

MINUTES

ORDINANCE AND RULES COMMITTEE MEETING

5:30 P. M., FEBRUARY 13, 2020

AV ROOM #308, CITY HALL

Jeanine Faegre, Chairperson, called the meeting of the Charleston City Council Committee on Ordinance and Rules to order at 5:30p.m., FEBRUARY 13, 2020, in the AV Room #308 in City Hall.

Committee Members Present:

Jeanine Faegre, Chair
Bobby Haas, Vice Chair
Caitlin Cook
Chuck Overstreet
Keeley Steele

1. Approval of Previous Minutes – Councilmember Steele moved to approve the minutes of the previous meeting on 10-16-2019. Councilmember Haas seconded. There was no objection and the minutes were approved.

2. Resolution No. 291-20 – The memo from the Fire Civil Service Commission Attorney John R. Teare, Jr. sent to City Attorney Kevin Baker and given to members of the Committee has been reproduced as a complete summary of the resolution.

Councilmember Overstreet pointed out that a “business day” is “a day in which City Hall is open for general transactions of the public business,” which would be different than a holiday day, for example.

Councilmember Faegre confirmed that the effective date will be the date passed by Council.

Chief of Staff, Matt Sutton, added that the Commission also wants to make changes to testing, but chose to hold off until the current active tests are completed.

Councilmember Overstreet confirmed with Sutton that all new hires are cross trained as a paramedic, and all current firefighters are in the process of being trained as well. Councilmember Overstreet added that he would be interested in hearing about the Department’s plan for minority/female hiring and recruitment.

From the audience, Councilmember Knauff asked who wrote the changes (John Teare,

Eric Kinder or Kevin Baker). Sutton answered that he knows there were a lot of emails back and forth between Teare and Baker, although it was mostly written by the Commission. He could not speak to Kinder's involvement. Councilmember Knauff also asked if the Firefighters Union had any input regarding the changes. Sutton said the he did know at least one member was there, and was told that CFD was in favor of the changes.

Councilmember Cook said she was glad to see that the Rules are finally being updated.

With no further discussion, Councilmember Cook made a motion to approve the bill. Councilmember Haas seconded. With the ayes being in the majority, Resolution No. 291-20 was approved.

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



SPILMAN THOMAS & BATTLE, PLLC

ATTORNEYS AT LAW

MEMO

To: Kevin Baker, City Attorney

From: John R. Teare, Jr.

Date: February 5, 2020

Re: Summary of Revisions to Fire Civil Service Rules

The Firemen's Civil Service Commission of the City of Charleston recently revised its Rules and Regulations and approved those revisions on January 16, 2020 and forwarded them to you for submission to the City Council pursuant to West Virginia Code §8-15-15. These Rules would replace parts I through V and that portion of part IX that relate to original appointment.

Prior to this revision, the Rules were last revised and adopted on July 3, 1977. A revision to the Rules regarding promotion test scoring was adopted on March 16, 1983 and is not at issue in this current revision. The revisions to the existing rules submitted for consideration cover the general operating procedures of the Commission and the hiring processes.

As we have discussed, the proposed revisions submitted for City Council action is not a complete rewrite due to the current promotion testing process in place for Chief and Assistant Chief. The Commission may consider and present further revisions to the remaining portion of those rules after the current promotion processes are completed.

Part I

There are no substantive changes to Part I.

Part II

The changes to Part II (Definitions) are new and are found in paragraphs (h) and (j) through (m). Paragraph (h) defines the terms used in the West Virginia Code regarding disciplinary actions and, along with paragraph (k) make clear that administrative leave for administrative or investigative purposes is not disciplinary and does not trigger any right to a hearing before the Commission.

When the existing Rules were promulgated, there was no Code provision for a Conduct Review Hearing Board. The investigative and hearing requirements for Firemen accused of misconduct are found at West Virginia Code §§8-14A-1 through 5 (sometimes referred to as the "Bill of Rights") which was enacted and effective in 1982. Paragraphs (j) and (l) relate to that statutory process; in particular, paragraph (l) more clearly defines "Transfer for Purposes of Punishment" which was not considered as discipline under the Civil Service Code but now constitutes a punitive action under the Bill of Rights.

Also, where the Code refers to days, the Commission has provided for business days and defined it to eliminate past confusion over the definition of days.

Part III

The revisions to Part III, 3.01 (a), are new and relate to continuity and recusal issues. The first provides for a Commissioner to continue in office until his/her replacement is named; thereby avoiding any claim that the unintentional passing of an appointment anniversary invalidates Commission action. The second point provides a mechanism for a full Commission when a Commissioner has a conflict of interest, is on active duty, seriously ill or otherwise cannot participate on a temporary basis. To maintain the integrity of the make-up of the Commission, any temporary vacancy is filled by the appointing authority of the absent member.

Part IV

Part IV is a substantial re-write to accommodate changes in the law and to more accurately reflect the way that the Fire Department handles the application process. Items of note:

(1) 4.03 In the event that there are only one (1) or two (2) applicants remaining on the list, this allows for the Chief and Mayor to waive the three name requirement if they are satisfied with the remaining applicant(s) and desire to hire that applicant without requiring a new round of testing. Note, the Commission cannot require the Chief or Mayor to accept a list of fewer than three (3);

(2) 4.06 Permits, but does not require, the Fire Department to screen out an applicant who is unfit or ineligible for hire due to age or other disqualification and provides for notice of a right to contest disqualification to the Commission;

(3) 4.07(a) Adds an exception to the age requirement for certain firemen who are employed in another paid Fire Department in West Virginia to comply with statutory changes;

(4) 4.07(b) Requires a high school education at time of appointment;

(5) 4.07(c) Sets presumptive minimum passing score unless another score is announced in advance of the test;

(6) 4.07(d) Puts into the Regulations the long existing practice of requiring an applicant to pass the CPAT test of physical ability as part of the initial testing;

(7) 4.08 Provides a process for making a reasonable accommodation request under the West Virginia Human Rights Act or the Americans with Disabilities Act; and

(8) 4.10 Provides for Veteran Preference, additional points awarded for college education and Paramedic certification and also provides for a tie-breaking protocol when there are identical scores on an applicant hiring list.

Please feel free to contact me if you have any further questions or concerns.

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

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

**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.