical (including mental health) examination, a conditional offer of employment must be made.

8.41. MULTI-PART EXAMINATION. Where an examination consists of two or more parts, the Examiner may:

- 8.41.01 set a minimum score to be required in any part of such examination, and any applicant who fails to attain such minimum score shall be considered as having failed in the entire exam and shall not be entitled to take the balance of the exam;
- 8.41.02 assign weights to each part of the examination, with the examinee's earned examination score equaling the weighted average of the scores on each part;
- 8.41.03 (a) limit the number to be further considered or tested to a group of the highest scoring applicants, depending on the number of applicants who meet the minimum requirements for a position;
- (b) allow candidates of protected groups which are under-represented in the job classification or department, to continue in the testing process, even if their passing scores on each test are not the highest. This would pertain only to entry level tests and only to women, minority or disabled candidates. Under-representation would be determined in the same manner as under Rule 8.05.02; or
- 8.41.04 employ all or any of the above options for multi-part examinations in any examination.

[Note, compare Rule 8.41 with alternatives set out at Rules 8.13-8.15.]

8.43 **NUMBER OF APPLICANTS—LIMITATIONS.** The Secretary may restrict the number of qualified applicants to be examined whenever an examination for a position is likely to attract large numbers of qualified applicants, and when job-related testing processes are prohibitively costly or impractical to administer to all qualified applicants, or may have adverse impact on protected groups.

8.43.01 **RANDOM SAMPLE.** The Secretary may provide for a random sample of qualified applicants to be drawn for an entry level examination by so stating in the Examination Bulletin. Those qualified applicants whose names are not drawn for the initial group to be examined shall be held on file. Should the initial group examined fail to yield an eligibility list of sufficient size to meet the needs for eligibles for that class, or should the list become exhausted before it expires, a sample from the remaining qualified applicants will again be drawn and the examination process repeated.

8.43.03 **MULTI-PART EXAMINATIONS.** The Secretary may limit eligibility in subsequent exam parts to those scoring highest on a preliminary test or series of tests; provided, however, the number of examinees shall be established before administration of preliminary tests.

COMMENTS TO RULE 8: EXAMINATIONS

8. GENERAL COMMENTS.

- A. Commission Discretion in Examinations. In Stoor v. Seattle, 44 Wn.2d 405, 409, 267 P.2d 902 (1954), the court stated the following in rejecting a challenge to a Civil Service examination:

The commission has a wide discretion in the examination of applicants with regard to the manner of performing its duties and exercising its powers.

In O'Brien v. Civil Service Commission, 14 Wn. App. 760, 764, 544 P.2d 1254 (1976), the court stated that Commissions have "broad discretion in determining eligibility requirements for promotion, as well as examination content and subject matter." In O'Brien, the court reviewed a challenge to a promotional exam. The court found that under Chapter 41.14 RCW (county sheriff civil service), there was no specification that an examination be promotional or original. A promotional exam is limited to current employees. An original exam is open to all persons. The Civil Service Commission was found to have discretionary power to require either type of examination.

- B. Commission Must Follow its Rules. Although a Civil Service Commission has broad discretion with respect to examinations, a Civil Service examinee has a fundamental right to have the Civil Service Commission follow its rules and regulations concerning examinations. See Green v. Cowlitz County Civil Service Comm'n, 19 Wn. App. 210, 577 P.2d 141 (1978) (exams criticized, but upheld by the court). See also Casebere v. Civil Service Comm'n, 21 Wn. App. 73, 584 P.2d 416 (1978). In Casebere, the Clark County Civil Service Commission was criticized as follows:

The commission did not approve or review in advance either the oral or written examinations, nor did the sheriff make a written request to the commission for certification of the person eligible for promotion to the rank of sergeant following the examination, nor did the commission make such a certification. All of these procedures were required by rule or statute.

In addition, the record shows that the chief examiner followed procedures not provided for in the commission's rules and regulations. He allowed three individuals appointed by himself to conduct and grade the oral examination, he gave the oral examiners copies of the examinees written test scores and prior service evaluations,

and he made comments, favorable and unfavorable about various examinees to the oral examiners. These unwritten procedures violate RCW 41.14.060(1), which states that the commission must "make suitable rules and regulations" that "provide in detail the manner in which examinations may be held, and . . . promotions . . . shall be made."

Casebere, 21 Wn. App. at 78, 79.

Of similar effect is the decision in Simonds v. Kennewick, 41 Wn. App. 851, 706 P.2d 1080 (1985). There, the court affirmed the invalidation of a civil service examination for the position of lieutenant in the City of Kennewick Fire Department. The court discussed the record demonstrating problems with the exam administration, as follows:

The fire department admits its supervisory personnel prepared 99 percent of the examination. While the written examination was conducted by the Commission's chief examiner, the fire marshal assisted her in grading the exams. The oral interviews were not conducted according to preset standards, see Stoor v. Seattle, 44 Wn.2d 405, 267 P.2d 902 (1954). In fact, there were no preset standards, but instead, the interviews were organized by a fire department officer who also sat in on the interviews and assisted in their administration. The impartial investigation phase of the examination was added by [an] Officer . . . of the fire department. It was conducted by the fire chief who conceded his evaluation of each candidate was not impartial and that favoritism within the department could influence the candidates' grades. This evidence establishes the examination was not impartial as mandated by RCW 41.08.050 and also violated the commission's own rules and regulations. Thus, the commission's conduct was arbitrary and capricious and contrary to law.

One of the most extreme cases of court review of civil service exam process is found at Helland v. King County Civil Service, 84 Wn. 2d 858, 529 P.2d 1058 (1975). In Helland, the court reviewed a challenge by certain King County sergeants who contested the results of a lieutenant promotional exam. The court actually critiqued the specific question and the answer (multi-choice) that was approved by the commission and its consultant as the correct "key" answer. Notwithstanding the fact that the keyed answer was consistent with the background materials for the exam, the court threw out the question and reversed the determination of the commission. The court ruled that the sergeants should receive credit for their answers to the question.

- E. Model Rule 8 concerning examinations sets forth a broad outline for adoption and conduct of examinations. It does not specify the exam to be given or such details as time, place, or manner of exam administration. Upon department request for an examination, the Commission through its Secretary and staff can then provide for the type of examination to be given, approval of the examination, and authorization to the secretary concerning administration of the examination. Rules of the Commission should not be cluttered with such details. Each exam should be considered independently. As such, Commission authorization of the exam should be left to the time when the exam is needed. Attempting to set standards in rules for the administration of future examinations, results in nothing but problems.

8.29.03 It is a fundamental rule of civil service test scoring that if a passing score is fixed, it must be fixed prior to the administration of the exam. Otherwise, the process is subject to manipulation; i.e., shifting the passing score to favor or disfavor applicants. This is also consistent with the rule that the identification of applicants is not typically known until their grades have been established, except where necessary to provide for integrity of the exam. In State ex rel. Hearty v. Mullin, 198 Wn. 199, 87 P.2d 280 (1939), the eligibility list for the City of Seattle auto truck driver class was thrown out. At the time of the exam, the working test portion was to have 60% weight, and experience a 20% weight. Over two months later, the commission changed the weights to working test 40%, and experience 40%. A candidate whose standing on the eligible register dropped markedly challenged this practice, and the Supreme Court ruled in his favor. The Court recognized a principle underlying civil service to "make free and open the opportunity to enter the public service in accordance with certain tests as to qualification, and not to leave anything to 'whim or caprice of the appointing power.'" State ex rel. Hearty v. Mullin, 198 Wn. at 103.

- 8.39 A. Types of Tests. The Commission may use any kind of valid test. No particular form of test is required. Commonly, the test process consists of a written examination, a test of physical fitness and an oral examination of the candidate. Often the oral exam is conducted by police or fire personnel from a neighboring jurisdiction who are knowledgeable in their fields. Again, all tests should be preapproved by the Commission. In a police department, tests also often include a criminal records check, a background investigation, a psychological examination and polygraph (lie detector) examination.
- B. Polygraph Testing. See, RCW 49.44.120 (permitting polygraph examinations). See Stone v. Chelan County Sheriff's Department, 110 Wn.2d 806, 756 P.2d 736 (1988) (holding that county had authority to require polygraph test as condition of employment for city employee transferring to sheriff's department, and that applicant's equal protection

rights were not violated when asked to retake the examination); and, O'Hartigan v. Dept. of Personnel, 118 Wn.2d 111, 821 P.2d 44 (1991) (holding constitutional a polygraph test given to applicants for a word processing position with the State Patrol but ordering the state to establish guidelines ensuring that the polygraph exam would not include indiscriminate and boundless questioning).

- C. Drug Testing. Drug testing is permissible for prospective employees at a nuclear power plant, since the significant governmental interest in safety at the plant outweighs the intrusion on the prospective employees. Alverado v. WPPSS, 111 Wn.2d 424, 759 P.2d 427 (1988). The Alverado court did not discuss the state privacy right, since it ruled that federal law preempted state law in the nuclear industry. Drug testing is also permissible for U.S. Customs Service employee-applicants having a direct involvement in drug interdiction, the carrying of firearms, or the handling of classified materials, since there is a compelling government interest in ensuring that these employees are physically fit and have impeccable integrity and judgment. National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989). Also important to the Court was the fact that employees knew in advance that the test would be required. The Supreme Court has also upheld drug testing of railroad employees in safety sensitive positions after major train accidents. Skinner v. Railway Labor Executives Association, 489 U.S. 602 (1989). Other cases have upheld drug testing, even without suspicion of drug use, for jobs involving public safety. See, e.g., Everett v. Napper, 632 F. Supp. 1481 (N.D. Ga. 1986) (upholding discharge of fire fighter for failing to submit to urinalysis); Penny v. Kennedy, 5 Indiv. Employ. Rel. Cas. 1290 (6th Cir. 1990) (upholding mandatory urinalysis for fire fighters and police officers, but noting that such a mandatory program must include standards to protect against potential abuse); Local 194 v. Bridge Commission, 5 Indiv. Employ. Rel. Cas. 1629 (N.J. Super. Ct. App. Div. 1990) (bridge workers); American Fed'n of Gov't Employees v. Barr, 7 Indiv. Employ. Rel. Cas. 823 (N.D. Cal. 1992) (prison employees); Doe v. City and County of Honolulu, 6 Indiv. Employ. Rel. Cas. 1406 (Haw. Ct. App. 1991) (fire fighters). Using a similar rationale, courts have invalidated drug testing for employees not posing any danger to the public. See, e.g., Connally v. Newman, 6 Indiv. Employ. Rel. Cas. 262 (N.D. Cal. 1990) (personnel workers involved in accidents); O'Keefe v. Passaic Valley Water Comm'n, 7 Indiv. Employ. Rel. Cas. 354 (N.J. Super. Ct. 1992) (water meter readers).

See also O'Connor v. Police Comm'rs of Boston, 557 N.E.2d 1146 (Mass. 1990) (holding constitutional the discharge of a probationary police officer following department's receipt of positive results from a drug screening); Seelig v. Koehler, 556 N.Y.S.2d 832 (Ct. App. 1990) (holding that random drug testing of corrections officers did not violate the Fourth Amendment guarantee against unreasonable search and seizure). Drug testing may not

be constitutional for all employees; the Seelig court cited the paramilitary nature of the employment at issue as a basis for distinguishing the testing program from invalid programs for groups such as teachers.

- D. Psychological Screening. Psychological screening of applicants may constitute impermissible pre-employment inquiry by unconstitutionally violating an applicant's right to privacy. Soroka v. Dayton Hudson Corp., 6 Int'l Envtl. Rep. (BNA) 1491 (Cal. App. 1991) (holding that psychological screening program which included questions concerning the applicant's religious beliefs and sexual orientation violated applicants' right to privacy under the state constitution).

Requiring a school attendant counselor to submit to a psychiatric evaluation was not sufficiently outrageous and extreme to constitute a tort of outrage. Albright v. Dept. of Social and Health Services Division of Reconsideration Developmental Disabilities, 64 Wn. App. 1046, 829 P.2d 1114 (1992).

- E. Academic, Drug, and Traffic Violation Requirements. The Fifth Circuit has upheld the use of certain eligibility criteria for hiring police officers. Davis v. City of Dallas, 777 F.2d 205 (5th Cir. 1985). The court ruled appropriate the requirements that applicants: 1) must have completed 45 semester hours of college credits with at least a "C" average at an accredited college or university, 2) must not have a history of "recent or excessive marijuana usage", and 3) must not have been convicted of more than three "hazardous traffic violations" in the 12 months, nor convicted of more than six such violations in the 24 months preceding the date of application.

- F. Disparate Impact of Testing Upon Certain Minority Groups. Several courts have examined tests under claims that they have a disparate impact upon applicants of a certain race. In determining whether an examination has a disparate impact on certain candidates, courts place the burden of showing a "business necessity" on the employer and the ultimate burden of non-persuasion on the plaintiff. Police Officers v. Columbus, 54 Fair Empl. Prac. Cas. (BNA) 276 (6th Cir. 1990) (finding that plaintiff, a black candidate for promotion, did not prove that the exam was not job-related or that some other selection device would serve the employer's legitimate interests and that Uniform Guidelines on Employee Selection do not foreclose the possibility of a content-valid exam based solely on job knowledge). The inquiry in these cases is not whether there is a statistical difference between black and white scores, but whether the test prevented the promotion (or hiring) of black candidates who would otherwise have been promoted (or hired). Progressive Officers v. Metro Dade County, 54 Fair Empl. Prac. Cas. (BNA) 1161 (S.D. Fla. 1989). A police department following a practice of assigning black police officers to geographical areas with a predominantly black population does not create disparate

impact in the absence of evidence that such assignments affected scores on promotional examinations. Black Law Enforcement Officers v. Akron, 54 Fair Empl. Prac. Cas. (BNA) 1560 (6th Cir. 1990).

8.13/8.15 Alternative Provisions. Rules 8.13 and 8.15 provide for alternative approaches to parts, weight and grading of examinations. As indicated, Alternative II is the recommended alternative. No passing grade or percentage is designated. If a raw score is to be determined in the course of certification of an applicant, that raw score is to be adopted prior to administration of the exam. See Rule 8.15 (Alternate IIa). Should the second alternative be utilized, Rule 8.17 need not be included. Rule 8.17 contains essentially the same language as provided in Alternative II at 8.15.02.

8.23 Veteran's Credit. Veteran's preference in examination is simply stated in this rule. The rules need not contain applicable provisions of law that are readily available to the applicant. The pertinent provisions of Chapter 41.04 RCW may be attached as an appendix to the rules.

The significant return rights possessed by veterans were emphasized in Snohomish County v. Nichols, 47 Wn. App. 550, 736 P.2d 670 (1987). There a deputy sheriff sought reinstatement, back wages, and attorney fees after his return from military duty and the county's refusal to reemploy and the prosecutor's refusal to support the action for reinstatement. In ordering reinstatement, the court found that the Washington State Veterans' Reemployment Rights Act, Chapter 73.16 RCW, provided an absolute right to reemployment, subject to the terms of the statute. The court refused to adopt a "rule of reason" analysis established in federal court decisions interpreting similar federal law. Further, the court found that the county prosecutor had an obligation to represent the employee in his action for reemployment, pursuant to RCW 73.16.061. As a result of the denial of representation, the employee was also awarded attorney fees.

Information in the federal Uniform Services Employment and Reemployment Act (USERRA) can be found at dol.gov/elaws/vets/userra.

8.25 Reserve Credit. Some Civil Service Commissions provide credit on entry-level exams for individuals serving in a reserve capacity. No recommendation is made concerning this section.

8.27 Service Credit. Two alternatives are presented, one originating from former rules used by the City of Seattle and from the City of Renton. Should service credit be afforded in promotional examination, these rules are provided to demonstrate two approaches that have been used.

8.29 New Exams. The broad discretion in administration of exams by a Civil Service Commission has been discussed above. That same discretion has been afforded by Courts to a Commission when it determines to invalidate an exam. In Cox v.

Kern County, 203 Cal. Rptr. 94 (Cal. App. 1984), the court reviewed a Civil Service Board's invalidation of the results of a promotional examination. The board invalidated the exam when it appeared some cheating might have occurred prior to the exam. An individual whose test scores had been invalidated brought suit claiming that the board lacked the power to invalidate his test absent a showing that he had cheated. Although the Civil Service board did not follow applicable regulations regarding "for cause" removal of individuals from the eligibility list, the action invalidating the entire exam was proper. The court found that the Civil Service board had inherent authority to protect the integrity of the examination process.

8.39.03 Timing of Medical Examinations. The Federal Americans with Disabilities Act ("ADA") prohibits employers from refusing to hire applicants whose disabilities would not prevent them from satisfying the essential functions of the job with reasonable accommodation. The ADA not only bars intentional discrimination but also regulates the sequence of employers' hiring processes. Medical examinations must occur after the employer has made a "real" job offer to an applicant. 42 U.S.C. § 12112(d). In Leonel v. American Airlines, 400 F.3rd 702 (9th Cir. 2005), the court held that an employer must have either completed all non-medical components of the application process or be able to demonstrate that it could not reasonably have done so before issuing the exam order. American Airlines' process provided for a medical exam after the contingent offer of employment. But in addition to the medical component, there were additional non-medical components including background checks, employment verification and criminal history checks. Civil service departments and hiring authorities must be mindful of the exposure under the ADA with respect to the sequence of various examinations. The medical (including mental health) portion of an examination should follow all other testing, including background checks, polygraph (if authorized) and other preliminary testing.

8.39/8.43 Additional Examination—Limited Examinees. Because of the volume of applicants for Civil Service positions, Commissions find it necessary to conduct written exams for hundreds of candidates. The number of candidates passing the exam far exceeds the ability of the Commission to test for purposes of certification. Rule 8.39 provides the Commission with the option of delaying such additional exams as medical, physical, polygraph and the like until such time as it is likely that the appointing authority will have positions to fill. Some Commissions designate the register developed as a result of the written exam as a "preliminary register," and the final register then constitutes those employees who not only pass the initial written exam, but necessary subsequent exams as well.

Rule 8.43 provides an example of a process to deal with an unmanageable number of applicants.

9. REGISTERS AND ELIGIBILITY.

9.01 ESTABLISHMENT OF ELIGIBLE REGISTERS. After each examination, an eligible register for the class shall be prepared on which the names of successful candidates shall be ranked as follows:

9.01.01 On a promotional register: relative rank shall be determined by the examination rating or grade [plus any additional points for service credit] plus percentage allowed by law for veterans' preference.

9.01.02 On an open graded register: relative rank shall be determined by the examination grade, plus percentage allowed by law for veterans' preference.

9.01.03 Priority of time of examination shall not give any preference in rank on the register.

9.01.04 The preference in rank of eligibles having equal final general averages shall be determined as follows, in the order stated:

(a) The one who qualifies for veterans' preference in accordance with Washington state law. Eligibles on a promotional (and not open) register do not so qualify.

(b) When the examination is composed of two or more parts with separate grades, the one who has:

(1) The highest grade on the most heavily weighted part of the examination; if a tie still exists, then the highest grade on the next most heavily weighted part, and so on for as many parts as the examination contains.

(2) The highest grade on the written test if all parts are weighted equally.

(c) When the examination has only one part or the candidates have the same standing under (a) and (b) above:

(1) As between examinees who are [City/County] employees, the one having the greater service credit with the [City/County], regardless of class or department;

(2) If one is a regular or probationary [City/County] employee and the others are not, the regular [City/County] employee has preference.

(d) By lot.

- 9.01.05 If an applicant is permitted to file for and take an examination for delayed eligibility, and if such applicant is successful in the examination, eligibility shall be held in abeyance until the candidate meets the requirements for eligibility, which must be reported in writing. If otherwise eligible, the candidate's name shall be placed on the register in accordance with the final examination grade. Any such eligibility shall expire with that of other eligibles from the same examination.
- 9.03 RETURN TO REGISTER FOLLOWING LAYOFF. On layoff, an employee's name shall be placed on the proper eligible register for the class [ranked by seniority/service credit] for one year from the date of such layoff.
- 9.05 RETURN TO REGISTER AFTER RESIGNATION OR RETIREMENT.
- 9.05.01 A former employee who resigned or retired may request return of his or her name to the proper open graded eligible register for the class. Such request must be made within one year from the date of resignation or retirement, provided, the Secretary may extend the above time limitation for not to exceed an additional [four (4) years] upon satisfactory showing that such extension would be in the best interest of the [City/County];
- 9.05.02 Any request for return to register following resignation or retirement must be supported by written recommendation of the former employing department;
- 9.05.03 A former employee whose eligibility is reinstated under this rule shall be certified according to Civil Service rules. However, the name of such an eligible need be considered only by the department which recommends the return of the name to the register.
- 9.05.04 The name of a former employee who resigned or retired may not be returned to a promotional register, unless recommended by the head of the former employing department and approved by the Civil Service Commission within one year from the date of resignation or retirement.
- 9.06 APPOINTMENT WITHOUT EXAMINATION. Except as provided in 9.03, 9.05, and 9.07, any return to the Civil Service shall be by examination only.
- 9.07 ESTABLISHMENT OF REINSTATEMENT REGISTERS.
- 9.07.01 The names of regular employees who have been laid off or, when requested in writing by the appointing authority, probationary employees who have been laid off shall be placed upon a reinstatement register for the same class and for the department from which laid off, for a period of one year from the date of layoff;
- 9.07.02 Upon the request of an appointing authority, the Secretary may approve the certification of anyone on such a reinstatement register as eligible for

appointment on an open competitive basis in the department requesting certification.

9.07.03 Anyone on a reinstatement register who becomes a regular employee in another department shall lose reinstatement rights in the former department.

9.07.04 Anyone accepting a permanent appointment in the class from which laid off and in a department other than that from which laid off is not to be certified to the former department unless eligibility for that department is restored.

9.11 AVAILABILITY OF ELIGIBLES.

9.11.01 It shall be the responsibility of an eligible to notify the Civil Service Department in writing immediately of changes in address, telephone number, change of name through marriage or otherwise, or any changes which may affect availability for employment.

9.11.02 The name of an eligible who submits a written statement restricting the eligibility for employment shall be withheld from certifications if the restrictions do not meet the conditions specified for appointment. New written statements may be filed at any time within the duration of an eligible register modifying conditions under which employment would be accepted.

9.13 CANCELLATION OF ELIGIBILITY.

9.13.01 Anyone's name may be removed from an eligible register for failure to pass a required examination or upon receipt of proof of bad character or other unfitness; fraudulent conduct; false statements by the eligible or by others with the eligible's collusion; material physical or mental disability; or, other disqualifying factor in connection with any application, examination for, or securing of an appointment. A previous unsatisfactory work record with the [City/County] or dismissal from the service, or dismissal from any position, public or private, for any cause which would be a cause for dismissal from [City/County] service shall be deemed cause for cancellation of eligibility;

9.13.02 Separation from the service will terminate any promotional eligibility;

9.13.03 Upon report of an appointing authority that an eligible has failed to respond to call or has refused to accept employment, the Secretary may strike the eligible's name from the register;

9.13.04 Failure to respond to the canvass of a register within fourteen (14) days from such canvass shall be deemed cause to strike the name of any eligible from the register;

- 9.13.05 Refusal to accept reemployment in a permanent position shall constitute separation from the service except as provided in Rule 9.07;
 - 9.13.06 Such action contemplated by this rule may also be taken for other material reasons.
- 9.15 RESTORATION OF NAMES TO ELIGIBLE REGISTERS. The name of an eligible which has been removed from a register may be restored upon written request to the Secretary for such restoration. The request must specify the reasons for the requested restoration. The Secretary may approve the request if it is deemed that the evidence submitted justifies such approval.

COMMENTS TO RULE 9: REGISTERS AND ELIGIBILITY

9. GENERAL COMMENTS

Many Commissions will find Rule 9 to be lengthy and cumbersome in light of their present needs. The rule is, however, provided in order that a Commission has exposure to the issues relating to establishment of registers and placement of eligibles on registers.

Rule of 1, Rule of 3 or Other. See discussion under Rule 10.

- 9.03 The Rules must require that in case of layoffs due to reduction in force or curtailment of expenditures, the employee having the greatest seniority must be rehired first.

One of the more unusual civil service stories reported by the Washington courts involves Amelia Warmus and Josephine Bereiter. Both women successfully passed the City of Seattle civil service examination for the position of "Cook, Class H." The eligibility list created by the test had a two-year limit. In 1925, shortly after taking the test, Bereiter was appointed to the position of Cook in the city hospital. Warmus was originally hired as a "kitchen helper" but later was allowed to perform cook duties as a relief worker. Ten years later, the city hospital was closed and much of the kitchen staff was laid off. Before this transpired, Bereiter actually performed the duties of the kitchen helper and Warmus performed the duties of Cook. Apparently, with the approval of the hospital kitchen supervisor, each after cashing their checks exchanged pay with the other (i.e., Warmus got Bereiter's wages as cook)!

The Seattle Civil Service Commission rejected Warmus's request for civil service standing, and the Supreme Court affirmed the Commission. State ex rel. Warmus v. Seattle, 2 Wn.2d 420, 97 P.2d 1095 (1940). Because Warmus had never been appointed as a cook off the eligible register, and the register had expired after its two-year term, she had no civil service standing.

- 9.13 Removing Names From the Register. During the life of a register, a Department Head may request removal of a name of an eligible register. But, a department head cannot control the register. Fezzey v. Dodge, 33 Wn. App. 247, 653 P.2d 1359 (1982). This rule provides the simple procedure for Secretary's management of the register, while maintaining the rights of applicants/eligibles to challenge their wrongful removal from the eligible register.

Federal courts have found that a permanent, non-probationary employee has a protected property interest in a merit-based promotion system and therefore a protected property interest to his or her place on a Civil Service eligibility register. Harris v. City of Wilmington, 644 F. Supp. 1483 (D. Del. 1986); see also Stana v. School District of Pittsburgh, 775 F.2d 122 (3rd Cir. 1985) (property interest in remaining on eligibility list where local policy created mutual understanding that once on eligibility list, applicant will remain on list for specific

period of time); Anderson v. City of Philadelphia, 845 F.2d 1216 (3rd Cir. 1988) (state law and policies determine to what consideration persons on an eligibility list are entitled). However, probationary employees, such as employees recently disciplined, lose all property rights in placement on the promotion register and accordingly can be made ineligible for promotion. Id. citing Dixon v. Mayor and Council of the City of Wilmington, 514 F.Supp. 250 (D.Del.1981); Tautfest v. City of Lincoln, 742 F.2nd 477 (8th Cir. 1984).

10. CERTIFICATION AND APPOINTMENT.

10.01 GENERAL PROVISIONS. Vacancies in the classified Civil Service shall be filled by reinstatement, promotional appointment, assignment, original appointment, transfer, reduction, or demotion. In the absence of an appropriate register, the Secretary may authorize a temporary or provisional appointment.

10.03 REQUEST FOR CERTIFICATION. Whenever an appointing authority wishes to fill a vacancy, a request for certification shall be submitted to the Secretary. The request shall show the number of positions or vacancies to be filled, the class title, tenure of work to be performed, cause of the vacancy, or if a new position, authority for the appointment and any other details for full description of the position to be filled.

10.05 CERTIFICATION

10.05.01 ELIGIBLE REGISTER. Certification to fill a vacancy shall be made by the Civil Service Department from registers in the following order and as provided in this rule:

- (1) Reinstatement
- (2) Promotional
- (3) Original

10.05.02 ORDER OF REINSTATEMENT—ELIGIBLE.

- (a) If a vacancy is to be filled from the reinstatement register, the following shall be the order of certification:
 - (1) Regular employees in the order of their length of service. The regular employee on such register who has the most service credit shall be first reinstated;
 - (2) Probationers, without regard to length of service. The names of all probationers upon the reinstatement register shall be certified together.
- (b) Upon request from the appointing authority, the Secretary may authorize reinstatement out of such regular order upon a showing of efficiency or that such action is for the good of the service, after giving the employees adversely affected an opportunity to be heard.
- (c) Nothing in this rule shall prevent the reinstatement of any regular or probationary employee for the purpose of transfer to another

department, either for the same class or for voluntary reduction in class, as provided in these rules.

- 10.05.03 CERTIFICATION. If a vacancy is to be filled from a promotional or original register, the Secretary shall certify to the appointing authority the names of the _____ [e.g., three, five] available eligibles that stand highest on the appropriate register.
- 10.05.05 MULTIPLE VACANCIES. If two or more vacancies are to be filled from any of the above registers other than the reinstatement register, the name of one additional person shall be certified for each additional position.
- 10.05.07 ADDITIONAL NAMES. If an appointing authority makes an acceptable showing that any of the eligibles certified are not available or that they do not respond, sufficient additional names shall be furnished to complete the certification.
- 10.05.09 SPECIAL SKILLS. Where a certification of eligibles with special experience, training, or skills is requested in writing by the appointing authority as being necessary for satisfactory performance in a particular position, and the Secretary determines that the reasons given fully justify the request, a certification may be made of only the highest ranking eligibles who possess the special qualifications.
- 10.05.11 PRIOR SERVICE. If a temporary vacancy is to be filled from an open or a promotional register, those eligibles with three months of service who are shown on the register as having been laid off within the last twelve (12) months from the department in which the vacancy exists shall be placed in grade order at the head of the list of eligibles for certification according to rule.
- 10.05.13 APPLICATION/EXAMINATION. The application and the examination papers of a certified eligible shall be available for inspection by the appointing authority.
- 10.07 DEFERMENT OF CERTIFICATION. The Secretary may grant deferment of certification of an eligible, upon receipt from the eligible, of a written request with satisfactory reason therefor. Such deferment will thereafter prevent certification of such eligible until the next vacancy occurring after the eligible has given written notice of his or her desire to be returned to the register, and such return has been approved by the Secretary.
- 10.09 DURATION OF CERTIFICATION. Certification shall be in effect for thirty (30) days from its date of issuance. The appointing authority must file a report of any appointment from such certification with the Secretary. Upon request, the Secretary may extend such certification for an additional 30-day period. Expiration of eligibility shall not cancel the validity of a certification.

- 10.11 REGULAR APPOINTMENT. A regular appointment to fill a vacancy must be made from the names contained on the official certification. The official appointment report shall show the name of the person appointed, the effective date, the salary, the nature or duration of the appointment, and any other information required.
- 10.13 TEMPORARY APPOINTMENT. Where there is no suitable eligible register from which certification can be made, the Secretary may allow the appointing authority to make a temporary appointment. A temporary appointment may be made for a period of up to [four (4)] months and may [not] be extended for a longer period of time. No person shall receive more than one temporary appointment in any 12-month period. All temporary employment in a class shall cease at the earliest possible date and shall not exceed thirty (30) days from date of notice that a proper eligible register for such class is available; provided, an extension may be granted by the Secretary upon satisfactory written showing by the appointing authority, if such extension will not cause the provisional appointment to exceed the [four (4)]-month limitation.

COMMENTS TO RULE 10: CERTIFICATION AND APPOINTMENT

- 10.01 The right of a municipality to fill vacancies is a discretionary right. The Court of Appeals has held that RCW 41.08.100 gives managers the discretion not to fill vacant positions. Crippen v. City of Bellevue, 61 Wn. App. 251, 810 P.2d 50 (1991).

The holding in Crippen was discussed in a footnote in Matson v. City of Tacoma Civil Service Board, 75 Wn. App. 370, 376, 880 P.2d 43 (1994). In footnote 8 of Matson, the court held that “because the appointing authority in Crippen had not submitted a requisition, the position [in Crippen] was unoccupied, but not a ‘vacancy’, if described in the terms used by the Tacoma Municipal Code.” The court went on to state that, “in this case, then, Crippen stands for the proposition that the City has no obligation to fill an unoccupied position, but not for the proposition that the City has no obligation to fill a ‘vacancy.’” *Id.* Central to the court’s holding in Matson was the definition of “vacancy” under the Tacoma Municipal Code (TMC). The TMC defined vacancy as an existing and unoccupied position for which funds were available to fill it and the Personnel Department had received a valid requisition. Further, since a list of eligibles had been established in Matson, the Fire Chief was required to fill the “vacancy.” *Id.* Matson is an anomalous case, dependent on the specifics of Tacoma’s rules. Most jurisdictions will be governed by the Crippen rule.

- 10.05 A. Rule of One, Three, Five . . . Rule 10.05.03 is the rule governing the number of eligibles to be certified to the appointing authority.

In 1978, the Supreme Court approved the use of the “Rule of Three” in Firefighters v. Walla, 90 Wn.2d 828, 586 P.2d 479 (1978). The court noted that in adopting 41.08 RCW, the state legislature did not consider the Rule of One to be essential to fire department Civil Service.

While the statute adopts the “Rule of One” for the statutory system, we do not find the legislature’s preference for that provision to be of such overriding concern that it is essential under RCW 41.08. The purpose delineated in Reynolds v. Kirkland Police Commission, 62 Wn.2d 720, 384 P.2d 819 (1963), [see previous discussion in comments to Rule 1] and ascribed to this legislation is substantially accomplished by Walla. As the Court of Appeals said in Bellingham Firefighters Local 106 v. Bellingham, 15 Wn. App. 662, 666, 551 P.2d 142 (1976)

“The ‘Rule of Three’ which has been used by the City of Bellingham since 1904, with the exception of one period for 2 1/2, is a well-established and well-recognized method of carrying out and accomplishing the methods of civil service. If the

state statute had meant to mandate a 'Rule of One' in every city fire department, it could have said so. The statute does not mandate compliance with the methods used in the statute; rather, it requires substantial accomplishment of its purpose. The statute intended to allow cities and towns a local option as to methods and techniques and as to the many recognized and acceptable methods of setting up a civil service system to substantially accomplish the purpose of civil service."

Firefighters v. Walla, supra. RCW 41.14.060(7) was amended in 1979 to provide for the Rule of Three for sheriff's appointments. Under Chapter 41.14 RCW, the Rule of Three is mandated. Under Chapters 41.08 RCW and 41.12 RCW, consistent with the decision in Firefighters v. Walla case, cities and towns have a local option with respect to certification of eligibles for appointment.

In 2004, the Washington State Supreme Court approved the use of a "Rule of Five" and possibly up to a "Rule of Seven" in Seattle Police Officers Guild v. City of Seattle, 151 Wn.2d 823, 92 P.3d 243 (2004). The court noted that Chapter 41.12 RCW establishes a "prototype" civil service system for cities; however, it does not require strict adherence to its prototype civil service system. Id. at 832. Chapter 41.12 RCW provides that cities and towns are not bound by its application if they have provided for or will provide for civil service in the police department that substantially accomplishes the purpose of the chapter.

In 1978, the City enacted an ordinance which permitted its civil service commission to certify "the names of candidates in the top twenty-five (25) percent of the eligible register, or the top five (5) candidates, whichever number is larger." The court upheld the "rule of five" portion of the ordinance, but severed and struck down the portion allowing the police chief to choose for promotion among the top 25 percent of candidates.

The City's "rule of five" substantially accomplishes the purposes of Chapter 41.12 RCW. Cities, however, may not enact ordinances that exceed the number the legislature has recognized as accomplishing the purpose of providing for promotions on the basis of merit.

The court cited to RCW 41.06.150(2), the statute applicable to state civil service employees, as its basis for legislative authority. The court held that designation of civil service certification procedures that accomplish the purpose of providing for promotion on the basis of merit is a legislative function, so the court held it would adhere to "the legislature's

benchmark” when considering whether cities’ civil service ordinances have accomplished this purpose. Id. at 837.

RCW 41.06.150(2) permits “certification of names for vacancies, including departmental promotions, with the number of names equal to six more names than there are vacancies to be filled.”

Like 41.12 RCW, the state employees’ civil service statute requires promotion based on merit principles. Id. at 836. The legislature obviously believed that certifying more than three names for promotions could accomplish this purpose. Id. Since the legislature has concluded that RCW 41.06.150(2) meets the purpose of promoting state employees based on merit principles, the City’s ‘rule of five’ certainly can ‘accomplish’ this same purpose. Id. Thus, we hold that cities will substantially accomplish the purpose of Chapter 41.12 RCW so long as the established civil service system provides for an appointment by certification of no greater than ‘six more names than there are vacancies to be filled.’ Id. at 837.

In striking the “Rule of 25 Percent,” portion of the ordinance, the court held that the certification of the top 25 percent afforded too much discretion to the Chief and failed to substantially accomplish the purpose of Chapter 41.12 RCW. Id. at 833.

- B. Affirmative Action/Selective Certification. Initiative 200, passed by the voters in 1998 and codified as RCW 49.60.400 eliminated (for the most part) governmental affirmative action in Washington State. The statute provides that “the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” “State” is defined in the statute as including, but not limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other policies subdivision or governmental instrumentality of or within the state.

The statute does not otherwise affect any lawful classification that (a) is based on sex and is necessary for sexual privacy, or medical or psychological treatment; or (b) is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or (c) provides for separate athletic teams for each sex. The statute also does not prohibit actions that must be taken to establish or maintain eligibility for federal programs, if ineligibility would result in a loss of federal funds to the state.

Previously, selective certification authority was found valid. In Lindsay v. Seattle, 86 Wn.2d 698, 548 P.2d 320 (1976), the court held that Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq., permitted affirmative action where necessary to eliminate the continuing effects of past discrimination. In Maehren v. Seattle, 92 Wn.2d 480, 599 P.2d 1255 (1979), the court additionally determined that the city's affirmative action plan did not violate equal protection rights guaranteed by the United States or Washington State Constitutions. In both cases, the Court examined and upheld Seattle's Civil Service practice of "selective certification" of qualified minority personnel for a vacant city position. These cases placed the burden upon the governmental entity to demonstrate that the affirmative action plan giving rise to selective certification was "necessary to the accomplishment of a compelling governmental interest" Maehren, supra, 92 Wn.2d at 491. The cases are of little value after Initiative 200/RCW 49.60.400.

RCW 49.60.400 was discussed in one case involving public education. Parents Involved in Community Schools v. Seattle School District No. 1, 149 Wn.2d 660, 72 P.3d 151 (2003). Parents involved the school district's use of race as a factor in a series of "tie breakers" when a school was over subscribed. The Washington State Supreme Court concluded that RCW 41.60.400 prohibits some, but not all, race-cognizant governmental action. However, the court held, "affirmative action programs which advance a less qualified applicant over a more qualified applicant are now impermissible under Washington law." Id. at 663.

Prior Washington state law already prohibited discrimination for the bases listed in the statute, so the impact of the statute lies in the definition of the term "preferential treatment." Unfortunately, the statute does not define this term and also does not specify how continued implementation or enforcement of existing laws will be affected. The official ballot stated that the effect of the Initiative would depend on how its provisions were interpreted and applied.

California passed Proposition 209, which is similar to Initiative 200. Aside from a few subtle differences in language, the main difference between the two is that Proposition 209 amended California's Constitution, whereas Initiative 200 is a statutory amendment. Even with that in mind, Washington courts may look to California case law for guidance. A 1998 California Court of Appeals case is on point. In Kidd v. State of California, 62 Cal.App.4th 386, 72 Cal.Rptr.2d 758 (1998), the court held that the state's practice of "supplemental certification" violated the ban on "preferential treatment" in Proposition 209. Proposition 209 provides that "[t]he state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. Id. The court

held that this clear language, which is the same as RCW 49.60.400, “allows no room for discretionary preferential programs such as supplemental certification.” *Id.* at 407. In reaching its conclusion, the court looked at the California Voters’ Pamphlet to determine the intent of voters in enacting Proposition 209.

The Washington Voters’ Pamphlet describing Initiative 200 contained a statement that the Initiative “does not end all affirmative action programs. It prohibits only those programs that use race or gender to select a less qualified applicant over a more deserving applicant for a public job...” Parents Involved in Community Schools v. Seattle School District No. 1, 149 Wn.2d 660 (2003) quoting State of Washington Voters Pamphlet, General Election 14 (Nov. 3, 1998) (Statement For I-200).

Employment Outreach. Employment outreach programs, such as targeted recruiting, tend to be viewed differently by courts than the use of factors such as race or sex in employment decisions. For example, the Eleventh Circuit described targeted recruitment efforts as “race-neutral measures.” Peightal v. Metropolitan Dade County, 26 F.3d 1545, 1557 (11th Cir. 1994). Courts make a distinction between an outreach plan that excludes a particular group from applying and an outreach plan directed at groups that are consistently underrepresented. See Almonte v. Pierce, 666 F. Supp. 517 (S.D.N.Y. 1987).

The City of Dayton established the Fire Apprentice Program to address the under-representation of women and minorities in the fire department. The Program offers classroom and occupation training, and participants are selected based on references, the applicant’s record of community service, and an essay. An amendment to the Civil Service Board Rules and Regulations allows “preference points” to be added to the firefighter-recruit exam for those who participated in the Program. Plaintiffs argue that the selection for the Program is based on the sex or race of the applicants; therefore, applying “preference points” for applicants who completed the Program would violate Dayton’s charter by selecting civil service applicants based on sex or minority status. The trial court held that the amendment allowing “preference points” violates the city charter, but an Ohio appellate court reversed. The Supreme Court of Ohio affirmed the appellate court. Int’l. Assoc. of Fire Firefighters v. City of Dayton Civil Service Bd., 836 N.E. 2d 544 (2005). The Ohio Supreme Court noted that the civil service rules authorize the civil service board to adopt rules to control the appointment of competitive classified service positions. The rules must be based on a competitive exam that measures merit, fitness, efficiency, character, and industry of the applicants. The Ohio Supreme Court found that adding “preference points” does not vitiate the competitive exam process if the preference measures the appropriate qualifications. The Ohio Supreme Court noted that those who complete the Program are likely to have increased merit, fitness,

efficiency, character, and industry; therefore, the "preference points" are not awarded based on sex or race.

But see Hi-Voltage Wire Works v. City of San Jose, 24 Cal.4th 537, 12 P.3d 1068 (2000). There, a city program required contractors bidding on city projects to utilize a specified percentage of minority and women subcontractors or to document efforts to include minority and women subcontractors in their bids. The program was found to violate the provision of the State Constitution prohibiting the state and its political subdivisions from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

Washington State Human Rights Commission ("Commission") regulations state that "employers are encouraged to seek a broad pool of applicants through recruitment efforts." WAC 162-16-290. The regulations state that it is not permissible to express or exercise a hiring preference based on protected status unless the employer has a court order to do so or authorization from the Commission or other governmental agency or unless the employer can prove that the expression is justified by a bona fide occupational qualification. WAC 162-16-290(2) (a-b), quoting WAC 162-16-240.

Special Skills. Courts have generally held that employers may set a qualification for a job requiring knowledge of a particular language so long as it is legitimately relates to the duties of the position. See Hernandez v. New York, 500 U.S. 352, 111 S. Ct. 1859 (1991). Washington State Human Rights Commission regulations state that an exception to the rule that an employer may not discriminate on the basis of protected status is if a "bona fide occupational qualification" applies. WAC 162-16-240 under subsection (2) provides the following example: "a 911 emergency response service needs operators who are bilingual in English and Spanish. The job qualification should be spoken language competency, not national origin."

- 10.11 Rule 10.11 provides that the appointing authority is to make the appointment from the register certified by the Secretary-Chief Examiner. In Side v. City of Cheney, 37 Wn. App. 199, 679 P.2d 403 (1984), the court reviewed a police officer's contention that he had been rejected for promotion because of political reasons. In that case, the Cheney Civil Service Commission had certified to the mayor the name of three eligibles, with Officer Side at the top of the list. On the recommendation of the police chief, the mayor appointed the person who occupied the third place on the certification. The court found that the mayor's decision to not promote Side was a non-judicial decision. The appearance of fairness doctrine could not be applied to the appointment decision. The court further found that the mayor had the right, within legal limits, to appoint any one of the three candidates certified by the Commission. As all candidates were

qualified for the position of sergeant, the appointment was approved. That Officer Side had determined to run for mayor against the incumbent prior to the incumbent's appointment decision is only another colorful fact to add to the history of Washington State Civil Service lore!

11. PROBATION.

11.01 PROBATIONARY PERIOD.

11.01.01 After each full-time or part-time permanent appointment from an eligible register, the employee appointed shall serve a complete period of probation before the appointment is deemed complete. The purpose of the probationary period is to provide a trial period during which the department may observe the performance of the probationary employee before civil service status is acquired.

11.01.02 If a probationer transfers in the same class from one department to another, the receiving department may, with the approval of the Secretary, require that a complete probationary period be served in that department.

11.01.03 A regular employee who has been reduced to a lower class in which he has not had regular standing shall have probationary status in the lower class for ____ months from the date of such reduction.

11.03 LENGTH OF PROBATIONARY PERIOD. The period of probation shall be equivalent to ____ months of full-time service following permanent appointment from an eligible register. Minor absences due to vacations, annual military leave, illnesses, etc. shall not be construed as interrupting the probationary period unless an absence or absences are considered to be excessive to the extent that the Secretary will approve a departmental request for an extension of the probationary period. [For entry-level police personnel, the probationary period shall commence upon certification from the Washington State Law Enforcement Academy.]

11.05 INTERRUPTION OF PROBATIONARY PERIOD BY MILITARY SERVICE. A probationer who engages in active military service on an extended basis shall be considered as having an interrupted probationary period. Such employee may continue the probationary period following return from military leave.

11.07 SERVICE IN ANOTHER CLASS. Service in a class or office other than the one to which an eligible is regularly appointed may be credited toward completion of a probationary period if the Secretary has approved the written statement of the appointing authority to the effect that the probationary period may be properly judged on the basis of service in the other class or office.

11.09 REMOVAL OF PROBATIONER.

11.09.01 GROUNDS. The appointing authority, by assigning in writing to the Commission the reasons therefor, may discharge any probationer. Such reasons need not constitute just cause and shall not otherwise be reviewed by the Commission.

- 11.09.02 **PROCEDURE.** The department head must file a prescribed form stating the reasons for the removal with the Secretary prior to the end of the probationary period. Notice must be mailed to or personally served on the employee and proof of notice filed with the Secretary.
- 11.09.03 **RIGHTS RETAINED.** A promotional probationer, unless discharged for cause, retains all civil service rights to the position from which appointed. Such rights shall be retained whether promotion is to an entrance or promotional position.
- 11.11 **DEMOTION.** A probationer may be demoted for inability to perform satisfactorily the duties of the position to which he was appointed, in accordance with Rule 17.03 on demotion, or may be allowed eligibility for another position in the same class, for which he is deemed qualified by the appointing authority, subject to approval by the Commission.
- A probationer demoted to a class in which he or she has not held regular standing shall start a new period of probation.
- 11.13 **PROTESTS.** Any probationer may file a written protest with the Secretary protesting a termination of probationary status or demotion. All protests must be filed within ten (10) days of notice of the action taken. The Secretary will give due consideration to and take appropriate action on all timely-filed protests. Probationers may appeal a decision of the Secretary to the Commission under Rule 17.

COMMENTS TO RULE 11: PROBATION

- 11.03 In Arbogast v. Westport, 18 Wn. App. 4, 567 P.2d 244 (1977), the court considered a challenge to the City of Westport's one-year probationary period. The employee had challenged the probationary period, arguing that the three- to six-month period prescribed by RCW 41.12.100 [see also 41.08.100] applies. The court noted that Westport justified the longer period on the ground that Westport is a town with seasonally fluctuating population and a probationer's performance during the quieter winter months may not be indicative of performance during the hectic summer months. The court found this to be a valid consideration and held that the one-year period allowed a reasonable period of time for determining the efficiency and competence of the probationer. In so holding, the court cited Bellingham Firefighters Local 106 v. Bellingham, [discussed in comments to Rule 10.05].

In setting a probationary period, the Commission should articulate a basis for such a period in excess of six months. In light of the lengthy training requirements required by the State after appointment of a probationer, defense of a one-year probationary period should not be difficult. See also Roberts v. Clark County Fire Protection District No. 4, 44 Wn. App. 744, 723 P.2d 488 (1986), where the court upheld a 12-month probationary period established in the regulations of a fire district. This case is also discussed in the comments to Rule 1.

- 11.09 Cause Not Required. Probation is a traditional element of most personnel or Civil Service systems. In discussing the state's personnel system, the court noted:

The purpose of probationary employment is to provide a trial period of employment during which the employer may observe the performance of the probationary employee before conferring the rights of permanent status.

Ross v. Social and Health Services, 23 Wn. App. 265, 272, 594 P.2d 1386 (1979). When an employee acquires a position in probationary status, closer scrutiny of job performance should be expected.

. . . when an employee is certified to fill a permanent position and is placed on probationary status, . . . the expectation arises that such person's performance on the job will be evaluated by her supervisors who will decide during the probationary period whether she should have permanent status conferred upon her.

Ross, *supra* at 273. It is only upon the employee's satisfactory completion of the probationary period, and attainment of permanent status, that justifiable cause must be shown before suspension or dismissal of the employee.

In Samuels v. City of Lake Stevens, 50 Wn. App. 475, 749 P.2d 187, (1988), the court considered the case of Chief Samuel's discharge from the Lake Stevens Police Department. The city claimed his position exempt and that he was not

entitled to a civil service hearing after he was discharged. The court found the exclusion of the position of chief of police violated Chapter 41.12 RCW. However, because the one-year probationary period applied to Samuels as a civil service employee and because Samuels was discharged during the one-year probationary period, he was not entitled to an investigation or a hearing. Samuels was a probationary employee at the time he was fired, therefore he did not possess a property right of continued employment. The court also found Samuel could not maintain an action under Section 1983 of the federal Civil Rights Act of 1964.

12. SERVICE CREDIT.

12.01 Service credit in a class for a regular employee shall be computed to cover all service subsequent to regular appointment in that class and shall be applicable in the department in which employed.

12.03 DETERMINATION.

12.03.01 The determination of a regular employee's earned service credit shall be made on the basis of the available payroll, personnel and other records. If payroll records are not available for any particular period, it shall be rebuttably presumed that each regular employee employed during such period, as shown by other records, earned full service credit in the particular class and department in which employed, for the entire length of such period.

12.03.02 Following the requisite probationary period and upon appointment or reappointment, the seniority and service credit of the employee shall begin anew and be computed without benefit or credit of any prior service except as the Commission may otherwise authorize for the good of the service.

12.04 REQUESTS FOR CONFIRMATION.

12.04.01 REQUESTS. Any regular employee, or an association or union on behalf of such employee, or the head of an employee's department may request a determination of the employee's earned service credit as of a designated date in any specified class and department in which he has served. If the request is made at a reasonable time and interval, and subject to such directives as may be then in effect, the Secretary shall as soon as practicable but within ten (10) days ascertain the requested computation, and shall so notify the requesting employee, association, union or department head in writing.

12.04.02 PROTESTS. If any employee, association, union or department head has cause to object to the computation of the employee's service credit, written protest may be filed with the Secretary setting forth with particularity the reason and basis for his objection. Such protests must be filed within ten (10) days. The Secretary shall give due consideration to all timely-filed protests and take such action as deemed appropriate.

12.05 SERVICE COVERED.

12.05.01 GENERALLY. Once a regular employee acquires regular Civil Service status and regular standing in any given class in a particular department, the employee shall receive full service credit for the entire length of time served in such class and department, whether such service is continuous or interrupted.

- 12.05.02 PROBATIONARY PERIOD. After completion of an original or promotional probationary period, a regular employee shall receive credit for actual service during such period. If a probationer fails to complete satisfactorily the required probationary period and is returned to the former regular class, actual service during such period shall be credited to the former class.
- 12.05.03 TEMPORARY OR PROVISIONAL APPOINTMENT. If a temporary or provisional appointment is followed by a regular appointment to the same class, such employee shall receive credit in such class for actual, continuous service during the temporary or provisional appointment. A regular employee shall receive service credit in the regular class for the period after the regular appointment, served under a temporary or provisional appointment to another class or department or to an exempt position, if the employee returns to the regular class after the expiration or termination of such service.
- 12.05.04 ON ASSIGNMENT. A regular employee shall be credited to the regular class for the entire length of time served under an assignment.
- 12.05.05 LEAVES WITH PAY. A regular employee shall receive full credit for any leave with pay.
- 12.05.06 LEAVES WITHOUT PAY. No service credit shall be allowed for any time that an employee is on any leave of absence without pay.
- 12.05.07 SUSPENSION. No service credit shall be allowed while an employee is on a suspension without pay, unless the suspension is modified, reversed or nullified on appeal.
- 12.06 CHANGE IN CLASS OR DEPARTMENT.
- 12.06.01 GENERALLY. No service credit earned by a regular employee in any one class and department shall be carried over upon appointment, promotion, reinstatement, transfer, demotion or voluntary reduction to or from another class or department, but such service credit shall be permanently retained in and be credited to the class and department in which it was earned, unless expressly provided by these Rules.
- 12.06.02 ABOLITION OF CLASS. In the event that a regular employee's former class is abolished or changed, all service credit earned in such class prior to its abolition or change and not lost or forfeited shall be credited to another class in the same department which is substantially similar to, and is neither higher nor lower than, the abolished or changed class.
- 12.06.03 COMBINATION—COMPUTATION. Whenever the service credit of a regular employee earned in two or more classes, or in the same class in different departments, is to be combined under these Rules as hereinafter

prescribed, the service credit earned and not lost or forfeited in each such class and department shall be computed separately and shall be added together, and the total sum shall represent the employee's service credit for the particular purpose in question.

- 12.07 **PROMOTION—COMPUTATION OF CREDIT.** Upon completion of the probationary period for a promotional position, an employee shall receive credit for all service in the promotional class and particular department, which shall be credited to that class and department. All prior service credit earned in the lower class and department shall be retained by the employee, but such service credit shall be credited only to that latter class and department.
- 12.08 **TRANSFER—COMPUTATION OF CREDIT.** A regular employee shall be entitled to retain all service credit earned in any class and department prior to an authorized transfer therefrom, which shall be credited to such former class and department. Service credit earned in the new class or department to which transferred shall be credited to such new class or department, from the effective date of the transfer. If the transfer becomes regular, the required trial period, if any, shall be credited to the new class or department. Otherwise such trial period as served shall be credited to the former class or department.
- 12.09 **DEMOTION—COMPUTATION OF CREDIT.** Upon the involuntary demotion of an employee in accordance with these Rules, all service credit earned in the class and department from which demoted, up to the effective date of the demotion shall be retained by the employee, unless otherwise provided in the demotion order and approved by the Commission. From that time, the employee shall be entitled to such service credit earned in the lower class to which demoted, plus whatever service credit formerly earned in such class and department and not lost or forfeited. Any required trial period, if satisfactorily served, shall be credited to that lower class and department. If not satisfactorily served and demoted again, such trial period as actually served shall be credited to the next lower or other class in which the employee acquires regular standing or, in the event of a layoff, to the class and department from which the employee is laid off.
- 12.10 **VOLUNTARY REDUCTION—COMPUTATION OF CREDIT.** Upon the voluntary reduction of a regular employee to a lower class in the same or different department as provided by these Rules, such employee shall retain all earned retention credit in the higher class and department from which reduced, prior to such reduction, if not lost or forfeited.
- 12.11 **REALLOCATION—COMPUTATION OF CREDIT.**
- 12.11.01 **SIMILAR CLASSES.** If a regular employee's position is reallocated to a different class which is substantially equivalent to the former class, all the service credit previously earned in the former class and same department and not lost or forfeited shall be credited to the new class. In addition

thereto, the employee shall receive all service credit subsequently earned in the new class and the same department.

- 12.11.02 **DISSIMILAR CLASSES.** If the position is reallocated to a class which is not substantially similar, the service credit earned in the former class shall be credited only to such former class and department.
- 12.12 **LAYOFF—COMPUTATION OF CREDIT.** No service credit shall accrue or be allowed during the period in which an employee is laid off, but all service credit earned and not lost or forfeited up to the effective date of the layoff shall be retained by the employee.
- 12.13 **DISCIPLINARY PENALTY. [OPTIONAL]** As a disciplinary penalty in lieu of dismissal, demotion or other penalty, or in addition to such penalty, the Commission may by its order, at its discretion, forfeit or deduct all or a designated portion of the service credit that the employee has earned up to the date of the order, in terms of service credit months or years.
- 12.14 **SERVICE CREDIT UPON SEPARATION FROM SERVICE.** Upon separation from the service, no credit shall be given or allowed for any prior service or employment up to the time of such separation, and except as otherwise specifically provided by these Rules, service credit shall be forfeited and not be reinstated upon reemployment by the [City/County].

COMMENTS TO RULE 12: SERVICE CREDIT

12. GENERAL COMMENTS.

If service credit is to be afforded, as discussed at Rule 8.27, a basis for determining service credit must be provided in the rules. This set of rules is only one basis for management of service credit. Service credit also becomes relevant to the issues of lay-off, Rule 14, and reinstatement, Rule 9.

The effect of seniority or service credit may also be relevant to transfer of personnel among civil service systems. This was addressed by the Attorney General's Office in AGO 1991 No. 27. There, the seniority status of a city or town police officer transferred to a county sheriff's office pursuant to RCW 41.14.250-.290 was considered. The Attorney General's opinion reviewed the history of the statutory provision. It then addressed the foundation for the issue – Pacific County civil service rules that granted certain advantages to employees based upon length of service (e.g., service credit in promotional examinations). The opinion concluded that the statute required that upon transfer and qualification of a former city officer into a county department, county seniority dated from the beginning of the officer's employment with the city.

13. TRANSFER—REDUCTION.

- 13.01 GENERAL. The transfer of an employee shall not constitute a promotion in the service, except as provided in Rule 13.03.04, below.
- 13.02 INTRA-DEPARTMENTAL TRANSFERS. An appointing authority may transfer an employee from one position to another position in the same class in the same department without prior approval of the Secretary but must report any such transfer to the Civil Service Department within five (5) days of its effective date.
- 13.03 PROCESS. Transfers may be made upon consent of the department head and with the Secretary's approval as follows:
- 13.03.01 Transfer in the same class from one department to another; such a transfer may be made concurrent with the appointment of an employee to another class;
- 13.03.02 Transfer to another class in the same or a different department in case of injury in line of duty either with the [City/County] service or with the armed forces in time of war, resulting in permanent partial disability, where showing is made that the transferee is capable of satisfactorily performing the duties of the new position;
- 13.03.03 Transfer, in lieu of layoff, may be made with limited standing to a single position in another class in the same or a different department, upon showing that the transferee is capable of satisfactorily performing the duties of the position and that a regular employee or probationer is not displaced. Regular standing in the new class may be attained by the employee only through examination and permanent regular appointment.
- 13.03.04 Transfer, in lieu of layoff, may be made with limited standing to a single position in another class when such transfer would constitute a promotion or advancement in the service; provided, a showing is made that the transferee is capable of satisfactorily performing the duties of the position and that a regular employee or probationer is not displaced and when transfer in lieu of layoff under Rule 13.03.03 is not practicable. Regular standing in the new class may be attained by the employee only through examination and permanent regular appointment.
- 13.03.05 The Secretary may approve a transfer under this Rule 13.03 with the consent of the appointing authority of the receiving department only, upon a showing of circumstances justifying such action.
- 13.04 LIMIT OF RULE. These rules have no authority or effect on positions or departments not subject to the Civil Service. Transfer to or from positions or departments not subject to the Civil Service are unaffected by these rules.

13.05 REDUCTION.

13.05.01 AUTHORIZED. As defined in Rule 4.73, a reduction is the movement of an employee from a higher class to a lower class of employment for reasons other than cause. A reduction may be made only upon an employee's written request, and consistent with these Rules.

13.05.02 APPLICABLE CLASSES. A reduction may be approved for

- (a) the next lower or any lower class in the Class Series containing the class from which reduced;
- (b) any lower class in which the employee has previously acquired Regular Standing, provided there has been no intervening forfeiture; or
- (c) any lower class which is substantially similar to any lower class (in the employee's current class series) in the position classification plan; or
- (d) employees seeking return to employment or reemployment from a disability, to a vacant position in another permissible class or department for which the employee qualifies.

13.05.03 PROCEDURE.

- (a) A request for reduction must be submitted in writing to the Secretary. The request must include statement of justifiable or satisfactory reason, including a showing that the employee meets the qualifications of the lower class.
- (b) The reduction must be approved by the [Personnel Manager] and [the Mayor] [city manager] [head of the department in which the lower class is located], and reported to the Commission.
- (c) The reduction shall take effect on the date ordered by the [Commission/Secretary].

13.05.04 EFFECT OF REDUCTION.

- (a) Upon the effective date, or following satisfactory completion of any trial period, the reduction shall be complete and the employee shall have Regular Standing in the lower class and department to which reduced.
- (b) An employee reduced shall be able to return to the former position only by examination and regular appointment. In the event of a

recovery from disability, an employee reduced in class may be eligible for appointment from a reinstatement register.

13.05.05 REDUCTION AVAILABLE.

- (a) By Employee. A voluntary reduction may be sought by an employee for any vacant position in a class under Section 13.05.02.
- (b) By Department.
 - (1) Employees with Standing. Reduction involuntarily of an employee from a higher civil service class to a lower civil service class is governed by Rule 13, Layoff. Return of an employee from an exempt position to a civil service position is governed by Rule 15, Leaves of Absence.
 - (2) Employees without Standing. When an employee is reduced from an exempt position, the employee may petition in writing the Commission within 10 days of the end of employment in the exempt position for placement on a reinstatement register for a class for which the employee is deemed eligible. In considering the placement of the employee, the Commission may consider the employee's experience, the record of City employment, or such other factors as deemed in the best interest of the System. The Commission's decision shall be deemed permissive and discretionary, and an employee shall have no claim or cause for denial of placement on a reinstatement register.

13.05.06 The [Commission/Secretary] may, in its judgment and discretion, provide in the order granting or approving any reduction that the employee shall serve a designated trial period, not to exceed one (1) month's service from the effective date of the reduction, in the position to which reduced for the sole purpose of satisfying the Commission that employee is capable of satisfactorily performing the functions and duties of such position or class.

Provided, the Commission may for cause shown, at any time during the prescribed trial period, extend, shorten, modify or waive in whole or in part the duration or balance of such period.

COMMENTS TO RULE 13: TRANSFER—REDUCTION

13. GENERAL COMMENTS.

The transfer rule should have little impact on public safety Civil Service Systems. There is little opportunity for transfer between departments. A Civil Service System that has a radio dispatcher classification, with radio dispatchers employed by a police department and by a fire department, may find such a rule useful. An example of the use of this rule outside public safety would be a position that may be found in many departments, such as the position of word processing operator.

The reduction rule may be of benefit in facilitating the continued employment of personnel who are no longer capable of performing in a current position by reason of disability. See Dean v. Metro (Seattle), 104 Wn.2d 627, 708 P.2d 393 (1985) (public employer's obligations to accommodate former employee by providing notice of job opportunities). Additionally, personnel employed in exempt positions, who do not enjoy standing in lower ranks, may be considered for reduction under this rule.

13. Reversion of Probationary Employees. A state merit system employee who was removed from her position during her trial service period and placed in her prior position was reinstated. Nelson v. Department of Corrections, 63 Wn. App. 113, 816 P.2d 768 (1991). The court held that only the Department of Personnel, not Corrections, had the right to revert the employee.

14. LAYOFF.

14.01 In a given class in a department, the following shall be the order of layoff:

14.01.01 Provisional appointees;

14.01.02 Temporary or intermittent employees not earning service credit;

14.01.03 Probationers (except as their layoff may be affected by military service during probation);

14.01.04 Regular employees in the order of their length of service, the one with the least service being laid off first.

14.02 LAYOFF OUT OF ORDER. The Secretary may grant permission for layoff out of the regular order, upon showing by the department head of a necessity therefore in the interest of efficient operation of the department, after giving any affected employee or employees an opportunity to be heard.

14.03 REDUCTION IN LIEU OF LAYOFF. At the time of any layoff, a regular employee or a promotional probationer, shall be given an opportunity to accept reduction to the next lower class in a series of classes in his department, or he may be transferred as provided by Rule 13.03.03,

14.04 TRANSFER IN LIEU OF LAYOFF. An employee so reduced shall be entitled to credit for any previous regular service in the lower class and to other service credit in accordance with Service Credit Rule 12.

COMMENTS TO RULE 14: LAYOFF

14. GENERAL COMMENTS.

- A. Contracting Out. The State Supreme Court has held that despite the fact that contracting with a private company to provide custodial services for a new building would result in a clear cost-saving and would not operate to terminate any civil service positions or employees, as a matter of law, the college had no authority to enter into a contract for new services of a type which have regularly and historically been provided, and would continue to be provided, by state civil service employees. Therefore, the court held the contract was void. Washington Federation of State Employees v. Spokane Community College, 90 Wn.2d 698, 699-700, 585 P.2d 474 (1978). The holding was codified as part of the state civil service law in 1978. See also Western Washington University v. Washington Federation of State Employees, 58 Wn. App. 433, 793 P.2d 989 (1990) (the discharge or layoff of an employee because the work has been contracted out is invalid, even if the contract is with another government agency); Washington Federation of State Employees v. Dept. of Social and Health Services, 90 Wn. App. 501, 966 P.2d 322 (1998) (in order to allow privatization of services historically performed and capable of being performed by state civil service employees, the enabling statute and/or relevant civil service law would need to be amended).

The court's analysis in the Spokane Community College case was extended to a local government in Joint Craft Council v. King County, 76 Wn. App. 18, 881 P.2d 1059 (1994) because the County's civil service statute was comparable to the state civil service law. The court held that when services are "customarily and historically" performed by civil servants, real or anticipated cost savings from use of private entities is not sufficient to show that civil servants cannot provide services. However, the court upheld the County's decision to contract out vehicle maintenance because the County was able to show that it was not practicable for civil servants to provide the services.

In 2002, the State Civil Service law was amended as part of comprehensive civil service reform. The amendments include a provision to allow contracting out of state services and seem to legislatively overrule the Spokane Community College case. RCW 41.06.142 (1) provides that "any department, agency or institution of higher education may purchase services, *including services that have been customarily and historically performed by employees in the classified service.*" (Emphasis added) The amended statute also provides that contracting out state services is permissible if the agency "determined that the *contract results in savings or efficiency improvements.*" RCW 41.06.142(10)(e). (Emphasis added)

14. This rule is a traditional “bumping” rule, authorizing tenured employees with seniority to bump employees with less seniority. An example of bumping was discussed in Greig v. Metzler, 33 Wn. App. 223, 653 P.2d 1346 (1982). There, a sergeant returning from a non-classified position bumped a tenured sergeant back to a deputy position. Rule 14 uses the term “reduction in lieu of lay-off” rather than “demotion” under such circumstances, since “demotion” is a disciplinary term. See Rule 17.03.

Another case discussing bumping is Thomas v. Dept. of Social and Health Services, 58 Wn. App. 427, 793 P.2d 466 (1990) (finding that DSHS violated employee’s seniority rights by replacing Thomas, rather than a less senior employee, upon the return of the exempt employee to classified service).

15. LEAVES OF ABSENCE.

15.01 DURATION OF LEAVES.

15.01.01 A leave of absence without pay for a period not exceeding _____ [e.g., sixty (60)] consecutive days may be granted by the appointing authority [department head], who shall give notice of such leave to the Commission.

15.01.02 A request for a leave of absence longer than _____ [e.g., sixty (60)] days bearing the favorable recommendation of the employee's department head may be granted by the Secretary, who shall give notice of such leave to the Commission.

15.01.03 No employee shall be given leave to take a position outside the [City/County] service for more than [sixty (60)] days in any calendar year, except where it appears in the best interest of the [City/County].

15.02 CANCELLATION/REVOCATION. Any or all leaves of absence without pay within a department may be cancelled whenever any necessity arises in the good-faith judgment of the department head. A department head may revoke an individual employee's leave without pay if it is found that the employee is using the leave for purposes other than that for which it was granted. Employees may be ordered to return to work immediately or as soon as practicable on written notice from the department head of the cancellation or revocation of leave. A copy of such notice shall be filed with the Secretary.

15.03 OTHER OFFICES [OPTIONAL]

15.03.01 LEAVE TO TAKE [CITY/COUNTY] OFFICES. Whenever a regular employee is appointed or elected to any office of the [City/County] which is exempt from the Civil Service System, including, but not limited to, an office which is the head of a department subject to the System, the Commission shall grant, and such employee must take, a leave of absence from the civil service position, without pay thereof, for the entire length of time that the office is held. Original probationers so appointed may be granted such leaves, depending upon the circumstances of each particular case, or they may be dropped from the service upon assumption of office.

15.03.02 LEAVE TO TAKE OTHER PUBLIC OFFICE. Whenever a regular employee is elected or appointed to a salaried elective office, or is appointed to a salaried appointive office of the State of Washington or of any of its political or municipal subdivisions or corporation other than the [City/County] or of the United States or any of its agencies, commissions, board or departments, the Commission may grant such employee, upon written request a leave of absence without pay for the entire length of time that such office is held, or for such shorter, designated time, and upon such terms and conditions as the Commission may deem proper in the

particular case, consistent with the best interests of the city and the Civil Service System. Original probationers so elected or appointed shall not be granted such leaves, but shall be dropped from the service upon assumption of the office.

If a regular employee so elected or appointed fails to file a request for a leave of absence, or if such request is denied, the employee may be separated from the service upon assumption of the elective or appointive office.

- 15.04 RETURN FROM LEAVE. At the expiration of the authorized leave of absence, a probationer or regular employee shall resume the same class of work with standing and service credit as determined by these rules.
- 15.05 MILITARY LEAVE. See [City/County] [ordinance/policy] and state and federal law relating thereto.
- 15.06 FILLING VACANCY. All temporary employment caused by leave of absence shall be made pursuant to Rule 10.
- 15.07 PROTESTS. All protests to any action pertaining to leaves of absence shall be filed with the Secretary within ten (10) days of notice of such action. The Secretary shall give due consideration to and take appropriate action on all timely-filed protests.

COMMENTS TO RULE 15: LEAVES OF ABSENCE

GENERAL COMMENTS.

- A. Family Care Act. In 1988 the state legislature enacted a law requiring employers to allow employees who have children under the age of 18 with a health condition that requires "treatment or supervision" to use the employee's accrued sick leave to care for the child (under certain conditions). In January 2003, changes to 49.12.265 through 49.12.295 took effect, allowing employees with available sick leave or other paid time off to care for sick family members in addition to children under age 18. Family member is defined as child under the age of 18, spouse, parent, parent-in-law, grandparent or a child 18 and older with disabilities. Grandparent-in-law, grandchildren, and siblings are not included. New rules were adopted and became effective January 6, 2003. In July 2005, a further legislative change to the definition of "sick leave" provides that certain disability plans are also included. The updated Family Care Rules became effective June 1, 2006. The Family Care Act applies to all employers regardless of size.
- B. Family Leave Act. In 1988, Chapter 49.78 RCW was amended to prohibit any employer from discriminating in its parental leave policies between biological and adoptive parents or between men and women. In 2006 the state legislature amended Chapter 49.78 RCW to include elements identical to the federal Family and Medical Leave Act (FMLA). For example, the change reduced the threshold for employers to qualify from 100 to 50 employees and dropped the requirement for employees to qualify from 1,820 hours to 1,250 hours worked in the past 12 months. Like the FMLA, the Family Leave Act entitles eligible employees to take up to 12 weeks of unpaid job-protected leave in a 12-month period for specific family and medical reasons.
- C. Family Medical Leave Act. ("FMLA") FMLA became effective on August 5, 1993, for most employers. If collective bargaining ("CBA") was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. To be eligible for FMLA benefits, an employee must have worked for the employer for a total of 12 months; have worked at least 1,250 hours over the previous 12 months.
- D. Pregnancy Disability Leave. Under the Human Right Commission regulations a woman is entitled to take unpaid leave for the entire time a woman is sick or temporarily disabled because of pregnancy or child birth; the leave could include periods before and after child birth. The woman is entitled to the same benefits that the employer offers other employees on temporary disability leave and the woman is entitled to return to the same or similar job after leave. Pregnancy disability leave is in addition to Family Leave. Employers with 8 or more employees are covered by the Human Rights Commission regulations.

- 15.05 A. Veteran Reinstatement. A former Sheriff's Department employee has an absolute right to return to employment following U.S. Army Reserve duty. Snohomish County v. Nichols, 47 Wn. App. 550, 736 P.2d 670 (1987) (ordering county to reemploy the veteran, and ordering payment of attorneys' fees to the employee). RCW 73.60.060 imposes a duty on the prosecuting attorney of the county to enforce an employee's right to return to employment. However, as the Nichols court noted, a Civil Service Commission is limited to the powers and duties authorized by the state. Here, where RCW 41.14 did not authorize the Commission to determine issues under the Veterans Reemployment Rights Act, RCW 73.16, the employee properly brought an independent action in court to establish his rights under the Act.
- B. Military Leave. In examining an apparent conflict between RCW 38.40.060 (providing for military leave not exceeding "15 days each calendar year") and the Washington Administrative Code 356-18-130 (providing for military leave not to exceed 15 calendar days), the Court of Appeals ruled that RCW 38.40.060 controlled, and that the statute means that the 15 days leave shall only include work days (not non-work days that fall between work days). State Employees v. Personnel Board, 54 Wn. App. 305, 773 P.2d 421 (1989).

The Veterans' Reemployment Rights Act does not limit the length of military service after which a member of the Armed Forces is entitled to reemployment at the prior civilian job. King v. St. Vincent's Hospital, 502 U.S. 215, 112 S.Ct. 570 (1991) (ruling that a three-year tour of duty is not unreasonably long).

16. RESIGNATION.

- 16.01 HOW SUBMITTED. Resignation of any employee from the service shall be made in writing and filed with the Secretary after approval by the [appointing authority/department head].
- 16.02 WITHDRAWAL OF RESIGNATION. The Secretary may permit the withdrawal of a resignation only upon a written request filed within [three hundred sixty-five (365), See Rule 9.05] days from the effective date of the resignation and if such request for withdrawal bears the favorable recommendation of the appointing authority.
- 16.03 INVOLUNTARY RESIGNATION. Any resignation may be voided and set aside and the employee reinstated or restored to active duty by order of the Commission upon its determination that the resignation was made involuntarily or under duress or coercion, after giving the department head reasonable notice and an opportunity to be heard on the matter. Such action by the Commission may only be taken upon the written petition of the resigned employee filed with the Personnel Manager within ten (10) days from the effective date of the resignation. If no such petition is filed within the ten (10) day limit, a resignation shall be conclusively presumed to have been made voluntarily and without duress or coercion.
- 16.04 IMPLIED RESIGNATION. The department head may presumptively consider any employee to have impliedly resigned upon finding that such employee has been absent from duty without leave or authorization or has failed to report for duty following the expiration or termination of any suspension for five (5) or more consecutive working days or has quit or "orally resigned" and has been absent from duty for three (3) or more consecutive working days without leave or authorization. An employee will not be determined to have resigned under this rule until five (5) days after proof of service of a written notice by delivery or by registered or certified mail to the employee's last known address as filed with the Personnel Manager. No resignation order shall take effect if, prior thereto, the employee reports for active duty, applies for restoration or reinstatement, or otherwise gives notice to the department head or the Personnel Manager which, in the judgment of the Commission, rebuts the presumption of resignation.
- 16.05 RETURN TO ELIGIBLE REGISTER FOLLOWING RESIGNATION. (See Rule 9.05).

COMMENTS TO RULE 16: RESIGNATION

16.

GENERAL COMMENTS.

- A. Letters of Reference. A public employer is not required to give positive letters of reference for resigning employees. A government hospital's negative recommendation for an ex-employee, which resulted in the ex-employee's failure to obtain a new position, does not violate the ex-employee's constitutional rights because injury to reputation is not a protectable liberty interest. Seigert v. Gilley, 6 Indiv. Employ. Rel.704 (U.S. Sup. Ct. 1991). However, the common law of defamation will continue to be available to a former employee who contests a former employer's comments.
- B. Occasionally questions will arise regarding the obligations of a civil service or human resources department to make recommendations or provide other employment information. The accepted practice is to provide only name, position(s) held, periods of employment and compensation levels. Upon release by the former employee, a civil service department may release such information contained in its files as authorized for release by the former employee. In a case involving one government's lawsuit against another government for failure to provide background information regarding the other government's former employee, see Richland School District v. Mabton School District, 111 Wn. App. 377, 45 P.3d 580 (2002). There, the Court of Appeals found that Mabton School District did not owe a duty under common law negligence principles to advise the Richland School District of child molestation charges against a former Mabton School District employee. The Supreme Court denied review of the Court of Appeals' decision at 148 Wn.2d 1002 (2003).

After several years of debate, the legislature in 2005 provided employers with "qualified immunity" from civil and criminal liability when providing reference checks on current and former employees. RCW 4.24.730. The new law presumes an employer is acting in good faith. However, this presumption only applies when the employer discloses information to a prospective employer or employment agency. The law does not protect against disclosures made to any other third party (i.e. the media, a landlord, credit agency, etc.) Moreover, the disclosed information must relate to: (1) the employee's ability to perform his or her job; (2) the diligence, skill, or reliability with which the employee carried out the duties of his or her job; or (3) any illegal or wrongful act committed by the employee when related to the duties of his or her job.

The good faith presumption will only be overcome if the employee can show the employer disclosed information that was knowingly false, deliberately misleading, or made with reckless disregard for the truth.

And the disclosure to a prospective employer cannot be unsolicited – it must be made in response to a specific request. There is no protection if you volunteer information.

RCW 4.24.730 does not mandate employers maintain written records of all disclosures. However, if a commission or personnel agency decides to maintain records, they must be maintained for two years and an employee has a right to inspect the employee's record upon request.

16.03

- A. Rule 16 provides an employee with an opportunity to regain rights and privileges which are normally lost upon resignation. See 15A Am. Jur. 2d Civil Service, at § 62. This provision is optional. If a Commission (or enabling legislation) determines that return after resignation will not be allowed, an employee's timely appeal from a resignation should be reviewed only upon receipt of allegations that the resignation was a result of coercion, fraud, or was otherwise violative of Civil Service policy (i.e., constructive discharge).
- B. In Micone v. Town of Steilacoom Civil Service Commission, 44 Wn. App. 636, 722 P.2d 1369 (1986), the court reviewed the Town of Steilacoom Civil Service Commission's handling of a resignation hearing. Following the tender and acceptance of his resignation, the Steilacoom Chief of Police requested that the Civil Service Commission set a hearing regarding his resignation. The Chief contended that the resignation was made under duress. Following a Civil Service hearing, the Commission found that the Chief's resignation was voluntary and did not constitute a dismissal. In the alternative, the Commission found that the Chief's request for a hearing was not timely. On review, the court determined that the voluntariness of a resignation is both a question of jurisdiction and a question on the merits. The court found that there was a question of jurisdiction because the Commission was not authorized by Chapter 41.12 RCW to investigate voluntary resignations. However, the court recognized that an involuntary or coerced resignation is equivalent to a discharge and could be made the subject of a hearing as provided for in RCW 41.12.090. The court found that the Chief's request for a hearing was timely, because it was made within 10 days of his separation from service. The court went on to find that the Commission did not act arbitrarily and capriciously or contrary to law in concluding that the Chief voluntarily resigned from his position with the Steilacoom Police Department.

17. DISCIPLINE AND DISCHARGE.

17.01 SUSPENSION.

17.01.01 A department head may suspend a subordinate, with or without pay, for a period not to exceed thirty (30) days for cause.

17.01.02 Any deprivation by a department head of any vacation or other paid leave, compensatory time-off or other privilege involving pay or compensation either directly or indirectly, to which an employee is otherwise entitled under law and these Rules, shall be deemed to be a suspension without pay and shall be subject to the above provisions.

17.03 DEMOTION—DISCHARGE.

17.03.01 The department head may discharge an employee or demote an employee to a lower class for cause. An employee so demoted shall lose all rights to the higher class. If the employee has not had previous standing in the lower class, such demotion shall not displace any other regular employee or any probationer.

17.03.02 The Secretary shall be satisfied as to the ability of such demoted employee to perform the duties of the lower class. The demoted employee may be required to actually serve a trial period in the class to which demoted, for such time and upon such terms and conditions as the head of the department may provide in the demotion order, for the sole purpose of determining the capability to satisfactorily perform the functions and duties of such class.

17.03.03 Upon the satisfactory completion of the prescribed trial period or upon the effective date of the demotion if no such period is required, the demoted employee shall have the status, rank and standing of the lower class to which demoted, and such class and department shall be deemed to be the employee's regular class and department for purposes of these Rules until an authorized change is made.

17.05 DISCIPLINE—CAUSE—ILLUSTRATED. The following are declared to illustrate adequate causes for discipline; discipline may be made for any other cause:

17.05.01 Incompetency, inefficiency, inattention to, or dereliction of duty;

17.05.02 Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any other act of omission or Commission tending to injure the public service, or any other willful failure on the part of the employee to properly conduct himself;

17.05.03 Mental or physical unfitness for the position which the employee holds;

- 17.05.04 Dishonest, disgraceful, or prejudicial conduct;
- 17.05.05 Drunkenness or use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under Civil Service;
- 17.05.06 Conviction of a felony, or a misdemeanor involving moral turpitude;
- 17.05.07 False or fraudulent statements or fraudulent conduct by an applicant, examinee, eligible, or employee, or such actions by others with his or her collusion;
- 17.05.08 Willful or intentional violation of any lawful and reasonable regulation, order or direction made or given by a superior officer;
- 17.05.09 Willful or intentional violation of any of the provisions of these rules.
- 17.05.10 Any other cause, act or failure to act which, under law or these Rules, or the judgment of the Commission, is grounds for or warrants dismissal, discharge, removal or separation from the service, demotion, suspension, forfeiture of service credit, deprivation of privileges or other disciplinary action.

COMMENTS ON RULE 17: DISCIPLINE AND DISCHARGE

- 17.01 Any deprivation of compensation may be considered a suspension under this rule. Note, however, that this rule does not address verbal or written warnings. Some Commission rules discuss this action in separate provisions.
- 17.03 Discharge of a Subordinate. “Discharge” is defined at Rule 4.20 to include termination, separation, dismissal or removal. These are phrases found in the disciplinary provisions of the state statutes. See RCW 41.08.090, 41.12.090, and 41.14.120.
- 17.05 Demotion is distinguished from reduction. Demotion is a disciplinary matter, requiring the employer to show cause for the action taken. “Reduction” is defined in Rule 4.73 as “removal from a higher class to a lower class of employment for reasons other than cause.” See also Rule 14, Layoff.
- 17.05 Rule 17.05 sets out the general grounds for imposition of discipline. See RCW 41.08.080, 41.12.080, and 41.14.110.

Definition of Cause. “Conduct unbecoming a public employee,” “conduct prejudicial to good order,” or similar charges are frequently contained in governmental personnel manuals and are more frequently cited as “cause” for discipline or discharge of public employees. Employee challenges to the use of such standards have generally been rejected by courts. For example, a discharged fire fighter brought action claiming that the Dallas Fire Department rules of conduct were facially unconstitutional, and unconstitutional as applied, in violation of the First and Fifth Amendments to the U.S. Constitution. The claims were rejected in McDonald v. Miller, 596 F.2d 686 (5th Cir. 1979). The court determined that the standards clearly applied to the employee’s conduct of possessing stolen property and that he therefore had no standing to challenge the constitutionality of the standards. Similar fire department regulations prohibiting “conduct prejudicial to good order” were found constitutional in Davis v. Williams, 617 F.2d 1100 (5th Cir. 1980). See also Fabio v. Civil Service Commission of Philadelphia, 414 A.2d 82 (1980); and Porter v. Civil Service Commission, 12 Wn. App. 767, 532 P.2d 296 (1975). In Porter, a Spokane Water Department employee was discharged following his conviction on two counts of indecent liberties. The notice of discharge cited “misconduct unbecoming a city employee and conduct amounting to disgraceful conduct.” Because the discharged employee knew the precise conduct which was the subject of his hearing and the basis for his discharge, the court found that he was “afforded administrative due process” and had no difficulty rejecting the employee’s argument that the standard was unconstitutional. See also discussion of “inefficiency” and “insubordination” as standards for discipline, below.

Definition of “Just Cause”. In a private sector case determining that a respiratory therapist fired for allegedly molesting a female patient had been fired for just cause, the Washington Supreme Court defined “just cause” as:

a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power. We further hold a discharge for "just cause" is one which is not for any arbitrary, capricious, or illegal reason and which is one based on facts (1) supported by substantial evidence and (2) reasonably believed by the employer to be true.

Baldwin v. Sisters of Providence, 112 Wn.2d 127, 769 P.2d 298 (1989).

The definition from Baldin v. Sisters of Providence, suggests substantial deference to the appointing authority. It was this deference that perhaps led the Supreme Court to reject a civil service commission decision and uphold a conflicting arbitration ruling in Kelso Civil Service Commission v. City of Kelso, 137 Wn.2d 166, 969 P.2d 474 (1999). The court discussed the following with respect to the "for cause" provision found in the civil service statutes.

There is no suggestion that the Commission applied the "for cause" standard improperly under RCW 41.12.090. Although this court has yet to give a precise definition to this standard, the statute has not previously been interpreted to require the Commission to consider any factors apart from the particular allegation of wrongdoing and the employer's motivation for the disciplinary action. See Nickerson v. City of Anacortes, 45 Wn. App. 432, 725 P.2d 1027 (1986) (discharge based on illegal conduct upheld under Civil Service Ordinance absent discussion of other factors such as mitigating circumstances); Benavides v. Civil Service Comm'n Serv., 26 Wn. App. 531, 613 P.2d 807 (1980) (discharge based on incompetence upheld, without discussion of other factors, because no indication of bad faith).

The Supreme Court contrasted what it observed to the Civil Service Commission's evaluation of cause with the standard of "just cause" frequently found in collective bargaining agreements.

In contrast, the collective bargaining agreement insures that no officer will be disciplined except for "just cause." "Just cause" is a term of art in labor law, and its precise meaning has been established over 30 years of case law. Whether there is just cause for discipline entails more than a valid reason; it involves such elements as procedural fairness, the presence of mitigating circumstances and the appropriateness of the penalty.

Kelso, 137 Wn.2d at 173. The definition of cause in these rules does incorporate the "just cause" provision and does require Commission to give greater scrutiny to the actions of the appointing authority. All elements that go into a determination of just cause should be part of a civil service commission's consideration, including procedural fairness, the presence of mitigating circumstances, and the

appropriateness of the penalty. The Commission should not only find cause for discipline (i.e., that facts supported the imposition of discipline) but also find that there is cause for the level of discipline imposed. The statutes should be noted in this regard as recognizing the authority of the Commission to reverse, modify or even add to the determination of discipline by the appointing authority. See Pool v. City of Omak, 36 Wn. App. 844, 678 P.2d 343 (1984) (upholding Commission's increase in discipline). Just cause for removal should demonstrate that there is a "real and substantial relationship between the employee's conduct and the efficient operation of the public service, or, otherwise, legal cause is not present." 15A Am. Jur. 2d Civil Service, at § 64. A checklist of cause is found in A. Koven & S. Smith, *Just Cause—The Seven Tests* (2nd Ed. 1992). Those elements include: reasonable notice; reasonable rule; employer investigation; fair and objective investigation; adequate proof of employee conduct; equal treatment; and, reasonable penalty (including consideration of the employee's prior service record). A commission should be satisfied that the appointing authority in presenting a case to the commission has satisfied these steps, and the commission should document its findings and conclusions in a thorough written order.

The definition of cause in Rule 4.16 is important for two reasons. First, it makes clear that the employer (not the court) is the party making the requisite factual determination of just cause. Second, this definition allows consideration of the employer's subjective good faith.

Examples of discharge cases are discussed below.

Obscene Phone Calls. A fire fighter's placement of harassing and obscene phone calls from a city telephone located in a fire captain's office constitutes official misconduct. Bajis v. City of Dearborn, 391 N.W.2d 401 (Mich. 1986) (upholding discharge of the fire fighter).

Smoking. A trainee employee who has signed a certificate agreeing not to smoke a cigarette, on or off duty, for a period of one year may be dismissed for smoking during a lunch break. Grusendorf v. City of Oklahoma City, 816 F.2d 539 (10th Cir. 1987).

Marijuana Use and Solicitation. A senior dispatcher may be dismissed for attempting to acquire marijuana during a conversation with his co-worker wife over the 911 phone system. Ostwald v. City of Omaha, 399 N.W.2d 783 (Neb. 1987).

Drug Use. The presence of illegal drugs in a firefighter's body is sufficient to support termination even if the drug usage was not on work time and if the effects of the drugs were unnoticeable to co-workers. Montague v. City of New Orleans Fire Dep't, 675 So. 2d 810 (La. Ct. App. 1996) (finding that strong public policy reasons exist for terminating fire fighters who fail random drug tests).

Inefficiency. Inefficiency is a valid reason for employee termination. Gibson v. City of Auburn, 50 Wn. App. 661, 748 P.2d 673 (1988) (finding that the term “inefficiency” was not unconstitutionally vague, and that greater specificity of the term would not be practical).

Insubordination. “Insubordination” and “unprofessional conduct” are not unconstitutionally vague terms and may be cause for termination. Sinnot v. Skagit Valley College, 49 Wn. App. 878, 746 P.2d 1213 (1987), citing Arnet v. Kennedy, 460 U.S. 134 (1974). A police officer refusal to obey a superior’s direct order and usage of inappropriate and disrespectful language toward a superior is grounds for termination. The officer’s “gross insubordination impaired the efficient and orderly operation of the HANO police service” and is cause for removal. Ben v. Housing Authority of New Orleans, 879 So. 2d 803 (La. Ct. App. 2004).

Criminal Activity. An employee’s conviction of a crime is “just cause” under a city ordinance and Baldwin to discharge the employee when the ordinance states that conviction of a crime is cause for dismissal. Hoflin v. City of Ocean Shores, 121 Wash 2d. 113 (1993); see also Bolden v. City of New York, 256 F. Supp. 2d 193 (S.D.N.Y. 2003) (dismissing claim of discrimination after finding that the city’s firing of two civil servants following their conviction of tax fraud was justified under the New York Public Officers Law and that their conviction constituted forfeiture of their property rights in their jobs).

Obesity. A court has upheld the suspension of a paramedic for failure to maintain proper levels of physical fitness and to lose two pounds per month as required by the department’s mandatory weight control program. Hegwer v. Board of Civil Service Commissioners, 5 Cal. App. 4th 1011 (1992). The court rejected the employee’s claim that her suspension constituted handicap discrimination.

Disability. The Washington Supreme Court defines disability, as used in the Washington Law Against Discrimination (WLAD), consistently with the definition provided in the federal ADA. A plaintiff may establish that there is a disability if there is “(1) a physical or mental impairment that substantially limits one or more of his major life activities, (2) a record of such an impairment, or (3) is regarded as having such an impairment.” McClarty v. Totem Electric Int’l, 137 P.3d 844 (2006). This was a change from prior construction of the WLAD that provided a less precise standard of disability.

Alcohol Use. In a case proving the exception to the usual rule that conduct affecting the operation of a department may be the subject of discipline, the Louisiana Appellate Court held that a police department’s termination of an officer for drunken and reckless driving was illegal. Laborde v. Alexandria Municipal Fire and Police Civil Service Board, 566 So.2d 426 (La. App. 1990). The court concluded that the city had produced no evidence proving that the officer’s conduct was detrimental to the efficient operation of the police department or violated any rules concerning off-duty conduct of an officer. In a

subsequent case, the same state's supreme court upheld the dismissal of two police officers drinking on duty. Shields v. City of Shreveport, 579 So.2d 961 (La. 1991).

Jewelry. The discipline of police officers for wearing earrings was upheld, where the court found that department regulations were reasonably sufficient to define limits of the expected and prohibited conduct of officers. Rathert v. Village of Peotone [Illinois], 903 F.2d 510 (7th Cir. 1990).

Religious Jewelry. Terminating a librarian for refusing to remove pendant with cross violated the librarian's First Amendment rights under the Free Exercise and Free Speech Clauses. The court found that the "library's policy is based upon nothing more than 'undifferentiated fear of apprehension of disturbance [which] is not enough to overcome the right to freedom of expression.'" Draper v. Logan County Pub. Library, 403 F. Supp. 2d 608 (2005) (quoting Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503 (1969)).

Retaliatory Discipline. Retaliation for an employee's acts does not constitute just cause for discipline. See, e.g., Valentin-Almeyda v. Municipality of Aguadilla, 447 F.3d 85 (1st Cir. 2006) (reinstating female police officer after city fired her for filing a claim under Title VII); Gronowski v. Spencer, 424 F.3d 285 (2d Cir. 2005) (city violated employee's First Amendment rights when city laid off employee because of her political support of opposing mayoral candidate); Bell v. Clackamas County, 341 F.3d 858 (9th Cir. 2003) (termination of employee for complaining of racial comments and profiling to superiors). Retaliation claims frequently arise in the context of employee criticism of the government employer. The First Amendment does protect a public employee's right in certain circumstances to speak as a citizen addressing matters of public concern. Pickering v. Board of Ed., 391 U.S. 563 (1968); Connick v. Myers, 461 U.S. 138 (1983); Wilson v. State, 84 Wn. App. 332, 929 P.2d 448 (1996). However, when public employees make statements pursuant to official duties, the employees are not speaking as citizens for First Amendment purposes, "and the Constitution does not insulate their communications from employer discipline." Garcetti v. Ceballos, 547 U.S. ____ (No. 04-473, 2006) reversing Ceballos v. Garcetti, 361 F.3d 1168 (9th Cir. 2004). The elements of a prima facie retaliation claim under Title VII of the federal Civil Rights of 1964 are: (1) the employee engaged in a protected activity; (2) the employee suffered an adverse employment decision by the employer; and (3) there was a causal link between the protected activity and the adverse employment decision. See Villarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1064 (9th Cir. 2002).

If the employee can demonstrate a prima facie case, the burden of production shifts to the defendant employer to demonstrate a legitimate, non-discriminatory reason for the adverse employment decision. Once it has done so, the burden shifts back to the employee to establish that the reason articulated is a pretext.

Bad Conduct. An officer who leaves his post to check on the safety of his family after his wife reported that their home was threatened by flooding has exhibited conduct warranting discharge, when he does not return to his post within a reasonable time and when he was explicitly denied permission to leave. Launius v. City of Des Plaines, 603 N.E. 2d 477 (Ill. 1992). The Illinois Supreme Court concluded that “a police officer does not have the option of performing his duties when he wishes. Plaintiff admitted that as a police officer, it was his primary and sworn duty to protect the lives and property of the citizens of Des Plaines.” Id. at 488-89.

Negligent Conduct. A court has upheld the termination of an employee for misconduct, when the employee was a bus driver who unawaredly carried her loaded gun to work in her handbag, and the city had a policy prohibiting employees from bringing weapons on board the buses. Johnson v. Employment Sec. Dept., 64 Wn. App. 311, 824 P.2d 505 (1992).

Religious Practices. The Arizona Appellate Court upheld the revocation of a police officer's certificate as a result of his open polygamy, a practice in accordance with his Mormon religious beliefs. Barlow v. Blackburn, 798 P.2d 1360 (Ariz. App. 1990).

Policies Applied in Discriminatory Fashion. The Washington Supreme Court has determined that employees may not use a disparate impact analysis (examining whether a protected class is subject to substantial disproportionate impact as a result of the personnel policy) as a basis to challenge an employment practice. Oliver v. Pacific Northwest Bell, 106 Wn.2d 675, 724 P.2d 1003 (1986) (reviewing termination of employees for violating policy requiring honest conduct on and off job, when employer reviewed each violation on case-by-case basis).

Defenses to Discrimination Claims. In reviewing the allegedly age-discriminatory termination of a university employee, a court has sustained the termination when there is evidence that the University had a substantial valid reason for termination. Grimwood v. University of Puget Sound, 110 Wn.2d 355, 753 P.2d 517 (1988) (finding that employer had called job deficiencies to employee's attention in writing over a long period of time, culminating in a warning six months before dismissal that continued substandard performance would result in dismissal). See also Leong v. Potter, 347 F.3d 1117 (9th Cir. 2003) (finding that the employer proffered a legitimate non-discriminatory reason for firing a Chinese employee who used obscenities in the work place and could not establish that other, similarly situated employees were treated differently). As another defense, consider whether the relevant statute is applicable to the municipality. For example, the Age Discrimination in Employment Act, applicable to public as well as private employers, is applicable only to employers with twenty or more employees. EEOC v. Monclova Township, 920 F.2d 360 (6th Cir. 1990) (holding that the ADEA is applicable to government employers who have over twenty employees).

18. PREDISCIPLINARY HEARING.

18.01 PREDISCIPLINARY HEARING—REQUIRED. A department head shall provide and arrange for a predisciplinary hearing prior to demotion, suspension, or discharge of a subordinate. The hearing under this Rule 18 is not subject to Rule 19, and does not require witnesses, presentation of evidence or other formalities. It is an opportunity for an employee to present to the [department head/appointing authority] the employee's response prior to the decision on discipline.

18.03 PREDISCIPLINARY HEARING—STANDARDS/NOTICE OF DISCIPLINE.

18.03.01 An employee shall be provided, in writing, with a notice of the charge and an explanation of the department's evidence. The employee shall be given an opportunity to respond to the charges, orally or in writing, as to why the department's proposed action should not be taken.

18.03.02 The employee may have legal counsel or union representation present at a predisciplinary hearing.

18.03.03 The department's explanation of the department's evidence at the predisciplinary hearing shall be sufficient to apprise the employee of the basis for the proposed action. This rule, however, shall not be construed to limit the employer at subsequent, post-disciplinary hearing from presenting a more detailed and complete case, including presentation of witnesses and documents not available at the predisciplinary hearing.

18.03.04 Should the appointing authority determine to discipline following the predisciplinary procedure, written notice of discipline shall be given to the employee. Such notice shall include the charges against the employee and a general statement of the evidence supporting the charges.

18.03.05 The Commission shall not consider, on appeal, any basis for disciplinary action not previously presented to an employee.

COMMENTS TO RULE 18: PREDISCIPLINARY HEARINGS

18.01

Right to Pre-Termination Hearing. The U.S. Supreme Court has found that regular civil service employees are guaranteed a pretermination hearing. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 84 L.Ed. 2d 494, 105 S. Ct. 1487 (1985). Civil Service employees, who can be discharged only for cause (i.e., tenured), possess a property right to continued employment. See Ticeson v. Department of Social and Health Services, 19 Wn. App. 489, 576 P.2d 78 (1978). Such a property interest cannot be deprived without due process of law. Board of Regents v. Roth, 408 U.S. 564 (1972).

Loudermill did not require that a pretermination hearing be elaborate. All that is required is notice and an opportunity to respond:

Here, the pretermination hearing need not definitely resolve the propriety of the discharge. It should be an initial check against mistaken decisions—essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

... the tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story.

Loudermill, 105 S. Ct. at 1495, cited in Payne v. Mount, 41 Wn. App. 627, 634, 705 P.2d 297 (1985). Loudermill is to be applied retroactively. Bullo v. City of Fife, 50 Wn. App. 602, 749 P.2d 749 (1988).

The Washington Supreme Court reviewed the application of Punton and Loudermill in Danielson v. City of Seattle, 108 Wn.2d 788, 742 P.2d 717 (1987). In Danielson, a police officer sought judicial review of his discharge from the Seattle Police Department for events which resulted in his pleading guilty to a felony charge. Prior to his termination, internal investigation officers explained the allegations they were investigating and described the evidence supporting the allegations. The internal investigation officers further told Danielson that criminal charges might be filed. The officers asked Danielson if he desired to make a statement regarding the allegations. Danielson admitted the criminal violations. He was later discharged for violations of provisions of the Seattle Police Department manual. The court found the interview with internal investigation officers satisfied Danielson's pretermination due process rights. The interview served as a check against mistake and gave Danielson notice and opportunity to respond. Further, the existence of a Civil Service post-termination hearing further convinced the court that Danielson's due process rights to continued employment were adequately protected. To the extent that Punton suggested that a public agency's failure to follow internal procedural rules, such as those contained in a policy manual, gave rise to a prima facie deprivation of due process, it was overruled in Danielson. The court noted that an agency's failure to follow its own rules does per se violate procedural due process, but does

so only when the agency's rules represent minimal due process requirements. Because Danielson was afforded those minimal due process rights, there was no violation.

Rule 18 goes beyond the requirements of Loudermill for a pretermination hearing. The rule provides for a predisciplinary hearing prior to demotion, suspension, or discharge of the subordinate. While a pretermination hearing would satisfy the requirements of constitutional due process, the predisciplinary hearing is recommended as an employment practice that can only benefit the employer, employee, and Civil Service System. Clarification of facts and issues will facilitate communication between the employer and employee, and at a minimum, expedite a subsequent hearing before the Commission.

A court has found that a discharged police officer's right to a hearing regarding his entitlement to disability retirement benefits was not waived by the officer's failure to command a hearing. Ostlund v. Bobb, 825 F.2d 1371 (9th Cir. 1987).

An arbitrator has found that a City did not provide an officer his Loudermill rights when the pretermination hearing consisted of a meeting with the officer to tell his story and read him his Miranda rights. Shelton Police Guild and City of Shelton, FMCS No. 89-02362 (involving police officer charged with abuse of office and official misconduct when he cited a driver for following too close, then issued a reckless driving citation when he heard that the driver intended to contest the citation). The arbitrator concluded that the City acted improperly in not confronting the officer with a full slate of allegations, and to conduct a criminal investigation and expect the officer to discuss openly the circumstances of his actions. Similarly, the Third Circuit has held that police officers' due process right to a pretermination hearing was not satisfied by merely advising the officers of a complaint involving their drug use, because this was not sufficient to give them an opportunity to explain or rebut the evidence. Fraternal Order of Police v. Tucker, 868 F.2d 74 (3d Cir. 1989). The court held that the City must explain the specifics of the drug allegations in order for the employees to meaningfully respond.

Loudermill gives the right to a hearing prior to the actual discharge, not a hearing of the decision to discharge. Fuller v. Employment Security Dept. of Wash., 52 Wn. App. 603, 762 P.2d 367 (1988). The court ruled that a discharged employee's due process rights were satisfied since the termination was not final until some time after a meeting where she was given an opportunity to explain her conduct in falsifying job placement orders. See also Gibson v. City of Auburn, 50 Wn. App. 661, 748 P.2d 673 (1988).

Pre-Hearing Discipline. An employer may suspend an employee with pay before granting notice or a hearing if the employer perceives a significant hazard in keeping the employee on the job, but once the employee's pay is stopped, a hearing is required. Everett v. Napper, 833 F.2d 1507 (11th Cir. 1987) (upholding

termination of employee drug dealer, but remanding to resolve due process claims of lack of hearing of suspension of employee prior to suspension without pay).

Process. The Washington Supreme Court reviewed the process of a State Patrol disciplinary hearing in Sherman v. Moloney, 106 Wn.2d 873, 725 P.2d 966 (1986). The employee alleged that the State Patrol Chief violated the appearance of fairness doctrine and was biased, especially in interrogating witnesses. The court summarized the evidence by stating that "although the Chief's conduct during the hearing may not have been exemplary, it does not show bias." Sherman, at 884. The language of the court suggests sensitivity to a Commission's involvement in the interrogation of witnesses.

Remedy for Violation of Right to Pretermination Hearing. Termination without a pretermination hearing does not necessarily require employee reinstatement. In Nickerson v. City of Anacortes, 45 Wn. App. 432, 725 P.2d 1027 (1986), the court determined that a city's failure to provide a pretermination hearing did not result in an employee's right to reinstatement. The court's conclusion is cited in its entirety as follows:

Having been terminated without a pretermination hearing, Nickerson's discharge on September 4, 1981, was wrongful. However, at this juncture, Nickerson is entitled to no more than an evidentiary hearing before the superior court on the probable effect of the denial of a pretermination hearing. If the superior court finds and concludes that a pretermination hearing as required by Loudermill would, within reasonable probabilities, have prevented his discharge, then he is entitled to reinstatement with back pay and benefits from the date of his termination. If the superior court finds and concludes that a pretermination hearing would not have prevented his ultimate discharge, then Nickerson's remedy is limited to the recovery of such monetary damages, if any, as the court finds were proximately caused by the denial of a pretermination hearing.

Nickerson, at 441.

Similarly, a Civil Service Commission considering an employee's challenge to a department's pretermination process would not necessarily require reinstatement and dismissal of charges, but rather the provision of pretermination rights to the employee before the effective date of the action. A Civil Service Commission would proceed on these grounds on a procedural basis, returning the matter to the department for proper pretermination proceedings prior to review on the merits. If the department chooses not to continue the disciplinary action, no future hearing would be required by the Commission. If the department follows the proper pretermination proceedings and then determines to terminate the employee, the Commission can deal with the post-termination matter on subsequent appeal by the employee.

Appeal of Hearing. In a case involving the termination of a police officer after statements he made to the City Council, the officer was informed of his right to appeal the decision of the City's Hearing Officer (affirming the dismissal) to the state superior court, but did not do so within the statutory filing period. His claim in federal court subsequently was dismissed. Eilrich v. Remas, 839 F.2d 630 (9th Cir. 1988).

19. HEARINGS.

19.01 HEARINGS—APPEALS.

19.01.01 Any regular employee who is demoted, suspended or terminated may appeal such action to the Commission.

19.01.02 Any employee who is alleged to be probationary by the disciplining department may only appeal to the Commission issues regarding probationary status and whether the procedures for discharge of probationers, as found in these rules, were properly followed.

19.01.03 Any employee, or department, who is adversely affected by an alleged violation of Civil Service or [City/County] [ordinances/policy] may appeal such violation to the Commission.

19.03 APPEALS—TIME—FORM. A notice of appeal shall be filed at the Commission offices within ten (10) days of the action that is the subject of the appeal. The notice of appeal shall be in writing and include the mailing address and street address where service of process and other papers may be made upon the appellant. The notice of appeal shall also contain a brief description of the facts giving rise to the appeal and a concise statement of the reason for the appeal. [Forms provided by the Commission may be used for such notice but are not required.]

19.05 EXHAUSTION OF ADMINISTRATIVE REMEDIES.

19.05.01 The Secretary may [OPTIONAL: when not inconsistent with the terms of a collective bargaining agreement] direct the employee to exhaust available administrative procedures regarding a disciplinary matter before scheduling the matter for hearing before the Commission.

19.05.02 If the employee exhausts the available administrative procedures and continues to believe that cause has not been shown, the employee may within ten (10) days after the final step of the procedure request the Secretary to return the appeal to the Commission for hearing.

19.07 AUTHORITY OF SECRETARY-CHIEF EXAMINER AND STAFF.

19.07.01 The Secretary-Chief Examiner to the Commission shall have the authority to make orders of preliminary matters, including motions for discovery and to compel discovery, continuance, protective orders, and other similar matters. Such orders may be appealed to the Commission. The Secretary-Chief Examiner may also conduct pre-hearing settlement conferences (in order to encourage resolution of contested matters), issue subpoenas for depositions and for hearings.

- 19.07.02 The Commission may authorize the Commission staff to investigate any reports or appeals relating to the enforcement or application of the Civil Service or those rules which do not involve a disciplinary proceeding. The staff shall report the results of the investigation to the Commission in an open meeting. On the basis of such report, the Commission shall either dismiss the report or appeal as being without basis or set the matter for a full hearing.
- 19.07.03 As an aid to investigations authorized by the Commission, the Secretary-Chief Examiner may subpoena any documents that would be discoverable for purposes of hearing preparation and may take depositions by tape recorder or otherwise of any person who may have relevant knowledge. Depositions so taken shall be kept as part of the records of the Commission.
- 19.07.04 The Commission may direct a hearing officer of its selection to carry out the proceedings, including the activities of the Secretary, under Rule 19.
- 19.09 APPEALS—INITIAL REVIEW. The Secretary-Chief Examiner shall review all appeals to determine whether the employee has timely filed an appeal and whether the action appealed is a final action. Upon a determination that the appeal is not timely, the Secretary-Chief Examiner shall issue a written order of dismissal with prejudice, setting forth the basis of the dismissal. In the case of an action that is not final, the appeal shall be stayed until such action becomes final. Such orders may be appealed to the Commission.
- 19.11 APPEALS—NOTICE OF HEARING. Upon receipt of a notice of appeal, the Commission staff shall forward a copy of the notice to other affected parties. As soon as possible thereafter, but in any event within ten (10) days, a scheduling/pre-hearing conference before the Commission shall be set, with each party to be afforded not fewer than ten (10) days' notice of such hearing. Subsequent hearings on the same appeal shall have at least one week's notice unless waived by the parties. All parties may agree to waive the notice provisions and time limits provided by this section. [In counties subject to Chapter 41.14 RCW, the hearing must be held within 30 days of Commission receipt of appeal.]
- 19.13 APPEALS—AUTHORITY OF DEPARTMENT. The exercise of jurisdiction by the Commission over a matter does not preclude the party from withdrawing, modifying or otherwise compromising the matter prior to the matter going to hearing. Upon resolution of a matter prior to hearing, any party may request the dismissal of the matter. A stipulation signed by both parties should be submitted to the Commission prior to such dismissal.
- 19.15 SERVICE OF PROCESS—PAPERS.
- 19.15.01 The Commission staff shall cause to be served all orders, notices, and other papers issued by the Commission, together with any other papers

that the Commission is required by these rules to serve. Every other paper shall be served by the party filing the notice, document or paper.

19.15.02 All notices, documents or papers served by either the Commission or a party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel. Service of papers shall be by personal service, by registered or certified mail, [electronic mail] or by regular mail with written acknowledgement of such mailing attached to the papers so served. Written acknowledgement shall be by affidavit of the person who mailed the papers or by certificate of any attorney or Secretary-Chief Examiner.

19.15.03 Service upon parties shall be regarded as complete when personal service has been accomplished or by mail (U.S. or inter-city), upon properly stamped and addressed deposit in the mail system.

19.15.04 Papers required to be filed with the Commission shall be deemed filed upon actual receipt of the papers by the Commission staff at the Commission office. All papers except the original appeal notice shall be served with the original and three copies. Briefs and memoranda must be filed with the Commission at least three (3) days prior to any hearing involving matters discussed in such brief or memoranda. Documentary evidence is not required to be filed but, rather, provided at the hearing.

19.15.05 An appellant or petitioner is responsible for notifying the Commission in writing of any change in mailing or street address and telephone number. Failure to so notify the Commission shall constitute a waiver of service and notice under these rules.

19.17 DISCOVERY.

19.17.01 Parties to a proceeding are required to provide to each other reasonable access to and discovery of all relevant information concerning the matter before the Commission. Any questions concerning relevancy or access shall be resolved by order of the Secretary.

19.17.02 Upon the failure of any party to comply with an order of the Secretary compelling discovery, the Secretary shall schedule the matter before the Commission for review and determination of appropriate sanctions.

19.19 SUBPOENAS.

19.19.01 Every subpoena shall identify the Commission and the title of the proceedings, if any, and shall command the person to whom it is directed to attend, at a specified time and place, and give testimony or produce designated books, documents, or things under that person's control.

- 19.19.02 Upon application of any party or his/her representative, the Secretary shall issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The party requesting the subpoena is responsible for having the subpoena properly served. Requests for subpoenas shall be submitted to the Commission offices at least three (3) days prior to the hearing.
- 19.19.03 Service of subpoena shall be made by serving a copy of the subpoena on the person named therein.
- 19.19.04 The person serving the subpoena shall make proof of service by filing the subpoena at the Commission office, and if such service has not been acknowledged by the witness, the person serving the subpoena shall make an affidavit of service. Failure to file proof of service does not affect the validity of service.
- 19.19.05 Upon a motion promptly made by a party or by the person to whom the subpoena is directed, and upon notice to the party on whose behalf the subpoena was issued, the Commission may:
- (1) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or
 - (2) Condition denial of a motion to quash or modify upon just and reasonable conditions.
- 19.21 BURDEN OF PROOF. At any hearing on appeal from a demotion, suspension or termination, the disciplinary authority shall have the burden of showing by a preponderance of the evidence that its action was for cause. At any other hearing, the petitioner or appellant shall have the burden of proof by a preponderance of the evidence.
- 19.23 EVIDENCE.
- 19.23.01 Subject to other provisions of these rules, all competent and relevant evidence shall be admissible. In passing upon the admissibility of evidence, the Commission shall give consideration to, but shall not be bound to follow, the rules of evidence (ER) governing civil proceedings in the superior courts of the State of Washington.
- 19.23.02 A witness in any hearing may be examined orally, under oath or affirmation and shall be subject to cross-examination by opposing parties and the Commission.
- 19.23.03 When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The Commission may exclude inadmissible evidence and may order cumulative evidence discontinued in its discretion, either with or without objection. A party objecting to the

introduction or exclusion of evidence shall state the grounds of such objection at the time such evidence is offered or excluded. No such objection shall be deemed waived by further participation in the hearing.

- 19.23.04 At any hearing before the Commission when documentary exhibits are to be offered into evidence, copies shall be furnished to the opposing party, to each Commission member and to the Secretary-Chief Examiner.
- 19.23.05 Parties are encouraged to stipulate to the admissibility of documentary exhibits. To further this end, parties will make request of other parties for such stipulation no later than three (3) days in advance of the hearing, barring unusual circumstances. The party of whom the request is made shall respond no later than one (1) day prior to the hearing.
- 19.23.06 An employee has the right to appear before the Commission with or without counsel and to be heard in the employee's defense.
- 19.25 DELIBERATION. The Commission may deliberate in closed (executive) session when taking a disciplinary or other quasi-judicial case under advisement. Deliberations by the Commission shall otherwise be subject to Chapter 42.30 RCW. No person other than the Secretary-Chief Examiner and legal counsel to the Commission shall be present during deliberation. No person shall attempt to convey any information or opinion to the Commission concerning any matter on appeal, other than in open hearing.
- 19.27 DECISION. In any appeal, the Commission shall issue a decision, including findings of fact, conclusions of law, and an order, to each party or counsel of record for each party. [A decision shall be issued within _____ () days of the close of the hearing of an appeal or other proceeding heard only by the Commission.] Absent the consent of an appellant to an extension of time, failure to issue a decision within the time prescribed shall result in an appeal being sustained.
- 19.29 REMEDIES. The Commission may issue such remedial orders as deemed appropriate.
- 19.31 RECONSIDERATION. A party may move for reconsideration by the Commission only on the basis of fraud, mistake, or misconception of facts. Such motion must be filed with the Commission within ten (10) days of the decision of the Commission. Such motion for reconsideration shall be decided on affidavits, absent special showing that testimony is necessary.
- 19.33 WAIVER. Upon stipulation of all parties to a proceeding, and upon a showing that the purposes of the rules or ordinances of the [City/County] would be better served, the Commission may waive the requirements of any of these rules.

COMMENTS TO RULE 19: HEARINGS

- 19.01 A. Probationary Employees. Probationary employees do not possess a property right of continued employment and thus may not maintain an action for lack of pretermination hearing under Section 1983 of the Civil Rights Act. Samuels v. City of Lake Stevens, 50 Wn. App. 475, 749 P.2d 187 (1988).
- B. Volunteer Employees. A Volunteer Fire Chief is not entitled to a pretermination hearing. Slaughter v. Snohomish County Fire Protection District No. 20, 50 Wn. App. 733, 750 P.2d 656 (1988). The court found that the employee's job description, providing that one of the Chief's duties was to "promote, suspend, demote or discharge for due cause," was not a promise to the employee and that his employment was at will. The court also found that the District's decision to discharge the employee was not a violation of the Open Meetings Act, RCW 42.30.060. However, that statute subsequently was amended, and an employer therefore should be sensitive to the application of the open meetings law to a discharge determination.
- 19.01/19.03 The manner and time for filing of appeals is discussed in RCW 41.08.090, 41.12.090, and 41.14.120. In Payne v. Mount, 41 Wn. App. 627, 705 P.2d 297 (1985) the court held that the employee's failure to timely file an appeal with the Commission, and therefore failure to follow the administrative remedies provided by the Commission, precluded judicial review. The court rejected the claim that the employer was responsible to advise the employee of the 10-day time limit for appeal.
- 19.05 Rule 19.05 attempts to coordinate the administrative hearing process provided by Civil Service with arbitration. This provision must be subjected to scrutiny by individual jurisdictions. See Kelso Civil Service Commission v. City of Kelso, 137 Wn.2d 166, 969 P.2d 474 (1999).
- Resort to Internal Remedies. Employees' claims must first be presented to the State Personnel Board, before action in a superior court. Kringel v. DSHS, 47 Wn. App. 51, 733 P.2d 592 (1987) (dismissing employee's claim to challenge the computation of certain employment benefits due on reinstatement).
- 19.11 Chapter 41.08 and 41.12 RCW require that within 10 days of the receipt of a notice of appeal, a hearing date be set. Chapter 41.14 RCW requires that the hearing be held within 30 days of the Commission's receipt of the appeal.
- 19.21 This rule incorporates a common standard in the conduct of Civil Service hearings. Because discipline requires the demonstration of cause, it is the employer's burden to show that the action was taken in good faith for cause. In all other actions, the employee must come forward to demonstrate how

employment actions constituted a violation of the rules of the Civil Service System.

- 19.23 An employee is entitled to a full hearing before the governing personnel board. State ex rel. Perry v. City of Seattle, 62 Wn.2d 891, 893, 384 P.2d 874 (1963). At such a hearing:

Competent, substantial evidence should be taken, establishing the violation of specific charges, which must not be frivolous, but support just cause for dismissal. However, the receipt of evidence by Civil Service Commission is not governed by the technical rules of evidence governing court proceedings. The Commission has discretion relative to the admission of evidence.

See Kaplan, *The Law of Civil Service* (1958) at 233. Porter v. Civil Service Commission, 12 Wn. App. 767, 772, 776, 532 P.2d 296 (1975).

- 19.25 See Chapter 366, Laws of 1985, amending RCW 42.30.110, the executive session section of the Open Public Meetings Act concerning executive sessions. As a result of the amendment, deliberations of a Civil Service Commission are subject to the Open Public Meetings Act. Exceptions to the application of the Act are allowed for consideration of disciplinary proceedings, RCW 42.30.110, and that portion of the Commission's proceedings that are quasi-judicial, RCW 42.30.140. Because of the inconsistency in decisional law of the state concerning whether a Civil Service Commission proceeding is quasi-judicial in nature, legal counsel should be consulted before proceeding with an executive session on a matter other than a disciplinary appeal. See State ex rel. Hood v. State Personnel Board, 82 Wn.2d 396, 511 P.2d 52 (1973); and Zoutendyk v. State Patrol, 95 Wn.2d 693, 628 P.2d 1308 (1981).

- 19.27 RCW 41.14.120 requires that a county Commission render its decision on appeal within 10 days. Chapter 41.08 and 41.12 RCW do not contain the same provision. Rule 19.27 need not contain a specific time limit for city police and fire Civil Service Commissions, unless otherwise provided by local ordinances.

- 19.29 Commissions have broad remedial authority. A list of such authority would only result in a potential limitation on that authority. A reference to RCW 41.08.090, 41.12.090, and 41.14.120 can provide additional guidance.

The authority of a Commission is demonstrated by the decision in Pool v. City of Omak, 36 Wn. App. 844, 678 P.2d 343 (1984). In that case, Pool appealed the imposition of a five-day suspension and written reprimand to the Omak Civil Service Commission. The Commission, believing the Department's actions to be unduly light, demoted Pool to a probationary status for one year. The court rejected Pool's argument that the Commission had no authority to impose a harsher penalty than that given by the police chief. The Commission's imposition of a stricter penalty was not found to be arbitrary and capricious.

20. RETIREMENT AND DISABILITY.

20.01 RETIREMENT. Employees of the [City/County] who are members of pension fund systems as provided by law shall be retired on account of service or disability in accordance with provisions of law.

20.02 REINSTATEMENT AFTER DISABILITY RETIREMENT.

20.02.01 PROCEDURE. The Secretary shall review any report from a retirement system showing that a former employee who is on disability retirement has regained his health to the extent employable. Upon being satisfied that the employee is physically and mentally competent to perform the duties of the regular class, the Secretary shall:

- (a) Order return of the employee to former employment status as if a leave of absence had been granted; or
- (b) Place the name on the reinstatement register for an available class and department.

20.02.02 EFFECT. The name of an employee who is employable but not fully recovered shall be placed on the most advantageous reinstatement register for the same department, for an equivalent or lower class comprised of duties the employee is competent to perform, as determined by the Secretary. If such an employee's name is placed on a reinstatement register, service credit acquired previous to retirement shall be continued. The employee shall be reinstated from such register and transferred or reduced in grade according to rules. Eligibility rights shall not expire as prescribed in case of layoff. Any reinstatement in a class other than that in which last employed shall not result in a promotion.

20.02.03 DISCHARGE FOR CAUSE—EXCEPTION. The provisions of this rule shall not apply in the event an employee is discharged from the service, whether or not the employee receives a disability retirement.

COMMENTS TO RULE 20: RETIREMENT AND DISABILITY

20. GENERAL COMMENTS.

20.01 The Civil Service System does not incorporate provisions for retirement that are governed by local or state law. Rule 20.01 simply states this limitation. Rule 20.02 may be necessary for implementation in those jurisdictions in which a retirement system is established by municipal authority and when that system provides for re-employment benefits.

Unused Sick Leave as Wages. Cash-out of accumulated sick leave under a government "buy-back" program constitutes wages for purposes of applying RCW 49.48, the State Wages and Hours law. Naches Valley School District v. Cruzen, 54 Wn. App. 388, 775 P.2d 960 (1989). This means that a person who successfully sues for a sick leave cash-out may be awarded her attorney's fees, as is done for suit for wages or salary.

Mandatory Social Security. All public sector employees who are not members of a qualifying retirement system have mandatory social security coverage under the state PERS and LEOFF retirement systems.

Officers who have contributed both to LEOFF and the Police Relief Pension Fund are entitled to receive pension benefits from either system. Fann v. Smith, 62 Wn. App. 239, 814 P.2d 214 (1991).

20.02 Public safety employees subject to the LEOFF system, Chapter 41.26 RCW, have their reemployment rights granted by operation of law. For example, RCW 41.26.140 provides that upon determination that a disability beneficiary (employee) is no longer incapacitated:

He shall be restored to duty in the same Civil Service rank, if any, held by the beneficiary at the time of his retirement, or if unable to perform the duties of said rank, then, at his request, in such other like or lesser rank as may be or become available, the duties of which he is then able to perform.

Rule 20.02a(1)(b) provides for the placement of an employee on a reinstatement register if the employee is not able to perform the duties of the rank from which he or she has retired.

In Dean v. Metro (Seattle), 104 Wn.2d 627, 708 P.2d 393 (1985), the Court found a public employer's obligation to continually advise disabled former employees of job opportunities the former employee may be able to perform. The employer's duty of accommodation under the State Law against Discrimination goes beyond the job the employee is no longer able to perform, but extends to other positions of the employer. Maintenance of a disabled worker on a mailing list of employer job postings/announcements is one way to satisfy the employer's obligation under Dean.

21. MISCELLANEOUS.

21.01 REPEALS AND SAVINGS. All matters shall be subject to these rules, and to that extent, all previous Civil Service rules are hereby repealed.

21.03 COMPUTATION OF TIME.

21.03.01 In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a [City/County] legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a [City/County] legal holiday. When the period of time prescribed or allowed is [ten (10)] [OPTION: five (5)] days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

21.03.02 Any period of time except for the stated period of time set forth in Rules 19.03 and 19.11 [and 19.27 in Counties] may be extended by the Secretary-Chief Examiner for no more than fourteen (14) days upon written notice to the Commission and a showing of good cause. The motion for extension of time must be filed with the Commission offices prior to the end of the applicable time period.

21.03.03 The date of notice for purpose of these rules shall be the date on which notice of an action is posted in the Commission's office; (a) as provided in these Rules; (b) is mailed or (c) delivered personally to a party to a proceeding.

21.05 CIVIL SERVICE AND COLLECTIVE BARGAINING.

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW ("Act") provides for collective bargaining agreements between the [city/county] and the labor organization(s) representing employees. The Act, and collective bargaining agreements prevail over these rules in the event of conflict.

COMMENTS TO RULE 21: CIVIL SERVICE AND COLLECTIVE BARGAINING

21. GENERAL COMMENTS

Since 1967 the conflict between civil service and collective bargaining has been the basis for constant turmoil among employees, employee groups, city and county management, state administrative agencies and the courts. Three decades later the conflict has been resolved, with collective bargaining prevailing over civil service. A brief summary, and discussion of the outcome of this conflict follows.

In 1967, the Public Employees' Collective Bargaining Act (PECBA) was enacted. Chapter 41.56 RCW. An earlier version of the Act had been vetoed by Governor Dan Evans because there had not been a legislative reconciliation with existing civil service laws. The purpose of PECBA is set out in RCW 41.56.010:

The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

The purpose of PECBA was implemented by requiring public employers and unions of public employees to engage in collective bargaining. In an effort to reconcile that bargaining obligation with civil service, the legislature provided:

That nothing . . . shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW.

RCW 41.56.100. Similarly, the definition of collective bargaining applied only to wages, hours and working conditions "peculiar to an appropriate bargaining unit." RCW 41.56.030(4). Public employers argued variously that civil service matters were not subject to the bargaining obligation or, because of their broad application, were not peculiar to any group of employees.

In 1980, a court determined that the City of Seattle's charter amendment and resulting uniform personnel (civil service) ordinance was not enacted in violation of PECBA. City of Seattle v. Auto Sheet Metal Workers, 27 Wn. App. 669, 620 P.2d 119 (1980), review denied, 95 Wn.2d 1010 (1981). Subsequent decisions of the courts have not supported civil service systems in the face of challenges by public employee unions.

In Rose v. Erickson, 106 Wn.2d 420, 721 P.2d 969 (1986), the Supreme Court was asked to decide whether the procedures set forth in Chapter 41.14 RCW, Civil Service for County Sheriffs, pre-empt the grievance procedures set forth in a collective bargaining agreement.

A deputy sheriff, who had been disciplined by the Spokane County Sheriff's Office, sought to compel the sheriff to follow a grievance procedure established by collective bargaining. The sheriff refused to process the grievance filed by the employee. The sheriff took the position that, despite the collective bargaining agreement, the employee's exclusive right was under Chapter 41.14 RCW.

The Supreme Court rejected the sheriff's position, holding that the provisions of Chapter 41.56 RCW, the Public Employees' Collective Bargaining Act, prevail. The court found that the language of RCW 41.14.080 and RCW 41.56.905 was in conflict. The court further acknowledged that to give effect to the language of each statute would be to distort the other. The court concluded that in the event of conflict between the chapters, the PECBA must prevail over civil service.

During this period, the Public Employment Relations Commission (PERC) ruled regularly against cities and counties on this topic. See, e.g., City of Wenatchee, PECB-2216 (1986); and City of Bellevue, PECB-3156 (1989).

The Washington Supreme Court ruled that in order for a city to be exempt from the requirement of bargaining over issues of wages, hours, or conditions of employment, a civil service commission must be similar in scope, structure and authority to the state personnel board. City of Yakima v. Int'l Assoc. of Fire Fighters, 117 Wn.2d 655, 818 P.2d 1076 (1991) (holding that Yakima's Commission is more limited than the State's personnel board, and that the city was required to bargain). The Court narrowly construed the exception to an employer's collective bargaining obligation.

In 1992 the Court ruled on the City of Pasco's argument that the police union's proposal for an optional grievance procedure was not a mandatory bargaining subject. Pasco v. PERC, 119 Wn.2d 504, 833 P.2d 381 (1992). Pasco argued that the matter was outside the scope of a mandatory bargaining obligation because the City's grievance process (civil service) was not unique to the police union. The Court agreed with PERC that PECBA must be given the broadest interpretation to support collective bargaining. Seattle v. Auto Sheet Metal Workers was overruled to the extent inconsistent with the Supreme Court ruling in Pasco.

Notwithstanding the apparent direction from the courts that collective bargaining prevails over civil service, the Spokane Civil Service Commission thought it could go a different direction. In City of Spokane v. Spokane Civil Service Commission, 98 Wn. App. 574, 989 P.2d 1245; rev. denied at 141 Wn.2d 1013 (2000), the court reviewed a process for a police sergeant promotional exam. For many years, the Commission had used a multi-choice exam to determine who should be promoted and made each promotion under the "Rule of One." In 1996,

the City of Spokane and the Spokane Police Guild entered into a new collective bargaining agreement. That agreement included a new procedure for promotions to the rank of sergeant.

The City and the Guild agreed that an assessment center, a process to further evaluate candidates, should be used to supplement the Commission's testing procedure. The assessment center would evaluate the leadership and supervisory abilities of the top 12 scorers on the civil service exam and determine who was the best qualified patrolman for promotion.

City of Spokane v. Spokane Civil Service Commission, 98 Wn. App. at 577. The Commission elected not to recognize the City and Guild arrangement, and chose to follow its traditional procedures. The City and Guild were then forced to sue the Commission. The court reviewed the extensive history of the cases leading to the conclusion that collective bargaining prevailed over civil service. It concluded that the purpose of the Public Employees' Collective Bargaining Act "is not served if the City complies with its obligation to collectively bargain, only to have the Civil Service Commission refuse to abide by the collective bargaining agreement." Id., 98 Wn. App. at 584. The Commission was ordered to abide by the agreement regarding the sergeant promotional exam and process.

The result of these decisions, anticipated by most jurisdictions, will create more of a focus on collective bargaining and less on civil service. Commissions can expect that policies once developed in the public process of commission meetings and debate, will be presented as accomplished acts of the collective bargaining process. Eligibility standards (e.g., time in-grade) for promotion are becoming a common bargaining topic. Similarly, alternative grievance procedures in collective bargaining agreements may reduce further the commission's work. It is not inconceivable, as has happened in some jurisdictions, that the commission's functions will be absorbed within the procedures dictated by a collectively bargained agreement. In such a circumstance, the commission must accept that the policies of merit, tenure, and independent system review are being carried forward by management and labor without commission involvement.

MODEL CIVIL SERVICE RULES
for
WASHINGTON STATE LOCAL GOVERNMENTS

P. Stephen DiJulio
Foster Pepper PLLC

Third Edition
(2008 Update)

Published by Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400

(Prior editions published by Washington Local Government Personnel Institute
1076 South Franklin Street, Olympia, Washington 98501)

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MODEL CIVIL SERVICE RULES

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10. CERTIFICATION AND APPOINTMENT.

10.01 GENERAL PROVISIONS. Vacancies in the classified Civil Service shall be filled by reinstatement, promotional appointment, assignment, original appointment, transfer, reduction, or demotion. In the absence of an appropriate register, the Secretary may authorize a temporary or provisional appointment.

10.03 REQUEST FOR CERTIFICATION. Whenever an appointing authority wishes to fill a vacancy, a request for certification shall be submitted to the Secretary. The request shall show the number of positions or vacancies to be filled, the class title, tenure of work to be performed, cause of the vacancy, or if a new position, authority for the appointment and any other details for full description of the position to be filled.

10.05 CERTIFICATION

10.05.01 ELIGIBLE REGISTER. Certification to fill a vacancy shall be made by the Civil Service Department from registers in the following order and as provided in this rule:

- (1) Reinstatement
- (2) Promotional
- (3) Original [including lateral entry register]

10.05.02 ORDER OF REINSTATEMENT—ELIGIBLE.

- (a) If a vacancy is to be filled from the reinstatement register, the following shall be the order of certification:
 - (1) Regular employees in the order of their length of service. The regular employee on such register who has the most service credit shall be first reinstated;
 - (2) Probationers, without regard to length of service. The names of all probationers upon the reinstatement register shall be certified together.
- (b) Upon request from the appointing authority, the Secretary may authorize reinstatement out of such regular order upon a showing of efficiency or that such action is for the good of the service, after giving the employees adversely affected an opportunity to be heard.
- (c) Nothing in this rule shall prevent the reinstatement of any regular or probationary employee for the purpose of transfer to another

department, either for the same class or for voluntary reduction in class, as provided in these rules.

10.05.03 CERTIFICATION. If a vacancy is to be filled from a promotional or original register, the Secretary shall certify to the appointing authority the names of the _____ [e.g., three, five] available eligibles that stand highest on the appropriate register.

10.05.05 MULTIPLE VACANCIES. If two or more vacancies are to be filled from any of the above registers other than the reinstatement register, the name of one additional person shall be certified for each additional position.

10.05.07 ADDITIONAL NAMES. If an appointing authority makes an acceptable showing that any of the eligibles certified are not available or that they do not respond, sufficient additional names shall be furnished to complete the certification.

10.05.09 SPECIAL SKILLS. Where a certification of eligibles with special experience, training, or skills is requested in writing by the appointing authority as being necessary for satisfactory performance in a particular position, and the Secretary determines that the reasons given fully justify the request, a certification may be made of only the highest ranking eligibles who possess the special qualifications.

10.05.11 PRIOR SERVICE. If a temporary vacancy is to be filled from an open or a promotional register, those eligibles with three (3) months of service who are shown on the register as having been laid off within the last twelve (12) months from the department in which the vacancy exists shall be placed in grade order at the head of the list of eligibles for certification according to rule.

10.05.13 APPLICATION/EXAMINATION. The application and the examination papers of a certified eligible shall be available for inspection by the appointing authority.

10.07 DEFERMENT OF CERTIFICATION. The Secretary may grant deferment of certification of an eligible, upon receipt from the eligible, of a written request with satisfactory reason therefor. Such deferment will thereafter prevent certification of such eligible until the next vacancy occurring after the eligible has given written notice of his or her desire to be returned to the register, and such return has been approved by the Secretary.

10.09 DURATION OF CERTIFICATION. Certification shall be in effect for thirty (30) days from its date of issuance. The appointing authority must file a report of any appointment from such certification with the Secretary. Upon request, the Secretary may extend such certification for an additional 30-day period. Expiration of eligibility shall not cancel the validity of a certification.

10.11 REGULAR APPOINTMENT. A regular appointment to fill a vacancy must be made from the names contained on the official certification. The official appointment report shall show the name of the person appointed, the effective date, the salary, the nature or duration of the appointment, and any other information required.

10.13 PROVISIONAL APPOINTMENT.

10.13.01 Where there is no suitable eligible register from which certification can be made, the Secretary may allow the appointing authority to make a provisional appointment. A provisional appointment may be made for a period of up to [six (6)] months. No person shall receive more than one provisional appointment in any 12-month period, unless no register has been established and the Commission has extended the period for provisional service.

10.13.02 All provisional employment in a class shall cease at the earliest possible date and shall not exceed thirty (30) days from date of notice that a proper eligible register for such class is available; provided, an extension may be granted by the Secretary upon satisfactory written showing by the appointing authority, if such extension will not cause the provisional appointment to exceed the [six (6)]-month limitation.

10.14 TEMPORARY APPOINTMENT.

10.14.01 Temporary appointment is appointment from an eligible or promotional list in the usual manner, but to fill a position the duration of which does not exceed [six (6)] months. In making such an appointment, the appointing authority shall make requisition to the Secretary in the manner provided for regular appointment but shall indicate the time at which it is estimated the position terminates. The Secretary shall notify the person or persons appearing on the appropriate list, indicating the nature of the position and its duration, to learn who may be willing to accept temporary appointment. The names highest on the [eligible register/official certification] consistent with Rule 10.05.03 willing to accept shall be certified for appointment.

10.14.02 In the event of the need to fill a position for a limited duration not to exceed [six (6) months], and there is either (1) no suitable eligible register from which certification can be made; or, (2) no eligible is willing to accept temporary appointment, the Secretary may authorize the appointing authority to make a temporary appointment.

10.14.03 No temporary appointment shall be continued and no person shall be employed on a temporary basis for more than [six (6) months] in any one year. Temporary service shall not be credited to the probationary period or to calculation of service credit.

- 10.15 EMERGENCY APPOINTMENT. To meet the immediate requirements of an emergency condition which threatens life or property, the appointing authority may employ any person or persons when they may be legally empowered to appoint. Such appointment shall be without restriction under these Rules. Emergency employment shall be limited to the duration of the emergency period and shall in no event exceed [thirty (30)] days without Commission approval.
- 10.16 EXTENSION OF APPOINTMENTS. Notwithstanding the provisions of Sections 10.13 and 10.14 above, and in recognition of the staffing issues created by disability leave and retirement periods under Chapter 41.26 RCW, military service leaves, and other programs, the Commission may extend provisional and temporary appointment authority beyond [six (6) months] upon application of the appointing authority. Such an extension may be granted when a position is vacant as a result of a disability leave, active military service, or for such other reason as the Commission finds may preclude a timely and regular appointment.

Item Attachment Documents:

The City announced the vacancy opened by the resignation of Commissioner Lucas. Three applications have been received and are being considered by Mayor Fournier (Ms. Lauraine Carlson, Ms. Donna Wilson, Ms. Ronna Barnes)



CITY OF TENINO

City Commission Vacancy Application

(Please type or print clearly)

RECEIVED

JUN 11 2019

CITY OF TENINO

Name as
registered:

LAURINE CARLSON

Physical
Address:

118 McArthur St N. #8-A

Mailing
Address:

Same

Home Phone:

360-915-9157

Cell Phone:

Email Address:

How long at Residence:

2 1/2 year

Best time to
contact:

MORNING

Personal Information (optional):

retired
vice president Senior Center Tenino

List any prior experience as an elected official:

List any applicable work experience:

18 yr. Line COOK + MANAGER Restaurant
21 yr. MANAGER CAFE man kitchen
(retired) ✓

List any applicable experience working with budgets:

Both restaurants

Please list three (3) references:

Name: Les LAMB

Address: 118 McArthur St N. #1

Contact Number: 360-264-7757

Name: Linda Larsen

Address: B

Contact Number: 360-264-5264

Name: Betty Wilson

Address: 118 McArthur St N #7

Contact Number: 360-972-1778

Council members make recommendations and decisions that affect the entire community.

- 1.) Do you foresee possible conflicts of interest with any of your current employment or civic positions? ☐ Yes (Please explain on back) ☒ No
- 2.) When making recommendations and decisions do you feel you could be impartial and base your decision on the overall need and benefit of the Community? ☒ Yes ☐ No (Please explain on back)
- 3.) Are there any days or evenings you are unavailable to meet? ☐ Yes (Please explain on back) ☒ No

Signature: Laura Carlson Date: 6-10-19

Please return completed form and any additional information to:
City of Tenino – Attn: City Clerk, 149 Hodgden St South, P.O. Box 4019, Tenino, WA 98589
For more information please call (360) 264-2368

CITY OF TENINO

Civil Service Commission Vacancy Application

(Please type or print clearly)

Name:

Veronica Barnes

Address:

103 Rifer Sts
PO Box 957 Tenino

Home Phone:

360-951-7938

Business Phone:

360-264-4157

Email Address:

rabarnes5@gmail.com

How long at Residence:

7 y

Best time to contact:

any

Reason you are interested in serving:

To continue the police dept with professionalism
to

Community activities/involvement:

Post Chamber of Commerce Vice President
Chair person for Oregon Trail Days

Applicable education, occupational, and specialized experience:

Governmental experience

Civil Service Commission members make recommendations and decisions that affect the entire community.

- 1.) Do you foresee possible conflicts of interest with any of your current employment or civic positions? ☐ Yes (Please explain on back) ☒ No
- 2.) When making recommendations and decisions do you feel you could be impartial and base your decision on the overall need and benefit of the Community? ☒ Yes ☐ No (Please explain on back)
- 3.) Are there any days or evenings you are unavailable to meet? ☐ Yes (Please explain on back) ☒ No

Signature:

Veronica Barnes

Date:

6-25-19

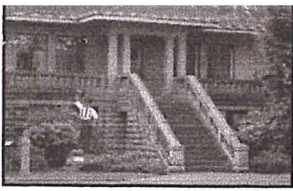
RECEIVED

JUN 26 2019

Please return completed form and any additional information to:

City of Tenino – Attn: City Clerk, 149 South Hodgden St., P.O. Box 4019, Tenino, WA 98589
For more information please call (360) 264-2368

CITY OF TENINO



CITY OF TENINO

City Commission Vacancy Application

(Please type or print clearly)

RECEIVED

JUN 04 2019

CITY OF TENINO

Name as
registered:

Donna Wilson

Physical
Address:

118 McAuley Apt 112

Mailing
Address:

SAME

Home Phone: 360819-5172 Cell Phone: _____

Email Address: _____

How long at Residence:

19 years

Best time to
contact:

Anytime

Personal Information (optional):

List any prior experience as an elected official:

COUNCIL PERSON AIRWAY HEIGHTS
WASHINGTON

List any applicable work experience:

NONE

List any applicable experience working with budgets:

AS A COUNCIL PERSON I HELPED
OVERSEE A BUDGET FOR AIRWAY HEIGHTS

Please list three (3) references:

Name: LESLIE LAMB

Address: 118 MCARTHUR ST N #1 TENINO WA.

Contact Number: 360 264 7757

Name: DEE SAMPLEY

Address: 118 MCARTHUR ST N #6 TENINO WA.

Contact Number: 360 264 4110

Name: Doris Wain

Address: 118 MCARTHUR APT 5

Contact Number: _____

Council members make recommendations and decisions that affect the entire community.

- 1.) Do you foresee possible conflicts of interest with any of your current employment or civic positions? ☐ Yes (Please explain on back) ☒ No
- 2.) When making recommendations and decisions do you feel you could be impartial and base your decision on the overall need and benefit of the Community? ☒ Yes ☐ No (Please explain on back)
- 3.) Are there any days or evenings you are unavailable to meet? ☐ Yes (Please explain on back) ☒ No

Signature: Dorinda Wilson

Date: 7-6-200

Please return completed form and any additional information to:
City of Tenino – Attn: City Clerk, 149 Hodgden St South, P.O. Box 4019, Tenino, WA 98589
For more information please call (360) 264-2368

Item Attachment Documents:

3. The City implemented an electronic meeting management system designed to standardize the preparation of the agendas, packets, and minutes of each of the City's Councils, Commissions, and Committees. Acting Secretary Millard will demonstrate how this system works and what the potential advantages and disadvantages are to the Civil Service Commission.

CITY OF TENINO AGENDA MANAGEMENT POLICY

Purpose: The purpose of this policy is to establish the procedures for the development and management of the agendas and agenda packets for the Tenino City Council, the Tenino Planning Commission, the Tenino Civil Service Commission, and the ARCH Commission.

Section 1. Definitions: As used in this Resolution, the following words or terms shall have the meaning indicated, below:

1. Action: The transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.
2. Business Session: The period of time during which the City Council or any of the City's Commissions or Committee's, sitting as a body, deliberates upon the issues before it using the rules of procedure adopted for such purposes and during which final action may be taken.
3. Clerk/Treasurer. As used in this Policy, the term "Clerk/Treasurer" shall be understood to include her or his designated representative.
4. Deliberative Body: As used in this Policy, the term "Deliberative Body" shall be understood to include the individual members of the City Council, the Planning Commission, the ARCH Commission, or any of the City's standing Committees.
5. Final Action: A collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.
6. Presentation: The practice of showing and explaining, by a person or persons who are not a part of the City's organizational structure, through the use of words, pictures, video, charts, graphs, or other visual aids, the content of a topic to the City Council for the purpose of informing, persuading, motivating, building good will, or to obtain a decision.
7. Public Comment Period. The purpose for this agenda item is to allow members of the public to voice their concerns, make recommendations, or to ask the Council to consider placing their concerns before the Council as an agenda item in a future meeting. The Public Comment Period is not intended to be a forum in which to engage the Council, or any particular member, in debate or to gain any decision other than agreement to place an item on a future agenda.
8. Secretary: As used in this Policy, the terms "Secretary" shall be understood to include his or her designated representative.

9. Work Session: A period of time during which the emphasis is placed on the understanding of the issue under discussion. In a work session, the rules of order are relaxed in order to facilitate a “back and forth” conversation between the individual members of the City Council, Commissions, or Committees and the sponsor of the item under discussion. No final action may be taken during a work session.

Section 2. General Guiding Principles. Agenda preparation is part science, and part art. Those responsible for agenda preparation and management must reflect upon all the written guidance available in the Municipal Code, the RCW's, this Policy, and materials providing during training and at the applicable conferences and conventions related to the management of Governing Bodies and work with all stakeholders to set the stage for smooth, productive meetings wherein all interested parties are heard and their input is considered in order that Councilmembers, Commission Members, or Committee Members may deliberate with full knowledge of the issues and thereby be more apt to arrive at the best decision for the City of Tenino under the circumstances. To this end, the following guiding principles are provided:

1. Work Session Length. Work sessions should be timed so as to start no earlier than required in order to end precisely one (1) minute prior to the Business Session. No work session shall be scheduled prior to one (1) hour prior to the start of the Business Session.
2. Overall Meeting Length. Every effort should be made to keep the average meeting length to no more than 2½ hours (including the work session, if any).
3. Agenda Approval. The Deliberative Body shall vote to approve the agenda either as presented by the Administration or may modify the proposed agenda as outlined in TMC 2.04.080. Agendas so modified shall be noted only within the meeting minutes (no retroactive attempt to modify a published agenda shall be made.)
4. Time limits.
 - a. Presentations. Every effort should be made to limit Presentations to no more than 20 minutes, plus 10 minutes for questions and answers. No more than two (2) presentations shall be scheduled during any one meeting.
 - b. Reports. With 28 separate report possibilities, every effort should be made to limit Reports to no more than three (3) minutes each.
 - c. Old or New Business. The length of time required for any item of old or new business will be directly proportional to how well the Deliberative Body has been prepared to consider the item. Accordingly, the standard

adopted by the City is that complex items shall always first appear as a “Work Session” topic. A judgement may then be made whether the topic should be tabled for a future meeting, or meetings, or whether the Deliberative Body should modify the Agenda during the Business Session in order to take “final action” the same day. During agenda preparation, if the staff is highly confident the Deliberative Body will be fully prepared to take final action the same day as the work session wherein the topic is to be considered, the Clerk/Treasurer or Secretary may schedule the item under “old” or “new” business for final action during the same meeting.

- d. Final Action. It is the desire of the Administration that no “final action” be requested of any Deliberative Body until that body has had adequate time to deliberate on the issue. No amount of science can help here; this is pure art. When attempting to schedule an agenda item where final action is the desired result, the Clerk/Treasurer or Secretary must rely on his or her innate sensibilities the result of working with a particular Deliberative Body, staff, and supporting agencies over time, the topic at hand, the Body’s knowledge of that topic, and how many other things are on the same agenda. What can fairly be said of this dilemma is that it is far easier to pass on an existing agenda item than it is to add the item “in stride” using the procedure in TMC 2.04.080.

Section 3. Submitting Agenda Items. Agenda items may be submitted by the following categories of people and in the manner specified:

1. Elected City Officials. Any elected official may direct the addition of agenda items at any time up until 36 hours in advance of any particular meeting. A member of a Deliberative Body may direct the inclusion by personal contact, telephone, or email. The Clerk/Treasurer or Secretary shall immediately coordinate the additional agenda item with the Mayor. If the addition of the item would, in the mayor’s opinion, cause the total meeting length to exceed 2½ hours, the Mayor shall coordinate with the member of the Deliberative Body to determine if the meeting length should be exceeded, or whether the item should be scheduled for the next meeting, or whether an existing agenda item should be pre-empted and re-scheduled. In the event it is the Mayor who wishes an additional agenda item be added at the last minute, he or she will coordinate with the individual Members of the Deliberative Body as outlined, above, and then indicate to the Clerk/Treasurer or Secretary whether the item shall be appended to the existing agenda, or will replace an existing agenda item and in what meeting the replaced item shall be scheduled.
2. Appointed City Officials. Any appointed official may request the addition of agenda items at any time up until 96 hours in advance of any regular meeting. The Clerk/Treasurer or Secretary shall process any such request in the same manner as in the preceding paragraph.

3. City Staff or Commission/Committee Members. Any member of the City Staff, or any member of a City Commission or Committee may request the addition of agenda items at any time up until 96 hours in advance of any regular meeting. The Clerk/Treasurer or Secretary shall decide which date such item shall be scheduled. In the event the requesting official wishes an earlier date, the requesting official shall contact the Mayor and the Mayor will inform the Clerk/Treasurer or Secretary of the date decided upon.
4. Outside Agencies or Liaisons. Any outside agency or liaison with whom the City has a contractual relation may request the addition of agenda items at any time up until 96 hours in advance of any regular meeting. The Clerk/Treasurer or Secretary shall decide which date such item shall be scheduled. In the event the requesting official wishes an earlier date, the requesting official shall contact the Mayor and the Mayor will inform the Clerk/Treasurer or Secretary of the date decided upon.
5. Members of the Public.
 - a. Public Comment Period. Members of the general public have at least one opportunity at every regular meeting of any of the City's Deliberative Bodies to speak on any topic they wish for up to three (3) minutes; these opportunities require no prior coordination.
 - b. Presentations. Any member of the Public may request to be included on the agenda as a Presenter. Any such request must be submitted a minimum of two (2) weeks in advance of the requested meeting date and must be accompanied by any materials the requester wishes to present. The Mayor shall evaluate the request, including the materials to be presented and will, at his or her sole discretion, decide whether the item will be included on an agenda and will direct the Clerk/Treasurer or Secretary as to which agenda the Presentation will be included.

Section 4. Agenda Formats.

1. Regular City Council Meetings. The agenda for a Regular Meeting shall include:
 - a. Work Session. (If required or desired).
 - b. Call to order. This portion shall include roll call and the Flag Salute.
 - c. Agenda Approval.
 - d. Approval of Minutes. This item will include the minutes of the immediately preceding regular meeting and the minutes of any special meeting conducted between regular meetings.

- e. Consent Calendar. This item shall always include vouchers and EFT's (beginning with those issued the day after the immediately preceding regular meeting through the day of the current meeting) and any Liquor and/or Cannabis license applications or renewals received since the immediately preceding regular meeting.
- f. Executive Session.
- g. Presentations.
- h. Public Comment Period #1.
- i. Public Hearing(s).
- j. Proclamations.
- k. Old Business.
- l. New Business. A topic being considered for adoption as an Ordinance should first arise as new business.
- m. Resolutions.
- n. Ordinances. This section shall be understood to include only those Ordinances that are receiving a second reading with the intent of being adopted.
- o. Reports. Reports shall be divided into four categories and the members of all four categories shall always have the option of addressing the City Council during the reports period.
 - i. Outside agencies:
 - 1. Tenino Chamber of Commerce (The Chamber).
 - 2. Thurston Economic Development Council (EDC).
 - 3. Experience Olympia & Beyond (VCB).
 - 4. Fire District #12 (STFEMS)
 - 5. Tenino Branch, Timberland Regional Library (Library)
 - 6. Tenino Depot Museum (South Thurston County Historical Society, or STCHS)
 - ii. Commissions & Committees:
 - 1. Civil Service Commission
 - 2. Park Commission
 - 3. Planning Commission

4. Façade Improvement Grant Review Committee
5. Finance Committee
6. Public Safety Committee

iii. City Staff:

1. Building Official
2. City Attorney
3. City Historian
4. City Planner
5. Chief of Police
6. Director of Public Works
7. Clerk/Treasurer
8. Mayor

iv. Liaisons:

1. Bucoda/Tenino Healthy Action Team (BTHAT)
2. Community Investment Partnership (CIP)
3. Solid Waste Advisory Board
4. TCOMM/911
5. Tenino School Board
6. Thurston Regional Planning Council (TRPC)
7. South Thurston Economic Development Initiative (STEDI)
8. Transportation Policy Board.

p. Public Comment Period #2.

q. Announcements.

r. Adjournment.

2. Planning Commission Meetings.

a. Call to order. This portion shall include roll call and the Flag Salute.

b. Housekeeping. This portion shall include

i. Agenda approval

ii. Approval of minutes. This item will include the minutes of any preceding regular meeting and the minutes of any special meeting conducted between regular meetings.

c. Public Comment.

- d. Reports.
 - e. Public Hearings.
 - f. Unfinished Business. Annual work plan items are considered unfinished business.
 - g. New Business. Presentations are considered new business.
 - h. Adjournment
3. Civil Service Commission Meetings.
- a. Call to order. This portion shall include roll call and the Flag Salute.
 - b. Housekeeping. This portion shall include agenda approval and the approval of minutes from previous meetings, including special meetings.
 - c. Public Comment.
 - d. Unfinished Business.
 - e. New Business.
 - f. Adjournment
4. Arts, Recreation, Culture, and History (ARCH) Commission. (TBP)
5. Special Meetings. The agenda for any Special Meeting shall only include:
- a. Call to order. This portion shall include roll call and the Flag Salute.
 - b. Purpose of the Meeting: By statute, only the business specified on the Notice of Special Meeting may be transacted at a special meeting. There may be as many agenda items as appeared in the notice and all action items must be clearly identified. No additions to the agenda may be made during a special meeting.
 - c. Adjournment.

Wayne Fournier, Mayor

