



CITY OF CHARLESTON WEST VIRGINIA



Council Member – Ward 5

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Ordinance and Rules Committee, Chair
Parks and Recreation Committee

TO: Ordinance and Rules Committee
FROM: Jeanine Faegre, Chair
RE: Committee Meeting

A meeting of the Council Committee on Ordinance & Rules will be held on Thursday, February 13, 2020. The meeting will begin promptly at 5:30 PM in the AV Room, 3rd Floor of City Hall.

Agenda

Approval of Previous Minutes

1. 10-16-2019

Resolutions

1. Resolution No. 291-20 - Authorizing amendments to the Charleston Fire Civil Service Rules, which were approved by the Charleston Fire Civil Service Commission

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JF/ns

MINUTES

ORDINANCE AND RULES COMMITTEE MEETING

5:30 P. M., OCTOBER 16, 2019

COUNCIL CHAMBERS

Jeanine Faegre, Chairperson, called the meeting of the Charleston City Council Committee on Ordinance and Rules to order at 5:30p.m., OCTOBER 16, 2019, in Council Chambers in City Hall.

Committee Members Present:

Jeanine Faegre, Chair
Caitlin Cook
Chuck Overstreet
Keeley Steele

1. Approval of Previous Minutes – Councilmember Steele moved to approve the minutes of the previous meeting on 7-15-2019. Councilmember Cook seconded. There was no objection and the minutes were approved.

2. Bill No. 7843 –

Councilmember Faegre introduced City Attorney, Kevin Baker, who stated that the bill came from the recommendation of the Charleston Police Department that the current requirement that business owners have their alarms registered with the City is unnecessary. The CPD no longer needs to call an outside registry to get contact information when an alarm is triggered. The proposed bill eliminates the requirements for registering an alarm. With respect to false alarms, the limit is changed to no more than 2 in a 3-month period.

Councilmember Steele confirmed with Deputy Chief, Paul Perdue, that this has been an ongoing issue.

Councilmember Overstreet confirmed that false alarms are concerned with mechanical malfunctions.

Councilmember Cook confirmed that the bill does not pertain to residences.

With no further discussion, Councilmember Cook made a motion to approve the bill. Councilmember Overstreet seconded. With the ayes being in the majority, Bill No. 7843 was approved.

3. Bill No. 7844 Committee Substitute –

Baker explained that the proposed bill establishes a fund (not part of the General Revenue). It clarifies that the quarterly reports due to City Council will be due 30 days after the end of the fiscal quarter, as well as a new requirement of an Annual Report that details the direct economic impact, financial summaries, etc. for the previous 5 fiscal years. It also requires that the rates be posted on the Convention Center's website. The bill also gives the Mayor authority to request a nation-wide search for a General Manager, to set a timeline for the search and to require the Board to submit between 3-7 recommendations. The Mayor will make the appointment and set the compensation with advice and consent of Council, as well as removal authority. The Committee Substitute adds language that says the removal authority is "subject to any employment contract approved by the board and authorized by resolution of council." Additionally, it clarifies that the Board has authority to appoint an interim General Manager until the Mayor makes the appointment.

Councilmember Cook confirmed with Baker that currently, the General Manager is hired by and reports to the Board.

From the audience, Councilmember Pharr stated that Council does not currently have a lot of say as to what happens to the Convention Center. As Chair of the Facilities Committee, she supports the bill.

With no further discussion, Councilmember Overstreet made a motion to approve the bill. Councilmember Cook seconded. With the ayes being in the majority, Bill No. 7844 Committee Substitute was approved.

4. Bill No. 7845 –

Baker added that the bill codifies what the current Parking Director is practicing. Anyone who has a dispute over a parking ticket can do so informally with the Parking Director, who will make a determination. If unsatisfactory, the person can make an appeal with the Municipal Court. The goal is to potentially decrease the volume of appeals for the Court, and to give the public an easier option to dispute their tickets. The bill also changes some terminology.

With no further discussion, Councilmember Steele made a motion to approve the bill. Councilmember Overstreet seconded. With the ayes being in the majority, Bill No. 7845 was approved

Councilmember Cook motioned to adjourn the meeting. Councilmember Overstreet seconded. Meeting adjourned.

Bill No. 7843 - A BILL to amend and reenact Section 46-1 of the Municipal Code of the City of Charleston, as amended, relating to updating requirements for alarm systems; removing the requirement that alarm systems be registered; and updating when false alarms become a violation that subjects the owner to a fine; and increasing the fine amount.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Section 46-1 of the Municipal Code of the City of Charleston, as amended, be amended and reenacted to read as follows:

Chapter 46 - EMERGENCY SERVICES

Sec. 46-1. – Alarm systems.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alarm system means equipment designed to signal an illegal entry or other activity to which the police department is requested to respond by silent or audible alarm, but does not include an automobile alarm.

Alarm user means any person whose business premises are protected by an alarm system within the city.

False alarm means an alarm not resulting from an unauthorized entry, robbery or where no other crime was committed or attempted at the premises. An alarm caused by power failure shall be deemed a false alarm if the power outage lasts longer than the alarm system's battery backup. A false alarm does not include an alarm that activates during violent weather.

Reporting period means each 12-month period following a false alarm for an alarm user. ~~described in the first sentence of subsection (c) of this section.~~

~~(b) *Alarm system registration.*~~

~~(1) An alarm user shall register its alarm system with the city by completing a registration application prepared by the police department for such purpose in accordance with this section, and filing such application with the police department. Registration shall be free and must be renewed annually on or by July 1. An alarm user who fails to register an alarm system after receipt of three written notices from the police department of the obligation to do so shall thereafter be subject to a fine of \$100.00 on each occasion on which such alarm system records a false alarm and remains unregistered.~~

~~(2) The registration application shall provide the police department with a record of the company or firm that installed the alarm system, the names and telephone numbers of contact people (key holders) to call when an alarm is activated, and information concerning the maintenance and inspection of the alarm system. The registration application shall also confirm whether the alarm system includes an audible alarm (siren, etc.) and, if so, whether such alarm system has an automatic 15-minute shutoff switch. No registration pertaining to an alarm system having an audible alarm~~

~~shall be deemed completed unless it confirms that such system also has an automatic shutoff switch as set forth in this section. The alarm user shall notify the police department of any changes in any information set forth in an application within 30 days of each such change. Failure to notify the police department of such changes shall result in a \$100.00 fine.~~

~~(c) False alarms; penalties.~~

~~(1) The police department shall maintain records regarding false alarms. for each alarm system for consecutive 12 month periods initially beginning on the date the alarm system is registered. If an alarm user has a false alarm, the police department shall notify the alarm user that continued false alarms during the reporting period will result in a fine consistent with this section. The notice may be made orally or in writing and failure to provide the notice is not a defense to a violation of this section.~~

~~(2) After an alarm system is registered, the An alarm user owning such an alarm system, upon conviction following the filing of a complaint in municipal court, shall be fined \$100.00 \$500.00 upon the occurrence of the sixth false alarm recorded by such alarm system three or more false alarms in any three month period during any reporting period, and for each false alarm occurring thereafter during the same reporting period.~~

Committee Substitute for Bill No. 7844 - A BILL to amend and reenact Chapter 2, Article VII, Sections 2-553, 2-554, 2-555, and 2-556 of the Code of the City of Charleston, as amended, relating to providing authority for the mayor to appoint a general manager of the Charleston Coliseum and Convention Center and Auditorium; authorizing the general manager to employ necessary employees within the budget approved by Council; clarifying financial and purchasing requirements; requiring an annual report and detailing its contents; and requiring rates to be posted on the Charleston Coliseum and Convention Center website.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Chapter 2, Article VII, Sections 2-553, 2-554, 2-555, and 2-556 of the Code of the City of Charleston be amended and reenacted to read as follows:

Sec. 2-553. – Powers and duties.

(a) The Charleston Coliseum and Convention Center/Municipal Auditorium Board shall have power, authority, and duty to supervise, administer, operate, and maintain the municipal civic, cultural, and educational center of the city, located on Civic Center Drive, commonly called the “Charleston Coliseum and Convention Center,” and the Municipal Auditorium, located on Virginia and Truslow streets, commonly called the “Auditorium;” to prepare, make, adopt, prescribe, and promulgate instructions, procedures, rules, and regulations appropriate for the management of the Charleston Coliseum and Convention Center and the Auditorium; to provide for the safeguarding of and accountability for all funds derived from and in connection with the operation of the Charleston Coliseum and Convention Center and Auditorium; and to determine, prescribe and collect all charges, fees, and revenue of any kind due to the city for the use of the Charleston Coliseum and Convention Center and Auditorium. However, any schedule of fees, rates, or charges shall be first approved by the city council before being put into effect.

(b) The board shall not allow the property under its control to be used for or in connection with any program or purpose that is prohibited by law or resolution of council.

(c) If a vacancy occurs in the position of general manager, the board may appoint an interim general manager until the mayor makes an appointment pursuant to this subsection. Upon the request of the mayor, the board shall initiate a nationwide search for a new general manager and, upon conclusion of the search and pursuant to the timeline set by the mayor, provide no less than three and no more than seven recommendations to the mayor to fill the general manager position. The mayor shall appoint a general manager, by and with the advice and consent of the council, who shall work with the board to execute a vision for the Charleston Coliseum and Convention Center and Auditorium. The mayor shall fix the compensation of the general manager, subject to council approval, and have the full and complete power of removal of the general manager, subject to any employment contract approved by the board and authorized by resolution of council. The board general manager shall have the authority to employ a manager and such other employees as are necessary properly to

effectively operate the Charleston Coliseum and Convention Center and Auditorium and, subject to approval of the council, to fix the compensation of such employees consistent with the budget approved by council.

Sec. 2-554. - Finances.

All revenue derived from the use and operation of the Charleston Coliseum and Convention Center and the Auditorium shall be paid into the city treasury, general fund in a special fund dedicated to the Charleston Coliseum and Convention Center and the Auditorium. and all All connected expenditures from the special fund shall be requisitioned and accounted for in the same manner as other general fund expenditures, and pursuant to all of the purchasing requirements of Article IV of this chapter.

Sec. 2-555. – Annual and Quarterly reports to city council.

The Charleston Coliseum and Convention Center/Municipal Auditorium Board shall make a written annual report to the city council detailing the economic impact attributable to the Coliseum and Convention Center and the Auditorium. The annual report shall include, at a minimum, the following information: (1) the number of events, unique attendees, total hotel room nights, and a summary of the direct economic impact figures for the preceding fiscal year, (2) an operations breakdown summarizing food and beverage, community impact, and sustainability efforts, and (3) financial summaries for the previous five fiscal years.

The Charleston Coliseum and Convention Center/Municipal Auditorium Board shall make a quarterly written report to the city council of its operating expenses and finances, quarterly due within 30 days of the end of each fiscal quarter.

Sec. 2-556. – Schedule of rates, rentals and other charges for use of services and facilities.

(a) A true copy of the schedule of fees, rates and charges for the use of the Charleston Coliseum and Convention Center and the Auditorium, as approved by the city council pursuant to the provisions of section 2-553, shall be maintained on file in the office of the Charleston Coliseum and Convention Center/Municipal Auditorium Board or the general manager of the Charleston Coliseum and Convention Center and Auditorium and on the Charleston Coliseum and Convention Center's website.

(b) All fees, rates and charges for the use of the Charleston Coliseum and Convention Center and the Auditorium established or approved by the city council and in effect immediately prior to the effective date of this Code are continued in full force and effect until such time as new fees, rates and charges are determined, prescribed and approved pursuant to the provisions of section 2-553, as set forth in Chapter 82, Article 1, Section 82-4, Schedule of Rates and Rentals.

Bill No. 7845 - A BILL to amend and reenact Section 114-90 of the Municipal Code of the City of Charleston, as amended, relating to formalizing a dispute process for parking citations with the Director of Parking; and detailing the appeal process from the decision of the Director of Parking.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Section 114-90 of the Municipal Code of the City of Charleston, as amended, be amended and reenacted to read as follows:

Sec. 114-90. - Parking citation as prima facie evidence of offense; process to pay or contest parking citations.

(a) Issuance of a parking citation to an alleged violator of the provisions of this chapter shall be deemed to be prima facie evidence of the parking violation indicated on the face of the parking citation. As such, any person who is issued a parking citation must pay the fine indicated for the violation, as set forth in City Code subsection 114-3(c), in full to the cashier for the parking system within ten days of issuance; provided, however, that any person who feels he or she was improperly issued such parking citation may, within the ten days from issuance, ~~file a motion to contest the parking citation along with the required bond with the municipal court clerk~~ file a dispute with the Director of Parking. The Director of Parking shall review the dispute and make an independent determination regarding the citation. The Parking System shall communicate the decision of the Director of Parking to the alleged violator and notify the alleged violator that they may appeal the decision to the municipal court within ten days in accordance with the following:

(1) Prior to filing any ~~motion to contest~~ appeal of the decision of the Director of Parking, the alleged violator ~~must~~ shall pay the required amount of the fine in full to the cashier for the parking system, which amount will be held by the parking system City Collector or on the City's online payment website as bond pending evidentiary hearing before and resolution of the case by the municipal court. ~~the cashier~~ The City Collector must issue a receipt to the alleged violator showing the amount of the bond paid. Thereafter, in order to properly and timely ~~contest~~ appeal the decision of the Director of Parking regarding his or her citation, the alleged violator must file a copy of the bond receipt along with his or her ~~motion to contest~~ appeal of the decision of the Director of Parking with the municipal court clerk within ten days of issuance of the decision of the Director of Parking citation as set forth above. If any ~~motion to contest~~ appeal filed in accordance with this section is not timely filed or is not accompanied with the required receipt showing payment of the required bond, the alleged violator shall be deemed to have waived his or her right to contest the citation, and such ~~motion~~ appeal shall be summarily denied as untimely filed; provided, however, that nothing set forth hereinabove shall prevent the municipal court judge from finding upon proper showing that an alleged violator suffers from financial hardship, and, as a result, waiving the requirement that the bond be posted as a prerequisite to filing a ~~motion to contest~~ an appeal.

(2) Any ~~motion to contest~~ appeal filed with the municipal court clerk must be in writing, on the form to be provided by the municipal court clerk, and must be signed by the alleged violator affirming that the contents of the ~~motion~~ appeal are true and accurate to the best of the alleged violator's knowledge at that time. Such ~~motion to contest~~ appeal must state the facts and reasons in support of the ~~motion~~ alleged violator's position. Upon filing any such ~~motion to contest~~ appeal with the municipal court clerk, the alleged violator must serve a copy of the ~~motion~~ appeal and receipt showing proof of bond upon the city attorney.

(b) Upon filing of a ~~motion to contest an appeal~~ of the Director of Parking's decision with the municipal court clerk, the clerk or his or her designee shall place the case on the municipal court docket, set the case for evidentiary hearing, and provide a notice of hearing to the alleged violator, city attorney, and Director of Parking. ~~and The municipal court clerk shall forward a copy of the motion appeal to the parking system director city attorney and the Director of Parking.~~ Upon receipt of the ~~motion~~, ~~the parking system director appeal~~, the Director of Parking shall cause a copy of the parking citation at issue to be forwarded to the municipal court clerk who shall file it as the original complaint alleging the violation indicated therein and forward a copy to the city attorney. Further, if the alleged violator alleges as his or her reason for contesting that he or she is reporting a defective parking meter, then the ~~parking system director~~ Director of Parking shall cause an inspection of the meter to be made and a report to be generated setting forth the findings of the inspection, a copy of which will be forwarded to the municipal court clerk to be placed in the court file along with the motion to contest ~~and to the city attorney~~; if the meter is found defective, the appeal will be granted and the parking citation shall be dismissed.

(c) The municipal court shall treat the parking citation itself as the original complaint before the court, and shall treat it as prima facie evidence of the parking violation alleged therein. As such, the alleged violator will bear the burden of overcoming the prima facie case at the evidentiary hearing. At the close of all of the evidence, should the municipal judge find against the alleged violator, the bond posted by the alleged violator will be applied as payment for the fine indicated for the violation; ~~and the court may assess against the alleged violator appropriate court costs in an amount equal to the court costs generally assessed for any other violation of this chapter; however, should the court find in favor of the alleged violator, the bond shall be refunded to the alleged violator. by the municipal court clerk, and no court costs will be assessed.~~

(d) In any instance in which a an alleged violator does not timely pay, within ten days of the issuance of a parking citation upon him or her or ten days after the decision of the Director of Parking (if applicable), the full amount of the fine set by City Code subsection 114-3(c) at the increased amount for the alleged offense described in the parking citation becomes due. ~~or If the alleged violator properly and timely file a motion to contest files an appeal~~ along with the required bond, then the amount of the fine shall automatically remain at the original amount until ten days after the decision by the

municipal court, at which point the amount due will increase to the amount set forth in subsection 114-3(c) as a penalty for late payment.

Resolution No. 291-20

Introduced in Council:

February 18, 2020

Introduced by:

Jeanine Faegre

Adopted by Council:

Referred to:

Rules and Ordinances

1 Resolution No. 291-20 - Authorizing amendments to the Charleston Fire Civil Service
2 Rules, which were approved by the Charleston Fire Civil Service Commission and are
3 attached hereto as Exhibit A.

4

5 Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:
6 That the amendments to the Charleston Fire Civil Service Rules, attached hereto as
7 Exhibit A, which were approved by the Charleston Fire Civil Service Commission are
8 hereby approved by the Charleston City Council and Mayor.

9

**REGULATIONS OF
THE FIREMEN'S CIVIL SERVICE COMMISSION
OF
THE CITY OF CHARLESTON, WEST VIRGINIA**

**Approved on January 16, 2020
By its Commissioners**

**Eric Kinder, President
Paul Harrison, Commissioner
Ben Thomas, Commissioner**

Submitted to Charleston City Council

February 4, 2020

**REGULATIONS OF
THE FIREMEN'S CIVIL SERVICE COMMISSION OF
THE CITY OF CHARLESTON, WEST VIRGINIA**

PART I - GENERAL

1.01 Authority of Promulgation.

The Rules and Regulations contained herein are promulgated pursuant to the authority vested in the Firemen's Civil Service Commission of the City of Charleston, West Virginia by West Virginia Code §8-15-15 as it may be amended from time to time.

1.02 Effective Date.

The Rules and Regulations contained herein become effective after they have been approved by the Mayor and City Council of the City of Charleston or after the passage of twenty (20) days from the date of submission of these Rules and Regulations to said Mayor and City Council, whichever date is sooner.

1.03 Distribution of Copies.

Copies of these Rules and Regulations, as adopted by the Mayor and the City Council, shall be distributed in printed form to the Mayor, the City Clerk, the Fire Chief and each current and later appointed member of the Fire Department within a reasonable time after they become effective, at the expense of the City of Charleston. Additional copies may be obtained from the City Clerk.

1.04 Amendments.

Amendments to these Rules and Regulations may be adopted from time to time by the Commission and shall become effective on the date of their approval by the Mayor and the City Council or twenty (20) days after their submission to said Mayor and City Council, whichever date is sooner. Copies of amendments to these Rules and Regulations shall be provided to each member of the Fire Department and shall be posted in a conspicuous place at the Charleston City Hall, at each Fire Station, and at such other places as the Commission may direct.

1.05 Severability

If any provision of these Rules and Regulations or its application to any person or circumstance is determined to be unconstitutional, in conflict with State or Federal law or is otherwise invalid, such unconstitutionality conflict or invalidity shall not affect other provisions or application of these Regulations. And, to this end, the provisions of these Regulations will be interpreted to comply with law where possible, and when not possible, those provisions shall be held void and severable.

PART II - DEFINITIONS

2.01 As used in these Regulations, the term or phrase:

(a) "Appointing Officer" means the Mayor of the City of Charleston, West Virginia.

(b) "Appointment" or "Conditional Appointment" means the process whereby vacancies not filled by promotion, reinstatement, reduction or non-competitive examination (provisional appointment) are filled by persons making an original entry into the Department.

(c) "Code of West Virginia" or "The Code" means the Code of West Virginia of 1931, as amended.

(d) “Commission” or “Firemen’s Civil Service Commission” means the Fire Civil Service Commission of the City of Charleston, West Virginia, duly constituted and appointed pursuant to the provisions of West Virginia Code § 8-15-12.

(e) Except where reference is made to “Members” of the Commission, “Member” or “Member of the paid Fire Department” means and includes any person employed by the Fire Department of the City of Charleston. “Member” does not include civilian employees of the Fire Department.

(f) “Promotion” means advancement in rank and base pay. The term “Promotion”, in the discretion of the Commission, may also mean a raise in base pay not shared by other members of the same rank.

(g) “Removing officer” means the Fire Chief of the City of Charleston.

(h) “Suspension, Discharge, Removal, or Reduction in Rank or Pay” means any final disciplinary action which results in suspension from duty without pay, removal from office, discharge, or reduction in the rate of pay, regardless of the time period involved.

(i) “The Department” or “The Fire Department” means the Fire Department of the City of Charleston.

(j) “Hearing Board” means the Fire Department’s Conduct Review Hearing Board established pursuant to West Virginia Code §8-14A-1(4)(a).

(k) “Punitive Action” means any action which results in the termination of employment, demotion or reduction in rank, suspension from duty without pay, reduction in salary, written reprimand or transfer for purposes of punishment. Administrative leave for investigative or other official purposes does not constitute punitive action and is not appealable to the Commission.

(l) “Transfer for Purposes of Punishment” means an involuntary transfer from one assignment to another assignment as a result of a complaint against the member, as punishment, or an involuntary transfer for reasons other than economy, administrative efficiency, competence, training or managerial discretion. An affected Member shall have the initial burden of establishing that any contested transfer is for punitive purposes. If so established, the City will have the ultimate burden of establishing good cause for the transfer.

(m) “Business day” means days when City Hall is open for the general transaction of public business.

PART III - FIREMEN'S CIVIL SERVICE COMMISSION

3.01 Organization of the Commission.

(a) Membership - The Commission shall consist of three members, whose appointment and removal shall be in accordance with the provisions of West Virginia Code § 8-15-12.

(1) Continuation in office. Any Commissioner duly appointed for a full term or to fill an unexpired term of office will continue in office as Commissioner from term to term unless that Commissioner’s appointing authority (whether the Mayor, the Local International Association of Fire Fighters or the Chamber of Commerce) elects to replace the Commissioner by making a new appointment at any time after the expiration of any appointed term of office.

(2) Temporary absence - Recusal. In the event that an Commissioner is temporarily unable to fulfill his duties for reasons including, but not limited to, military

service, medical necessity or recusal from an issue or case, that Commissioner's appointing authority shall designate a temporary replacement Commissioner to act in the stead of its appointed Commissioner for that case or issue or for the term of the absence or disability.

(b) President; Vice President -

(1) At the first regularly scheduled meeting after the first day of January, each year, the three (3) members of the Commission shall elect one of their number to serve as President of the Commission and one of their number to serve as Vice President of the Commission. The term of each shall be one (1) year from the date of election.

(2) It shall be the duty of the President of the Commission to preside over meetings of the Commission and to generally act as spokesman for the Commission. The President shall also cause a complete record of Commission actions and activities to be kept.

(3) It shall be the duty of the Vice President of the Commission to perform the duties of the President in the event of the President's absence from a meeting, or in the event of the President's death, resignation from the Commission or other permanent incapacity, until such time as a new member is appointed to the Commission and a new president is elected.

(4) In the event of the death, resignation or other incapacity of the President of the Commission, a new President shall be elected in the manner provided for above immediately following the appointment of a new member of the Commission.

(c) Quorum -

Except as hereinafter provided, two (2) members of the Commission shall constitute a quorum for the transaction of business.

(d) Meetings -

The Commission shall meet at the call of the President or any Commissioner.

(e) Records to be Kept by the City Clerk - The City Clerk of the City of Charleston shall be *ex officio* Clerk of the Commission and shall supply to the Commission, without extra compensation, such clerical and stenographic services as may be required by the Commission. The City Clerk shall cause minutes of Commission proceedings, records of examinations, recommendations of applicants received by the Commission or any other person entitled to receive such information, and any other records of the Commission's official acts to be kept as official records of the Commission. All such records shall be kept by the Commission for a period of ten (10) years. With the exception of personnel files, disciplinary proceeding records, recommendations of former employers, psychiatric examination reports, financial information and other personal information deemed by the Commission to be of a confidential nature, all such records shall, subject to reasonable regulation, be open to public inspection.

3.02 Commission Purposes -

The purposes of the Commission shall be:

(a) To provide for employment security for the members of the paid fire department of the City of Charleston by protecting said members from vicissitudes which may be present in the absence of the Civil Service statutes, and

(b) To provide for a complete, all-inclusive and non-discriminatory system for the appointment, promotion, reduction, and reinstatement of members of the Charleston Fire Department, and

(c) To provide for a fair and impartial appeal of disciplinary action taken against any member and for any appeal from a Conduct Review Board established pursuant to West Virginia Code §8-14A-5; and

(c) To provide for an efficient, professional and competent Fire Department to serve the City of Charleston.

3.03 Liberal Construction.

These Regulations shall be liberally constructed to accomplish the objectives and purposes of the Commission.

3.04 Powers and Duties of the Commission.

(a) The Commission shall provide for the implementation of the purposes of the Commission, and, in connection therewith the Commission:

(1) may make investigation, as a body or through a single Commissioner, concerning all matters touching the Commission, and in connection therewith administer oaths and affirmations and take testimony; and

(2) shall hold such hearings as may be required by law or such hearings as it may, in its discretion determine to be necessary, in accordance with these rules and regulations; and

(3) shall have the power to subpoena and require the attendance of witnesses, and the production of books and papers, in accordance with the provisions of West Virginia Code §8-15-15(4); and

(4) shall have the powers to employ legal counsel and other professional services, at City expense, to assist the Commission in its duties; and

(5) shall have the power to initiate legal action in furtherance of the purposes of the Commission; and

(6) shall have all powers expressed in the Code or these Regulations and such other powers as may be fairly implied therefrom.

Part IV Hiring Regulations

HIRING REGULATIONS FOR THE CHARLESTON FIRE DEPARTMENT

4.01 Application of this part.

Vacancies not filled by reinstatement or non-competitive examination (provisional appointment), shall be filled in accordance with the provisions of this part.

4.02 Commission to be notified by Appointing Officer.

The Appointing Officer shall notify the Commission of any vacancy which he desires to fill by appointment. In conjunction with such notification, the Appointing Officer shall request that the names of three persons eligible for appointment be certified to him by the Commission.

4.03 Procedure upon receipt of request from Appointing Officer.

Upon receipt of request for such names from the Appointing Officer, the Commission may certify to the Appointing Officer the top three names from any existing list of eligibles from which appointments shall be made. If there are fewer than three names on the eligibility list, Appointing Officer may, but shall not be required to, accept an eligibility list with fewer than three names.

Alternatively, the Commission may terminate any existing list of eligibles, or, if no such list exists, the Commission shall proceed to establish a new list of eligibles in accordance with

these rules and regulations and certify names from the new list of eligibles to the Appointing Officer.

4.04 Notice of vacancy and examination.

(a) In order to keep a list of eligibles available at all times, the Commission may establish a list of eligibles at any time, whether a vacancy exists or not. Upon determining to establish a list of eligibles, the Commission shall give public notice of the following:

- (1) The fact that the Commission will establish a list of eligibles; and
- (2) The requirements that must be satisfied in order to be placed on the list of eligibles; and
- (3) The date(s) on which the written and other competitive examinations for the position will be held; and
- (4) Locations at which applications for the position may be obtained; and
- (5) The last date on which applications for the position will be accepted by the Commission.

(b) Each such notice shall be:

- (1) Published once a week for two (2) consecutive weeks in all newspapers of general circulation in the City of Charleston; and
- (2) Posted in a conspicuous place at the City Hall and at each Firehouse; and
- (3) Distributed to such groups or organizations and in such a manner as the Fire Department and/or the Commission may direct. The purpose of these additional distributions shall be to make sure a reasonably diverse applicant pool aware that a list of eligibles will be established.

4.05 Application forms.

Application forms, designated as CSC Form 1, which request the data required by West Virginia Code and any other information requested by the Fire Department regarding an applicant's eligibility for appointment, shall be available from the City Clerk, the Fire Department, and the Commission whenever applications are being accepted. This provision does not preclude the distribution of applications by any person or organization other than the City Clerk, the Fire Department or the Commission and it does not preclude distribution at other times. All application forms shall be completed and filed with the City Clerk or the Fire Department during the time period included in the published notices.

4.06 Applicant Screening.

The Fire Department may, but shall not be required to, review any application which it receives and check criminal and/or driving history of the applicant to determine whether the applicant is eligible for appointment as a probationary fire fighter. Any applicant who is found to be ineligible, based upon the application, shall be immediately disqualified and the Applicant and the Commission shall be notified of the disqualification by the Chief of the Fire Department by U.S. mail or electronic mail and shall be further notified that he/she is entitled to a hearing before the Commission to determine his/her eligibility provided that the applicant requests a hearing within ten (10) business days of notice being sent to the applicant at the address shown on the application. Persons who do not request a hearing, or if after a hearing, are determined to be ineligible, shall not be eligible for further consideration.

4.07 Requirements for applicants for original appointments.

(a) Age requirement - Pursuant to West Virginia Code § 8-15-17, applicants for original appointment shall be not less than eighteen (18) years nor more than thirty-five (35) years of age on the date of his or her application; provided, however, persons qualifying for

appointment by reinstatement may be over thirty-five (35) years of age; and provided further that any applicant who is a member in good standing of a paid Fire Department serving a municipality that has elected to participate in either the West Virginia Municipal Police Officers and Firefighters Retirement System created in §8-22A-1 *et seq.* or the West Virginia Public Employees Retirement System created in §5-10-1 *et seq.* is eligible to apply for and be appointed as a probationary firefighter even though more than thirty-five (35) years of age.

(b) Education - Applicants for original appointment must have a high school education as evidenced by a diploma or GED at the time of their appointment.

(c) Written examination - The Commission shall select an appropriate written examination which meets the requirements of West Virginia Code §8-15-18 and shall cause the same to be administered and promptly scored.

(1) Examination scores will be posted at the office of the City Clerk and each Fire Station.

(2) Unless the Commission establishes and announces a different passing score before the written test is begun, the passing score is established as seventy-five (75) % of the number of questions in each examination. Any applicant who fails to achieve a passing score of seventy-five (75) % will be disqualified from further participation in the application process.

(3) Any applicant who wishes to challenge the accuracy of the scoring of his or her examination shall notify the Commission of his or her challenge within five (5) business days after the results are posted at the office of the City Clerk. Challenges received after five (5) business days will not be considered.

(d) Physical ability examination - Each applicant must achieve a minimum passing score on each element of the Candidate Physical Ability Test ("CPAT") in effect at the time of his or her application.

(1) Each applicant shall have no more than three (3) officially proctored practice opportunities to successfully complete the CPAT. An applicant who successfully completes the CPAT during a practice session is not required to retake the CPAT when it is later administered in the same applicant testing cycle for qualification. The applicant must successfully complete all portions of the CPAT in the same test administration; failure to successfully complete any part of the CPAT on a test administration results in a failure for that administration of the test.

(2) Each applicant shall present a medical clearance and release of liability from his or her personal physician before being admitted to any CPAT practice or examination. Applicants who do not present a medical release may not participate in the examination.

(3) An applicant who does not appear for CPAT testing or who does not successfully complete each element of the CPAT examination shall be eliminated from further consideration for appointment.

(e) The order of competitive examinations and other forms of evaluation used by the Commission shall be as determined by the Commission.

4.08 Reasonable accommodation - Applicants who need to request a reasonable accommodation due to a disability or other reason must notify the Commission of the need for an accommodation and the specific accommodation requested not less fifteen (15) calendar days before the examination. The Commission will promptly evaluate the request for accommodation and notify the applicant of the Commission's decision concerning the accommodation request.

4.09 Refusal of the Commission to examine.

The Commission may refuse to examine any applicant who does not meet the minimum requirements of this part, based upon information coming into its hands by way of the application, or any other source. Upon determining that an applicant will not be admitted to the examination, the Commission shall send a notice to the applicant at the address listed on his application. The applicant will then have a period of ten (10) business days to request a hearing before the Commission. Failure to request a hearing within ten (10) business days of notice being mailed by regular first class mail to the applicant's address on the application will be deemed a waiver of the applicant's right to contest the decision of the Commission.

4.10 Computation of scores and compilation of list of eligibles.

After all challenges to the scoring of the written examination have been heard and determined, the Commission shall establish a list of eligibles. Applicants who have achieved a passing score on the written examination shall be ranked in the order of merit using the following formula:

- (a) Written examination, interpolated so that a perfect score would equal one hundred (100) for ranking purposes; plus
- (b) Military service credit, computed according to West Virginia Code § 6-13-1.
- (c) Applicants who pass the written examination and the CPAT and possess a valid and current certification as a Paramedic will have five (5) points added to the written test score.
- (d) Applicants who have a degree from an accredited college or university will have the greater of the following added to their passing score:
 - (1) Applicants with an Associate's degree will have two (2) points added to their passing score; or
 - (2) Applicants who have a Baccalaureate or higher degree will have five (5) points added to their passing score.
- (e) In the event that more than one applicant shall attain the same total score for ranking purposes, the position of each applicant on the list of eligibles shall be determined by coin toss or the drawing of lots.

4.11 Anti-discrimination provision; prohibited inquiry.

No question on the applications or the examinations mentioned in this part, whether oral or written, shall be framed or designed so as to illicit from any applicant information linked to such applicants political or religious opinions or affiliations. No applicant shall be discriminated against on the basis of race, religion, color, nation origin, ancestry, sex, age, blindness, handicap or familial status.

4.12 Commission to establish eligible list.

The Commission shall establish, by comprehensive evaluations and examinations, an eligible list from the number of persons who make application for appointment under provisions of this part. Applicants shall be rank ordered by total score.

The list of eligibles shall continue in full force and effect until: (1) the list is exhausted by appointments therefrom or removal of names for other reasons; (2) the passage of three (3) years' time from the date the list is established; or (3) until termination of the list by Order of the Commission; whichever period is shorter.

4.13 Background investigation.

The Fire Department shall conduct a personal background investigation of each applicant before the applicant is eligible for consideration for appointment. To be eligible for certification to the Appointing Officer, an applicant must be on a current and valid list of eligibles and:

- (a) Undergo a background investigation which shall at a minimum, inquire into the applicant's criminal and driving history, employment history and character; and
- (b) Cooperate fully in the background investigation.

At the conclusion of each background investigation the Chief of the Fire Department will determine whether the applicant is suitable for appointment. The Chief of the Fire Department will send notice by first class mail to each applicant that is disqualified by the background investigation and report to the Commission the reason(s) that any applicant is disqualified. The applicant shall then have a right to request a review of the decision by requesting a hearing before the Commission not more than ten (10) business days after notice is sent to the applicant's last known address. Failure to request a hearing within the ten (10) day time period shall be deemed a waiver of the applicant's right to challenge the certification issue.

If the applicant requests a review by the Commission, the Commission shall consider the information presented and may certify or refuse to certify an applicant based upon the information available. The Commission may request additional information or further investigation before determining whether or not to certify any applicant.

In the event that the Commission decides that it will not certify an applicant as eligible for appointment based upon the background investigation, the Commission shall send a notice to the applicant at his last known address informing him or her that he or she has been disqualified from further consideration.

4.14 Certification to Appointing Officer.

When requested by the Appointing Officer, the Commission will forward the names of the top three certified applicants in the order in which they appear on the eligible list.

4.15 Conditional Appointment.

From the certified list, the Mayor will conditionally appoint one of the three applicants. The remaining two applicants' names will be returned to his or her position of the list of eligibles. When an applicant has been passed over in favor of a candidate which ranks below that applicant on the eligible list on three occasions, the candidate shall be stricken from the list of eligibles and disqualified from further consideration consistent with the provisions of West Virginia Code § 8-15-20.

4.16 Full Appointment.

An applicant's conditional appointment shall not become a full appointment until he/she meets all additional requirements of the City of Charleston and its Fire Department for full appointment, such as a positive evaluation/recommendation after psychiatric evaluation and/or medical evaluation and otherwise satisfy all state requirements for appointment.

4.17 No Right to Appeal Mayor's Appointment Decisions.

An applicant certified by the Commission but not hired by the City for any reason shall have no right of appeal to this Commission as the Commission has no jurisdiction or authority over ultimate hiring decisions, only certification.

PROVISIONAL APPOINTMENTS BY NON-COMPETITIVE EXAMINATION

5.01 (a) Applicability of This Part.

This Part shall apply to appointments made by the Commission after individuals are nominated to fill a vacancy provisionally upon non-competitive examination by the Appointing Officer pursuant to West Virginia Code §8-15-21.

(b) Nominations for Provisional Appointment; Form.

(1) Whenever, in the judgment of the Appointing Officer, there are urgent reasons for filling a vacancy provisionally by non-competitive examination, the Appointing Officer may nominate an individual to the Commission for appointment.

(2) Each such nomination shall contain:

(i) The urgent reasons for nominating such person rather than requesting a list of eligibles;

(ii) The name of the person nominated;

(iii) The expected duration of such person's tenure in the vacancy to be filled;

(iv) A completed CSC Form 1 as an attachment.

(c) Approval of Application by Commission. The Commission may approve the application of the person nominated for provisional appointment by the Appointing Officer if, in its exclusive judgment: there are urgent reasons which justify deviation from the appointment procedures contained in Part IV of these Rules and Regulations; the person nominated is satisfactory to the Commission; and, no eligible list was in effect on the date of the nomination.

(d) Provisional Appointment Procedures. If the application of the person nominated for provisional appointment is approved by the Commission, the nominee's application shall be processed in the manner provided for in Part IV of these Rules and Regulations, except that the testing and evaluation procedures described therein shall only be used to determine the nominee's suitability for appointment and no public notice of such examinations shall be required.

(e) Limitations on Provisional Appointments. No provisional appointment shall continue to be valid for a period in excess of three (3) months from the date the appointment is made by the Appointing Officer, nor shall successive provisional appointments be used to fill the same position.

PART VI - REINSTATEMENT

6.01 Any former member of the Charleston Fire Department may apply to the Commission for appointment by reinstatement.

6.02 An applicant for reinstatement is eligible for consideration of appointment by reinstatement if the applicant

(a) successfully completed his/her one year probationary period; and

(b) resigned from the department when there were no charges of misconduct or other misfeasance under investigation or otherwise pending against the applicant; and

- (c) applies within two (2) years of his/her resignation; and
 - (d) his or her former term of service justifies reinstatement.
- 6.03 All applicants for reinstatement must:
 - (a) complete an application and background investigation questionnaire
 - (b) cooperate in any background investigation requested by the Commission
 - (c) pass the medical test administered to all applicants for original appointment
 - (d) appear before the Commission to answer questions related to reasons for leaving and reason for reinstatement if requested by the Commission.
- 6.04 The Commission may, in its sole discretion, elect to:
 - (a) reinstate the applicant immediately
 - (b) reinstate the applicant to the first vacancy
 - (c) refuse the request for reinstatement.
- 6.05 If reinstated to the Department, the reinstated member shall be the lowest in rank next above the probationers of the Department. The reinstated member shall not be eligible to test for promotion until the completion of two years of service after reinstatement. Service prior to resignation will be credited toward seniority credit for promotion seniority calculation purposes but not to establish eligibility to test for promotion.