

**RULES AND REGULATIONS
OF THE
ELKINS POLICE CIVIL
SERVICE COMMISSION**

Approved by the Common Council
of the City of Elkins on the 20th day of
January 2011.

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RULES AND REGULATIONS OF
THE POLICEMEN'S CIVIL SERVICE COMMISSION
OF THE CITY OF ELKINS, WEST VIRGINIA

PART I – GENERAL

1.01 AUTHORITY FOR PROMULGATION

The Rules and Regulations contained herein are promulgated pursuant to the authority vested in the Policemen's Civil Service Commission (the "Commission") of the City of Elkins, West Virginia (the "City") by Chapter 8, Article 14, Section 10 of the Code of West Virginia, as amended.

1.02 EFFECTIVE DATE

The Rules and Regulations contained herein become effective after they have been approved by the Mayor and Common Council of the City or, if no action is taken by the Mayor and Common Council, after the passage of twenty (20) days from the date of submission of these Rules and Regulations to said Mayor and Common Council, whichever date is sooner.

1.03 DISTRIBUTION OF COPIES

Copies of these Rules and Regulations shall be distributed in printed form to each member of the police force within a reasonable time after they become effective, at the expense of the City. Thereafter, each person appointed to said force shall be issued a copy of these Rules and Regulations.

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 Common Council or, if no action is taken by the Mayor and Common Council, shall become effective as though approved by the Mayor and Common Council twenty (20) days after their date of submission to said Mayor and Common Council, whichever date is sooner. Copies of amendments to these Rules and Regulations shall be posted in a conspicuous place at Elkins City Hall, at police department headquarters, and at such other places as the Commission may direct.

1.05 OPEN MEETINGS; NOTICE OF OPEN MEETINGS

(a) The proceedings of the Commission and its meetings shall be subject to and conducted in accordance with the provisions of Chapter 6, Article 9-A of the Code of West Virginia, as amended.

(b) The Clerk of the Commission shall cause notice to be given of the time and place of all regularly scheduled meetings of the Commission, and the time, place and purpose of all special meetings in the same fashion as notice is given for regular and special meetings of Elkins Common Council except in the event of emergency requiring immediate official action and subject to the exceptions provided in Chapter 6, Article 9-A, Section 4 of the Code of West Virginia, as amended.

PART II – DEFINITIONS

As used in these Rules and Regulations, the term or phrase:

- (a) **“Appointing Officer”** means the Mayor of the City of Elkins, West Virginia.
- (b) **“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 police department.
- (c) **“Code of West Virginia”** or **“the Code”** means the Code of West Virginia of 1931, as amended.
- (d) **“Commission”** means the Policemen's Civil Service Commission of the City of Elkins, West Virginia, duly constituted and appointed under the provisions of Chapter 8, Article 14, Section 7 of the Code of West Virginia, as amended.
- (e) Except where reference is made to members of the Commission, **“member”** or **“member of the paid police department”** means and includes an individual employed by the Police Department of the City of Elkins who is clothed with police power of the state in being authorized to carry deadly weapons; make arrests, enforce traffic and other municipal ordinances; issue summons for the violation of traffic and other municipal ordinances; and perform other duties which are within the scope of active, general law enforcement.
- (f) **“Official commendation”** means any commendation recommended by the chief of police and approved by the Mayor.
- (g) **“Promotion”** means the process whereby persons advance from a given rank, grade, or position within the department to the next higher one. The term "promotion", at the discretion of the Commission, may also mean a raise in base pay not shared by other members of the same rank, grade or position. Incentive pay increases do not constitute a promotion if shared by or available to all members of the department or available to all persons holding a given rank, grade or position.
- (h) **“Removing Officer”** means the Mayor of the City of Elkins, West Virginia.

(i) **“Suspension, Discharge, Removal or Reduction in Rank or Pay”** means any such suspension, removal, discharge, or reduction in pay and/or benefits, regardless of the time period involved.

(j) **“The Department”** or the **“Police Department”** means the Police Department of the City of Elkins.

PART III – POLICEMEN’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 terms of Chapter 8, Article 14, Section 7 of the Code of West Virginia. No Commissioner shall hold any other office (other than the office of Notary Public) under the United States, this State, or any municipality, county, or other political subdivision thereof; nor shall any Commissioner serve on any political committee or take any active part in the management of any political campaign.

- (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 Fraternal Order of Police 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 April 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 spokesperson 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 to 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 a majority of the Commission.

(e) Records to be kept; City Clerk to Act as Clerk of Commission

The Commission shall cause minutes of its own proceedings, records of its 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 recommendations of former employers, psychiatric examination reports, financial information and other information deemed by the Commission to be of a confidential nature, all such records including all written causes of removal shall, subject to reasonable regulation, be open to public inspection.

The Elkins City Clerk 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.

(f) Annual report

The Commission shall, on or before the 31st day of March of each *year*, make an annual report to the Mayor showing its own actions, and its rules and regulations, and all of the exceptions (amendments) thereto in force, and the practical effects thereof, and any suggestions it may have for the more effectual accomplishment of the purposes of the Civil Service provisions of these Rules and Regulations. Such report all be made available for public inspection within five (5) days after the same shall have been delivered to the Mayor.

3.02 COMMISSION PURPOSE

The purpose of the Commission shall be:

- (a) To assure adherence to provisions of civil service statutes enacted to provide for employment security for the members of the paid Police Department of the City of Elkins by protecting said members from the vicissitudes which always attend political municipal elections; and,
- (b) To provide for a complete, all-inclusive and non-discriminatory system for the appointment, promotion, reduction, removal, and reinstatement of members of paid police departments.

3.03 POWERS AND DUTIES OF THE COMMISSION

The Commission is responsible for carrying into effect the civil service provisions of the Code of West Virginia, and, in connection therewith, the Commission:

- (a) may make investigation, as a body or through a single Commissioner, concerning all matters touching upon the Commission, and, in connection therewith, administer oaths and affirmations and take testimony; and
- (b) 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
- (c) 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 Chapter 8, Article 14, Section 10 of the Code of West Virginia; and
- (d) shall have all powers expressed in the Code and these regulations and such other powers as may be fairly implied therefrom.

PART IV – APPOINTMENT FROM LIST OF ELIGIBLES

4.01 APPLICATION OF THIS PART

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

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, and shall request certification of eligibles.

4.03 APPOINTMENTS FROM LIST OF ELIGIBLES

Every position, unless filled by promotion, reinstatement or reduction, shall be filled, in the manner specified in Section 8-14-15 of the Code, from the Commission's list of eligibles. If the current list has been exhausted or if such list has been in existence in excess of a three (3) year period next preceding the date of the prospective appointment, the Commission shall proceed to establish an updated list of eligibles in accordance with the Code and with these Rules and Regulations and certify names from the new list of eligibles to the Appointing Officer.

4.04 APPLICATIONS FOR ORIGINAL APPOINTMENTS

Applicants for original appointments shall not be less than eighteen (18) years of age on the date of his or her application. (*Updated 2024 per HB 5122.*)

4.05 APPOINTMENTS BY REINSTATEMENT

(a) An applicant for appointment to a vacancy may, at the Commission's discretion, be appointed by reinstatement without a competitive examination if he or she meets the following preliminary requirements:

- (1) The applicant must have previously served with the Police Department of the City for a period of time in excess of the required probationary period;
- (2) The applicant must have not resigned from the Police Department at a time when charges of misconduct or other misfeasance were pending against him or her;
- (3) The applicant must have resigned within two (2) years immediately preceding the date of his or her application; and
- (4) The applicant must undergo a medical examination and such preliminary screening and testing as the Commission may require.

(b) All appointments by reinstatement shall be only to the lowest rank in the Department next above that of probationary patrolman.

(c) Persons reappointed under the provisions of this section may be nominated by direct submission of their names to the Appointing Officer or, in the sole discretion of the Commission, the name of such persons may be incorporated into a new or existing list of eligibles.

4.06 FORM OF APPLICATIONS

Applications for appointment shall be made on a form devised by the Commission, which form shall be designated **PCSC Form 1**. The information solicited and given on PCSC Form 1 shall be given under oath and affirmation. The form and content of PCSC Form 1 may be varied from time to time by the Commission, provided that the form must solicit the following information:

- (a) The applicant's full name, residence and post office address;
- (b) United States citizenship, age and the place and date of birth of the applicant;
- (c) The state of health and physical capacity of the applicant for the public service; and
- (d) The businesses, employments, and residences of the applicant for the previous three (3) years.

After passing the competitive examination, each applicant shall give such other information as may reasonably be required, touching upon the applicant's qualifications and fitness for appointment, not in violation of provisions of the Human Rights Commission.

The Commission may require, in connection with such application, such certificates of citizens, physicians, and others, having pertinent knowledge concerning the applicant, as the good of the service requires.

4.07 COMMISSION TO ESTABLISH ELIGIBLE LIST

The Commission shall establish, by comprehensive examination and evaluation, an eligible list from the number of persons who make application for appointment to a vacant position under the provisions of this part.

- (a) The list of eligibles, as so constituted, shall continue in full force until:
 - (1) The list is exhausted by appointments therefrom or removal of names for other reasons; or
 - (2) The adoption of an updated list of eligibles as required pursuant to Section 4.03 of this part.
- (b) The Commission shall establish a new eligible list or an updated eligible list in conjunction with the provisions of this part when:
 - (1) All names on the previous list shall have been contacted to determine continued interest.
 - (2) Any person on the previous list expressing continued interest shall be given the opportunity to re-test; however, that person's test score shall be the average of the scores for tests taken in the three years next preceding the date of prospective appointment.
 - (3) New applicants shall be added to the eligible list as provided herein.

4.08 REFUSAL OF COMMISSION TO EXAMINE OR CERTIFY AS ELIGIBLE

The Commission may refuse to examine an applicant or to certify an applicant as eligible in accordance with the provisions of Section 8-14-14 of the Code.

4.09 RULES APPLICABLE TO ELIGIBLE LIST FOR PROBATIONARY PATROLMAN

(a) Unless exempted by the Commission pursuant to the provisions of Section 4.05 (Reinstatement) or Part V (Provisional Appointments), every applicant for the position of probationary patrolman who meets the age requirement specified in Section 4.04 shall be required to submit to the following testing and evaluation procedures:

- (1) A competitive written examination testing the applicant's suitability for appointment to the vacancy;
- (2) A medical examination testing the applicant's general condition of health;
- (3) A physical fitness examination testing an applicant's agility, strength, and endurance;
- (4) A psychiatric examination testing the applicant's suitability for appointment;
- (5) Any other tests as required by the Commission; and
- (6) An oral interview.

The Commission, recognizing that one of the purposes of the physical fitness examination in paragraph (a)(3) is to ensure that probationary patrolman will pass the State mandated physical fitness evaluation to be admitted to the West Virginia Police Academy, has concluded that applicants who have already completed their Police Academy training and are fully certified law enforcement officers at the time of their application shall not be not required to take, and will be deemed to have passed, the physical fitness examination.

(b) Each procedure shall be conducted in accordance with the provisions of Part X, below, and the form and content of examination and administering personnel shall be selected or approved by the Commission.

(c) To qualify for appointment, each applicant shall be required to achieve a score or evaluation on the examinations specified in subsection (a) (1)-(6), above, which qualifies said applicant for appointment. Such score on the written examination shall be at or above seventy (70%) percent. The Commission shall determine, in its discretion, the level of achievement necessary to so qualify.

(d) Upon completion of the testing and evaluation procedures, candidates who have qualified for appointment by achieving a qualifying result on each testing and evaluation procedure shall be ranked in order of merit and fitness, using the following formula:

- (1) Written examination - - seventy-five percent (75%) of total weight for ranking purposes; and
- (2) Oral interview - - twenty-five-percent (25%) of total weight for ranking purposes; and

(3) Adjustments, if any, as required by Part X.

(e) The list of applicants who qualify for appointments as probationary patrolman, when so ranked by the Commission, shall constitute the list of eligibles from which names shall be submitted to the Appointing Officer.

4.10 ANTI-DISCRIMINATION PROVISIONS; PROHIBITED INQUIRY

No questions on the applications or the examinations mentioned in this part, whether oral or written, 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, creed, sex, ethnic affiliations, or religious or political opinions or affiliations.

4.11 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.

4.12 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 § 8-14-15.

4.13 FULL APPOINTMENT

An applicant's conditional appointment shall not become a full appointment until he/she meets all additional requirements of the City of Elkins and its police department for full appointment, such as a positive evaluation/recommendation after psychiatric evaluation and/or medical evaluation and otherwise successfully meeting all state requirements for admission to a State approved police academy.

4.14 NO RIGHT OF APPEAL

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.

4.15 PROBATIONARY PERIOD FOR ORIGINAL APPOINTMENT

All original appointments to any positions in the Department subject to these rules and regulations shall be for a probationary period of one (1) year; provided, that at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section 7.03 of these rules and regulations. If, at the close of this probationary term, the

conduct or capacity of the probationer has not been satisfactory to the Appointing Officer, the probationer shall be notified, in writing, that he will not receive absolute appointment, whereupon his employment shall cease; otherwise, his retention in the service shall be equivalent to his final appointment.

PART V- PROVISIONAL APPOINTMENTS BY NON-COMPETITIVE EXAMINATION

5.01 APPLICATION OF THIS PART

This part shall apply to appointments made by the Commission after individuals are nominated to fill a vacancy provisionally upon-competitive examination by the Appointing Officer.

5.02 NOMINATIONS FOR PROVISIONAL APPOINTMENTS; FORM

(a) Whenever, in the judgment of the Appointing Officer, there are urgent reasons for filling a vacancy in the Department and there is no list of individuals eligible for appointment after a competitive examination, the Appointing Officer may nominate an individual to the Commission for non-competitive examination in accordance with Section 8-14-16 of the Code.

(b) Each such nomination shall contain:

- (1) The urgent need to nominate such person rather than wait for an examination from which a list of eligibles could be given;
- (2) The name of the person nominated;
- (3) The expected duration of such person's tenure in the vacancy to be filled, not to exceed three (3) months;
- (4) The vacancy to be filled; and
- (5) A completed PCSC Form 1, attached thereto.

5.03 APPROVAL OF APPLICATION BY COMMISSION

The Commission shall 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, and no eligible list was in effect on the date of the nomination.

PART VI - PROMOTIONS

6.01 APPLICATION OF THIS PART

Every vacancy in positions above that of probationary patrolman in the Department shall be filled, so far as practicable, in accordance with the provisions of this Part and of Section 8-14-17 of the Code.

6.02 PERSONS ELIGIBLE FOR PROMOTION

Persons who have completed at least two (2) years continuous service in the next lower grade shall be eligible to apply for promotion in accordance with the provisions of this part. Said two (2) year period shall be the two (2) years preceding the day on which the examination for promotion is given.

6.03 WHAT CONSTITUTES PROMOTION

Promotion means the process whereby persons advance from a given grade, rank, or position to the next higher one. 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.

6.04 COMMISSION TO BE NOTIFIED BY APPOINTING OFFICER

The Appointing Officer shall notify the Commission of any vacancy which he desires to fill by promotion. In conjunction with such notification, the Appointing Officer shall request that the name or names from the list of eligibles be certified to him by the Commission.

6.05 PROCEDURE UPON RECEIPT OF REQUEST FROM APPOINTING OFFICER

Upon receipt of a request from the Appointing Officer for a list of eligibles for promotion, the Commission shall certify to the Appointing Officer the existing list of eligibles from which promotions shall be made. Alternatively, the Commission shall terminate any existing list of eligibles for promotion upon passage of two (2) years from the date the list was established. If no valid list of eligibles for promotions exists, the Commission shall proceed to establish a new list of eligibles in accordance with the Code and these Rules and Regulations; Provided, however, that in the event that there is only one applicant lawfully qualified to be promoted, the Commission may certify that single applicant as eligible for promotion without administering a written examination.

6.06 FORM OF APPLICATIONS

Applications for promotion shall be made on a form devised by the Commission, which form shall be designated **PCSC Form 2**. The information solicited and given on PCSC Form 2 shall be given under oath and affirmation.

The form and content of PCSC Form 2 may be varied from time to time by the Commission, provided that the form must solicit the following information:

- (a) The applicant's full name, residence and post office address;
- (b) The United States citizenship, age, place and date of birth of the applicant;
- (c) The state of health and physical capacity of the applicant for the public service;
- (d) The businesses, employments, and residences of the applicant for the previous three years;
- (e) The applicant's rank and time of service in that rank;
- (f) The applicant's assignment and time of service in that position;
- (g) The applicant's total years of service on the Police Department; and
- (h) Such other information relating to the applicant's fitness for promotion as the Commission may require, that is not in violation of provisions of the Human Rights Commission.

6.07 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 to a vacant position 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. The list of eligibles, as so constituted, shall continue in full force until:

- (a) The list is exhausted by promotion therefrom or removal of names for other reasons; or
- (b) The passage of two (2) years from the date the list is established.

6.08 TESTING AND EVALUATION REQUIRED FOR PROMOTIONS

- (a) Every applicant for promotion who meets the preliminary requirements thereof shall be evaluated by use of the following testing and evaluation procedures:
 - (1) Except as provided in section 6.05 of these Rules and Regulations, a competitive written examination testing the applicant's suitability for promotion to the vacancy;
 - (2) A qualifying medical examination testing the applicant's general condition of health and ability to perform the public service;

- (3) Length of service with the Department; and
- (4) Adjustment for commendations and/or suspensions.

(b) Each test or evaluation shall be conducted in accordance with the provisions of the Code and of Part X below. The form and content of examinations and the administering personnel shall be selected or approved by the Commission.

(c) Upon completion of the testing and evaluation procedures, candidates for promotion shall be ranked in order of merit and fitness, using the following formula:

- (1) Written examination shall constitute 70 percent of total weight for ranking purposes; and
- (2) Seniority shall constitute 30 percent of total weight for ranking purposes.

(d) The list of applicants who qualify for promotion, when so ranked by the Commission, shall constitute the list of eligibles from which the Appointing Officer shall award promotions in order of merit and fitness.

6.09 INDIVIDUAL REVIEW OF TEST AND ANSWERS FROM PROMOTIONAL EXAMINATION

Individual review of test and answers from promotional examinations shall be in accordance with Section 8-14-13a of the Code.

6.10 ANTI-DISCRIMINATION PROVISIONS; 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 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, creed, sex, ethnic affiliations, or religious or political opinions or affiliations.

PART VII – GENERAL ENTITLEMENT TO HEARING; GRIEVANCES; REMOVAL, DISCHARGE, SUSPENSION, OR REDUCTION IN RANK; REDUCTION IN SIZE OF DEPARTMENT

7.01 APPLICATION OF THIS PART

(a) This Part shall govern and determine the right of an individual to a hearing before the Commission, and it shall operate to supplement the other provisions of law granting such a right.

(b) All hearings provided for in the Code or in these Rules and Regulations shall be governed by the provisions of this Part.

7.02 PERSONS ENTITLED TO HEARING

- (a) Any person aggrieved by the Commission's refusal to accept an application for appointment or promotion, refusal to test or otherwise evaluate, refusal to certify as eligible, or any other act of the Commission during the appointment or promotion process operating to the detriment of such person, shall be entitled to a hearing before the Commission.
- (b) Any member or group of members of the Department or any other persons who believe that any of the provisions of the Code or of these Rules and Regulations has been violated by virtue of any order or instruction issued in the Department, or by any act of the Commission, may petition the Commission for a hearing. The Commission shall promptly consider any such petition and may, in its discretion, grant such person or persons a hearing upon the issues raised in the petition.
- (c) No member of the Department shall be removed, discharged, suspended, or reduced in rank, pay or benefits, except for just cause; any person aggrieved by an action of the Department removing, discharging, suspending, or reducing in rank, pay or benefits shall be entitled to a hearing.
- (d) Any member of the Department sought to be removed by a citizen's petition provided for in Section 8-14-19 of the Code shall be entitled to a hearing.
- (e) Any applicant for promotion who feels aggrieved by the answers and/or scores received on a promotional competitive examination shall be entitled to a hearing.

7.03 RULES APPLICABLE TO CASE OF REMOVAL, DISCHARGE, SUSPENSION, REDUCTION IN RANK OR REDUCTION IN PAY

Cases of removal, discharge, suspension, reduction in rank or reduction in pay shall be governed by Section 8-14-20 of the Code.

7.04 RULES APPLICABLE TO HEARINGS CONDUCTED BY REASON OF PETITION FOR VACATING APPOINTMENTS

Cases involving petitions for vacation of appointments shall be governed by the provisions of Section 8-14-19 of the Code.

7.05 REDUCTION IN SIZE OF DEPARTMENT

If for any reasons of economy or other justifiable cause, it shall be necessary to reduce the number of persons employed as members of the Department, 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 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 VIII - HEARINGS

8.01 APPLICATION OF THIS PART

Unless otherwise specified in these or other Rules and Regulations, the rules in this Part shall govern and apply to hearings conducted by the Commission pursuant to the authority vested in it under the Code or regulations promulgated pursuant thereto.

8.02 HEARINGS BY THE COMMISSION; PRESIDING OFFICER

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

8.03 POWERS OF THE PRESIDING OFFICER

(a) At every hearing, the Presiding Officer may conduct generally the hearing, and, in connection therewith:

- (1) Administer 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 permit the taking of discovery depositions;
- (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; and
- (9) With regard to each of these duties and powers, decisions by the Presiding Officer shall be subject to review by the Commission.

(b) In all cases, final orders and decisions shall be entered by the Commission. In no case shall a Presiding Officer enter a final order or decision.

8.04 NOTICE OF HEARING; CONTENTS OF NOTICE

- (a) Unless otherwise specified in the Code or these Rules and Regulations, no hearing shall be conducted 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 concise statement of matters which are to be the subject of or asserted at the hearing.

8.05 PLACE OF HEARING

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

8.06 REPRESENTATION AT HEARINGS

At hearings held pursuant to the Code or these Rules and Regulations, any party may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this State.

8.07 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, subject to such guidelines as the Commission may determine to be appropriate in any case.
- (c) Waivers must be unequivocal and request the Commission to decide the matter at issue on the pleadings and written record in the 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.

8.08 PROPOSED FINDINGS, CONCLUSIONS AND ORDERS

The Presiding Officer may request the submission of proposed findings of fact, conclusions of law and orders, together with supporting briefs. Such proposals and briefs, if submitted, shall be served upon all parties and shall contain adequate references to the record and the authorities relied upon.

8.09 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.

8.10 DECISION BY THE COMMISSION

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 decision and order.

PART IX – CHIEF OF POLICE

9.01 APPOINTMENT AND REMOVAL

The appointment and removal of the chief of Police shall be in accordance with the provisions of Section 8-14-17 of the Code.

PART X – CONTENT, CONDUCT, GRADING, WEIGHTING, POSTING OF RESULTS OF EXAMINATIONS AND APPOINTMENT TO A LIST OF ELIGIBLES

10.01 APPLICATION OF THIS PART

- (a) This Part, along with Sections 8-14-13, 8-14-13a, and 8-14-14 of the Code, shall govern and apply to the design, content, conduct, grading, posting of results and weighting of competitive examinations and other forms of evaluation used by the Commission in determining which applicants will be placed on a list of eligibles.
- (b) All competitive examinations and other forms of evaluation for appointments or promotions to all positions shall be practical in their character, and shall relate to such matters, and include such inquiries as will fully test the comparative merit and fitness of the individual or individuals examined to discharge the duties of employment sought by him or them.
- (c) Competitive examinations and other forms of evaluation used by the Commission shall be administered in an order determined by the Commission.
- (d) At least seven (7) days public notice of each examination or other form of evaluation shall be given to applicants for a position; provided, however, that the Commission may issue a complete schedule of all testing to be conducted during a series of examinations or evaluations, which schedule shall contain the times, dates and places of all examinations to be conducted in such series. In that event, such schedule shall be given at least seven (7) days prior to the time that the first examination or other form of evaluation in the series is given.
- (e) The eligible list, consisting of the applicants' names and the grades of examinations, shall be posted at the City Hall, at the Department headquarters, and at such other places as the

Commission deems appropriate.

(f) Whenever the Commission determines that an applicant for probationary patrolman is disqualified from appointment to the list of eligibles by reason of his failure to pass or qualify on one of the examinations or evaluations administered in a series, the Commission shall direct that the individual cease to participate further in the evaluation process.

(g) All examinations and other forms of evaluation shall be designed and administered under the supervision of the Commission. In the Commission's discretion, educators, private or public consultants, and representatives of other police departments and other persons may be used to assist the Commission in design and administering such examinations and other forms of evaluations.

10.02 GENERAL RULES RELATING TO WRITTEN EXAMINATIONS

(a) Grading of written examinations shall be done by professionals selected by the Commission. Each applicant for appointment as a probationary patrolman shall be required to achieve a passing score of seventy (70%) percent on such written examination. A passing score shall be deemed to be that level of achievement which indicates to the Commission that the applicant(s) taking the examination possess the requisite skills and knowledge to perform the duties of a probationary patrolman.

(b) Results of written examinations shall be posted on a list, consisting of applicants' names and grades, before the close of the business day following the Commission's receipt of the results. A copy of the results shall be posted at the places described in Section 10.01 (e), above. The Commission shall direct that probationary patrolman applicants failing the written examination cease to participate further in the evaluation process.

(c) The test score of an applicant for probationary patrolman shall be the average of all scores of tests taken during the three (3) years next preceding the date of prospective appointment. The test score of an applicant for promotion shall be the average of all scores of tests taken during the two (2) years next preceding the date of the prospective appointment.

10.03 PRESENCE OF REPRESENTATIVES OF THE PRESS

It shall be the policy of the Commission to permit representatives of the press to visit, observe, and record the events surrounding the examinations herein referred to insofar as it is possible to allow them so to do without disturbing applicants who are taking such examination. Representatives of the press may observe and be present at competitive examinations administered under the provisions of these Rules and Regulations, subject to the following restrictions:

(a) Whenever the Commission determines that the number of press representatives seeking to attend an examination is so large that their attendance will disturb the candidates taking such examination or otherwise disrupt the conduct of such examination, the Commission may choose, in a fair and random method, five (5) representatives of the press to attend and observe such

examination;

- (b) Representatives of the press attending such examination shall observe such examinations in a quiet and orderly fashion;
- (c) Representatives of the press shall, under no circumstances, interview or record by film, videotape, or any other electronic means any conversations or images in the area where the examinations are being conducted without prior approval of the Commission; and
- (d) Representatives of the press not complying with this Section may be asked to leave the area of the examinations.

10.04 GENERAL RULES RELATING TO OTHER EXAMINATIONS

- (a) Medical Examinations - After a conditional offer of employment, the Commission shall cause each applicant for appointment of promotion to a position to undergo a medical examination. Such examination shall be conducted under the supervision of a board composed of two (2) doctors of medicine, appointed for such purpose by the Appointing Officer of the City. Such board must certify that an applicant is free from any bodily or mental defect, deformity or disease which might incapacitate him or her from the performance of the duties of the position desired and is physically fit to perform such duties. Said examination may be given prior to the written examination or after it, at the discretion of the Commission.
- (b) Psychiatric Testing - After a conditional offer of employment, the Commission shall require applicants for appointment to a position to undergo psychiatric testing designed to test an applicant's mental fitness for service in the Department. Such examination shall be conducted by or under the supervision of one or more licensed psychiatrists or qualified psychologists selected and/or approved by the Commission.
- (c) Background Investigations - Background investigations required by the Commission shall be conducted by the Department. Such investigations shall have the following purpose: (1) To verify information contained in applications; (2) to inquire into matters relevant to the applicant's suitability for appointment; and (3) to inquire into such other matters as the Commission may request.
- (d) Agility testing shall be administered to all entry-level applicants. Such testing shall be to standards established from time to time by the President of the Commission, in consultation with the Chief of the Elkins Police Department, and made available for public inspection in the Order Book of the Elkins Police Civil Service Commission. Provided, that said standards will always require applicants to exceed the then-current entrance requirements imposed by the West Virginia State Police training facility on municipal police department trainees. In the event that the West Virginia State Police training facility adopts higher entrance standards for West Virginia State Police cadets than for municipal trainees, the standards established by the President of the Elkins Police Civil Service Commission shall not exceed the entrance standards imposed on West Virginia State Police cadets.

(e) Oral Interview - (1) As a part of the evaluation process, each applicant for appointment as a probationary patrolman shall be administered an oral interview by the Commission. (2) At such oral interview, a quorum of the Commission must be present. (3) Oral interviews for appointment shall test the applicant's general ability to assume the rank of probationary patrolman. In all cases, the Commission shall administer oral interviews in a fair and impartial manner.

(f) Confidentiality to be Maintained - Results of all medical, psychiatric, and background examinations conducted in connection with the evaluation process shall be kept confidential and the information contained therein shall be released only in accordance with the provisions of these Rules and Regulations.

(g) Certification of Fitness - Each applicant shall be required to be deemed by the medical doctors, psychiatrist, psychologist or the person or agency administering such examinations to be fit for service in the Department and in the position to which the applicant aspires. Such fitness shall be determined after consulting a statement of standards presented to such medical doctors, psychiatrist or psychologist by the Commission.

10.05 WEIGHING OF VARIOUS EXAMINATIONS; RANKING OF APPLICATIONS

(a) Appointments:

(1) In accordance with the provisions of these regulations, each appointment by the Appointing Officer shall be from a list of eligibles. The list of eligibles shall be established by the Commission by ranking applicants for appointment in order of merit and fitness in accordance with the following formula:

I. WRITTEN EXAMINATION SCORE [based on
a maximum score of 100 points] X 0.75 = _____

PLUS

II. ORAL EXAMINATION SCORE [based on
a maximum score of 100 points] X 0.25 = _____

AND ANY ADJUSTMENTS NECESSARY AS PROVIDED FOR HEREIN

Military service credit, computed according to West Virginia Code § 6-13-1.

- (2) To the total number of points awarded in accordance with the written examination:

Five (5) points shall be added for an applicant who is Academy-trained and approved by the Governor's Committee on crime

OR

Five (5) points shall be added for an applicant who has a Bachelor's Degree in Criminal Justice or related field

OR

Three (3) points shall be added for an applicant who has an Associate Degree in Criminal Justice or related field.

- (3) The total number of points, so calculated, shall constitute an applicant's score. Applicants shall be ranked in order of merit and fitness on the basis of such score and the list of eligibles constructed from such ranking.
- (4) 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 the public drawing of lots.

(b) Promotions

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

I. WRITTEN EXAMINATION SCORE [based on a maximum score of 100 points] X 0.70 = _____

PLUS

II. DEPARTMENT EVALUATION SCORE [sum of departmental evaluation of previous January less points for suspension as calculated in (b)(2) below, plus points for commendations as calculated in (b)(3) below] [based on a maximum score of 100 points] X 0.15 = _____

PLUS

III. SERVICE [ten points for each full year of service or major fraction thereof to a maximum of 100 points] X 0.25 = _____

- (2) To the raw departmental evaluation score, in II above, in accordance with the above formula, one (1) point shall be subtracted for each day of suspension during the preceding three (3) years (up to ten days), and an additional 0.50 point shall be subtracted for the eleventh (11th) and each succeeding day of such suspension.
- (3) To the raw departmental evaluation score, in II above, in accordance with the above formula, one (1) point shall be added for each official commendation the applicant had received in the past three (3) years, up to a maximum of three (3) points.
- (4) The total number of points so calculated shall constitute each applicant's score. Applicants shall be ranked in accordance with their scores and a list of eligibles constructed therefrom.
- (5) 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 the public drawing of lots.

10.06 ELIGIBLE LIST

The Commission shall prepare and keep open to public inspection the eligible lists constructed in accordance with the terms of these Rules and Regulations. The persons on the list of eligibles shall be notified and be appointed or promoted from the list of eligibles in accordance with these Rules and Regulations.