



CITY OF CHARLESTON WEST VIRGINIA



COUNCIL MEMBER – WARD 20

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Ordinance and Rules Committee, Chair
Parks and Recreation Committee
Finance Committee
Parking Facilities Committee

A meeting of the Council Committee on Ordinance & Rules will be held on Monday, December 5, 2022 at 6:00 PM. **To be held in person**
AV ROOM #308, CITY HALL

Agenda

RESOLUTIONS

1. Resolution No. 746-22 - Authorizing the adoption of the Charleston Fire Civil Service Rules, which were amended and approved by the Charleston Fire Civil Service Commission.

BILLS

1. Bill No. 7978 - A BILL to amend the Municipal Code relating to updating the quadrennial organization statute to be consistent with the City Charter. (a Committee Substitute will be proposed)
2. Bill No. 7980 - A BILL to amend the Municipal Code relating to the makeup of the Board of Directors of the Land Reuse Agency.

ADJOURN

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***Meetings may be recorded and broadcast via internet <https://charlestonwv.civicclerk.com>**

Resolution No. 746-22

Introduced in Council:

December 5, 2022

Introduced by:

Chuck Overstreet

Adopted by Council:

Referred to:

Rules and Ordinances

Resolution No. 746-22 - Authorizing the adoption of the Charleston Fire Civil Service Rules, which were amended and 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 Charleston Fire Civil Service Rules, attached hereto as Exhibit A, which were amended and 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**

Submitted to Charleston City Council

By its Commissioners

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

**REGULATIONS OF
THE FIRE 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 - FIRE 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

(d) 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

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 for good cause after notice and a hearing, 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) Posted in a conspicuous place at the City Hall and at each Firehouse; and
- (2) 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 Civil Service 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 18 years nor more than 35 years of age on the date of his or her application; provided, however, persons qualifying for appointment by reinstatement may be over 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 35 years of age.

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

(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 Civil Service Commission establishes and announces a different passing score before the written test is begun, the passing score is established as 75 % of the number of questions in each examination. Any applicant who fails to achieve a passing score of 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 business days (5) 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) opportunities to successfully complete the CPAT. 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. An applicant is required to announce in advance of each attempt at the CPAT whether the applicant is training for the CPAT or attempting the CPAT for scoring purposes.

(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 eligible.

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 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 (National Registry and/or State of West Virginia) as a Paramedic will have 5 points added to the written test score.
- (d) Applicants who have an Associate's degree from an accredited college or university will have two points added to their passing score.
- (e) Applicants who have a Baccalaureate or higher degree from an accredited college or university will have five points added to their passing score (not to be combined with any other education credit, - 5 points is the maximum allowed education credit)
- (f) 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 of the examination; or (3) until termination of the list by Order of the Commission for good cause after notice and a public hearing; 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.

PART V - 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

- successfully completed his/her one year probationary period; and
- resigned from the department when there were no charges of misconduct or other misfeasance under investigation or otherwise pending against the applicant; and
- applies within 2 years of his/her resignation; and
- his or her former term of service justifies reinstatement.

6.03 All applicants for reinstatement must:

- complete an application and background investigation questionnaire
 - cooperate in any background investigation requested by the Commission
 - pass the medical test administered to all applicants for original appointment
 - appear before the Civil Service Commission to answer questions related to reasons for leaving and reason for reinstatement if requested by the Commission.
- 6.04 The Civil Service Commission may, in its sole discretion, elect to:
- reinstate the applicant immediately
 - reinstate the applicant to the first vacancy
 - 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.

PART VII - PROMOTION

7.01 Application of This Part.

Every vacancy in positions on the Fire Department of the City shall be filled in accordance with the provisions of this Part unless otherwise filled by appointment, reinstatement, reduction or non-competitive examination. It shall be the policy of the Commission to, insofar as is possible, fill vacancies by promotion.

7.02 Persons Eligible for Promotion.

No member shall be eligible to test for promotion from the lower grade to the next higher grade until such member shall have completed at least two years of continuous service in the next lower grade in the Department as of the date of the test and completed the apprenticeship and certification program established by West Virginia Code §8-15A-1 *et seq.*

7.03 What Constitutes Promotion.

Promotion means the process whereby persons advance from a given grade, rank or position to a higher one with an increase in base pay/salary. Promotion may also mean a raise in base pay not shared by other members of the same rank, grade or position. The Commission shall, in its discretion, determine whether a change in pay constitutes a promotion.

7.04 Commission to be Notified by Appointing Officer.

The Appointing Officer shall notify the Commission of any vacancy which he/she desires to fill by promotion.

7.05 Procedure Upon Receipt of Request From Appointing Officer.

Upon receipt of a request for a list of eligibles from the Appointing Officer, the Commission may certify to the Appointing Officer any existing list of eligibles from which promotions shall be made. Alternatively, the Commission may terminate any existing list of eligibles for good cause after notice and a public hearing, or, if no such list exists, the Commission shall proceed to establish a new list of eligibles in accordance with these Rules and Regulations.

In the event that the Appointing Officer objects to promoting the highest ranked individual on any promotion eligibility list, the Appointing Officer shall notify the Commission in writing at the time of any request that the Commission certify a list of eligibles for promotion. The Commission shall not certify a list of eligibles until it has provided all interested parties an

opportunity to present evidence to the Commission and the Commission enters an order sustaining or overruling the Appointing Officer's objection.

7.06 Notice of Vacancy and Examinations.

(a) Upon receipt of the request for a list of eligibles from the Appointing Officer and a determination that a new list of eligibles must be constituted, the Commission shall make a reasonable effort to notify members of the Department, at least fifteen calendar days before any examination of the following:

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

(b) Each such notice shall be:

- (1) Posted in a conspicuous place at City Hall; and
- (2) Posted at various locations throughout each Firehouse to give reasonable notice to all members; and
- (3) Distributed to such groups or organizations and in such manner as the Commission may direct.

7.07 Form of Applications.

Applications for promotion shall be made on a form devised by the Commission, which form shall be designated CSC Form 2. The form and content of CSC Form 2 may be varied from time to time by the Commission.

7.08 Commission to Establish Eligible List.

The Commission shall establish, by comprehensive evaluation and examination, an eligible list from the number of persons who make application for promotion under the provisions of this Part.

The list of eligibles shall be forwarded to the Appointing Officer who shall promote persons to vacant positions in order of their ranking on the list of eligibles. Unless otherwise specified herein, each eligible list shall continue in full force and effect until the list is exhausted, for three years from the date that the exam was administered or until terminated by the Commission for good cause after notice and a public hearing, whichever period is shorter.

The Commission shall use reasonable effort to maintain an active list of eligibles at all times. If a list is exhausted or terminated by the Commission the Commission will make reasonable efforts to administer a promotion examination within three (3) months after any such list of eligibles is exhausted, or terminated by the Commission.

7.09 Testing and Evaluation Required for Promotion.

(a) Every applicant for promotion who meets the preliminary requirements therefore shall be evaluated by use of the following testing and evaluation procedures:

- (1) A competitive written examination testing the applicant's suitability for promotion to the vacancy, and

(2) A qualifying medical examination testing the applicant's general condition of health.

(b) Each test or evaluation shall be conducted in accordance with the provisions of these Rules, and the form and content of examinations and the administering personnel shall be selected or approved by the Commission.

(c) Applicants will be provided the opportunity to review their examinations and answers within five (5) business days after the results is posted. The results will not be certified until the Commission rules on any challenge to the examination.

(d) In accordance with the provisions of these Regulations, promotions shall be made on the basis of a list of eligibles established by the Commission. The list of eligibles established by ranking applicants for promotion in order of merit in accordance with the following formula:

(1) Written examination score (% of questions answered correctly based on a maximum score of 100 points) PLUS

(2) Computation of actual length of service with the Department allowing 0.0041 points for each day of service in the Charleston Fire Department (approximating 1.5 point per year).

(3) The total number of points so calculated, including written test score and seniority, shall constitute each applicant's total score. The minimum passing score to be eligible for promotion shall be 70.

(4) Applicants who have a combined total score of 70 or higher shall be ranked in accordance with their scores and a list of eligibles constructed therefrom. In the event of identical total scores, placement on the list shall be determined by:

(a) seniority in current rank; if still tied;

(b) seniority on the Department; if still tied;

(c) the drawing of lots.

(e) Applicants for promotion have a twenty (20) calendar day period after the Commission's decision on any challenge to seek judicial review in the Circuit Court of Kanawha County.

7.10 Anti-discrimination Provisions; Prohibited Inquiry.

No question on the applications or the examinations mentioned in this Part shall be framed or designed so as to elicit from any applicant information relating to such applicant's political or religious opinions or affiliations. No applicant shall be discriminated against on the basis of race, religion, color, national origin, ancestry, sex, age, handicap or familial status.

7.11 Refusal of the Commission to examine or certify eligible for promotion.

The Commission may refuse to examine, or refuse to certify as eligible for promotion, 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.

PART VIII - DISCIPLINE

8.01 Conduct Review Board

(a) A Hearing Board has original jurisdiction to decide all cases of punitive action before punitive action is taken. If the proposed action is discharge, suspension or reduction in rank or pay, the punitive action may not be taken until the Accused Member is provided notice of the right to a hearing before a Hearing Board except that the Fire Chief, or his designee, may immediately temporarily suspend from duty any member, pending an investigation, who reports is on duty under the influence of alcohol or controlled substances or apparent emotional or mental distress which would prevent the member from performing his duties.

(b) The Fire Chief may issue a written reprimand or order a transfer for purposes of punishment after providing the member with a notice of the reasons for such action and notice that the member is entitled to a hearing on the issues by a Hearing Board. The punitive action may be imposed immediately with the Member having a right to appeal to the Hearing Board.

(c) The Civil Service Commission has original jurisdiction to determine appeals from Hearing Board Orders, discharging, suspending and reducing a member in rank or pay.

(d) The Civil Service Commission's jurisdiction over written reprimands and transfers for the purpose of punishment is appellate only. Original jurisdiction over these disciplinary sanctions rests solely with the Hearing Board. The Commission will decide such issues based solely on the Hearing Board record.

(e) The standard of review in cases decided on the record before the Hearing Board is substantial deference to the Hearing Board's findings of fact and *de novo* review of the Hearing Board's legal conclusions. In all instances, the burden of proof to sustain the punitive action remains on the Department.

8.02 Civil Service Rules Applicable to Cases of Removal, Discharge, Suspension, Reduction in Rank or Reduction in Pay.

(a) Notice of Charges; Answer -

(1) In every case of removal, discharge, suspension or reduction in rank or pay, notice shall be given to the individual removed, discharged, suspended or reduced of the reasons therefore by the removing officer. A copy of such notice shall also be forwarded to the Commission for filing. Upon the filing of such notice, the affected member may demand, in writing, a hearing within ten (10) business days unless the member desires to file an answer. If the affected member desires to file an answer to the charge against him, he shall do so, in writing, within ten (10) business days of the receipt of such notice from the removing officer. A copy of said answer shall be forwarded to the Commission and to the removing officer. Such answer shall contain a demand for a hearing if the affected member desires a hearing. Failure to request a hearing within the established time frame will be deemed a waiver of the right to a hearing. The Commission will schedule an evidentiary hearing to be held within ten (10) business days unless all parties agree, in advance to a later hearing date.

(b) If the member waives his right to a Hearing Board or upon the filing of an appeal by either party a hearing shall be held in accordance with the provisions of these Rules and Regulations. The party desiring the hearing shall make its written appeal/request within ten (10) business days and the other party may file a written answer/response within ten (10) business days. The Commission will schedule an evidentiary hearing to be

held within ten (10) business days of the filing of the charges in writing and demand for a hearing by the affected member, or the filing of the answer thereto, whichever shall last occur, unless a longer period of time is agreed to by the affected member. The time to hold any hearing may be extended with the consent of the affected parties and the Commission.

(c) Burden and Standard of Proof at Hearing -

At such hearing, the burden of proof shall be upon the removing officer to show just cause for his actions, by a preponderance of the evidence unless the West Virginia Rules of Civil Procedure provide a higher burden for any specific charge such as fraud.

(d) Rules of Evidence -

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the circuit courts of this state shall be used only as a guide. When necessary to ascertain facts not reasonably susceptible of proof under the strict rules of evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Commission shall be bound by the rules of privilege recognized by law. Objections to evidentiary offers shall be noted in the record. Any party to any such hearing may vouch the record as to any excluded testimony or other evidence.

(2) All evidence, including papers, records, memoranda and documents in the possession of any party, of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(3) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

(4) The Commission may take notice of judicially cognizable facts. All parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(5) Upon motion in writing served by any party assigning error or omission in any part of any transcript of the proceedings had and testimony taken at any such hearing, the Commission shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated so as to make it conform to the whole truth.

(e) Reinstatement or Other Relief -

If the removing officer fails to show just cause for his action at said hearing, the member removed, discharged, suspended or reduced shall be reinstated with full pay forthwith, without any additional order, for the entire period during which he may have been prevented from performing his usual appointment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearing, shall be kept and preserved by the Commission which record shall be sealed and not open to public inspection unless an appeal is taken to the Circuit Court of Kanawha County from the final Order of the Commission.

8.05 Reduction in Size of Department.

If for reasons of economy or other justifiable cause it shall be necessary to reduce the number of persons employed as members of the paid Fire Department of the City, said reduction shall be effected by suspending the last persons, including probationers, appointed to the Department, said removal being accomplished by suspending the number desired in inverse order of their appointment. In the event the Fire Department shall again be increased in authorized strength, members suspended under the terms of this part shall be reinstated in inverse order of their suspension before any new appointment is made.

PART IX - HEARINGS

9.01 Application of this Part.

Unless otherwise specified in these or other rules and regulations, the rules in this section shall govern and apply to hearings conducted by the Commission pursuant to the authority vested in it under the laws of this State or regulations promulgated pursuant thereto.

9.02 Hearings by the Commission; Presiding Officer.

Hearings shall be conducted before the Commission. The Presiding Officer at a hearing shall be designated by the President of the Commission and may be the President of the Commission, one of the Commissioners, or such other person as the President of the Commission may designate.

9.03 Powers of Presiding Officer.

The Presiding Officer at every hearing may, subject to the rules set forth in this section:

- (a) Conduct generally the hearing, and in connection therewith:
 - (1) Cause the administration of oaths and affirmations;
 - (2) Issue subpoenas authorized by law;
 - (3) Rule on offers of proof and receive evidence;
 - (4) Permit evidentiary depositions to be taken and read as in civil actions in the Circuit Courts of this State and discovery depositions with the consent of the Presiding Officer;
 - (5) Regulate the course of the hearing;
 - (6) Dispose of procedural requests or other matters;
 - (7) Hold conferences for the settlement or simplification of the issues with the consent of the parties;
 - (8) Take any other action in connection with such hearing authorized by law or fairly implied in the jurisdiction of the Commission; and
 - (9) With regard to each of these duties and powers, decisions by the Presiding Officer shall be subject to review by the full Commission.
- (b) In all cases, final orders and final decisions shall be made by the Commission and entered by the City Clerk.

9.04 Notice of Hearing; Contents of Notice.

- (a) Unless otherwise specified in these Rules and Regulations, no hearing shall be conducted under these rules or otherwise unless the parties to the proceeding shall have received written notice.
- (b) Each written notice of the hearing shall contain the date, time and place of the hearing and a short and plain statement of matters which are to be the subject of or asserted at the hearing.

(c) Reasonable efforts will be made to schedule hearings by agreement with ten (10) calendar days' notice. Affected persons may agree to a hearing on less than ten (10) days notice for time sensitive issues.

9.05 Place of Hearing.

The date, time and place of each hearing shall be determined by the President of the Commission.

9.06 Representation at Hearings.

At hearings held pursuant to these Rules, any party may represent himself or be represented by an attorney at law admitted to practice before any Circuit Court of this State.

9.07 Waiver of Evidentiary Presentation.

(a) Parties entitled to an evidentiary hearing may waive such right in writing, but unless all parties file timely waivers, a hearing will be conducted. Parties waiving such hearing need not appear.

(b) Any party who desires to submit written pleadings, comments or information in lieu of an evidentiary presentation may submit such documents to the Presiding Officer for consideration by the Commission.

(c) Waivers must be unequivocal and request the Commission to decide the matter at issue on the pleadings and written record in case, including any stipulations the parties might enter.

(d) When a hearing is waived under the provisions of this section, the written record in the case shall be submitted to the Commission for decision.

9.08 Proposed Findings, Conclusions and Orders.

The Commission will prepare Findings of Fact and Conclusions of Law and served its decision and Order on all Parties. Alternatively; the Presiding Officer may request the submission of proposed findings of fact, conclusions of law and Orders, together with a supporting brief. Such proposals and briefs, if submitted, shall be served upon the Commission in an editable text document so that the Commission can modify any proposed Order to accurately reflect its reasoning and findings. Proposed Findings shall be served on all parties and shall contain adequate references to the authorities relied upon. The

9.09 Hearings Not Public Unless Requested.

Hearings conducted under these Rules, except when the context clearly indicates otherwise, are considered personnel matters and are therefore private and not open to the public. If the member who will be affected by the actions of the Commission requests a public hearing, the hearing will be open to the public. The Commission reserves the right to close portions of any hearing to protect confidentiality and other legitimate reasons. Deliberations of the Commission are not public.

9.10 Final Decision by the Commission.

(a) Upon completion of the proceedings provided for in these Rules and Regulations, the Commission shall review, consider and decide the case and enter, where appropriate, a final decision and order.

(b) In cases where any member of the Commission is not present at a hearing, the Presiding Officer shall forward the record in the case to that Commissioner for review, together with such written commentary and recommendations as the Presiding Officer deems appropriate. Such recommendations and commentary, if any, shall be made a part of the record of the case.

PART X - APPEALS

In the event the Commission sustains the action of the removing officer, the member has an immediate right of appeal to the Circuit Court of Kanawha County. In the event that the Commission reinstates the member, the removing officer has an immediate right of appeal to the Circuit Court of Kanawha County. In the event either the removing officer or the member objects to the amount of the attorney fees awarded to the member, the objecting party has an immediate right of appeal to the Circuit Court. Any appeal must be taken within ninety days from the date of entry by the Commission of its final order.

Bill No. 7978

Introduced in Council:

November 21, 2022

Adopted by Council:

Introduced by:

Becky Ceperley

Referred to:

Ordinances & Rules

Bill No. 7978 - A BILL to amend the Municipal Code of the City of Charleston, as amended, by amending and reenacting Section 2-63, relating to updating the quadrennial organization statute to be consistent with the City Charter.

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

That Section 2-63 of the Municipal Code of the City of Charleston, as amended, be amended and reenacted to read as follows:

CHAPTER 2. – ADMINISTRATION.

ARTICLE III. – CITY COUNCIL.

DIVISION 1. – GENERALLY.

Sec. 2-63. – Quadrennial organizational.

(a) ~~At 10:00 a.m. 12:00 noon on the third Monday of June in the year 1999, first Monday of January, unless said Monday is a state holiday, in which case on the Tuesday immediately following said holiday, in the year 2023, and every four years thereafter, the mayor-elect and councilmen-elect councilmembers-elect shall meet in special public session at the council chamber in the city building city hall, or another appropriate location specified by the mayor-elect in the public meeting notice, and shall be called to order by the incumbent city clerk or, in his or her absence, a deputy or assistant city clerk.; and the~~ The mayor-elect and councilmen-elect councilmembers-elect shall then proceed to take the prescribed oath of office, whereupon they shall be deemed to have qualified themselves for the offices to which they, respectively, have recently been elected; provided, that the mayor-elect shall not be deemed to have qualified until he or she shall have given bond as provided in section 25 of the city Charter.

(b) The city council shall then elect a president pro tempore of the council from among the councilmembers, and may then proceed with other business of an organizational nature such as adopting, amending or readopting rules not inconsistent with this Code; filling vacancies in offices for which the appointing authority is the council or the mayor with the approval of the council; the appointment of members of council committees; and other matters relating to the organization of the city government generally. No regular business of city council shall occur at this special

36 public session held once every four years. ~~for the ensuing four-year period.~~

Bill No. 7978 Committee Substitute

Introduced in Council:

November 21, 2022

Adopted by Council:

Introduced by:

Becky Ceperley

Referred to:

Ordinances & Rules

Bill No. 7978 Committee Substitute - A BILL to amend the Municipal Code of the City of Charleston, as amended, by amending and reenacting Section 2-63, relating to updating the quadrennial organization statute to be consistent with the City Charter.

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

That Section 2-63 of the Municipal Code of the City of Charleston, as amended, be amended and reenacted to read as follows:

CHAPTER 2. – ADMINISTRATION.

ARTICLE III. – CITY COUNCIL.

DIVISION 1. – GENERALLY.

Sec. 2-63. – Quadrennial organizational.

(a) At ~~10:00 a.m.~~ 12:00 noon on the ~~third Monday of June in the year 1999, first Monday of January, unless said Monday is a state holiday, in which case on the Tuesday immediately following said holiday, in the year 2023,~~ and every four years thereafter, the mayor-elect and ~~councilmen-elect~~ councilmembers-elect shall meet in special public session at the council chamber in ~~the city building~~ city hall, or another appropriate location specified by the mayor-elect in the public meeting notice, and shall be called to order by the incumbent city clerk or, in his or her absence, a deputy or assistant city clerk.;~~and the~~ The mayor-elect, ~~and councilmen-elect~~ councilmembers-elect, municipal judge-elect, and treasurer-elect shall then proceed to take the prescribed oath of office, whereupon they shall be deemed to have qualified themselves for the offices to which they, respectively, have recently been elected; provided, that the mayor-elect, municipal judge-elect, and treasurer-elect shall not be deemed to have qualified until he or she shall have given bond as provided in section 25 of the city Charter.

(b) The city council shall then elect a president pro tempore of the council from among the councilmembers, and may then proceed with other business of an organizational nature such as adopting, amending or readopting rules not inconsistent with this Code; filling vacancies in offices for which the appointing authority is the council or the mayor with the approval of the council; the appointment of members of council committees; and other matters relating to the organization of the city government generally. No regular business of city council shall occur at this special public session held once every four years.

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36 ~~for the ensuing four year period.~~

Bill No. 7980

Introduced in Council:

November 21, 2022

Adopted by Council:

Introduced by:

Emmett Pepper and Ben Adams

Referred to:

Ordinance & Rules

Bill No. 7980 - A BILL to amend the Municipal Code of the City of Charleston, as amended, by amending and reenacting Section 65-3 relating to the makeup of the Board of Directors of the Land Reuse Agency.

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

That Section 65-3 of the Municipal Code of the City of Charleston, as amended, is hereby amended and reenacted to read as follows:

**CHAPTER 65. – LAND REUSE AGENCY.
ARTICLE 1. – CREATION ORGANIZATION.**

Sec. 65-3. Board of Directors.

(a) The Charleston Land Reuse Agency shall operate under the control of a board of directors composed of seven members, as follows:

(1) The Mayor, or his or her designee;

(2) The City Manager, or his or her designee;

(3) ~~The City Attorney, or his or her designee;~~

(4) Two members of City Council, appointed by the Mayor, for terms coinciding with their term on City Council; and

~~(5) Two~~ (4) Three members of the general public, who are residents of Charleston, appointed by the Mayor with the advice and consent of City Council.

(b) The ~~two~~ three members of the general public ~~initially~~ appointed to the Board shall serve initial terms of ~~two and four years, respectively. Thereafter, each term shall be for~~ four years.

(c) The ~~two~~ three members of the general public shall each have expertise in one or more of the following areas:

(1) Real estate transactions or financing;

(2) Development of commercial or residential property;

(3) Establishment, development, management, or use of public lands;

(4) Land conservation;

(5) Housing; or

(6) Public safety.

(d) Each member shall continue in office until a successor is duly appointed,

36 except in the event of a member's removal, death, or delivery of written resignation to
37 Council. In the case of such a vacancy, a new member shall be appointed to serve the
38 remainder of the term. If the Mayor or City Manager, ~~or City Attorney~~ no longer holds
39 that position, then the position they or their designee holds on the Board is immediately
40 declared vacant and filled by the person's duly qualified successor.

41 (e) Members of the Board shall serve without compensation. Any member of the
42 Board who is an employee of the City may spend regular work hours on matters related
43 to the Board and receive his or her regular salary, as approved by the employee's direct
44 supervisor.

45 (f) In addition to the voting members of the Board stated in this section, the
46 following persons shall be non-voting *ex officio* members to provide advice to the Board:
47 The City Attorney, the Planning Director, the Building Commissioner, and the Director of
48 the Mayor's Office of Community and Economic Development. The Board may request
49 assistance from any City department or employee, as necessary.
50