

1. Announcements And Updates
2. Review And Approval Of Minutes From November 14th, 2017 Meeting

Documents:

[HHS MINUTES FROM NOV 14 2017.PDF](#)

3. Civil Service Ordinance Updates

- Overview of updates to ordinance

Chief Sauschuck, Portland Police Department
Chief Jackson, Portland Fire Department

- Committee Questions
- Public Comment
- Committee Deliberation & Vote

Documents:

[2018-01-12 CIVIL SERVICE MEMO \(TO COMMITTEE\).PDF](#)
[CH. 2 AMENDMENTS - FULL REDLINE V.3 \(TO COMMITTEE\).PDF](#)

4. Sound Monitoring Equipment Update

- Brief update from city staff regarding the sound monitoring equipment that has been placed throughout the city
- Committee questions & discussion

5. Upcoming Meeting Dates: Committee Discussion

Keep up to date with the shelter design and planning process at the City's website:

[_HTTP://WWW.PORTLANDMAINE.GOV/2098/PLANNING-FOR-A-NEW-SHELTER](http://www.portlandmaine.gov/2098/planning-for-a-new-shelter)

Portland, Maine



Yes. Life's good here.

Health & Human Services Committee Minutes

Tuesday, November 14th, 2017, 5:30 p.m. Room 24, City Hall

Committee Attendance:

Belinda S. Ray, Chair (District 1), Brian Batson (District 3),

City Staff Attendance:

Mayor, Ethan Strimling; Corporation Counsel, Anne Torregrossa; Finance Director, Brendan O'Connell; Director of Human Resources, Gina Tapp; Director of Health & Human Services, Dawn Stiles; Fire Chief, David Jackson; Assistant Police Chief, Vern Malloch;

AGENDA ITEM 1 – Meeting Called to Order and Minutes Reviewed:

Meeting was called to order at approximately 5:34 PM

Second order of business Agenda Item #4, Civil Service Ordinance Updates, was tabled for January, motion was seconded with all in favor

Chair Ray moved to accept minutes after a brief overview from the previous meeting. The motion was seconded with all in favor.

AGENDA ITEM 2 - Mandatory Paid Sick-Leave Ordinance (no public comment)

Chair Ray gave an overview of the process. There will be two public comments sessions before this could go in front of the council.

Mayor Strimling took the floor and spoke on the importance of this ordinance. The concern is that thousands of workers currently do not have earned paid sick time. *The Portland Earned Paid Sick and Safe Time Ordinance Draft* (See handout #1) the Mayor gave a quick overview before introducing Erin Hennesey & Eliza Townsend.

Presentation:

Earned Paid Sick Time Ordinance By: Erin Hennesey, Southern Maine Workers' Center & Eliza Townsend, Maine Women's Lobby (presentation Handout #2)

Presentation highlights are paid sick time is proven tool to:

- Decrease spread of illness
- Improve recovery
- Support preventative health care
- Improve productivity for business
- Reduce employee turnover

Paid sick time helps Portland children

- Aids children's health
- Shortens hospital stay
- Reduces disease transmission- keeping more kids healthy and in school

"Stay home if you are sick"

This is a growing momentum for earned paid sick leave policies – 8 states, 2 counties and 30 cities, including ten cities that are comparable to the size of Portland (Among the eight state are Connecticut, Massachusetts, Vermont and Rhode Island) see handout

Definition of family-supporting the diverse (chosen) families and caregivers relationships in the community Supports Victims/Survivors of Violence paid "safe days"

Allowing all employees of all businesses in Portland (full time or part-time) to earn one hour a week of sick leave for every 30 hours they work. This is a small change, but will improve public health in the city of Portland.

Chair Ray asked Erin if she could provide the presentation including the data she spoke on regarding 20% stats on businesses (completed posted online)

Chair Ray asked the committee to start to review the draft ordinance (see handout #1)

A brief introduction of city staff was given: Gina Tapp, Human Resources Director; Dr. Kolawole Bankole, Public health; Amy Legere, Fire Department; Anne Torregrossa, Corporation Counsel; Brendan O'Connell, Finance Director; Dawn Stiles, Health & Human Services;

Committee began review of draft ordinance:

Definitions:

Chair Ray asked staff if it is typical for a policy to define to who gets benefits. Gina responded with that Yes, an employer typically defines benefit eligible employees such as full-time, part-time.

Chair Ray asked staff regarding seasonal employees, such as a college student home for the summer who is working full-time hours, would they receive benefits? Gina responded that a seasonal, per diem, on-call, usually don't have benefits tied to them and if they do they could be prorated.

Chair Ray requested clarification on defining an employee - What is the likelihood of a company moves their full time employees to having all part time employees? Anne responded that she will have to look into this further for the committee.

Chair Ray asked Gina if the city has concrete language defining family. Gina responded that any good employer can defines family different. The City defines "other family member" and recognizes domestic partners.

Councilor Mavdonnes requested the following information from staff:

- Stats on Union vs Non-union employees with the City of Portland
- How would an employer monitor affiliation or close association by blood?
- Red line version of ordinance (Anne will provide original version)
- FMLA information outlining types of employees such as Healthcare professionals (HR will provide)

Continuing with the definition section Councilor Batson requested specific definition of a healthcare professional.

Gina & Anne responded that the definition proposed in the draft was originated from FMLA (Family Medical Leave Act) employers are familiar with this requirement as it falls under Maine Statute & Federal Statutes.

Councilor Mavdones noticed that this draft does not require to pay out earned sick leave to those who leave voluntary or who are terminated – Anne responded that this is correct.

Accrual of Earned Paid Sick Time

Councilor Batson: *Section #3 **Accrued paid sick leave shall be awarded and available for use no more than eight days after it is accrued. Alternatively, an employer may award paid sick time in advance of accrual in an amount anticipated to be accrued over a year's time. Is there a grace period?***

Chair spoke up that this may be tied to your paycheck where you are paid a week later.

Councilor Mavodones: ***Are there limits to what can be used?***

Anne responded if you have to go to a doctor's appointment for one hour you can use one hour. If you have to use the next day for a total of four hours you can use four hour increments. You do not have to take a whole eight hour shift. Anne mentioned she will clarify the language going forward.

Councilor Mavodones requested information regarding financial impact for businesses- A request of information from Brendan O'Connell on financial impact from various businesses along expense liability on sick leave usage. Brendan will follow up on this item

Gina spoke to the committee on a stats she prepared for this evening (she gave the document to the Committee to review) The Committee gave an overview of the document provided

- 2016 sick leave usage for city employees.
- by department
- sick leave hours usage gross 65k
- 1375 employees
- Actual leave cost totaling \$1.5 million

Following the review of this document Councilor Mavodones requested the following from staff

- stats to possibly include termination payout and FICA cost
- stats NOT include salary employees (where they are paid out regardless) Per Mayor Strimling

Accrual of Earned Sick Time Continued

Chair Ray proposed that the ordinance reflect having a cap on accrual. Is it possible to stop accrual at 40 hours? Once you reach 40 hours the employee will need to use or lose it.

Anne responded this would need to be written in ordinance unless paid out, cap 6 days per year

Mayor Strimling responded when drafting this ordinance it was discussed it was to go in the draft as *to once the employer gave you 6 days they did not have to give you anymore.*

Council Mavodones added to the conversation in regarding calendar year vs fiscal year? Where different businesses may have different budget dates.

*follow-up item

Use of Earned Paid Sick Time

Chair Ray reviewed Section #4- *Attend a school meeting or meeting at a place where a family member is receiving care necessitated by the family member's health condition or disability - **Was this attended for parent teacher conference? Or school meeting?*** Eliza responded to refers to "health"

Chair request a change to this sentence to reflect "health"

Procedures for Taking Earned Paid Sick Time

Councilor Batson- Under #2 *When the need for use of earned sick time is not foreseeable, an employee must provide notice to the employer as soon as practical under the facts and circumstances of the particular case. **What constitutes this? How does an Employer to define this?***

Anne responded with this is not a new requirement for employer. This is a general standard as an employer has to follow leave acts (FMLA) smaller business, 15/50 small business requirements; job protected leave; they can't fire you for it, but employer does not have to pay you for the leave; there is a balance for abuse of sick leave vs sick leave use for medical leave;

Councilor Batson- good faith effort?

Anne added that employer's already struggling with current leave act.

Councilor Mavodones requested a table showing/outlining types of leave by law (Gina gave to Committee) please send/provide digital. **What are similar types of leave?**

Eliza added to the conversation (with approval from Committee) that small businesses are familiar with FMLA.

Chair Ray added to the conversation asking for further clarification on *particle term* from Section #2? Gina responded with employee's preplanning if they need surgery- that is practical. If you are sick that is unforeseeable.

Councilor Mavodones: **Can an employer require documentation for employer out more than 3 consecutive days?** Gina responded with she would accept a note from doctor's that is on letterhead with brief description of when they can return to work. Anne gave information on current *CEBA Doctor's Note Requirements* surrounding (abusers) on dealing with an employee taking sick leave but not necessarily on consecutive days.

Chair Ray: **Does this cover time to and from doctor's office? Was the intent to cover cost of doctor's visit if you require a doctor's note?** The conversation continued with the committee and staff. This will have to be a follow-up item.

Councilor Mavodones: **It is not unusual to require documentation from mutual agreed doctor, such as a Concentra- Does this draft preclude that?** Eliza expressed to the committee she has a concern with sending employee's to employer's doctor's involving mental illness issues.

Anne added to the conversation that reasonable documentation does not have to require to send to an employer's doctor.

Councilor Batson added to the conversation that a trip to the ER on a weekend or holiday where the employer requires doctor's note that could be a large expense, falling on employer over \$1000.

Chair Ray added to the conversation that only required documentation if they feel sick leave may be abused, draft does not require a note.

Mayor closed the conversation with finding the middle ground for employee and employer.

Section 4. Exercise of Rights Protected; Retaliation Prohibited

Chair Ray requested Anne to clarify ***Section (D) Protections of this section shall apply to any person who mistakenly but reasonably alleges a violation of this article.*** Anne responded that there is a standard that it has to be a reasonable belief standard. The employee may call out sick but if she gives the reason of because of her cat. This reason, her cat, does not fall under a protected class. Having both parties understanding "reasonable" There could be a situation where both parties could misinterpretation of the ordinance of what "reasonable" means. Will need to clarify.

Councilor Mavodones; reviewed ***Section (C) What is the cities role in enforcement? Abuse of sick time and get fired –I have been wronged?*** Anne responded with an employee may take off every Friday (does not require a note) the employee decides not to share for what the reason was for calling out. The challenge could be for the employer has to make the decision abuser of sick leave. The challenge could be the employee could be hunting or undergoing treatment? If the employee does not share why they were out and they get fired. They could go to the city and ask for assistance. Does the city make the determination? Anne we would have to clarify going forward.

Notice of Rights

Councilor Batson reviewed ***Section (f) What constituents as an offense? Each day? Where does this fall?*** Anne responded that this is a good section to clarify. \$100 per notice? Per day? Either way we should clarify.

For the city most ordinance penalties run per day.

Councilor Mavodones reviewed ***Section (C) Notice of posters shall be provided in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole, and any language spoken by at least 5% of the employer's workforce, provided that such notice has been provided by the City of Portland.- Is this from City of Portland? Dr. Bankole confirmed yes.*** As he continued reviewing ***Section (E) The amount earned paid sick time available to employee... Who would keep track of this? Would this be the employer's payroll?***

Committee asked Brendan if there was a way to find out the cost of the posters maybe by finding the cost when the city did the minimum wage posters.

Chair Ray proposed question to staff regarding Section (C) Can the poster be on the website? So city wouldn't be tasked with cost of prints.

Recordkeeping requirements

Councilor Mavodones: Reviewing ***Section (A) Employers shall retain records documentation hours worked by employees and earned sick time earned and taken by employees for a period of six years. How does this square with the law? Is this universal?*** Anne responded with that 6 years is typical statute of limitations.

Mayor asked about our payroll records? Anne responded with as a government entity we have different requirements.

Chair Ray reviewed ***Section (B) Employers shall allow the city of Portland access to records– is this legal for the city to coordinate an audit?*** Chair requested a change. The conversation continued and the enforcement section addresses this issue. Anne will follow-up with requested changes

Enforcement

Councilor Mavodones: Section B1 Complaint process & C1 Private Cause of Action after conversation he has requested future follow-up. He continued to review **Section B3 regarding additional amount 2x what the employer was paid.** Anne responded with that this came from the original draft she received as an enforcement penalties. He continued to review **Section (c) Private Cause of Action #2.** Councilor Mavodones expressed concern with last sentence. **Chair Ray agreed and asked Anne if there was another course of action? What would that be? Would they have to go to court to receive wages?** Anne responded with if you are violations of the ordinance \$100 a day – and you continue to refuse to pay employee the city will come after you with civil penalties– **What’s incentive for an employee to go thru this process to receive days wages? Without enhanced of penalties – follow up item.**

Committee requested from Corporation Counsel:

- Best estimate in terms of cost
- What would be the staff time to prosecute on of these cases?
- Is it possible to check with other municipalities and see what their legal departments do regarding penalties? And how many do they process a year?

Public Outreach

Chair Ray gave an overview that this is a multiple step process. There is no time frame provided in the draft. Do we need to have one? Within 30 days? Anne responded with a reasonable expectations.

Committee completed draft ordinance review.

Chair gave overview of the next steps

- Follow-up in February meeting with answers
- Anne will prepare the next draft
- Staff to answer questions and get possible staff recommendations going forward

Brendan spoke that January may be a difficult time. Chair Ray spoke that a few items will be on the agenda on January and February seems more realistic time. The public may want to see this before they comment. The committee decided to come back in Feb. there may have to have two meetings.

Meeting adjourned

MEMORANDUM

TO: Health and Human Services and Public Safety Committee

FROM: Chief Jackson and Chief Sauschuck

CC: Jon P. Jennings, City Manager

DATE: January 12, 2018

RE: Proposed Changes to the Civil Service Ordinance

Hiring and promotions in the Fire and Police Departments are governed by the Civil Service Ordinance, as well as the rules put in place by the Employment Subcommittee of the Civil Service Commission. Unfortunately, the ordinance is badly outdated, does not reflect the current practices of the either Department, and includes many legacy provisions from when the Fire Department moved to dual companies twenty years ago. Instead, the Departments have been working with their respective Unions and the Employment Subcommittee to make sure that their hiring and promotion processes are up to date and work to meet the needs of the Departments.

The proposed changes streamline the ordinance while keeping the most important pieces in place. These include minimum qualifications for new police officers and firefighters, the basic procedures for hiring and promotions, and the appeal rights of new hire and promotional candidates. The changes remove many of the smaller details that are more likely to change over time, including the timing of exams, the specific type of testing, and procedures for preparing forms. Instead, these details can be addressed at the Employment Subcommittee level, or at the Department level, depending on the nature of any changes. This format still ensures oversight over hiring and promotions in the Fire and Police Departments, but allows the process to be more responsive with more routine changes being implemented through the Employment Subcommittee, rather than amendments to the ordinance.

The Fire Union and both Police Unions have been involved in the changes to the ordinance and all three Unions support the proposal.

The proposed ordinance changes also make some edits to the qualifications for, and procedures of, the Police Citizen Review Subcommittee. Many of these changes were recommended by the Subcommittee itself, and they are in support of the changes proposed to their governing provisions.

Chapter 2 ADMINISTRATION*

ARTICLE IV. CIVIL SERVICE*

*Charter reference(s)--Mandate for civil service, Art. VI, § 3.

*Cross reference(s)--Commissions generally, § 2-31 et seq.

*Cross reference(s)--32 M.R.S.A. § 7166 (Limitation on use of polygraph in employment)

*Editor's Note--The Civil Service Ordinance was substantially reorganized and revised by Council Order No. 89-02/03, 11-4-02.

DIVISION 1. GENERALLY

Sec. 2-46. Definitions.

The following words and phrases, when used in this article, shall having the meanings respectively ascribed to them unless the context otherwise indicates:

~~Appointing authority means the City Manager.~~

Cause. In the case of a member, "cause" shall mean just cause and shall include any act or omission which constitutes legal cause and includes, but is not limited to: violation of any departmental rule or rules; incompetent or inefficient performance of duty; or inattention to or dereliction of duties; insubordination; discourteous treatment of the public or a fellow employee; violation of any provision of this article or the rules adopted thereunder, whether such violation may result in a forfeiture of office hereunder, or not; job suitability or physical unfitness to perform the normal duties of the position which the member holds; the use of intoxicating liquors, narcotics, or any other drug, liquid, or preparation on duty, or to such an extent that such use interferes with the efficiency or job suitability or physical fitness of the member, or prevents the member from properly performing the normal functions and duties of his or her position; misconduct; the commission of any disqualifying criminal offense; failure to report to the appropriate superior; errors, incompetence, misconduct, inefficiency, neglect of duty, or any other form of misconduct or negligence of which the member has knowledge; ~~failure of a firefighter or firefighter/paramedic to pass the first fire drill school offered within the first two years of appointment;~~ and any other acts or omissions which would tend to directly discredit or injure the public service or would jeopardize the effective functioning of the department. In the case of a civil service commissioner or alternate, "cause" shall include any act or omission which constitutes legal cause, and includes but is not limited to: incompetent or inefficient

performance of duty; unexcused absences from commission meetings; violation of any provision of this article or the rules adopted thereunder, whether such violation may result in a forfeiture of office hereunder, or not; the commission or conviction for any disqualifying criminal offense, or any action by the Civil Service Commissioner or alternate intended to affect or influence, or which could reasonably be expected to affect or influence any decision of the City Manager, the Chief of either department, or the City Council with respect to the department, or of any member of the department with respect to the performance of his or her duty.

Charge means a written statement to the member describing the act or omission constituting cause for action taken or proposed to be taken.

Civil service commission means collectively the two independent subcommittees constituting the commission, i.e. the employment subcommittee and the police citizen review subcommittee.

Demotion means any reduction in rank within the department but shall not include any economic layoff.

Director of human resources shall mean the person designated by the City Manager to act as Director of Personnel for the City and his or her designees (also referred to herein as the "Director").

~~*Disqualifying criminal conviction* means the conviction for any disqualifying criminal offense. The term shall not include such a conviction if it has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure. Juvenile offenses shall not disqualify but may be considered among other factors if otherwise relevant to the proposed action.~~

~~*Disqualifying criminal offense* shall mean and include any offense punishable by death or imprisonment for one (1) year or more under the law of the sentencing jurisdiction, whether or not such sentence is imposed or served; or any theft offense; or any sex offense; or any offense which involves dishonesty or false statement.~~

Member means any firefighter, ~~firefighter/paramedic~~ fire officer, police officer, or superior officer appointed hereunder to any rank within the fire or police departments, except the chiefs thereof.

Promotion means any advancement in rank within the department, other than the rank of chief.

Rank means the position classification of any member to which he or she has been appointed hereunder within the fire department or police department but shall not include any contractual or other pay differentials between functions or grades within each rank.

Relative means grandfather, grandmother, father, mother, son,

daughter, grandson, granddaughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, half-brother, or half-sister, whether by half-blood or full blood, and whether by consanguinity or affinity.

~~Working test period means a probationary period during which the employee has no expectation of continued employment and may be removed for any reason, with or without just cause.~~

(Code 1968, § 201.1; Ord. No. 89-80, 7-7-80; Ord. No. 433-82, § 1, 3-15-82; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 4, 11-5-01)

DIVISION 2. CIVIL SERVICE COMMISSION*

Sec. 2-48. Composition.

(a) The Civil Service Employment Subcommittee of the Civil Service Commission shall consist of three (3) commissioners and one (1) alternate who shall serve in the absence of any commissioner.

(b) The police citizen review subcommittee shall consist of ~~sevenix (76)~~ commissioners ~~and one (1) alternate~~ who shall serve in the absence of any commissioner.

(Code 1968, § 201.3; Ord. No. 89-80 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01)

Sec. 2-49. Qualifications.

(a) *Qualifications of commissioners.* Every civil service commissioner and alternate shall be a resident of the City of Portland ~~and shall be of good moral character.~~ In addition, the following persons shall not be eligible for appointment to, or service on the Commission:

- (1) Any present or former employee of the city, who was employed by the city within the previous ten (10) years;
 - (2) Any present or former member of the City Council, who has held that position in the previous ten (10) years; or
 - (3) Any civil service commissioner who has completed three (3) consecutive full terms of three (3) years as provided in Chapter 2, Article III.
- (b) Additional subcommittee eligibility requirements:
- (1) *Employment subcommittee.* The following persons shall not be

eligible to serve on the employment subcommittee:

any relative of a present member of the police or fire departments.

(2) *Police Citizen Review Subcommittee.* In order to ensure an objective and unbiased audit of the police department's internal affairs investigation process, any applicant for service on the citizen review subcommittee shall be disqualified from serving on said subcommittee if:

- a. any member of the applicant's immediate family is or has been a Portland police officer in the previous ten (10) years;
- b. the applicant or any member of his or her immediate family has been arrested by any member of the Portland police department within the previous ten (10) years, or has had the final disposition of any criminal proceedings resulting from such an arrest within the previous ten (10) years, whichever is longer;
- c. the applicant or any member of his or her immediate family has filed a complaint with the internal affairs unit of the Portland police department ~~alleging excessive force, civil rights violations or conduct on the part of a police officer that would constitute a criminal offense~~ within the previous ten (10) years; and
- d. the applicant or any member of his or her immediate family has brought suit against the City of Portland, the Chief of Police, the police department or any individual police officer for a cause of action arising out of an officer's performance of his or her duties; within the last ten (10) years, or has had such a suit finally disposed of within the previous ten years, whichever is longer.
- e. "Immediate family" as used herein shall mean and include spouse, domestic partner, children, grandchildren, parents, grandparents, and siblings.

(c) Failure to disclose any grounds for disqualification or falsification of any information in the application process shall disqualify the person from service on the commission and shall constitute "cause" within the meaning of section 2-46.

(d) Any civil service commissioner or alternate who becomes ineligible to serve during his or her term shall resign, and failure to do so shall be "cause" within the meaning of section 2-46. A commissioner or alternate on the employment subcommittee who is a relative of any candidate for appointment under this article shall

inform the secretary in writing of such relationship and shall not attend any meeting of the subcommittee dealing with such candidacy, nor participate in nor attempt to influence any action by the commission with respect to the position for which such relative has applied.

(e) Reasonable efforts shall be made to ensure that the appointments to the civil service commission are diverse and representative of the community.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299.86, 1-22-86; Ord. No. 370-91, § 1, 6-5-91; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 118-08/09, 12-1-08)

Sec. 2-54. Officers.

Each subcommittee of the civil service commission shall annually elect one (1) of its members as the chair. Each subcommittee may, at its option, also elect one (1) of its members as the vice chair, to serve in the absence of the chair. The Director of Human Resources or his or her designee shall serve as secretary to the employment subcommittee and shall furnish any necessary administrative assistance.

The corporation counsel or his or her designee shall serve as secretary to the police citizen review subcommittee and shall furnish any necessary administrative assistance to that subcommittee.

(Code 1968, § 201.3; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01)

DIVISION 3. EMPLOYMENT SUBCOMMITTEE

Sec. 2-58. Applicability; duties.

(a) *In general.* This division shall govern the appointment, reinstatement, promotion, demotion, layoff, suspension, resignation, or removal of members of the fire and police departments of the city, other than the chiefs thereof, except to the extent that the Maine Public Employees Labor Relations Law and any collective bargaining agreement made in accordance therewith provides to the contrary.

(b) *Duties.* In addition to carrying out the duties described elsewhere in this article, it shall be the duty of the employment subcommittee:

- (1) To establish a system of personnel administration for members of the departments based on competition, merit principles, and scientific methods, and to prevent unlawful discrimination based upon race or color, religion, age, sex (including pregnancy), sexual orientation, gender identity or expression, ancestry or national origin, physical or mental disability, veteran status, genetic information, previous assertion of a claim or right under Maine's Workers'

Compensation Act, previous actions taken protected under Maine's Whistleblowers' Protection Act, or any other protected group status as defined by applicable law, or race, color, age, religion, sex, sexual orientation, physical or mental disability, ancestry, national origin, veteran's status or political affiliation;

- (2) To ~~provide the City Manager with~~oversee the process of creating lists of names of persons eligible for specific appointments;
- (3) To make suitable rules, from time to time, which rules shall not be inconsistent with this article, applicable statutes, or regulations. Proposed rules shall be submitted to the City Manager and shall become effective when approved by the City Manager. All such rules shall be recorded in the office of the City Clerk; and

~~_(4) To request and review reports of the chiefs of the police and fire departments detailing the departmental rules and regulations relating to physical fitness of members. When, and if, the commission determines that such rules and regulations are inadequate to ensure the physical fitness of either department, it shall report such inadequacy and make recommendation for improvement therein to the City Council.~~

(Code 1968, § 201.2; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, § 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Ord. No. 174-05/06, 3-6-06)

Sec. 2-59.1. Minimum qualifications for original appointment to the fire department.

(a) Standards required. Each candidate for original appointment to the fire department must meet the minimum requirements set forth in this subsection. The deadline by which these requirements must be met, the method of proving such requirements have been satisfactorily met, and any additional requirements shall be established by rule of the employment subcommittee:

- (1) Age. Have reached the age of twenty-one (21), or have reached the age of twenty (20) with two years of post-high school education.
- (2) Good character. Be of good character; which includes a personal history of honesty, fairness, and respect for the rights of others and for state and federal law. No person shall be appointed who has a history which includes a disqualifying criminal offense or conviction.
- (3) Education and experience. Have a high school diploma or general equivalency diploma (GED);

(4) *Licensing.* Possess a valid State of Maine Emergency Medical Technician license of EMT-B or higher;

(5) *Motor vehicle driver's license.* Possess a valid motor vehicle driver's license for the three (3) years immediately preceding the date of application. If such license is from a state other than the State of Maine, the candidate must be qualified to receive a State of Maine driver's license; and

(6) *Citizenship or immigration status.* Be a citizen of the United States or eligible to work in the United States.

(b) *Automatic disqualifiers.* An applicant for original appointment will be automatically disqualified from the hiring process for any of the following characteristics, and as further established by rule of the employment subcommittee:

(1) *Disqualified Individuals.* Disqualification from participating in federal funded health care programs under the Social Security Act.

(2) *Criminal Convictions/Conduct.* Disqualifying criminal conviction;

(3) *Protection Orders.* An active Protection from Abuse or Protection from Harassment Order (temporary or permanent) served on the applicant;

(4) *Military Service.* Dishonorable discharge from the military or a bad conduct discharge from the military;

(5) *Tattoos or Body Art.* Tattoos, branding, body art or body markings that (a) indicate a criminal gang affiliation, (b) depict sexually explicit art or nudity, (c) are associated with hate groups or supremacist groups such as swastikas, pentagrams, or (d) otherwise violate the rules promulgated by the Fire Chief.

Sec. 2-59.2. Hiring process for original appointment to the fire department.

(a) *Fire department hiring process.* All applicants for original appointment to the fire department shall satisfactorily complete the minimum requirements in this section. The employment subcommittee may, by rule, establish processes and procedures to implement these requirements, may set minimum passing scores, and may impose additional requirements for original appointment.

(1) Job-related aptitude capacity test. All applicants for original appointment must pass a job-related aptitude capacity test.

(2) Physical fitness test. All applicants for original appointment must pass a physical fitness test.

(3) Oral interview. All applicants for original appointment must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the employment subcommittee and designees of the fire chief. No member of the panel may be a candidate for the position nor a relative of a candidate.

(b) Conditional offer of employment. Upon successful completion of the job-related aptitude capacity test, the physical fitness assessment and the oral interview, the fire chief may evaluate the candidates and make a conditional offer of employment to qualified applicants, at his or her discretion. The conditional employee must successfully complete the following requirements. Failure to do so will result in revocation of the conditional offer of employment.

(1) Background check. All applicants for original appointment must satisfactorily complete a background check, including criminal history, driving record, and credit check.

(2) Medical examination. The applicant must satisfactorily complete a medical exam to determine whether the applicant is physically capable of performing the essential functions of the job.

(3) Job suitability assessment. The applicant must satisfactorily complete a job suitability assessment.

(c) Rehire of former fire department member. In the sole discretion of the fire chief, a fire department member who voluntarily terminated his or her employment on satisfactory terms may be rehired to a vacant, entry-level position within one year of termination without completing the full process required by subsection (a) above. However, the member must satisfactorily complete a new medical examination and job suitability assessment, and must complete a new probationary period.

(d) Transfer between public safety departments. Upon the written request of the employee to the chief of his or her department, an employee in good standing within either department may be transferred from one department to the other to an entry level position, subject to the conditions and limitations established by rule of the employment subcommittee and with the approval of both chiefs and the City Manager. Police officers requesting a transfer to the Fire Department must successfully complete the Candidate Physical Abilities Test (CPAT) and provide proof of a valid State of Maine Emergency Medical Technician

license. The Chief of Police may waive the police entrance exam for firefighters. All other hiring requirements must be successfully completed.

(e) Waiver. During periods of difficulty in recruitment, the employment subcommittee may vary the requirements of this section by rule, which rule shall not be effective for more than one hiring cycle.

Sec. 2-59.3. Disqualification and temporary withdrawal from fire application process.

In accordance with rules promulgated by the employment subcommittee, an applicant may be disqualified, or temporarily withdraw, from the application process as follows:

(a) Disqualification. After notice and an opportunity to be heard, the employment subcommittee or the fire chief may disqualify an applicant for original appointment.

(b) Temporary withdrawal of applicants for original appointments. An applicant for original appointment may, for sufficient cause, temporarily withdraw from consideration for a limited period of time with the prior approval of the fire chief. During the period of temporary disqualification the applicant's eligibility for appointment shall automatically expire 12 months after the date the applicant passed the aptitude capacity test.

Sec. 2-59.4. Fire department promotional process.

(a) Minimum qualifications. All candidates for promotion within the fire department shall satisfactorily complete the minimum requirements in this section. The employment subcommittee may, by rule, establish processes and procedures to implement these requirements, may set minimum passing scores, and may impose additional requirements for promotion.

(1) Time in service. Promotional candidates must have the following amount of time in service to be eligible for a promotion:

A. Six years of continuous service in the fire department for promotion from firefighter to lieutenant.

B. One year of continuous service as a lieutenant for promotion from lieutenant to captain.

(2) Training. Promotional candidates must possess the minimum amount of training, certification, and/or education for the rank to which he or she is seeking promotion.

(3) Departmental officer candidate program. Promotional candidates must participate in and complete a fire department officer candidate program, which may include job-shadowing, mentorship, and similar requirements.

(4) Assessment center exam. Promotional candidates must complete and pass an assessment center exam each year.

(5) Oral interview. All promotional candidates must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the employment subcommittee and designees of the fire chief. No member of the panel may be a candidate for the position nor a relative of a candidate. The president of the union, or his designee, shall have the right to observe, but not participate in, the interview.

(6) Job suitability assessment. Candidates must undergo a job suitability assessment. Assessments within three (3) years from the date of examination may be used, or the fire chief may require an updated job suitability assessment at any time. Assessments may be taken into consideration in the promotional process.

(b) Eligible promotion list. Promotional candidates shall be placed on a ranked certified promotional list. A separate list shall be made for each promotional rank.

(1) The list shall be ranked based on a methodology established by the employment subcommittee.

(2) The employment subcommittee shall also establish rules governing the validity of the list, including the minimum number of names required on the list, the duration and expiration of the list, and other requirements.

(c) Promoting from ranked certified promotional list. Promotions in the fire department shall be made from the ranked certified promotional list in their order of ranking, unless the candidate refuses the promotion, is disqualified for cause by the chief, or lacks the particular skill set required by the promotional vacancy. If the chief disqualifies a candidate for cause, he or she shall state the reasons for disqualification in writing.

(d) Command staff. The employment subcommittee may provide by rule for special procedures or different competitive examination for appointment to fire department command staff because such rank requires particular and exceptional qualifications of a scientific, managerial, professional, technical, or educational character and said rule may waive any requirement of this article in such cases.

(e) Waiver. When the number of employees eligible for promotion to a particular vacancy is insufficient to permit meaningful competition, the employment subcommittee may vary the requirements of this section by rule, which rule shall not be effective for more than one promotional cycle.

Sec. 2-59.5. Disqualification during fire promotional process.

After notice and an opportunity to be heard, the employment subcommittee or the fire chief may disqualify a candidate from participating in the promotional process, or may remove a candidate for promotion from the ranked certified promotional list.

Sec. 2-59.6. Fire department appeals and rights.

(a) Appeals from decisions of the fire chief. Except as otherwise provided, an applicant, candidate for original appointment, or candidate for promotion shall have the opportunity to appeal any decision made by the fire chief under this division to the employment subcommittee, pursuant to rules established by the subcommittee. The subcommittee may, after hearing, uphold or overturn the fire chief's decision. The subcommittee shall provide the fire chief and the appellant with written notice of its decision and the reasons therefor.

(b) Appeals from decisions of the employment subcommittee. An appeal of a decision of the employment subcommittee under this section may be taken to the city council. The city council may, after hearing, uphold or overturn the employment subcommittee's decision. The council shall provide the subcommittee, fire chief, and appellant with written notice of its decision and the reasons therefor.

(c) Applicant rights. If a decision is overturned with respect to an applicant, the applicant shall continue through the remainder of the application process or be considered eligible for hire, as applicable. In the event an applicant is reinstated pursuant to this section, he or she shall have no right or entitlement to be considered for any vacancy that exists at or prior to the date of said reinstatement.

(d) Promotional candidate rights. If a decision is overturned with respect to a promotional candidate, that candidate shall 1) be allowed to continue through the promotional process; 2) be placed on or reinstated to the ranked certified promotional list; or 3) be promoted, as applicable. The decision maker shall specifically state the appropriate remedy.

(e) Vested rights. No rights shall vest in any person who is deemed to be a qualified applicant or who is placed on the ranked certified promotional list, and no names shall be carried over from one eligible list to another, except as otherwise provided in this section.

(f) Rulemaking. The employment subcommittee may promulgate rules to implement this section, including forms and deadlines for appeal.

Sec. 2-59.7. Fire department probationary period.

(a) Each member who is originally appointed to or rehired in the fire department, or who is promoted, pursuant to this division shall be a probationary employee for one (1) year from the date of appointment or promotion. This section shall not, however, apply to an employee who is recalled after layoff, so long as he or she completed the probationary period prior to layoff.

(b) The fire chief may at any time during the probationary period reject any person appointed or promoted. The fire chief must state his or her reasons for rejection in writing, and provide those reasons to the employee and the employment subcommittee.

(c) In the case of a promotional candidate, any candidate rejected by the fire chief shall revert to the rank and pay status from which he or she was promoted.

(d) Any person rejected during the probationary period shall have no right of hearing or appeal under this division.

Sec. 2-60.1. Minimum qualifications for original appointment to the police department.

(a) Standards required. Each candidate for original appointment to the police department must meet the minimum requirements set forth in this subsection. The deadline by which these requirements must be met, the method of proving that such requirements have been satisfactorily met, and any additional requirements shall be established by rule of the employment subcommittee:

(1) Age. Have reached the age of twenty-one (21) by the date of appointment;

(2) Good character. Be of good character; which includes a personal history of honesty, fairness, and respect for the rights of others and for state and federal law. No person shall be appointed who has a history which includes a disqualifying criminal offense or conviction.

(3) Education and experience. Have a high school diploma or general equivalency diploma (GED) and meet the admission standards of the Maine Criminal Justice Academy.

(a) (4) Motor vehicle driver's license. Possess a valid motor vehicle driver's license for the three (3) years immediately preceding the date of application. If such license is from a

state other than the State of Maine, the candidate must be qualified to receive a State of Maine driver's license.

- (4) Citizenship or Immigration status. Be a citizen of the United States or demonstrate a permanent right to work in the United States.

(b) Automatic Disqualifiers. An applicant for original appointment will be automatically disqualified from the hiring process for any of the following characteristics, and as further established by rule of the employment subcommittee:

- (1) Criminal Convictions/Conduct. Any conviction for a disqualifying criminal offense or engaging in conduct that qualifies as a disqualifying criminal offense as defined in Maine law and the entrance standards of the Maine Criminal Justice Academy, including having no convictions for or have engaged in any conduct which would constitute Murder, Class A, Class B, Class C, or Class D crimes, or any provision of the Maine Criminal Code, Chapters 15, 19, 25, or 45 which include Theft, Falsification in Official Matters, Bribery & Corrupt Practices, and Drugs.

- (2) Domestic Violence. Any conviction for a crime of domestic violence or any active Protection from Abuse Order (temporary or permanent) served on the applicant.

- (3) Drug Activities. The use, purchase, or possession of illegal drugs or controlled substances within the five (5) years prior to the date of application.

The trafficking in and/or furnishing of marijuana, as defined in the Maine Criminal Code, is an automatic disqualifier from the hiring process. The use of marijuana is not an automatic disqualifier. The use of marijuana by an applicant will be assessed on a case by case basis; including, but not limited to, the frequency and recency of the use.

- (4) Military Service. Dishonorable discharge from the military or a bad conduct discharge from the military.

- (5) Tattoos or Body Art. Tattoos, branding, body art or body markings that (a) indicate a criminal gang affiliation, (b) depict sexually explicit art or nudity, (c) are associated with hate groups or supremacist groups such as swastikas or pentagrams, or (d) are on the applicant's face, neck or hands.

Sec. 2-60.2. Hiring process for original appointment to the police department.

(a) Police department hiring process. All applicants for original appointment to the police department shall satisfactorily complete the minimum requirements in this section. The employment subcommittee may, by rule, establish processes and procedures to implement these requirements, set minimum passing scores, and impose additional requirements for original appointment.

(1) Job-related aptitude capacity test. All applicants for original appointment must pass a job-related aptitude capacity test. The aptitude capacity test may be waived for a police applicant who is a full-time employee with law enforcement duties and arrest authority in another jurisdiction at the time of application and is certifiable by the Maine Criminal Justice Academy.

(2) Physical fitness assessment. All applicants for original appointment must pass meet the Maine Criminal Justice Academy's physical fitness assessment standards prior to the oral interview. or Applicants may take the fitness test at the Portland Police Department or produce a current, valid letter from the Maine Criminal Justice Academy stating that the applicant has successfully completed the Academy's physical fitness assessment.

(3) Oral Board. An oral interview will be conducted with all applicants who have passed both the aptitude capacity test and the physical fitness assessment.

(b) Conditional offer of employment. Upon successful completion of the job-related aptitude capacity test, the physical fitness assessment and the oral interview, the Police Chief may evaluate the candidates and make a conditional offer of employment to qualified applicants, at his or her discretion. The conditional employee must successfully complete the following requirements. Failure to do so will result in revocation of the conditional offer of employment.

(1) Background check. A conditional employee must be fingerprinted and satisfactorily complete a background check, including, but not limited to, criminal history, prior substance abuse, driving record, and credit check.

(2) Polygraph. A conditional employee, shall be required to submit to a polygraph examination to the extent such examination is permitted by law.

(3) Medical examination. A conditional employee shall undergo a medical examination to determine whether the applicant is physically capable of meeting the standards established by the Maine Criminal Justice Academy.

(4) Job suitability assessment. Candidates for police original appointment shall be given a post-offer job suitability

assessment as required by the Maine Criminal Justice Academy.

(b) *Transfer between public safety departments.* Upon the written request of the employee to the chief of his or her department, an employee in good standing within either department may be transferred from one department to the other to an entry level position, subject to the conditions and limitations established by rule of the employment subcommittee and with the approval of both chiefs and the City Manager. Police officers requesting a transfer to the Fire Department must successfully complete the Candidate Physical Abilities Test (CPAT) and provide proof of a valid State of Maine Emergency Medical Technician license. The Chief of Police may waive the police entrance exam for firefighters. All other hiring requirements must be successfully completed.

Sec. 2-60.3. Disqualification and temporary withdrawal from police application process.

In accordance with rules promulgated by the employment subcommittee, an applicant may be disqualified, or temporarily withdraw, from the application process as follows:

(a) *Disqualification.* After notice and an opportunity to be heard, the employment subcommittee or the police chief may disqualify an applicant for original appointment.

(b) *Temporary withdrawal of applicants for original appointments.* An applicant for original appointment may, for sufficient cause, temporarily withdraw from consideration for a limited period of time with the prior approval of the police chief. During the period of temporary disqualification the applicant's eligibility for appointment shall automatically expire 12 months after the date the applicant passed the aptitude capacity test.

Sec. 2-60.4. Police department promotional process.

(a) *Minimum qualifications.* All candidates for promotion within the police department shall satisfactorily complete the minimum requirements in this section. Promotional appointments shall be made from successive ranks. The employment subcommittee may, by rule, establish processes and procedures to implement these requirements, may set minimum passing scores, and may impose additional requirements for promotion.

(1) *Time in service.* Promotional candidates must have the following amount of time in service to be eligible for a promotion:

A. Three (3) years of continuous service in the police department for promotion from officer to the rank of

Sergeant.

B. Twelve months of continuous service as a Sergeant in the police department for promotion to the rank of Lieutenant.

(2) Selection Components

A. An annual professional development course.

B. A job-related aptitude capacity test.

C. Consideration of the candidate's last completed performance evaluation immediately prior to the date of the aptitude capacity test.

D. Seniority in the department as of the date of the aptitude capacity test.

(3) Oral interview. All promotional candidates must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the employment subcommittee, a member designated by the president of each of the affected unions and three (3) members appointed by the police chief.

(4) Job suitability assessment. Candidates for the position of Sergeant must undergo a job suitability assessment. Assessments within three (3) years from the date of examination may be used, or the police chief may require an updated job suitability assessment at any time. Assessments may be taken into consideration in the promotional process.

(b) Promotion list. Promotional candidates shall be placed on a certified promotional list. A separate list shall be made for each promotional rank.

(1) The list shall be prepared based on a methodology established by the employment subcommittee.

(2) The employment subcommittee shall also establish rules governing the validity of the list, including the minimum number of names required on the list, the duration and expiration of the list, and other requirements.

(c) Creation of certified list for promotional appointment.

(1) When requested to do so by the Chief, the employment subcommittee shall furnish a certified list of names from which a promotional appointment may be made.

(2) There shall be one eligible list maintained for police promotion in weighted score order for each promotional rank and the certified list shall be made up from the eligible list in the weighted score order. The certified list for promotional appointment shall contain the names of a minimum of three (3) and a maximum of five (5) applicants on the eligible list with the highest, aggregate scores.

(d) *Command staff.* The employment subcommittee may provide by rule for special procedures or different competitive examination for appointment to a sworn, non-union command staff position in the police department because such rank requires particular and exceptional qualifications of a scientific, managerial, professional, technical, or educational character and said rule may waive any requirement of this article in such cases.

(e) When the number of employees eligible for promotion to a particular vacancy is insufficient to permit meaningful competition, the employment subcommittee may vary the requirements of this section by rule, which rule shall not be effective for more than one promotional cycle.

Sec. 2-60.5. Disqualification during police promotional process.

After notice and an opportunity to be heard, the employment subcommittee or the police chief may disqualify a candidate from participating in the promotional process, or may remove a candidate for promotion from the ranked certified promotional list.

Sec. 2-60.6. Police appeals and rights.

(a) *Appeals from decisions of the police chief.* Except as otherwise provided, an applicant, candidate for original appointment, or candidate for promotion shall have the opportunity to appeal any decision made by the police chief under this division to the employment subcommittee, pursuant to rules established by the subcommittee. The subcommittee may, after hearing, uphold or overturn the police chief's decision. The subcommittee shall provide the police chief and the appellant with written notice of its decision and the reasons therefor.

(b) *Appeals from decisions of the employment subcommittee.* An appeal of a decision of the employment subcommittee under this section may be taken to the city council. The city council may, after hearing, uphold or overturn the employment subcommittee's decision. The council shall provide the subcommittee, police chief, and appellant with written notice of its decision and the reasons therefor.

(c) *Applicant rights.* If a decision is overturned with respect to an applicant, the applicant shall continue through the remainder of the application process or be considered eligible for hire, as applicable. In the event an applicant is reinstated pursuant to this

section, he or she shall have no right or entitlement to be considered for any vacancy that exists at or prior to the date of said reinstatement.

(d) Promotional candidate rights. If a decision is overturned with respect to a promotional candidate, that candidate shall 1) be allowed to continue through the promotional process; 2) be placed on or reinstated to the ranked certified promotional list; or 3) be promoted, as applicable. The decision maker shall specifically state the appropriate remedy.

(e) Vested rights. No rights shall vest in any person who is deemed to be a qualified applicant or who is placed on the ranked certified promotional list, and no names shall be carried over from one eligible list to another, except as otherwise provided in this section.

(f) Rulemaking. The employment subcommittee may promulgate rules to implement this section, including forms and deadlines for appeal.

Sec. 2-60.7. Police department probationary period.

(a) Probationary period. A specified period of time during which the employee has no expectation of continued employment and may be removed from employment for any reason, with or without just cause.

(b) Original appointment. Except as otherwise provided below for police lateral transfers, every person receiving an appointment as a police officer shall be a probationary employee for a period of two (2) years from the date of appointment.

(c) Lateral transfers. A police lateral transfer who has two years of post-academy, full-time, continuous service as a police officer at the time of appointment shall be credited with up to twelve (12) months of service toward completion of the department's two year probationary period. Eligibility for promotional appointment shall be the completion of three (3) years of service in the Portland Police department.

(d) Promotional appointments. Every person receiving a promotional appointment shall serve a probationary period of one (1) year while occupying the position to which he or she has been appointed.

(e) Completion of probationary period. The police chief may at any time during the probationary period reject any person appointed or promoted to a position in the police department. The police chief must state his or her reasons for rejection in writing, and provide those reasons to the employee and the employment subcommittee. In the case of a promotional appointment, the officer shall revert to the rank and pay status from which he or she was promoted.

(f) No hearing or appeal. Any person rejected during the probationary period shall have no right of hearing or appeal under this section.

~~Sec. 2-59. Minimum qualifications for appointments.~~

~~(a) Standards required. All candidates for appointment shall meet the minimum requirements set forth in this section and any additional requirements set forth hereafter or in the rules of the employment subcommittee not inconsistent herewith.~~

~~(b) Original appointments:~~

~~(1) Good character. Each candidate for original appointment shall be of good moral character and shall in all cases bear the burden of proof as to this requirement. No person shall be appointed who has a history which includes a disqualifying criminal conviction.~~

~~(2) Education and experience. Applicants must have a high school diploma or equivalency degree and have either: three (3) years of post-high school employment experience(s) or three (3) years of education in a post-high school program at a school, college, or university; or any combination of post-high school employment experience and post-high school education totaling three (3) years.~~

~~a. Police applicants. To the extent and in the manner required by subcommittee rule, applicants for police original appointment shall submit evidence of passing the ALERT test.~~

~~b. Fire applicants. Applicants who wish to be considered for the position of firefighter/paramedic must be certified as a paramedic prior to being sent to the department on an eligible list and must be licensable as a paramedic in the State of Maine prior to appointment. An applicant may notify the Director of Human Resources that he or she is certified as a paramedic after placement upon an eligible list so that he or she may be considered for either a firefighter or firefighter/paramedic vacancy for the life of that list.~~

~~(3) Motor vehicle driver's license. Each candidate for original appointment shall possess a valid motor vehicle driver's license. If such license is from a state other than the State of Maine, the candidate must not be disqualified from issuance of a State of Maine driver's license.~~

~~(4) Health. Candidates for original appointment shall be in good health and shall be subject to a fitness assessment, and a post offer medical examination, and in the case of police, a job suitability assessment, pursuant to the rules of the employment subcommittee. Such rules shall be developed in consultation with appropriate professionals and the chief of the department and, to the extent permitted by law, shall be determined by the employment subcommittee to be bona fide occupational requirements for appointment.~~

~~(5) Citizenship.~~

~~a. Police. Each candidate for original appointment to the police department shall be a citizen of the United States.~~

~~b. Fire. Each candidate for original appointment to the fire department shall either be a citizen or provide proof of eligibility to work in the United States.~~

~~(c) Promotional appointments:~~

~~(1) Promotion from successive ranks.~~

~~a. Police. Promotional appointments shall be made from successive ranks. No candidate shall be eligible for examination for his or her first promotional appointment until he or she shall have served a minimum of three (3) continuous years as a member in the department by the date of the written examination. No candidate shall be examined for a promotion to any other rank after the first promotion, until he or she shall have served a minimum of twelve (12) continuous months in the next lowest rank by the date of the written examination.~~

~~b. Fire lieutenant; fire/paramedic lieutenant.~~

~~i. Members hired prior to January 1, 1997:
Promotional appointments shall be made from successive ranks within each division of suppression and emergency medical services and the time in service requirement shall mean time as a member in the division.~~

~~ii. Members hired on or after January 1, 1997:
Promotional appointments may be made between the suppression and emergency medical services divisions and the time in service requirement shall mean time as a member in the department.~~

~~iii. Time in service requirements:~~

~~1. A member of the fire department hired prior~~

~~to January 1, 1997, shall be eligible for examination for his or her first promotional appointment only after serving four (4) cumulative years as a member in the division in which promotion is sought; and~~

~~2. A member of the fire department hired on or after January 1, 1997, but prior to January 1, 2002, shall be eligible for examination for his or her first promotional appointment after serving four (4) continuous years in the department;~~

~~3. A member of the fire department hired on or after January 1, 2002, shall be eligible for examination for his or her first promotional appointment only after serving six (6) continuous years as a member in the department.~~

~~4. To be eligible for promotion, the member must complete the time in service requirement by the date of the written examination.~~

~~c. Fire Captain; Fire/Paramedic Captain. After the first promotion, a member shall be eligible for further promotion only after serving a minimum of twelve (12) continuous months in the next lowest rank within the division in which promotion is sought, such time in service requirement to be met by the date of the written examination.~~

~~d. Licensing. Any member promoted to an emergency medical services position must maintain his or her paramedic license in Maine as a condition of employment in that position.~~

~~(2) Other promotional appointments. Upon recommendation of the City Manager, the employment subcommittee may provide by rule for special procedures or different competitive examination for eligibility for appointment to second in command in the fire department or the police department since such rank requires particular and exceptional qualifications of a scientific, managerial, professional, technical, or educational character and said rule may waive any requirement of this article in such cases.~~

~~(d) Waiver. During periods of difficulty in recruitment, or when the number of employees eligible for promotion to a particular vacancy is insufficient to permit meaningful competition, the employment subcommittee may vary the requirements of this section 2-59 of subparagraphs (c) (1) a., b. or c. by rule, which rule shall not be~~

~~effective for more than ninety (90) days.~~

~~(e) Rehire of former member by the same department. A former member of a department may be rehired by that department to an entry level position only upon a regular appointment in the manner set forth for an original appointment and such person shall be required to serve a new working test period of twelve months. In the case of re hire in the police department, the member shall not be eligible for promotion until after completion of three (3) years of service in the police department after date of rehire. Solely in the case of a former firefighter or firefighter/paramedic who is rehired by the fire department, upon completion of the new working test period, said firefighter or firefighter/paramedic shall be credited with the actual amount of time served in the fire department in the position to which they are being rehired, said time to be credited solely toward fulfillment of the minimum period prior to eligibility for promotion. The date of re-hire shall serve as the date of hire for purposes of determining the applicable minimum service requirement prior to promotion in the fire department.~~

~~(f) Transfers between departments. Upon the written request of the member to the chief of his or her department, a member in good standing within either department may be transferred from one (1) department to the other to an entry level position, subject to the following conditions and limitations:~~

- ~~(1) Both chiefs and the City Manager have approved said transfer;~~
- ~~(2) The employment subcommittee has determined that the member meets the minimum qualifications for original appointment into the new department set forth in this section and the rules of the employment subcommittee establishing physical standards for said new department;~~
- ~~(3) The benefits and wages of any member who is transferred under this subsection shall be determined prior to transfer, subject to any applicable collective bargaining agreements in effect, and/or to the agreement of the collective bargaining agent or agents;~~
- ~~(4) The implementation and scheduling of all transfers, once approved, shall be wholly discretionary with the City Manager;~~
- ~~(5) There shall be no right of appeal of any determination or decision of the chiefs or the City Manager which is made under this subsection;~~
- ~~(6) Any member requesting a transfer may be required to take a polygraph examination and a job suitability assessment to the extent required of original appointments;~~

~~(7) All transferees shall be required to serve a working test period as provided in section 2-67 below and must serve the minimum time required for eligibility for promotion as provided in this section 2-59(c)(1) above, except that the date of transfer shall serve as the date of hire.~~

~~(g) Reinstatement after voluntary termination.~~

~~(1) Entry level positions. If a person holding the rank of police officer, firefighter or firefighter/paramedic, who has completed his or her working test period in the department, voluntarily terminates his or her employment in good standing, such member may, within thirty (30) calendar days from the effective date of the termination, request reinstatement to his or her former position. Such request shall be made in writing to the chief of the department, who shall forward such request with a recommendation thereon to the City Manager. The City Manager may, in his or her absolute discretion, grant or deny such request for reinstatement.~~

~~(2) Promotional positions. If a person holding a rank above police officer, firefighter or firefighter/paramedic voluntarily terminates his or her employment in good standing, such member may, within thirty (30) calendar days from the effective date of termination, request reinstatement to an entry level position in the department from which they terminated. Such request shall be made in writing to the chief of the department who shall forward such request with a recommendation thereon to the City Manager. The City Manager may, in his or her absolute discretion, grant or deny such request for reinstatement.~~

~~(3) Effect of reinstatement. Persons holding the rank of police officer, firefighter or firefighter/paramedic who are reinstated pursuant to this section and for whom a vacancy exists shall be afforded the rank, pay, grade and benefits previously held, except as otherwise provided in this section. Persons holding a rank above police officer, firefighter or firefighter/paramedic who are reinstated pursuant to this section and for whom a vacancy exists shall be returned to the rank of police officer, firefighter or firefighter/paramedic and shall be afforded a pay grade and benefits commensurate with the appropriate number of years served in the department. This subsection shall not be construed to mean that pay and benefits shall accrue during the period of separation from the department, nor during any periods of inactive duty such as those set forth in subsection (4) hereinafter. No accrued leave, sick leave, or other benefits for which the member was compensated upon termination shall be credited or restored to the member, unless such compensation is fully repaid by the member and~~

~~accepted by the city. Retirement benefits shall be credited upon repayment as provided by governing law.~~

~~(4) *Waiting list.* In those cases where no immediate vacancy exists at the time the privilege of reinstatement is granted, the member may be appointed to the first available vacancy declared by the City Manager; provided such vacancy is declared within six (6) months from the date of the reinstatement request. In the event that no vacancy is declared within said six month period, the grant of reinstatement shall expire and the former member may be reinstated only upon a regular appointment in the manner set forth for original appointments under this division.~~

~~(5) *No expectancy.* Nothing in this section shall be construed as creating or implying a right or expectancy of future employment in any member who voluntarily terminates his or her employment.~~

~~(h) *Temporary emergency medical services appointments.* Persons may be appointed from the entry level fire eligible list to a firefighter/paramedic position on a temporary basis, up to a maximum of twelve (12) months, to fill in for a leave of absence or for other similar reason as determined by the City Manager. The chief shall request a list of candidates who wish to be considered for such temporary appointment, such list to be made up in alphabetical order from the eligible list from those persons who are paramedic certified and who wish to be considered for a temporary appointment. The names of all those meeting the conditions shall be sent to the chief. Any person on the eligible list may decline to be placed on a list for temporary appointment and such person shall remain on the eligible list without prejudice to his or her opportunity to be considered for permanent appointment. Prior to appointment to a temporary position, the candidates shall undergo an oral interview in a form determined by the chief, background investigation and the fitness test contained in the firefighter collective bargaining agreement, but shall not be required to undergo the oral board, medical examination, physical fitness assessment in sections 2-65 and 2-66 below. A person who is appointed to a temporary position hereunder continues to be eligible for permanent appointment during the time of such temporary appointment. Such person is also subject to removal by the fire chief from the temporary position at any time for reasons stated in writing to the employee, the civil service commission and the Director. Removal from the position shall be treated in the same manner as removal during the working test period under section 2-67; further, such removal shall be deemed to be a disqualification resulting in removal from the eligible list pursuant to section 2-61(b) below. The person shall have the right to appeal removal from the eligible list only, as provided in section 2-61(b). Except as provided in section 2-61(c) below, in the event the eligible list from which the person was temporarily appointed has expired at the time of removal from, or expiration of, the temporary appointment, said person shall not be placed on a new eligible list,~~

~~unless that person took and passed the examination for that new list. Time served as a temporary hereunder shall not count toward completion of the working test period nor for seniority for promotion unless such person is appointed to the position permanently with no break in service, in which case such time shall be counted. Any permanent appointment of a person who has had a temporary appointment shall be made only after completion of all of the hiring requirements for permanent appointment.~~

~~(i) *Emergency appointments.* During times of emergencies affecting the health, safety and welfare of the public as declared by the City Council, all provisions of this division with respect to appointments to both departments shall be suspended until such time as the City Council shall declare the emergency terminated. Appointments to both departments during such periods of declared emergency shall be made by the City Manager and shall be effective only during the period of the declared emergency.~~

~~(j) *Consolidation of firefighting and emergency medical services.*~~

~~(1) In general. Effective January 1, 1997, firefighting and emergency medical services were merged within the fire department as provided herein. In addition to the fire suppression ranks of deputy fire chief, fire captain, fire lieutenant and firefighter, there is a rank of deputy fire chief for emergency medical services, fire/paramedic captain, fire/paramedic lieutenant, and firefighter/paramedic. The position of paramedic was reclassified to that of firefighter/paramedic and that of paramedic lieutenant to that of fire/paramedic lieutenant, except as provided below for grandfathered employees, and each such new classification shall include full training in firefighting.~~

~~(2) "Grandfathering" of paramedics. Paramedics who do not choose to take the firefighter examination, or who take it but do not pass it, will be grandfathered in the position held on January 1, 1997, so long as there is no break in service. Grandfathered paramedics can take the firefighter examination at any time it is offered after the spring of 1997, but are subject to all of the conditions and requirements for original appointment prior to reclassification as a firefighter/paramedic.~~

~~(3) Elimination of paramedic positions. Paramedic positions will be eliminated as they become vacant.~~

~~(Code 1968, § 201.8; Ord. No. 89-80, 7-7-80; Ord. No. 292-80, 11-3-80; Ord. No. 294-80, 11-8-80; Ord. No. 433-82, § 2, 3-15-82; Ord. No. 299-86, 1-22-86; Ord. No. 325-88, 3-23-88; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Ord. No. 220-99, § 1, 3-1-99; Ord. No. 121-99, 12-20-99; Ord. No. 174-05/06, 3-6-06; Ord. No. 298-05/06, 6-19-06 emergency passage; Ord. No. 126-09/10, 1-4-10)~~

~~Sec. 2-60. Applications.~~

~~(a) *Summary.* Appointments to a position in the police or fire department shall be made only after completion of an application and passing a job related aptitude capacity test, placement upon an eligible list, and satisfactory completion of all other hiring requirements of this subchapter for appointment.~~

~~(b) *Forms.* Applications for appointment shall be made on forms prepared by the Director and approved by the employment subcommittee. All applications shall be accompanied by such certifications and other satisfactory evidence as to character, education, and if applicable, citizenship, as the employment subcommittee may establish by rule, or which the employment subcommittee may reasonably require of any particular applicant to satisfy itself of compliance with the minimum requirements of this division for eligibility. All applications shall be accompanied by a written waiver of rights with respect to the state criminal history record information act (16 M.R.S.A. § 611 et seq.), sufficient to permit the chief of the department and the members of the employment subcommittee to gain access to such records.~~

~~(c) *Duration.* Applications shall be valid only for the next examination, except that in the case of applications for police original appointment, such applications shall be valid for 180 days and may be accepted at the police department on the same day as the on-line test.~~

~~(Code 1968, § 201.9; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Ord. No. 121-99, 12-20-99; Ord. 174-05/06, 3-6-06)~~

~~**Sec. 2-61. Disqualification of candidates for original appointment by employment subcommittee; by chief.**~~

~~(a) *Disqualification by employment subcommittee.* The employment subcommittee may exclude any candidate for original appointment from any component of the hiring process, including the aptitude capacity test, refuse to certify him or her as eligible, remove him or her from any list upon sufficient evidence which demonstrates unfitness for duty, that there was a false statement made of a material fact on the application or during the hiring process, or that there was cheating during the hiring process or where there has been a conviction for a crime, or where there has been excessive or illegal use of intoxicating liquors or drugs, or that the candidate is otherwise ineligible for appointment. Any candidate proposed to be excluded from any component of the hiring process or removed from any list shall be provided an opportunity to be heard prior to final action by the employment subcommittee.~~

~~(b) *Disqualification by chief.* The chief of the department may disqualify applicants for original appointment for failure to pass the polygraph examination, the background check or the physical fitness assessment or for reasons related to a temporary appointment under section 2-59(h) above or upon the unanimous recommendation of the oral interview board that the person not be further considered for appointment and stating the reasons for such recommendation. The chief~~

~~of the department may accept, reject or modify such recommendation.~~

~~Written notice of said disqualification, and the reasons therefor, shall be provided to the applicant by such method as is specified by employment subcommittee rule, with copies thereof sent to the subcommittee and the Director. Upon disqualification by the chief, the applicant's name shall be removed from any list on which it appears. The applicant shall have the opportunity to appeal said disqualification to the employment subcommittee, which shall hold a hearing thereon, after which the subcommittee may uphold the disqualification or reinstate the person to the eligible list. The subcommittee shall provide the chief and the applicant with written notice of its decision and the reasons therefor.~~

~~(c) Reinstatement to list. — If an applicant for original appointment is disqualified or removed from an eligible list by the employment subcommittee or by the chief of the department, and he or she appeals that decision and said appeal is resolved in favor of the applicant, he or she shall be reinstated to the eligible list on the basis of his or her original grade. In the event that the eligible list from which the applicant was disqualified has expired, and the applicant is not on the succeeding list in effect at the time of reinstatement, then the applicant shall be placed upon said list in effect at the time of reinstatement.~~

~~In the event an applicant is reinstated hereunder, said applicant shall have no right or entitlement to be considered for any vacancy which exists at or prior to the date of said reinstatement provided, however, that he or she shall have the same rights as any other applicant to be considered for any vacancy which is authorized to be filled on or after the date of reinstatement. The applicant shall be entitled to stay on any eligible list on which he or she is placed hereunder until the list expires or until the applicant voluntarily withdraws, is removed for cause or is hired. — In the case of disqualification from a police entry level eligible list only, the applicant, if reinstated, shall be reinstated to the list only so long as required to complete a total of twelve (12) months on the list from the date of initial placement on the list.~~

~~(d) Rules. — The subcommittee shall provide rules governing the exercise of the power of removal or appeal therefrom, including the method of notice to be given under this section.~~

~~(Code 1968, § 201.10; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 86-90, § 1, 9-5-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Ord. No. 121-99, 12-20-99; Ord. No. 174-05/06, 3-6-06)~~

~~Sec. 2-62. Examinations.~~

~~(a) Aptitude capacity test. — A job related aptitude capacity written test to measure the skills and ability of the candidates for each rank of the police and fire departments shall be developed or recommended by the chief of the department and the director and approved by the employment subcommittee.~~

~~(b) Holding of aptitude capacity tests. The aptitude capacity test in each department shall be held annually for each rank, except as follows:~~

- ~~(1) The test for entry level firefighter and firefighter/paramedic positions shall be held every two (2) years. The same aptitude capacity test shall be used for both the entry level firefighter and entry level firefighter/paramedic position, with the creation of a single eligible list, with paramedic certification noted on the list. Such certification may be provided at any time during the life of the eligible list, but must be provided prior to an applicant's name being sent to the chief on an eligible list for a firefighter/paramedic position;~~
- ~~(2) The test for entry level police officer shall be an online test to be held as frequently as determined necessary by the police chief after consultation with the director or his or her designee. Each applicant may take the test up to twice in any rolling six month period, i.e. an applicant may take the test on January 15 and again on March 15, but not again until September 16. The applicant may not re take the test while on the eligible list; and~~
- ~~(3) Police captain tests shall be held only after the city manager has declared a vacancy in such position and authorized that it be filled.~~

~~(c) Waiver of aptitude capacity test.~~

- ~~(1) Police entry level lateral transfers. The entry level aptitude capacity test may be waived for any police applicants for original appointment who are full-time sworn officers in another jurisdiction at the time of application and are certifiable by the Maine Criminal Justice Academy (referred to as "lateral transfers"). Evidence satisfactory to the police chief of such status must be provided by the applicant at the time of application and is subject to the approval of the chief. In the event of any dispute as to such waiver, the police chief shall make a final determination as to waiver and such determination shall be within his discretion and shall not be subject to appeal. In no event shall any such dispute delay or prevent giving the test as scheduled. Persons approved for a lateral transfer shall be added to an existing police entry level eligible list in alphabetical order upon the chief's approval and their status as sworn officers shall be noted on the list and the date of their placement on the list shall be included. The chief, at~~

~~his or her option, may request a list consisting solely of all persons who are sworn officers to fill one or more vacancies prior to, or in place of, requesting the full eligible list.~~

~~(2) The chief of either department may notify the director of human resources that it is not necessary to hold an aptitude capacity test because of lack of anticipated vacancies in that rank and, in the case of promotional tests, all affected unions agree in writing to said waiver.~~

~~(d) Additional fire entry level aptitude capacity tests. In addition to the foregoing, the chief of the fire department may request that an entry level aptitude capacity test be held prior to expiration of an eligible list and that candidates who pass said test be added in alphabetical order to the existing entry level eligible list. Said list, including any names added to such list during its life, shall expire at the original applicable time, unless extended as provided below. Candidates on the original entry level list shall not be eligible to re take the test. The chief may request an additional entry level test for either suppression or for emergency medical services or for both;~~

~~(e) Additional tests needed. In addition to the foregoing, the chief of either department may request that an aptitude capacity test be held more frequently than provided herein or after waiver under subsection (c)(2) above if either (i) the eligible list has expired pursuant to section (f) below, or (ii) it is anticipated that test will be needed in order to fill anticipated or actual vacancies. The director shall notify the chief of the department of an intent to hold the test no less than ten (10) calendar days prior to advertising said test. An existing eligible list, if any, shall terminate as of the date set by the employment subcommittee, unless names are to be added to an existing entry level list as provided in subsection (d) above. The foregoing shall not apply to the police entry level only test which may be held as needed.~~

~~(f) Notice. Applications for testing may be solicited at any time by the director. All such solicitations of applications shall be publicly advertised and held open for a minimum of fourteen (14) calendar days. In addition to, or in lieu of, the foregoing, applications for police entry level original appointment or entry level lateral transfers may be taken at any time or on an ongoing basis.~~

~~(g) Administration of aptitude capacity test. Except in the case of the police entry level test, the aptitude capacity test shall be administered by the director during which at least one subcommittee member will be available by telephone to assist the director if necessary. The police entry level test will be an online test administered by the police chief or his or her designee, with the director available by telephone to assist if necessary.~~

~~(Ord. No. 174-05/06, 3-6-06)~~

~~Sec. 2-63. Eligible list.~~

~~(a) Establishing an eligible list. The selection components used in the process to establish an eligible list shall be impartial and relate to the subjects which, in the opinion of the employment subcommittee, appropriately measure relative capacity of the persons examined to effectively carry out the duties and responsibilities of the position to which they seek to be appointed. Such components shall include:~~

~~(1) Original appointments.~~

~~a. The eligible list for police original appointment will be created based upon a job related aptitude capacity with a passing score of 70.~~

~~b. Firefighter and firefighter/paramedics. The eligible list for fire original appointment will be created based upon a job related aptitude capacity test with a passing score of 70.~~

~~(2) Promotional appointments.~~

~~a. Police. The eligible list for promotional appointment will be created based upon the following components:~~

~~i. A job related aptitude capacity test with a passing score of 70.~~

~~ii. The candidate's last complete performance evaluation rating immediately prior to the date of the announcement of taking of applications for the written examination; and~~

~~iii. Seniority in the department as of the date of the written examination.~~

~~b. Fire. The eligible list for promotional appointments will be created based upon the following components:~~

~~i. A job related aptitude capacity test with a passing score of 70.~~

~~A. a basic subsection on supervision and management;~~

~~B. a subsection on advanced fire suppression; and~~

~~C. a subsection on advanced pre hospital medical care skills.~~

~~The same aptitude capacity test shall be used for either a suppression or emergency medical services~~

~~promotional rank, with the creation of a suppression list and an emergency medical services list based upon the combined score of subsections A and B for suppression and subsections A and C for emergency medical services.~~

- ~~ii. For employees hired prior to January 1, 2002, a base score of thirty (30); or~~
- ~~iii. Effective July 1, 2005, for employees hired on or after January 1, 2002, a base score of up to a maximum of 30, based upon completion of officer candidate school modules, which modules and base score shall be subject to approval by the employment subcommittee, after recommendation from the fire chief; and~~
- ~~iv. Seniority in the department as of the date of the written examination.~~
- ~~v. A member of the fire department who wishes to be considered for either a suppression or an emergency medical services promotion from the same examination must take and pass subsection A as well as both subsections B and C. Further, in order to take subsection C, a member must provide evidence of paramedic licensure in the state of Maine at the time of application. In the event a member takes both subsections B and C, but only passes one subsection (in addition to subsection A)², the member shall be included only on the eligible list for the subsection which he or she passed.~~

~~(b) Scoring.~~

- ~~(1) In general. The scores of the aptitude capacity test shall be determined by an impartial scorer and delivered to the director who shall draw up and maintain the eligible list(s).~~
- ~~(2) Original appointment. All applicants with a grade of 70 or above will be placed upon the eligible list in alphabetical order, with no numeric ranking. In the case of the police entry level eligible list, the date the applicant passed the test shall be posted on the list for the purpose of~~

~~[1] Editor's Note--So in original, Ord. No. 89-02/03, 11-4-02; but the passing score for the eligible list for each division is determined by the combined score of subss A+B or subss A+C, as applicable. See §2-63(a)(2)b.i., and §2-63(b)(3)b.~~

~~[2] Editor's Note--So in original, Ord. No. 89-02/03, 11-4-02; but the passing score for the eligible list for each division is determined by the combined score of subss A+B or subss A+C, as applicable. See §2-63(a)(2)b.i., and §2-63(b)(3)b.~~

~~calculating the applicant's twelve months of eligibility under subsection (c)(2) below.~~

~~(3) Promotional appointment. The passing score on the aptitude capacity test is seventy (70). An applicant's position on the eligible list will be determined as provided below. Each component of the promotional examination shall be scored separately.~~

~~a. Police promotional scoring. A police applicant's position on the eligible list will be determined by the weighted sum of his or her score on the aptitude capacity test and the performance evaluation, plus seniority points. The score of the aptitude capacity test shall be given fifty (50) percent weight and the performance evaluation ratings shall be given forty (40) percent weight in relation to the total grade. Seniority will be calculated as one-half point for each year of service in the department up to a maximum of ten (10) points and added to the weighted scores of the test and the performance evaluation.~~

~~b. Fire promotional scoring. A fire applicant's position on the eligible list will be determined by the weighted sum of his or her score on the aptitude capacity test and the base score, plus seniority points. Each subsection of the aptitude capacity test will be scored separately and there will be a separate eligible list for suppression promotions and for emergency medical services promotions. The score for subsection A will be added to subsection B to give an aptitude capacity test score for suppression, and the score for subsection A will be added to subsection C to give an aptitude capacity test score for emergency medical services. This combined score of the aptitude capacity test (A+B or A+C) shall be given sixty (60) percent weight and the base score will be given 30 percent weight. Seniority will be calculated as one-half point for each year of service in the department up to a maximum of ten (10) points and added to the weighted scores of the test and the base score. The performance evaluation ratings shall not be scored, but may be taken into consideration by the chief prior to appointment. Effective July 1, 2005, for employees hired on or after January 1, 2002, the base score of 30 will be replaced by the base score of up to 30 based upon the score for completion of the officer candidate school modules.~~

~~(c) Performance evaluations. The chief of each department shall develop the form of the performance evaluation record which shall be used by the police and fire departments, provided that such performance evaluation shall include an evaluation by the member's immediate superior or, in the absence of the immediate superior, by a superior~~

~~officer having personal and substantial knowledge of the member's performance, and the form of each evaluation shall be approved by the employment subcommittee.~~

~~(d) Seniority. Seniority in the department means total time served as a member of the department, and in addition in the police department, it includes time served as a police cadet to the extent provided by subcommittee rule.~~

~~(e) Duration of eligible lists.~~

~~(1) Except as provided for the police entry level eligible list, each eligible list shall be in effect for the following time period after the date on which it is first drawn up by the Director:~~

~~a. Firefighter and firefighter/paramedic original appointment: 2 years;~~

~~b. Fire lieutenant or captain appointment: 1 year; and~~

~~c. Police sergeant, lieutenant or captain appointment: 1 year.~~

~~(2) The police entry level eligible list shall be a continuous list with persons being added and deleted, and shall not have an end date, but each person shall be placed upon the list by the director immediately upon passing the test and shall stay on the list for twelve (12) months from the date of such passage. The person's date of passage of the test shall be included on the list and that person's eligibility for appointment shall automatically expire 12 months after such date. By way of example, a person who passed the test on January 17, 2006, would be eligible to be considered for appointment through January 16, 2007.~~

~~(3) No more than one eligible list for a given rank shall be in effect at the same time. No rights shall vest in any person who is on an eligible list, and no names shall be carried over from one eligible list to another, except as provided in section 2-61(c) of this article.~~

~~(Code 1968, § 201.11; Ord. No. 89-80, 7-7-80; Ord. No. 293-80, 11-3-80; Ord. No. 10-84, 6-25-84; Ord. No. 299-86, 1-22-86; Ord. No. 31-87, §§ 1-3, 9-9-87; Ord. No. 288-90, 4-2-90; Ord. No. 86-90, § 2, 9-5-90; Ord. No. 138-92, §§ 1, 2, 10-19-92; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Ord. No. 220-99, § 2, 3, 3-1-99; Ord. No. 121-99, 12-20-99; Substitute Ord. No. 83-01/02, § 1, 2, 11-5-01; Ord. No. 174-05/06, 3-6-06)~~

~~**Sec. 2-64. Eligibility list for original appointment; Certified list for promotional appointment.**~~

~~(a) Eligible list provided for original appointment. When requested to do so by the city manager, the employment subcommittee through the director shall furnish the eligible list of names from~~

~~which an original appointment may be made.~~

~~(1) Original appointment.~~

~~a. Fire. The list for original appointment shall contain the names of all the applicants on the eligible list in alphabetical order, with no numeric ranking, except the list for a firefighter/paramedic vacancy shall include only the names of those who have provided evidence to the fire chief of paramedic certification prior to the time the list is requested by the department.~~

~~b. Police. The list for original appointment shall contain the names of all the applicants on the eligible list in alphabetical order, with no numeric ranking. Unless the chief only requests the sworn police officers on the list, the eligible list for police original appointment shall include the names of all those who are on the eligible list as of the date the director provides the list to the department to begin the hiring process. Police entry level testing may continue during the hiring process and if the chief cannot fill the vacancies from the list sent over by the director, he or she may request that any additional names be sent over as a supplemental list until such time as all vacancies are filled. Applicants whose 12 months elapse while they are actively participating in the hiring process may continue in the hiring process until it is completed, but will be removed from the eligible list upon completion of that hiring process.~~

~~(b) Certified list for promotional appointment. When requested to do so by the city manager, the employment subcommittee through the director shall furnish a certified list of names from which a promotional appointment may be made.~~

~~(1) In general. The certified list for promotional appointment shall contain twice the number of names as there are vacancies to be filled, but in no case less than three names except as provided in section 2-64(2) below. Where the preparation of such a certified list cannot be made because the last two or more candidates received equal scores on the examination, the certified list shall include the names of all such equally qualified candidates. The names certified shall be the highest on the eligible list. If any candidate whose name appears on the certified list is disqualified, or withdraws prior to the appointment to fill the vacancy being made, the commission shall promptly certify the next name from the eligible list. The newly certified candidate shall then be given every examination previously administered to persons on that certified list.~~

~~a. Police. There shall be one eligible list maintained in~~

~~weighted score order for each promotional rank and the certified list shall be made up from the eligible list in the weighted score order.~~

~~b. Fire suppression/EMS lists. There shall be one eligible list maintained in weighted score order for each promotional rank in the fire suppression promotional positions and one eligible list maintained in weighted score order for each promotional rank in the emergency medical services promotional positions. Candidates must state at the time of application which subsections of the promotional examination they will take and present evidence of paramedic licensure in the state of Maine if they wish to take the advanced pre-hospital medical care subsection and be considered for an emergency medical services vacancy.~~

~~Upon request for a certified list for either a suppression or emergency medical services vacancy, or for both, the certified list shall be made up in weighted score order from those candidates who wish to be considered for the vacancy. Only those candidates who provided evidence of paramedic licensure in the state of Maine at the time of application for the promotion and passed the advanced pre-hospital medical care subsection of the examination shall be considered for an emergency medical services vacancy. Candidates on the eligible list for the available vacancy who have indicated that they wish to be considered for that vacancy will be put on the certified list based upon their weighted score order on that eligible list, assuming they met the paramedic licensure requirement in the case of an emergency medical services vacancy. By way of example, if a candidate is second on the suppression list and fourth on the emergency medical services list and there is one suppression and one emergency medical services vacancy, that individual will be listed on the certified list for the suppression position but will not appear on the certified list for the emergency medical services vacancy.~~

~~(2) Insufficient names for certified list. When there are insufficient names on an eligible list to make a certified list, that insufficient eligible list may be used if the chief and the city manager both request that it be used and the employment subcommittee determines that (i) holding of an examination would result in delay which would impair the ability of the department to meet its staffing needs in a cost-effective manner; or (ii) holding of an examination is not likely to result in additional names on the eligible list.~~

~~(Ord. No. 174-05/06, 3-6-06)~~

~~Sec. 2-65. Hiring process.~~

~~(a) Original appointment hiring process.~~

~~(1) Selection criteria. Prior to receiving the names on the eligible list, the department shall submit written selection criteria to the director for review and approval.~~

~~(2) Application review. The department shall review all of the written applications and resumes of all applicants on the eligible list in order to select an appropriate candidate pool to continue in the hiring process, based upon the approved selection criteria. The review of applications and resumes shall be done by a review group composed of one employment subcommittee member, a member designated by the president of the affected unions, and three members appointed by the chief of the department from city personnel, which three members may include the chief or his or her designee. Pursuant to its affirmative action plan, the city has identified certain public safety positions as underrepresented as to both female and minority employees. So long as such under-representation is determined to exist, any applicants on the entry level eligible list for either department who have self-identified as a female or minority applicant will be included in that department's pool of candidates to interview.~~

~~(3) Physical fitness assessment. Except as provided herein for applicants for police original appointment, all persons selected to be interviewed will be given the physical fitness assessment as provided in 2-66(a)(2) below. In the case of police original appointments, the chief may accept substitution of a valid letter from the Maine Criminal Justice Academy stating that the applicant has passed the Academy's physical fitness assessment within the 12 months immediately prior to the date of placement on the eligible list. Notwithstanding the foregoing, the chief of each department reserves the right to give the physical fitness assessment to some or all of the entry level applicants prior to resume review, including but not limited to doing such assessments on the same day as the written examination. Failure to pass the assessment shall disqualify the applicant from consideration for hire for a minimum of thirty (30) days after the date of such failure, but the applicant shall remain on the eligible list, unless removed by the chief or the employment subcommittee pursuant to section 2-61 above.~~

~~(4) Oral Board. An oral interview will be conducted of all persons selected who have passed the physical fitness assessment. The oral board will consist of one employment subcommittee member, a member designated by the president of the affected unions, and three members appointed by the chief of the department from city personnel, which three members~~

~~may include the chief or his or her designee. The oral board shall evaluate the candidates based upon a "recommend/do not recommend" basis.~~

~~(5) Background checks. Following the oral interview, all persons who were recommended will go through a background check, as provided in section 2-66(b) below.~~

~~(6) Conditional job offer. Following completion of the above elements of the hiring process, the chief may make a job offer which shall be conditional upon the approval of the city manager, and conditional upon passing a medical examination, as provided in section 2-65 below. In addition, in the case of the police department, such job offer shall be conditional upon passing a polygraph examination and a job suitability assessment. The Director shall be notified of the chief's conditional job offer(s) in order to review the hiring process for compliance with the requirements of this ordinance.~~

~~(b) Promotional appointment hiring process. In addition to the written test, police evaluation score or fire base score, and seniority, the promotional hiring process shall include an oral board which will consist of one employment subcommittee member, a member designated by the president of each of the affected unions and three (3) members appointed by the chief of the department from either city or non-city personnel, or a combination thereof, which three (3) members may include the chief or his or her designee. A job suitability assessment will also be done as provided in subsection 2-66(c) below.~~

~~(c) No conflict. In no case shall any member of the oral board be a candidate for the position nor a relative of a candidate.~~

~~(d) Appointments from list. Every appointment shall be made from an eligible list for original appointment or certified list for promotional appointment and the City Manager shall notify the civil service commission of appointments made.~~

~~(Ord. No. 174-05/06, 3-6-06; Ord. No. 298-05/06, 6-19-06 emergency passage)~~

~~**Sec. 2-66. Physical standards and background investigation for original appointment; Job suitability assessment for promotion, for police lateral transfer and for police original appointment.**~~

~~(a) Physical standards for original appointment.~~

~~(1) Medical examination. All candidates on the eligible list for original appointment shall undergo a medical examination by a physician specified by the employment subcommittee, said medical examination to be done only after a conditional offer of employment has been made to the candidate. The examining physician shall report his or her findings in writing to the subcommittee with respect to whether the candidate is physically capable of meeting the standards established by~~

~~rule of the subcommittee. If the physician's report indicates a disqualification which can be corrected, the candidate's name shall be returned to the eligible list except that such person shall not be again considered for appointment until such time as he or she furnishes satisfactory evidence that the disqualifying condition has been corrected. If the physician's report indicates a disqualification which cannot be corrected and which prevents the candidate from performing an essential function of the position with or without reasonable accommodation, the candidate's name shall be permanently removed from the eligible list pursuant to section 2-61 above.~~

~~(2) *Physical fitness standards.* In addition to the medical examination, the employment subcommittee shall establish by rule minimum standards and procedures for a physical fitness assessment of candidates for original appointment, which standards shall be determined by the subcommittee to be a bona fide occupational qualification or failure to meet them poses a safety hazard or cannot be reasonably accommodated in an individual case. Such physical fitness assessment shall be administered to each candidate by the department as provided in section 2-65(a)(3) above, and the result thereof shall be provided to the chief.~~

~~(b) *Background investigation for original appointment.*~~

~~(1) *Fingerprinting.* Candidates for original appointment to either department shall be directed to the police department where they shall be fingerprinted. All candidates shall execute any necessary waivers for the background check. The fingerprints and records of each candidate shall be checked against the local police files, state police files and, if available, the files of the Federal Bureau of Investigation, in order to determine whether the candidate has been convicted of a disqualifying criminal offense.~~

~~(2) *Polygraph.* Candidates for original appointment to the police department shall be required to submit to a polygraph examination to the extent such examination is permitted by law.~~

~~(c) *Job suitability assessment for promotional appointments, for police lateral transfers and for police original appointments.*~~

~~(1) All candidates whose names appear on any certified list for promotional appointment may be required to be examined by a psychologist for job suitability, the results of which examination shall be used by the chief of the department and by the city manager. Examinations hereunder for promotional appointment shall be required every year, except that the chief may waive said requirement if such examination has been done within three years of the date of the candidate's~~

~~appearance on a certified list, and the results are available for use by the chief and the city manger. The extent of said examination shall be determined by a psychologist on an individual basis and may be either pre offer or post offer, depending upon the content of the assessment, the psychologist's representation as to the purpose of the assessment and the department's preference.~~

~~To the extent permitted by law, the chief of either department may request that candidates on an eligible list undergo the job suitability examinations prior to drawing up a certified list if (1) doing so would overcome scheduling difficulties for a candidate and the candidate agrees to such scheduling and (2) doing so is necessary to ensure a timely appointment process. Nothing herein shall change a candidate's position on the eligible list or give him or her any vested rights therein.~~

~~(2) Candidates for police lateral transfer shall be given a post offer job suitability assessment.~~

~~(3) Candidates for police original appointment shall be given a post offer job suitability assessment as required by the Maine Criminal Justice Academy.~~

~~(d) Failure to pass polygraph test or job suitability assessment for police original appointment or job suitability assessment for police lateral transfer or job suitability assessment for police or fire promotional appointment. Notwithstanding anything herein to the contrary, any candidate for police original appointment who fails to pass a polygraph test as required hereunder, or, in the case of a police original appointment, police lateral transfer or police or fire promotional appointment, who fails to meet the job suitability assessment pursuant to this section, shall be removed from any list on which the candidate appears pursuant to section 2-61 above, and shall not be eligible to retake the written test until two years from the date the eligible list from which the candidate was removed was made.~~

~~(e) Failure to appear or complete hiring requirements. Any candidate who fails to appear for, or to complete, any component of the examination process, or any other requirement of the hiring procedure, shall be disqualified as a candidate and removed from any list on which he or she may appear. Such disqualification shall be reported to the employment subcommittee by the Director. Upon request of the candidate, the employment subcommittee may, in its discretion, waive the disqualification herein if: (i) the subcommittee finds that the candidate had sufficient excuse for such failure; and (ii) it finds that any rescheduling necessitated by such failure can be accomplished in a timely manner and with no disruption of the hiring process. Any candidate disqualified hereunder may reapply for any succeeding examination.~~

~~(f). Temporary withdrawal of applicants for original~~

~~appointments. Notwithstanding the foregoing, a candidate for original appointment may, for sufficient cause, temporarily withdraw from consideration for a limited period of time upon the prior approval of the chief of the department. Any denial of a request for temporary withdrawal by the chief may be appealed to the subcommittee which may grant the request if (i) the subcommittee finds that the candidate had sufficient cause for such request; and (ii) it finds that any rescheduling necessitated by request can be accomplished in a timely manner with no disruption of the hiring process. A candidate who is permitted to withdraw temporarily shall retain his or her place on the eligible list but shall not be considered for hire, or in the case of promotional appointment, shall not be placed on any certified list requested during the period of temporary disqualification. "Sufficient excuse" or "sufficient cause" as used herein shall include, but not be limited to, death or serious illness of a family member; temporary illness or disability of the candidate; completion of an academic or training program, or similar excuse and cause.~~

~~(g) Duration of certified list. The certified list shall be limited to the vacancy or vacancies for which it was requested. The names of persons not appointed shall be returned to the eligible list from which they were drawn. Each candidate for promotion who is not appointed shall be given, upon request, a statement by the chief of the department as to the reason or reasons why he or she was not recommended for appointment; or if he or she was recommended, a statement from the City Manager as to why he or she was not appointed. (Code 1968, § 201.12; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Ord. No. 220-99, § 4, 3-1-99; Ord. No. 121-99, 12-20-99; Ord. No. 174-05/06, 3-6-06; Ord. No. 298-05/06, 6-19-06 emergency passage; Ord. No. 126-09/10, 1-4-10)~~

~~Sec. 2-67. Working test period.~~

~~(a) Except as otherwise provided below for police lateral transfers or as otherwise provided for re hires under subsection 2-59(e), every person receiving any appointment or transferring pursuant to section 2-59 above shall be tested for a working test period of one (1) year while occupying the position to which he or she has been appointed or transferred, except that the working test period for original appointees or transferees to the police department shall be two (2) years. The period of the working test shall begin immediately upon appointment or transfer. The City Manager may at any time during the working test period reject for reasons stated in writing any person appointed to a position in either department. The City Manager shall forthwith report to the employment subcommittee in writing each rejection during such working test period, stating the date of the rejection and the reason for the rejection.~~

~~(b) Any person rejected during the working test period shall have no right of hearing, or appeal under this article, and in the case of a promotional appointment, shall revert to the rank and pay status from which he or she was promoted. No original appointment shall be effective beyond the end of the working test period unless, within ten (10) days preceding the end of the working test period, the City~~

~~Manager shall report to the employment subcommittee in writing that in the opinion of the City Manager, the employee's work has been such as to indicate that he is willing and able to perform his duties in a satisfactory manner. Upon delivery of a favorable report from the City Manager, the appointment shall become permanent.~~

~~(c) A police lateral transfer who has prior service as a police officer at the time of appointment shall be credited with up to twelve (12) months of service toward completion of the department's two year working test period, provided, however, that eligibility for promotional appointment shall continue to be completion of three (3) years in the Portland police department.~~

~~(Code 1968, § 201.13; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Ord. No. 174-05/06, 3-6-06; Ord. No. 126-09/10, 1-4-10)~~

DIVISION 4. POLICE CITIZEN REVIEW SUBCOMMITTEE

Sec. 2-76. Functions and duties.

(a) *Duties.* The duties of the police citizen review subcommittee are as follows:

- (1) To determine whether police investigations into citizens' complaints against police officers are thorough, objective, fair and timely by auditing the police department's internal affairs' unit investigative methods and procedures;
- (2) To report in writing to the City Manager periodically, but no less than annually beginning in January 2003, as follows:
 - a. on the subcommittee's determination as to the thoroughness, objectivity, fairness and timeliness of the police internal affairs' investigation of citizen complaints against police officers;
 - ~~b. a statistical analysis of all cases reviewed, including an analysis of trends and patterns of complaints or results of investigations of complaints; and~~
 - c. any recommendations and/or proposals for improvements or modifications in the police internal affairs investigative process, policies or training, and for enhancing public confidence in the methods and process of investigation of citizen complaints against police officers.
- (3) To hold a public hearing at least annually to receive comments upon the police citizen complaint process.

- (4) Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the subcommittee shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable.
- (5) Reports of the subcommittee shall be made available to the public to the extent consistent with the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 et.seq.
- (6) To make suitable procedural rules, from time to time, for the conduct of its duties. Proposed rules shall be submitted to the City Council and shall become effective only when approved by the City Council. All such rules shall be recorded in the office of the City Clerk.

(b) *Complaints to be reviewed.* ~~Effective with complaints completed, as defined in subsection (3) immediately below, on or after January 1, 2002, the subcommittee shall review the internal affairs investigation of the following citizen complaints against police officers:~~

- ~~1. complaints alleging excessive force;~~
- ~~2. complaints alleging civil rights violations;~~
- ~~3. complaints alleging conduct that would constitute a criminal offense; and~~
- ~~4. any other complaint which the subcommittee deems necessary to review in order to carry out its duties hereunder.~~

~~In addition to the foregoing, the subcommittee shall review any complaint upon request of the complaining party, subject to the January 1, 2002 completion date. The subcommittee shall review all completed internal affairs investigations of citizen complaints.~~

(c) *Timing of review.* All subcommittee reviews of citizen complaints shall take place only after final disciplinary action has been taken and all appeals exhausted or the case has been finally closed with no disciplinary action taken.

(d) **Notification of review.** The subcommittee shall notify the citizen complainant, in writing, of the subcommittee's review and any findings made by the subcommittee regarding the thoroughness, objectivity, fairness and timeliness of the internal affairs investigation.

(~~ed~~) *Scope of authority.* The subcommittee shall conduct its duties solely to determine the thoroughness, objectivity, fairness and timeliness of the police department's internal affairs' methods and

procedures in regard to citizen complaints against police officers, and the subcommittee shall have no power or authority to subpoena or call witnesses nor to impose or modify any disciplinary action, or lack of action, against any police officer. The subcommittee shall make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer.

(fe) *Training.* Prior to assuming their duties hereunder, subcommittee commissioners shall attend training by city staff as to the subcommittee's duties and responsibilities, applicable state and local law and regulations, issues relevant to the conduct of the citizen review function, accepted police practices and the department's internal affairs investigation process. Such training shall be provided by the city at no cost to the subcommittee members.

(gf) *Resources.* To facilitate the effectiveness and objectivity of the police citizen review subcommittee, the city shall make available to the subcommittee the services of a technical advisor, as needed by the subcommittee. The technical may be used for the purposes of training; briefing the subcommittee on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the subcommittee on aspects of the internal investigation process. The advisor shall be retained by the City Manager after consultation with the Chief of Police, representatives of the police unions and the subcommittee chairperson.

Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor.

The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the subcommittee to conduct its duties hereunder. In no case shall the subcommittee have access to police officers' personnel records except to the extent that they are part of an internal affairs investigation report or are considered a public document under the state Freedom of Access law.

(Substitute Ord. No. 83-01/02, § 3, 11-5-01)