

Chapter 2 ADMINISTRATION*

***Charter reference(s)**--Powers and duties, art. I, § 2.

Cross reference(s)--Ordinances promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds in the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city saved from repeal, §1-4(1); ordinances making any appropriations saved from repeal, § 1-4(4); ordinances prescribing the number, classification or compensation of any city officers or employees saved from repeal, § 1-4(10); ordinances providing for retirement benefits saved from repeal, § 1-4(11); uniform procedure for collecting assessments, § 1-16; elections, Ch. 9; general assistance, Ch. 13; planning board, § 14-16 et seq.; administration and enforcement of zoning, § 14-461 et seq.; jurisdiction of board of appeals for zoning, § 14-471 et seq.; board of appeals, § 14-541 et seq.; historic preservation, § 14-600 et seq.; licenses and permits, Ch. 15; police, Ch. 20; special police, § 20-16 et seq.; administration and enforcement of traffic regulations, § 28-11 et seq.; traffic division, § 28 et seq.; traffic engineer, § 28-21 et seq.; parking division, § 28-41 et seq.

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ARTICLE I. IN GENERAL

Sec. 2-1. City seal.

The design set forth below shall be the device of the city

seal; and the motto shall be: "*RESURGAM, SIGILLUM, CIVITATIS PORTLANDIAE.*"
(Code 1968, § 103.1)

State law reference(s)--Municipal authority to adopt a seal, 30 M.R.S.A. § 1902.

Sec. 2-2. Council members acting as agents in claims or actions against city prohibited.

No member of the City Council shall act as attorney, agent or representative for any person in any claim or demand against the City, nor in defending any person in any action brought by the City.
(Code 1968, § 202.3)

Charter reference(s)--No personal interest, art. VIII, § 1.

State law reference(s)--30 M.R.S.A. § 2251.

Sec. 2-3. Accidents to be reported.

Every officer and every employee, including the School Department, involved in any accident or other incident in which the City may be a party or having knowledge or notice, whether by hearsay or otherwise, of any such accident or incident shall immediately file a full report of such accident or other incident with the Corporation Counsel.
(Code 1968, § 202.4)

- Sec. 2-4. Reserved.
- Sec. 2-5. Reserved.
- Sec. 2-6. Reserved.
- Sec. 2-7. Reserved.
- Sec. 2-8. Reserved.
- Sec. 2-9. Reserved.
- Sec. 2-10. Reserved.
- Sec. 2-11. Reserved.
- Sec. 2-12. Reserved.
- Sec. 2-13. Reserved.
- Sec. 2-14. Reserved.
- Sec. 2-15. Reserved.

ARTICLE II. OFFICERS*

***Charter reference(s)**--Administrative officers, art. VI.

Cross reference(s)--Parking control officers, § 28-116.

State law reference(s)--Town officials, 30 M.R.S.A. § 2250 et seq.

DIVISION 1. GENERALLY

Sec. 2-16. Positions created.

In addition to the administrative officers and boards established by the Charter, there shall be the following additional administrative officers who shall be appointed in the manner provided in the Charter:

- (a) *Planning Director.* The Planning Director shall be the Director of Planning and Urban Development.
- (b) *Reserved.*
- (c) *Director of Economic Development.* The Director of Economic Development shall be responsible for maintaining an active liaison with existing business and industry located in the city, to assist them with problems in which the city may be involved and to encourage their growth and expansion in Portland. The Director of Economic Development shall also promote the City as a desirable location for new business and industry.

(Code 1968, § 202.1; Ord. No. 312B-80, 11-3-80; Ord. No. 281-82, § 1, 12-6-82; Ord. No. 429-85, § 1, 2-20-85; Ord. No. 376-90, § 1, 6-6-90)

Editor's note--Ord. No. 376-90, § 1, adopted June 6, 1990, deleted subsection (2) of this section, which formerly pertained to the purchasing agent, duties, etc. Similar new provisions have been included as Art. VII of this chapter, procurement and contracting procedures.

Sec. 2-17. Additional duties assigned.

In addition to the duties imposed on them by the Charter, state law and ordinance of the city, the City Council or the City Manager, the following officers shall perform the additional duties list below:

- (a) *City Clerk:*
 - 1. The City Clerk shall be Clerk of the City Council and shall record and keep all the official acts and doings of such body, which records shall be open and subject to the inspection of the public at all reasonable times.
 - 2. The City Clerk shall notify all persons elected or appointed to office in the city government or on

any board, commission or committee.

3. The City Clerk shall be custodian of the city seal and all official documents not required to be filed elsewhere.
4. The secretary of the Planning Board, the secretary of the Board of Appeals, and any other officer or employee of the City having possession of any recording of any hearing or proceeding of the Planning Board or Board of Appeals shall deliver the recording to the City Clerk for the purpose of preservation, retention, and to permit inspection and copying by the public, subject to such reasonable administrative fees as may be set by order of the City Council, upon conclusion of all of the proceeding(s). Such recordings shall be retained in the possession of the clerk for a period of not less than six (6) years.
5. The City Clerk shall appoint one (1) warden and one (1) ward clerk for each district precinct as their terms expire, subject to the approval of the City Council. The wardens and ward clerks shall be paid a reasonable compensation as determined by the City Clerk.
6. The City Clerk shall administer the office of the Board of Voter Registration pursuant to the City's personnel policies and procedures including, but not limited to, supervising the performance of the members thereof and establishing the individual work schedules, provided, however, that the office shall be open as provided by City Council Order.

(b) *Chief of Fire Department:*

1. The Chief of the Fire Department shall be the administrative head of the fire department responsible for the supervision of all matters relating to fires in the city and shall promulgate, and from time to time amend, rules and regulations for the guidance, government, and conduct of the officers and members of the fire department.
2. The Chief of the Fire Department shall have the care and control of all equipment assigned to the fire department, and no such equipment shall be taken outside of the City unless by order of the

City Manager or, in the manager's absence or unavailability, by order of the chief or commanding officer of the fire department.

3. The Chief of the Fire Department shall thoroughly inform himself or herself in regard to the location of all telegraph, telephone, electric light and power lines and all other electrical lines within the City; shall make and keep in his or her office a map showing the location of all such wires laid over, in, or under the streets, ways and buildings, including the names of the owners of such wires; shall see to it that all state laws and ordinances of the City relating to such installations are strictly complied with and enforced; and shall have the authority, whenever in his or her opinion the public safety requires it, to direct the cutting off of current from any such wires for such period of time as he or she may deem necessary for the public safety or the protection of property.
4. The Chief of the Fire Department shall provide certain medical and transportation services through a medical crisis unit.
5. The Chief of the Fire Department shall have the care and control of all fire alarm, police signal and radio electrical systems belonging to the city and shall perform all functions previously performed by the Director of public safety with regard to communications except the supervision of police communications operators and dispatchers.

(c) *Chief of Police:*

1. The Chief of Police shall be the administrative head of the police department, responsible for the supervision of all matters relating to police work in the City, and shall promulgate, and from time to time amend, rules and regulations for the guidance, government and conduct of the officers and members of the police department.
2. The Chief of Police shall be responsible for the provision of security at the Jetport, International Ferry Terminal, and other public buildings, facilities, parks, recreational areas, land and similar areas owned by the city.

3. The Chief of Police shall be responsible for public safety services, including fire, police and emergency medical services, for the residents of Portland's island communities, and upon the waters of Casco Bay within the City.
4. The Chief of Police shall be in charge of police communications services previously performed by the public safety department.

(d) *Director of Parks and Public Works:*

1. The Director of Parks and Public Works and the Department of Parks and Public Works shall be considered as the Public Works Authority and the Parks Authority for the City.
2. Reserved.
3. Reserved.

(e) *Corporation Counsel:*

1. The Corporation Counsel shall commence and prosecute all actions on behalf of the City before any tribunal and shall appear and defend the city in all actions brought against it or any of its officers or employees in the discharge of their official duties.
2. The Corporation Counsel shall appear before the Legislature of the State or any committee thereof, on behalf of the City when directed to do so by the City Council.
3. The Corporation Counsel shall, when requested to do so by the City Council or any committee thereof, or any administrative officer or board of the city in the discharge of their official duty, furnish written opinions upon any subject relating to City affairs and shall prepare all legal instruments, including orders, ordinances, resolves, bonds, deeds, contracts, leases and agreements, which may be required in the conduct of City affairs.
4. Corporation counsel is hereby authorized to charge developers a fee calculated on an hourly basis or on a project basis for legal work done by the office of corporation counsel on development

projects.

The hourly fee shall be set by council order at a rate that may, in the council's sole discretion, reflect the private sector legal rate for such services.

***Editor's Note**--Council Order 245A-04/05, passed on 5/16/05 set this rate at \$150.00 per hour.

The fee authorized by this subsection may not be charged in addition to any other fee levied for legal services pursuant to another section of this code.

- (f) *Director of Finance*: In all cases where the duty is not expressly charged to any other department or office, it shall be the duty of the Director of Finance to act to promote, secure and preserve the financial and property interests of the city. The Director of Finance shall:
1. Perform the duties and have and exercise the powers conferred or imposed upon Directors of Finance, Treasurers and Collectors of Taxes by State law, the City Charter and this Code;
 2. Receive, file and keep in his or her custody all contracts, leases and other like documents not required to be filed elsewhere, and the Director shall not permit any such papers to be taken from his or her possession without obtaining a receipt therefor;
 3. Keep and preserve all bonds required of officers and employees of the City, except his or her own bond which shall be kept by the City Clerk;
 4. Under the direction of the City Council, seal and execute all deeds to City-owned property, and shall, after recording when necessary, file and preserve all deeds delivered to the city as purchaser;
 5. Reserved.
 6. Under direction of the City Council, authorize, sign and issue all obligations of the city, and shall keep and administer said documents;

7. Deposit the proceeds of all sales of bonds into the city treasury immediately after he or she shall have received the same, and until such deposit, he or she shall be responsible for the amount thereof;
8. Keep in proper books a full and accurate account of all the moneys received and disbursed by him in behalf of the City, specifying the time of receipt and disbursement, from whom disbursed and on what account received and disbursed and how paid, showing at all times the financial condition of the City;
9. Receive and have custody of all moneys paid to the city and shall then deposit and invest and reinvest the same with some reasonable banking or investment institution or institutions, and shall disburse City moneys upon authorization of the City Council, and may sell, purchase and otherwise trade all, securities, bonds, stocks or other negotiable instruments owned by or belonging to the City;
10. Report the default of any officer of the City to the City Manager, who shall direct the corporation counsel to take immediate legal measures for the recovery of the amount for which such officer may be in default;
11. Ensure that all banks and trust companies, now or hereafter holding deposits of the city, are requested, authorized and, directed to honor checks, drafts or other orders for the payment of money drawn in this corporation's name, including those payable to the individual order of any person or persons whose name or names appear thereon as signee or signers thereof, when bearing the signature or facsimile signature of the Director of Finance or such person as he or she shall identify to the aforementioned banks and trust companies; and further, that the Director of Finance shall cause the names of said designees and all other conditions of payment to be submitted in writing to the aforementioned banks and trust companies;
12. Demand and receive all moneys and fees owing to the City, whenever any person is indebted to the City in any manner and the means of collection of such debt is not otherwise provided for by law. When any

claim shall not be collectible by other methods, he shall report the same to the corporation counsel for prosecution;

13. Pay City employees upon presentation of the properly certified payroll;
14. Transmit to the City Manager annually audited statements of cash on hand and of classified unencumbered appropriation balances for the City as a whole and such other financial statements as the City Manager may from time to time require. He or she shall keep every department, board, commission, and institution currently informed of its classified unencumbered appropriation balances;
15. Exercise general supervision over all officers of the City regarding the proper management of the fiscal concerns of their respective offices and:
 - a. Examine the books of each department from time to time and see that they are kept in proper form;
 - b. See that officers receiving money pay the same into the City Treasury when thereto required and that all necessary financial reports are made by officers, and shall report all delinquencies in such payments or reports to the City Manager and Council;
16. Examine, pay and audit the accounts of all officers and departments subject to the approval of the City Manager and appropriation by the Council;
17. Prescribe the forms of accounts and reports to be rendered to him or her;
18. Prepare estimates of revenues and expenditures as prescribed by the Charter and give such other assistance in the preparation of the budget as may be required by the City Manager;
19. Issue all permits and licenses required by ordinance to be issued by the Director of Finance or his designee;
20. Pay out to the persons duly entitled thereto on warrant of the Director of Finance, without

appropriation by the Council, any money paid into the Treasury pursuant to special trust funds.

The Finance Director shall further have the authority to employ assistants to whom he or she may delegate duties as permitted by state law, the Charter and this Code.

(g) *Director of Waterfront and Transportation Facilities:*

1. The Department of Waterfront and Transportation Facilities shall be headed by a Director of Waterfront and Transportation Facilities who shall be appointed by the City Manager, subject to confirmation by the City Council. The Director of Waterfront and Transportation Facilities shall have the responsibility for the direction and control of the Portland International Jetport, the International Ferry Terminal, the Fish Pier, the Maine State Pier and such additional powers as are set forth in article IV of chapter 18 and article II of chapter 30.
2. Reserved.

(h) *Director of Health and Human Services.* There is hereby established the Department of Health and Human Services to be headed by a Director of Health and Human Services to be appointed by the City Manager, subject to confirmation by the City Council. Such Director of Health and Human Services shall:

1. The Director of Health and Human Services and the Department of Health and Human Services shall be considered as the Health Authority of the City;
2. Exercise all powers of and perform all duties now or hereafter conferred upon or required of the Director of Welfare by state law, the Charter and ordinances of the City;
3. Exercise all powers of and perform all duties now or hereafter conferred upon or required of the Health Officer by state law, the Charter and ordinances of the City;
4. Exercise all powers of and perform all duties now or hereafter conferred upon or required by the City Manager of the Social Service staff of the Community Development Program;

5. Exercise all powers and perform all duties previously performed by the recreation division of the Department of Parks and Recreation;
6. Have the authority, personally or by his or her designated agents, to enforce all laws, ordinances and regulations pertaining to conditions dangerous or detrimental to life or health, including but not limited to the investigation and suppression of nuisances and the prevention and control of diseases within the City, the harbor, or on any vessel within the harbor.

(i) *Director of Planning and Urban Development:*

1. The Director of Planning and Urban Development and the Department of Planning and Urban Development shall be considered as the Building Authority and the Planning Authority of the City.
2. The Director of Planning and Urban Development shall supervise, manage and control the Department of Planning and Urban Development. Such department shall consist of the following divisions: Planning, Building Inspection, Housing Inspection, Relocation and Housing Rehabilitation.
3. The Director shall be secretary to the Planning Board and shall perform and be responsible for all other duties previously performed or required to be performed by the Planning Director or the Planning Department.
4. Through the Division of Housing Inspection, the Director shall exercise such authority and enforce such laws, ordinances and regulations pertaining to residential dwellings as the agent of the Director of Health and Social Services.
5. Through the Division of Neighborhood Rehabilitation, the Director shall approve and negotiate housing rehabilitation loans and grants and manage all loan and grant activities concerning residential units, including the repayment thereof to the City through the Finance Department, and he or she shall be responsible for contract administration and disbursement of all funds to housing rehabilitation agencies from whatever

source such funds are derived.

6. Through the Division of Neighborhood Rehabilitation, the Director shall be responsible for administrative oversight of public improvement programs implemented by other City departments in neighborhood conservation areas and shall advise and assist such departments in the development of such programs, and he or she shall also advise and assist the Planning Director in the delineation of new neighborhood conservation areas.
7. Through the Division of Building Inspection, the Director shall exercise such authority and perform such duties as were formerly exercised or performed by the Building Inspector or the former Department of Building Inspection Services. Wherever in this Code there appear the terms "Building Inspector," "Department of Building Inspection Services," etc., they shall be construed to mean the Director of Planning and Urban Development.
8. Through the Division of Relocation, the Director shall furnish relocation assistance to occupants of real property acquired by the City to the extent such assistance is required by law.
9. In addition to the aforesaid, the Director shall undertake such duties or responsibilities with respect to the Community Development Program as the City Manager may from time to time direct, and with the approval of the City Manager, he or she may employ additional assistants to administer grants obtained as part of the community development program whose salaries shall be paid for out of the grant budget.
10. The Director of Planning and Urban Development is hereby designated an agent of the health officer to exercise such authority and enforce such laws, ordinances and regulations pertaining to potential health hazards in residential, industrial, and commercial buildings and including but not limited to the following: investigation and oversight of local food service establishments, control of rabies, control of insects and rodents, control of refuse and its disposal, and investigation of lead paint.

(Code 1968, § 202.2; Ord. No. 232-68, 6-19-68; Ord. No. 577-72, 9-6-72; Ord.

No. 714-72, 11-6-72; Ord. No. 530-75, § 1, 10-6-75; Ord. No. 112-77, §§ 1--6, 2-7-77; Ord. No. 113-77, §§ 1--3, 2-23-77; Ord. No. 419-77, §§ 1--3, 7-6-77; Ord. No. 143-79, § 1, 6-6-79; Ord. No. 416-79, 12-17-79; Ord. No. 59-80, 6-16-80; Ord. No. 310-80, 11-3-80; Ord. No. 312A-80, 11-3-80; Ord. No. 688-81, §§ 1--3, 5-21-81; Ord. No. 331-81, §§ 1--9, 12-21-81; Ord. No. 598-82, 5-17-82; Ord. No. 281-82, § 2, 12-6-82; Ord. No. 493-83, § 1, 4-20-83; Ord. No. 429-84, §§ 1, 2, 2-6-84; Ord. No. 429-85, §§ 2, 3, 2-20-85; Ord. No. 286-85, 12-16-85; Ord. No. 250-88, § 1, 2-17-88; Ord. No. 410-88, 5-23-88; Ord. No. 301A-89, 1-30-89; Ord. No. 81-89, 8-21-89; Ord. No. 124-89, § 1, 10-2-89; Ord. No. 276-90, 3-19-90; Ord. No. 376-90, § 2, 6-6-90; Ord. No. 377-90, 6-6-90; Ord. No. 58-91, 7-15-91; Ord. No. 244-93, § 2, 4-16-93; Ord. No. 251A-04/05, 5-16-05; Ord. No. 294-04/05, 6-20-05)

Editor's note--Ord. No. 377-90, adopted June 6, 1990, not specifically amendatory of § 2-17, has been treated as repealing former subsection (d)3 of this section which assigned the duties relative to emergency preparedness and civil defense to the director of parks and public works. Ord. No. 377-90, specifically § 2-404 of this chapter, provided that such duties be performed by the fire chief.

Sec. 2-18. Reserved.

Sec. 2-19. Reserved.

Sec. 2-20. Reserved.

DIVISION 2. PROHIBITION ON IMMIGRATION STATUS CHECKS

Sec. 2-21. Inquiries into immigration status.

(a) Unless otherwise required by law or by court order, no city police officer or employee shall inquire into the immigration status of any person, or engage in activities for the purpose of ascertaining the immigration status of any person.

(b) City police officers and employees are exempted from the limitations imposed by subsection (a) above with respect to a person whom the officer or employee has reasonable suspicion to believe:

1. has previously been deported from the United States; and
2. is again present in the United States; and
3. is committing or has committed a felony (Class A, B or C) criminal law violation.

(Ord. No. 265-02/03, 6-2-03)

Sec. 2-22. Detention for purposes of national security.

If an officer has reasonable suspicion to believe that a person poses a credible threat to national security, the officer shall detain the individual for identification purposes and inform

the FBI of the threat, regardless of the immigration status of the suspect.

(Ord. No. 265-02/03, 6-2-03)

Sec. 2-23. City Manager reports to Council.

The City Manager shall report to the City Council annually as to the implementation and enforcement of this division, which report shall be put on a Council agenda as a communication.

(Ord. No. 265-02/03, 6-2-03)

Sec. 2-24. Required cooperation not prohibited.

Nothing in this amendment shall be construed to prohibit any city officer or employee from cooperating with federal immigration authorities as required by law.

(Ord. No. 265-02/03, 6-2-03)

Sec. 2-25. No liability.

Nothing in this chapter is intended, nor shall it be deemed, to create or form the basis for liability on the part of the city, or its officers, employees or agents. The exclusive remedy for violation of this division shall be through the City's disciplinary procedures for officers and employees.

(Ord. No. 265-02/03, 6-2-03)

Sec. 2-26. Reserved.

Sec. 2-27. Reserved.

Sec. 2-28. Reserved.

Sec. 2-29. Reserved.

Sec. 2-30. Reserved.

ARTICLE III. BOARDS, COMMISSIONS, COMMITTEES, ETC.*

*Cross reference(s)--Civil service commission, § 2-66 et seq.; planning board, § 14-16 et seq.; jurisdiction of board of appeals for zoning, § 14-471 et seq.; board of appeals, § 14-541 et seq.; historic preservation committee, § 14-603 et seq.; friends of the parks, § 18-10.

Sec. 2-31. Oath of office.

(a) All persons appointed by the City Council to membership on any board or commission of the City shall, prior to taking office as such member, be sworn to the faithful discharge of their duties by the City Clerk, Justice of the Peace, or Notary Public.

(b) The form of such oath shall be as follows:

I, _____, do solemnly swear that I will support the Constitution of the United States and of this State, so long as I shall continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties incumbent upon me as a member of _____, according to said Constitutions and the laws of this State and ordinances of this City.

State of Maine
County of Cumberland, ss. _____

I, _____, certify that _____ personally appeared before me on this day and took the above oath.

City Clerk
Justice of the Peace
Notary Public

(Code 1968, §§ 204.1, 204.2; Ord. No. 478-73, 7-16-73)

Sec. 2-32. Limitation on term of service--Generally.

(a) No person shall be appointed to, nor serve, more than three (3) consecutive full terms or nine (9) consecutive-years, whichever is greater, on the same board or commission of the city.

(b) The foregoing limitation shall apply only to service as a regular voting member of the board or commission, and not to service as an alternate nor as a nonvoting member.

(c) To the extent that this Code provides for a different limitation on the term of service for a specific board or commission, the limitation provided in this article shall apply.
(Ord. No. 301-91, 4-1-91; Ord. No. 118-08/09, 12-1-08)

Sec. 2-33. Applicability.

(a) The above limitation on terms shall apply to the following boards and commissions:

- (1) Board of appeals;
- (2) Board of assessment review;
- (3) Board of harbor commissioners;

- (4) Cable television committee (CATV);
- (5) Civil service commission employment subcommittee;
- (6) Civil service commission police citizen review subcommittee;
- (7) Community development block grant allocation committee;
- (8) Friends of the park;
- (9) Historic preservation committee;
- (10) Land bank commission;
- (11) Planning board; and
- (12) Portland public art committee;

(b) The above limitation on terms shall not be applied retroactively and shall apply to any person serving on one (1) of the above-named boards or commissions on the effective date of this section (5/1/91) beginning with the expiration of the term in which they are so serving. Notwithstanding the foregoing, the limitation on terms shall be applied to members serving on the boards and commissions identified in section 2-33, subsection (a), paragraphs 5,6,7 and 12, beginning with the expiration of the term of any sitting board or commission member following the passage of this amendment.

(c) Nothing herein shall prevent consecutive appointment of any person to a different board or commission from that on which he or she has served the maximum consecutive time.

(d) In the case of the board of harbor commissioners, such limitation shall apply only to the two (2) members appointed by the City Council.

(e) Any member on the above-named boards or commissions who completes the maximum years of service prior to the expiration of his or her term shall be allowed to complete that term of service and to continue to serve after expiration of that term until a successor is appointed and qualified, provided such service shall not continue in excess of one hundred twenty (120) days after expiration of the term.

(Ord. No. 301-91, 4-1-91; Substitute Ord. No. 233-99, §2, 4-5-99; Ord. No. 118-08/09, 12-1-08)

Sec. 2-34. Period of ineligibility.

Any person who completes the maximum terms or years of service on a board or commission shall be ineligible for reappointment to that board or commission for a period of three (3) consecutive calendar years from the date of completion of such maximum terms or years of service.

(Ord. No. 301-91, 4-1-91; Ord. No. 118-08/09, 12-1-08)

Sec. 2-35. Reserved.

Sec. 2-36. Reserved.

Sec. 2-37. Reserved.

Sec. 2-38. Reserved.

Sec. 2-39. Reserved.

Sec. 2-40. Tenure of Directors of the Board of the Greater Portland Transit District.

Each Director of the board of the Greater Portland Transit District representing the City of Portland on the effective date of this amendment, or thereafter, shall be appointed annually for a term of one (1) year and until his or her successor is appointed. Each Director so appointed shall serve at the pleasure of the City Council.

(Ord. No. 659-86, § 1, 6-16-86)

ARTICLE III-A. PORTLAND LAND BANK COMMISSION; FUND

Sec. 2-41. Definitions.

As used in this article, unless the context indicates otherwise, the following terms have the following meanings:

Commission means the Portland land bank commission established pursuant to section 2-42.

Land bank means property interests of the types provided in section 2-43(a) which are purchased, acquired or dedicated for the conservation and open space purposes hereunder.

Land bank fund means the fund established hereunder for the purchase of property interests for the conservation and open space purposes hereunder or for making grants or loans for such purposes.

Property interest means any fee simple interest in real property and any lesser interest therein, including without limitation, conservation restrictions and easements.

(Substitute Ord. No. 233, § 1, 4-5-99)

Sec. 2-42. Commission Established.

(a) *Findings.* The City Council hereby finds that:

1. There is a need to balance development within the municipality with conservation of open space important for wildlife, ecological, environmental, scenic or outdoor recreational values;
2. there are insufficient financial resources currently in place to plan for, and acquire significant open space lands or easements which are or may become available within the municipality or in adjoining buffer areas; and
3. there is a need to supplement the city's open space conservation efforts, without duplicating the efforts of other public and private groups including the Portland Planning Board, Portland Trails and the Friends of the Parks.

Therefore, in order to ensure the conservation and preservation of limited open space with important wildlife, ecological, environmental, scenic or outdoor recreational values, there is hereby established a Portland Land Bank Commission, Portland Land Bank and a Portland Land Bank Fund.

(b) *Purposes.* It shall be the purpose of the commission to:

1. work for the acquisition and conservation of open space within the City, as defined in §2-43(a) below;
2. cooperate with other agencies and parties on wetlands mitigation projects;
3. recommend on a priority basis the acquisition of various interests in real estate in order to effectuate the goals of this article;
4. accept gifts and funds from both private and public sources and to disburse such funds in accordance with the commission's approved budget for the purposes hereunder;
5. act as a liaison to other public and private nonprofit agencies involved in planning, acquisition, disposition, and management of conservation and open space land within the municipality; and
6. recommend an annual budget to the City Manager and City

Council to carry out its purposes.

(c) *Appointment of commission.* The Portland Land Bank Commission shall consist of and be administered by nine (9) persons appointed by the City Council for staggered three-year terms. Except as provided below for non-voting members, the members must be legal residents of the municipality and shall serve without compensation. One member of the commission shall be appointed from the City Council. Neither a municipal employee nor member of the Planning Board or Board of Appeals may be a member of the commission. To the extent feasible, representation on the board shall be diversified, including without limitation, members representing environmental or conservation interests, economic development, business and financial interests, and the public generally. There shall be a resident from each of the City Council districts on the commission.

(d) *Non-voting members.* In addition to the nine voting members, the Board of Directors of Portland Trails and of Maine Audubon Society shall each appoint one person from each of their memberships to serve as non-voting members of the commission for three (3) year terms. The only eligibility requirement for appointment to the non-voting positions shall be membership in the respective group which they represent. Such non-voting members shall serve at the pleasure of their appointing Board of Directors.

(e) *Vacancies.* In the event of a permanent vacancy in the voting members, the City Council shall, within 120 days of its occurrence, appoint a person to serve for the unexpired term.

(f) *Removal.* Voting members of the commission may be removed by the City Council for cause, after notice and hearing. Without limiting the foregoing, excessive absences from regularly scheduled meetings shall be considered cause for removal.

(g) *Organization of commission.* The commission shall annually elect a chair, a secretary and a treasurer from among its voting members and shall adopt reasonable rules for the conduct of its meetings, which rules shall include provisions for public comment substantially the same as those provided by City Council rules for standing council committees. The decisions of the commission shall be by majority vote of those present and voting and no business may be transacted without a majority of the voting members present; provided, however, five (5) votes shall always be required to authorize a grant or loan for acquisition of, or to recommend to the council the disposition of, any property interest acquired or disposed of hereunder. The Commission shall keep accurate records of its meetings and actions and shall file an annual report with the City Manager.

- (h) *Powers and duties of commission.* The Commission:
1. Shall file annually with the City Council a registry of all open space of the types in section 2-43(a), publicly or privately owned, located within the city or abutting the City as potential buffer areas, for the purpose of providing information pertinent to property utilization, protection, development or use of such open space. The registry must show all property interests then currently held by the city, including a description of the use of those interests and all acquisitions, improvements or dispositions of all property interests held by the city at any time during the year preceding each filing. The commission shall determine and list in the registry the open space lands which meet the criteria in section 2-43(a) and which have significant value for preservation through the land bank, and those which are of lesser or no value for preservation and those which are more appropriate for other uses. The foregoing determinations shall include a prioritized list of any recommended acquisitions for the Land Bank, as well as the commission's rationale for its determinations. The commission shall actively seek comments on the proposed registry from the Planning Board, Friends of the Parks, city departments, and the general public at a public hearing prior to adopting the registry or revision to the registry and forwarding it to the council for review. Said registry or revision thereto shall be subject to the approval of the City Council;
 2. May solicit and recommend to the City Council the acceptance of gifts of any real property interests or of funds to further the conservation and open space goals of this article;
 3. May recommend to the City Council the disposition of all or any portion of the property interests listed in the registry and held by the city; may review any proposed disposition of city tax-acquired property interests and make its own recommendations thereon to the City's tax acquired property committee, council committees and/or the City Council;
 4. May obtain such professional services as are necessary in order to perform its duties, including development and updating of the Commission's registry, provided, however, to the extent possible, City staff shall assist the Commission;

5. May act as a liaison for the activities of public and private conservation bodies organized for similar purposes;
6. May make recommendations to, and participate with, the city and other agencies and parties in regard to wetlands mitigation plans and projects;
7. May apply for federal, state and local funds for which it may be eligible, subject to the approval of the City Council;
8. May advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary; and
9. Shall submit to the City Manager annually an operating and capital budget for all expenses and projects of the Commission, which shall include a separate budget for expenditures from the Land Bank fund, which expenditures will be limited to the purposes for which this fund is dedicated. Commission expenditures shall not exceed its annual operating and capital budget, unless otherwise amended by the City Council.

(Substitute Ord. No. 233-99, §1, 4-5-99)

Sec. 2-43. Establishment of Land Bank.

(a) *Acquisition of property interests.* Property interests acquired and held for the purposes hereunder shall be considered as the land bank and may consist of any of the following types of land and interests in land:

1. Ocean, harbor, river, stream, or pond frontage and adjoining back lands;
2. Fresh or saltwater marshes, estuaries, flood plains and adjoining uplands;
3. Islands;
4. Land for future passive public outdoor recreational use, including hiking trails, bicycle paths, green belts and high elevations with a view;
5. Aquifers, aquifer recharge areas and other ecologically fragile or significant property;

6. Properties with unique historical or geological characteristics or otherwise important to the community's cultural welfare;
7. Woods or forest land;
8. Farmland or wildlife habitat;
9. Open spaces which help to shape the settlement pattern of the community by promoting the neighborhood concept and discouraging sprawl;
10. Vacant parcels of land, vacant buildings and properties or buildings and properties in significant disrepair which may be reclaimed for the purpose of establishing natural areas for conservation and open space land; or
11. Conservation or trail easements and other similar interests in land.

Said Land Bank property interests may be held in the name of the city or in the name of a private nonprofit organization when acquired from the City or with the assistance of a grant or loan from the land bank fund. All acquisitions of property interests under this article shall be subject to the approval of the City Council, unless previously approved through adoption of the Commission's annual budget.

(b) *Maintenance of land.* The Commission shall retain any land bank property interest acquired pursuant to this article and maintained in the land bank predominantly in its natural, scenic or open condition, except as otherwise provided in this article. Except upon the approval of the City Council or where required by state or federal law, and where appropriate, subject to the Constitution of Maine or state law, the commission shall not allow:

1. Construction or placing of buildings; roads, other than paths for recreational use; signs; billboards; other advertising, utilities or other structures on or above the surface, except in furtherance of the conservation and open space purposes of this article;
2. Dumping or placing of trash, waste or unsightly or offensive material;
3. Removal or destruction of trees, shrubs or other vegetation, except where necessary for management purposes and to enhance natural systems or open-space uses;

4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, except limited grading to enhance the open-space uses of the land;
5. Surface use except for purposes permitting the land or water area to remain predominantly in its natural, scenic or open condition; or to permit the land to continue to support the cultural or recreational values for which it was acquired;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation; or
7. Other acts or uses detrimental to the cultural, natural, scenic or open condition of the land or water areas.

(c) *Disposition of property interests.* Any request to use, improve or dispose of any property interest in the Land Bank in a manner otherwise prohibited by this article shall become effective only after review and recommendation thereon by the commission and approval of six (6) members of the City Council; provided, however, such use, improvement or disposition must be legally consistent with the terms of any gift or grant of funds or property which was used for the acquisition of that property interest. Nothing herein is intended, nor shall it be deemed, to prevent or prohibit the sale or development of all or a portion of any property interest purchased with land bank funds to the extent legally consistent with the terms of its acquisition and approved by six (6) members of the City Council; provided, however, that the fund shall be reimbursed all of its costs and expenses for such purchase from such sale or development, including without limitation the purchase price, or pro rata share thereof, of the property interest.

(Substitute Ord. No. 233-99, §1, 4-5-99)

Sec. 2-44. Reserved.

Sec. 2-45. Land Bank Fund.

(a) *Establishment of fund.* The City shall establish a municipal land bank fund to be set up as a separate account within the city to be used to carry out the purposes of this article pursuant to the commission's approved annual budget. Deposits into the fund shall include:

1. Funds appropriated to be deposited into the fund by vote of the City Council;

2. Voluntary contributions of money or other liquid assets to the fund;
3. Any federal, state or private grant or loan funds provided to the land bank fund;
4. Interest from fund deposits and investments;
5. Repayments of loans authorized by the commission and reimbursement upon the sale of property interests from the land bank or acquired with land bank funds; and
6. An annual appropriation of .5% of the total annual capital improvement program.
7. The City Council must approve any expenditure from this fund for the acquisition of property, including but not limited to the cost of options to purchase.

(b) *Authority to grant or loan funds.* In addition to any other authority granted hereunder and subject to its annual budget, the Commission shall have the authority to make grants and loans to private nonprofit groups for the purpose of acquiring property interests in accordance with the purposes of this article. Such grants or loans shall be on such terms as provided by rules of the commission.

(c) *Land bank property management.* The Commission may expend land bank funds for administration, maintenance, management and limited capital improvement of land bank property, provided, however, such expenditures shall not exceed 10% of the commission's budget without a 2/3 vote of the commission and approval by the City Council.

(d) *Payments; records.* All expenses lawfully incurred carrying out this article must be evidenced by proper vouchers and shall be paid by the City only upon submission of records duly approved by the commission and in a form satisfactory to the City's Finance Director. The City shall prudently invest available assets of the fund and all income from any investment or repayment of any loans shall accrue to the fund. Records of all meetings and transactions under this article shall be kept in accordance with City policies and procedures.

(Substitute Ord. No. 233-99, §1, 4-5-99; Ord. No. 19 03/04, 7-21-03)

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 have 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, 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. 2-47. Created.

There is hereby created a civil service commission, also referred to in this article as the commission. The commission shall consist of two separate and independent subcommittees as follows: the civil service employment subcommittee and the civil service police citizen review subcommittee. Commissioners shall be appointed to, and serve on, one of the two subcommittees only.

(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)

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 six (6) 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,

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;
- (2) Any present or former member of the City Council; 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;
- b. the applicant or any member of his or her immediate family has been arrested by any member of the Portland police department;
- 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; and
- d. the applicant or any member of his or her immediate family has brought suit against the Portland Chief of Police, the department or any individual police officer.

- 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. 2-50. Appointment.

Civil service commissioners and the alternates shall be appointed by the City Council. Such power of appointment shall be exercised only after the City Clerk has published a notice announcing such position or positions, describing the responsibilities thereof, and soliciting applications by qualified persons in a newspaper of general circulation within the city not less than fifteen (15) calendar days in advance of action by such council. Applications may be solicited whether or not there is a vacancy, and such applicants may be considered for any vacancy which occurs within one hundred eighty (180) days of the closing date for such applications. Such applicants may also be considered for appointment as a commissioner pro tem pursuant to section 2-55 below. Nothing herein shall limit the city's authority to solicit applications whenever the City Manager deems that it is necessary. (Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 138-92, § 3, 10-19-92; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97)

Sec. 2-51. Terms.

- (a) *Term.* Each civil service commissioner or alternate shall

be appointed to a three-year term, unless appointed to fill a vacancy. Police citizen review subcommittee commissioners first appointed hereunder shall be appointed for one-, two- and three-year terms so that only two (2) are initially selected each year other than by reason of resignation, removal or death. A commissioner or alternate shall serve until his or her successor is appointed and qualified, but in no case longer than one hundred twenty (120) days from the expiration of his or her term.

(b) *Limitation on service.* The term limitations of Chapter 2, Article Iii shall apply to service on each of the subcommittees of the civil service commission.

(c) *Applicability.* The limitation on terms provided by this amendment shall apply to any person serving on the civil service commission as of the effective date of this amendment (7/5/1991) and to any person appointed after said effective date.

(Code 1968, § 201.3; Ord. No. 89-80, 7-7-80; Ord. No. 275-83, 11-7-83; Ord. No. 299-86, 1-22-86; Ord. No. 370-91, § 2, 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. 2-52. Compensation.

Civil service commissioners shall serve without compensation, except that reasonable expenses incurred by any commissioner or alternate incidental to his or her duties under this article may be reimbursed.

(Code 1968, § 201.4; 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)

Sec. 2-53. Removal.

Any civil service commissioner or alternate may be removed from office by the City Council for cause, after notice and the opportunity to be heard.

(Code 1968, § 201.4; 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. 2-54. Officers.

Each subcommittee of the civil service commission shall annually elect one (1) of its members as 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)

Sec. 2-55. Commissioners pro tem.

In the case of temporary absence from the city, temporary disability of the civil service commission members and alternate, or other circumstances, so that a quorum of a subcommittee cannot be constituted without such action, the City Council may appoint such commissioners pro tem as may be necessary to constitute a quorum. Commissioners pro tem shall be subject to the eligibility requirements of this division. A commissioner pro tem shall possess the powers and discharge the duties of a regular commissioner during the absence or disability for which he or she has been appointed; provided, however, that a commissioner pro tem shall have no authority with respect to rule-making by the commission and shall not participate in any action or decision where a quorum is otherwise present.

(Code 1968, § 201.4; 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)

Sec. 2-56. Meetings.

(a) *Calling of meetings.* Meetings or hearings of either subcommittee of the Civil Service Commission may be called at any time by its Chair, or in the absence from the city or disability of the Chair, by any member of the Subcommittee. The Chair of a Subcommittee shall call a meeting upon request from any Subcommittee Commissioner.

(b) *Quorum.* A quorum of the Employment Subcommittee of the Civil Service Commission shall be two (2). The Subcommittee Alternate may attend any hearing or meeting, but shall participate as a Commissioner only during the absence or disability of any Commissioner or whenever a vacancy on the Subcommittee exists.

A quorum of the Police Citizen Review Subcommittee shall be four (4). Notwithstanding the foregoing, the quorum shall be reduced to three (3) during any period when there is a vacancy on the Subcommittee, including a vacancy in the position of alternate. (Code 1968, § 201.5; 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; Ord. No. 247-03/04, 6-21-04)

Sec. 2-57. Prohibited practices.

(a) *Forfeiture of office.* A determination by a court of competent jurisdiction of a practice, or facts necessarily constituting a practice prohibited by this section by any civil service commissioner, alternate, member of a department, or any other person shall result in the forfeiture of any office held by

such person and shall be a permanent disqualification for any office existing under or governed by this article.

(b) *Nondiscrimination.* No discrimination shall be exercised, promised, or threatened by any person, in connection with any action taken or to be taken under this article, in favor or against any applicant or member of a department because of his or her religious beliefs, ancestry, national origin or veteran's status; race, sex, sexual orientation, or color; because of age or physical or mental disability, except where such requirements constitute a bona fide occupational qualification or failure to meet the requirements poses a safety hazard or cannot be reasonably accommodated; because the applicant or member of the department, or member of his or her family, has or has declined to contribute to any political fund or to render political service; or because of any lawful union activity or membership. No person shall seek or attempt to use, nor shall the civil service commission give consideration to, any political endorsement, or any other factor prohibited by the preceding sentence. To the extent consistent with law and with this article, it is the policy of the city to encourage diversity in its work force and to use affirmative action in its recruitment of applicants for positions hereunder.

(c) *Falsification.* No person shall make any false statement, certificate, mark, rating or report with respect to any test, certification or appointment made under any provisions of this article, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules and the regulations adopted hereunder, or to cheat, or attempt to cheat, or abet cheating on any examination.

(d) *Bribery.* No person shall directly or indirectly give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in a position, or in an examination for a position, in the departments.

(Code 1968, § 201.7; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 239-91, § 1, 2-20-91; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

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, 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 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. 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

[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 sub§§ A+B or sub§§ 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 sub§§ A+B or sub§§ A+C, as applicable. See §2-63(a)(2)b.i., and §2-63(b)(3)b.

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 calculating the applicant's twelve months of eligibility under subsection (e)(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 underrepresentation 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)

Sec. 2-68. Disciplinary action.

(a) *Action by chief of department.* Unless otherwise governed by a collective bargaining agreement, the chief of the department may, for cause:

- (1) Suspend without pay any member for one (1) offense for a period of not more than fifteen (15) working days, resulting in the loss of not more than three (3) weeks' pay;
- (2) Issue a written reprimand to be included in the member's personnel file.

Suspensions without pay shall not be for more than thirty (30) working days in aggregate in a calendar year. Upon imposition of any discipline, the chief shall immediately file with the employment subcommittee a written statement of the disciplinary action taken and the reason therefor. A copy of the statement shall be delivered to the department member in person or by mail at the member's last and usual place of abode. Actions of the chief taken

within this subsection shall be final and there shall be no appeal therefrom under this article.

(b) *Action by subcommittee.* The employment subcommittee shall have the power and authority to demote, suspend with or without pay, and remove members of the police department and the fire department for cause and after presentation of charges and hearing. The subcommittee shall have the right to reinstate any such demoted, suspended or removed member of the police department or fire department after a hearing upon recommendation of the chief of the department to which the applicant seeks reinstatement, provided the City Manager joins in such recommendation for reinstatement.

(c) *Action by chief pending hearing.* Pending a hearing before the employment subcommittee, the chief of the department or the City Manager may, for the cause to be presented to the subcommittee, suspend any member, without pay, until the next succeeding meeting of the subcommittee; provided, however, that no suspension without pay pending a hearing by the subcommittee shall be effective for more than fifteen (15) days; no suspension without pay shall be effective unless it is either preceded by a filing of charges with the subcommittee or such charges are filed within ten (10) days thereafter, Saturday, Sunday and legal holidays excepted; and if the subcommittee determines that no disciplinary action is warranted, it shall provide that any salary which should have been paid during such period of suspension shall be paid to the member.

A member may elect to waive a hearing before the employment subcommittee and accept disciplinary action determined by the chief of the department. Said waiver shall be made in writing prior to the implementation of the discipline. Prior to waiving a subcommittee hearing, the member shall be provided with written notice of the charges against him or her, a brief statement of the evidence against him or her, and an opportunity for a hearing before the chief. Said hearing shall be informal in nature and shall not be an adversarial hearing, but the member may have counsel and/or a union representative present. The member shall have the right to confer with said counsel and/or representative during the hearing and to have them speak on his or her behalf. The hearing before the chief may be tape recorded upon the request of either party.

(d) *Notice; opportunity to respond.* Prior to suspending any member without pay under subsection (c) above, the chief of the department shall provide the member with notice of the substance of the charges against him or her, a statement of the evidence, and an opportunity to respond to said charges and evidence.

(e) *Hearings without formal charges.* Whether or not charges are filed with the subcommittee, the subcommittee shall within

thirty (30) calendar days schedule a hearing to determine whether disciplinary action should be taken against any member where:

- (1) The member fails or refuses to testify before the subcommittee at any disciplinary hearing; or
- (2) The member becomes the defendant in a pending criminal proceeding, the conviction in which proceeding would be a disqualifying criminal conviction.

Either party may request a continuance of such hearing, which may be granted by the subcommittee upon such terms and conditions as it deems appropriate. If the continuance is requested by a city official, the member shall receive his regular pay for the duration of the continuance. However, if a suspended member requests a continuance of the hearing, the member will not be paid for the duration of the continuance period requested by him.

(f) *No deferral of action.* Disciplinary action by the subcommittee for the same conduct which is the subject matter of a pending criminal proceeding shall not be deferred unless the subcommittee shall order such deferment at the request of the member charged, in which case the subcommittee may impose reasonable conditions, including but not necessarily limited to, a continuing suspension without pay.

(g) *Result of collateral criminal proceeding.* The acquittal of the member on criminal or civil charges involving material allegations which are substantially similar to the material allegations made in the disciplinary proceeding shall not require abatement of a disciplinary proceeding by the Subcommittee. A final judgment of conviction of a crime which is a disqualifying criminal offense shall operate as a disqualification from office, and, upon proof of such conviction to the subcommittee, such member shall be removed.

(h) *Procedure at disciplinary hearings.* All hearings of the subcommittee shall be deemed to be civil in nature and shall be informal in conduct. Such hearings shall be governed by this article and by any rules of practice and procedure adopted by the subcommittee. In the conduct of such hearings, the subcommittee shall not be bound to the technical rules of evidence. No informality in any proceeding or hearing or in the manner of taking testimony before the subcommittee shall invalidate any decision of the subcommittee. Disciplinary action shall be taken only upon a preponderance of the evidence.

(i) *Decision.* After hearing, the subcommittee shall make written findings of fact with respect to any specific allegations and shall determine whether such facts constitute cause for

disciplinary action, and if the subcommittee determines that cause for disciplinary action exists, the nature of the disciplinary action to be taken. Such decision may be appealed as provided by law.

(j) *Expenses.* The subcommittee may, if it determines that charges made were without substantial justification, recommend to the City Council the payment of reasonable counsel and witness fees incurred by any member in the defense of such unjustified charges. (Code 1968, § 201.14; 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. 174-05/06, 3-6-06)

Sec. 2-69. Reserved.

Sec. 2-70. Reserved.

Sec. 2-71. Reserved.

Sec. 2-72. Reserved.

Sec. 2-73. Reserved.

Sec. 2-74. Reserved.

Sec. 2-75. Reserved.

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.

(c) *Timing of review.* All subcommittee reviews of 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) *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.

(e) *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.

(f) *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 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)

Sec. 2-77. Confidentiality.

Each member of the civil service commission is obligated to maintain the confidentiality of all information and documents either provided to or reviewed by them, in accordance with state law. Failure to maintain such confidentiality will be cause for

removal from the commission. All reports and requests for disclosure of any information shall be referred to the corporation counsel for review prior to release.

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

- Sec. 2-78. Reserved.
- Sec. 2-79. Reserved.
- Sec. 2-80. Reserved.
- Sec. 2-81. Reserved.
- Sec. 2-82. Reserved.
- Sec. 2-83. Reserved.
- Sec. 2-84. Reserved.
- Sec. 2-85. Reserved.
- Sec. 2-86. Reserved.
- Sec. 2-87. Reserved.
- Sec. 2-88. Reserved.
- Sec. 2-89. Reserved.
- Sec. 2-90. Reserved.

ARTICLE V. EMPLOYEE BENEFITS

DIVISION 1. GENERALLY

- Sec. 2-91. Reserved.
- Sec. 2-92. Reserved.
- Sec. 2-93. Reserved.
- Sec. 2-94. Reserved.
- Sec. 2-95. Reserved.
- Sec. 2-96. Reserved.
- Sec. 2-97. Reserved.
- Sec. 2-98. Reserved.
- Sec. 2-99. Reserved.
- Sec. 2-100. Reserved.

DIVISION 2. RETIREMENT*

*State law reference(s)--State retirement system, 5 M.R.S.A. § 1001 et seq.

Sec. 2-101. Membership in state retirement system mandatory.

Any person who is hereafter appointed to employment with the city shall become a member of the state retirement system to the

extent of the benefits made applicable to the department into which the person is appointed by the terms of the city's participation in the system.

(Code 1968, § 203.1)

Sec. 2-102. Prior benefits retained.

Any person who was entitled to retirement benefits from the city on the effective date of this Code shall continue to be entitled to such benefits. Such benefits may be increased by order of the City Council from time to time, but all such increases shall be subject to the same, terms and conditions as existed for entitlement prior to the effective date of this Code. A right of survivorship, in the spouse of a retiree married to the retiree on the date of retirement, shall be recognized in the case of any retiree who sustained a service-connected disability, such benefits to be prospective only.

(Ord. No. 104-85, 8-5-85)

- Sec. 2-103. Reserved.
- Sec. 2-104. Reserved.
- Sec. 2-105. Reserved.
- Sec. 2-106. Reserved.
- Sec. 2-107. Reserved.
- Sec. 2-108. Reserved.
- Sec. 2-109. Reserved.
- Sec. 2-110. Reserved.
- Sec. 2-111. Reserved.
- Sec. 2-112. Reserved.
- Sec. 2-113. Reserved.
- Sec. 2-114. Reserved.
- Sec. 2-115. Reserved.
- Sec. 2-116. Reserved.
- Sec. 2-117. Reserved.
- Sec. 2-118. Reserved.
- Sec. 2-119. Reserved.
- Sec. 2-120. Reserved.
- Sec. 2-121. Reserved.
- Sec. 2-122. Reserved.
- Sec. 2-123. Reserved.
- Sec. 2-124. Reserved.
- Sec. 2-125. Reserved.
- Sec. 2-126. Reserved.
- Sec. 2-127. Reserved.
- Sec. 2-128. Reserved.
- Sec. 2-129. Reserved.
- Sec. 2-130. Reserved.
- Sec. 2-131. Reserved.

Sec. 2-132. Reserved.
Sec. 2-133. Reserved.
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Sec. 2-168. Reserved.
Sec. 2-169. Reserved.
Sec. 2-170. Reserved.
Sec. 2-171. Reserved.
Sec. 2-172. Reserved.
Sec. 2-173. Reserved.
Sec. 2-174. Reserved.
Sec. 2-175. Reserved.
Sec. 2-176. Reserved.
Sec. 2-177. Reserved.

- Sec. 2-178. Reserved.
- Sec. 2-179. Reserved.
- Sec. 2-180. Reserved.
- Sec. 2-181. Reserved.
- Sec. 2-182. Reserved.
- Sec. 2-183. Reserved.
- Sec. 2-184. Reserved.
- Sec. 2-185. Reserved.
- Sec. 2-186. Reserved.
- Sec. 2-187. Reserved.
- Sec. 2-188. Reserved.
- Sec. 2-189. Reserved.
- Sec. 2-190. Reserved.
- Sec. 2-191. Reserved.
- Sec. 2-192. Reserved.
- Sec. 2-193. Reserved.
- Sec. 2-194. Reserved.
- Sec. 2-195. Reserved.
- Sec. 2-196. Reserved.
- Sec. 2-197. Reserved.
- Sec. 2-198. Reserved.
- Sec. 2-199. Reserved.
- Sec. 2-200. Reserved.

ARTICLE VI. FUNDS DUE TO CITY*

*Editor's note--Ord. No: 274-90 and Ord. No. 275-90, both adopted March 19, 1990, amended this chapter by adding Art. VI, Divs. 1--3, §§ 2-201--2-206, 2-221 and 2-222 and 2-230, respectively, and both ordinances further provided that the provisions of § 1-14 of this Code would be applicable to this article.

DIVISION 1. GENERALLY

Sec. 2-201. Purpose.

The purpose of this article is to ensure the payment of funds due the city by requiring that persons who owe money to the city pay their just debts before undertaking any new activity involving the city.

(Ord. No. 274-90, 3-19-90)

Sec. 2-202. Definitions.

[For the purpose of this article the following definitions shall apply unless the context clearly implies otherwise:]

Indebtedness shall mean and include all amounts determined by the Director of finance to be then due and payable to the city (1) by the Payor, (2) by the person in whose name the license or permit was applied for, or (3) by any other person for which such person is financially responsible, and shall include without limitation amounts assessed as taxes upon real or personal property, amounts previously paid by check or credit and subsequently dishonored or disputed, delinquent alarm fees, liens and charges, and all claims for money, whether liquidated or unliquidated.

Person shall mean any natural individual, firm, trust, partnership, association or partnership (hereinafter "entity"), and any other person operating as an alter ego of such entity or for whose debts such entity may be legally responsible.

Property shall mean and include any property, real or personal, within the city.
(Ord. No. 274-90, 3-19-90)

Sec. 2-203. Applicability.

The provisions of this article shall not apply to the following:

- (a) Debts subject to the jurisdiction of the bankruptcy court;
- (b) Debts which are in bona fide litigation in any court of competent jurisdiction;
- (c) Lease or contractual obligations requiring a different method of dispute resolution; provided, however, this article shall apply to delinquent amounts due on notes subject to foreclosure;
- (d) Payment for any permit where the building authority certifies that the work authorized thereunder is of an emergency nature to abate a substantial hazard to the public (health, safety or welfare);
- (e) Payments to the city as agent for the state or for any other person; or
- (f) Amounts which the Director of Finance determines should be the subject of resolution by a court of law rather than through the mechanisms provided by this article.

(Ord. No. 274-90, 3-19-90)

Sec. 2-204. Payments received.

(a) No license, permit or other thing requiring payment to the city shall be issued in reliance on any check, charge or payment made which is not in accordance with this article.

(b) All checks, charges and amounts tendered which are not in accordance with this article shall be refunded to the person tendering payment if acceptance is expressly conditioned or restricted by endorsement or otherwise.

(c) The issuance of any license, permit or other thing in violation of this article shall not constitute a waiver of the provisions thereof with respect to the issuance of any other or renewal license, permit or other thing for the same person or project, or for any other person or project, and any license or permit inadvertently or erroneously issued in violation of this article shall be subject to revocation or cancellation on the basis that the fees required therefor were not paid.

(Ord. No. 274-90, 3-19-90)

Sec. 2-205. Debtor election.

No person who is indebted to the City of Portland in any amount may designate funds given to the city to be applied for any purpose other than the payment of such indebtedness, unless such person first:

- (a) Pays the full amount of such indebtedness;
- (b) Gives a promissory note to pay the amount of such indebtedness on a schedule, and with interest, each of which shall be acceptable to the Director of Finance, and thereafter complies fully with the terms thereof;
- (c) Except in the case of amounts owed for taxes, liens or judgments, elects in writing to have the dispute resolved by an arbitrator appointed by the City Manager, whose actions shall be governed in all respects by the Uniform Arbitration Act except as provided herein and whose award shall be final and enforceable in accordance with the provisions of Title 14 M.R.S.A. Chapter 706. The costs of such arbitration shall be borne by the city unless the arbitrator determines that the request for arbitration was made for the purpose of delay, in which case the arbitrator shall award double the amount in dispute or five hundred dollars (\$500.00), whichever is greater, to

the city. The alleged debtor shall thereafter cooperate to the extent necessary to obtain an adjudication and satisfy the award and/or any judgment entered thereon; or

- (d) Except in the case of amounts owed for taxes, liens or judgments, elects in writing to have the dispute resolved in accordance with the provisions of Title 14, M.R.S.A. Chapter 706, by a neutral arbitrator selected by written agreement of the person and the Director of Finance or, if there is no agreement, by the American Arbitration Association using the Rules for Commercial Arbitration. In either case, such person shall agree in writing to pay all fees and expenses thereof, and such agreement shall be irrevocable, and the appointment is reasonably likely to be accepted on such terms. The alleged debtor shall thereafter cooperate to the extent necessary to obtain an adjudication and satisfy the award and/or any judgment entered thereon.

(Ord. No. 274-90, 3-19-90)

Sec. 2-206. Content of arbitration agreement.

Any arbitration agreement pursuant to section 2-205 shall be in writing and shall state that the scope of arbitration is limited to findings of fact and shall not include any question as to the validity of any statute or ordinance. The award may include the expenses and fees of arbitration, and the arbitrator shall determine whether either party has been unreasonable in its positions or not proceeded in good faith and may award all of the costs associated with any arbitration against such party.

(Ord. No. 274-90, 3-19-90)

- Sec. 2-207. Reserved.**
- Sec. 2-208. Reserved.**
- Sec. 2-209. Reserved.**
- Sec. 2-210. Reserved.**
- Sec. 2-211. Reserved.**
- Sec. 2-212. Reserved.**
- Sec. 2-213. Reserved.**
- Sec. 2-214. Reserved.**
- Sec. 2-215. Reserved.**
- Sec. 2-216. Reserved.**
- Sec. 2-217. Reserved.**
- Sec. 2-218. Reserved.**
- Sec. 2-219. Reserved.**
- Sec. 2-220. Reserved.**

Sec. 2-221. Returned checks.

(a) All payments made by check or charge shall be deemed provisional only, until such time as payment is finally made to the city.

(b) Any person who delivers to the city any check which is not honored by the drawee bank shall be liable to the City for the amount of ten dollars (\$10.00) or for the actual amount charged as a return check fee to the City by the bank, whichever is greater, as a returned check fee.

(Ord. No. 275-90, 3-19-90)

Sec. 2-222. Effect on license or permit.

Any license or permit issued in reliance upon a provisional payment shall be and remain Provisional until such time as payment is received by the city. If the full amount of the dishonored check and the charge specified in paragraph (b) of this section 2-221 are not paid within five (5) days of the licensee or permittee having notice or knowledge of the dishonor of the check, such provisional license shall be deemed null and void as of the date of such notice or knowledge.

(Ord. No. 275-90, 3-19-90)

Sec. 2-223. Reserved.

Sec. 2-224. Reserved.

Sec. 2-225. Reserved.

Sec. 2-226. Reserved.

Sec. 2-227. Reserved.

Sec. 2-228. Reserved.

Sec. 2-229. Reserved.

DIVISION 3. INTEREST

Sec. 2-230. Interest on debt.

Any person who fails to pay any fee or charge due the city pursuant to any section of this Code on or before the last date prescribed for payment shall be liable for interest on the fee or charge. The rate of interest shall be the maximum rate of interest established for that year by the state tax assessor for purposes of delinquent taxes and shall be calculated from the last date prescribed for payment.

(Ord. No. 275-90, 3-19-90)

- Sec. 2-231. Reserved.
- Sec. 2-232. Reserved.
- Sec. 2-233. Reserved.
- Sec. 2-234. Reserved.
- Sec. 2-235. Reserved.
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- Sec. 2-297. Reserved.
- Sec. 2-298. Reserved.
- Sec. 2-299. Reserved.
- Sec. 2-300. Reserved.

**ARTICLE VII. PROCUREMENT AND CONTRACTING PROCEDURES;
SALE OR DISPOSAL OF REAL OR PERSONAL PROPERTY**

DIVISION 1. GENERAL

Sec. 2-301. Authority of Finance Director.

In addition to the duties described in § 2-17 of this chapter, the Director of Finance shall have direction and control over the purchasing of supplies, materials and/or services for the city and the several officers and boards thereof; and over the sale or disposal of real or personal property of the city. Said Director may delegate such of his or her responsibility and duties hereunder as he or she may deem fit and necessary. The provisions of division 2 shall apply to the City schools as provided in section 2-312 below. City and school compliance with this article will be subject to review through the annual audit process.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

DIVISION 2. COMPETITIVE PROCESS FOR CONTRACTS

Sec. 2-302. Contracts; purchases.

(a) *City Council authorization.* All contracts or purchases of supplies, materials or services shall be authorized by the City Council, unless they meet the conditions outlined herein for approval by the City Manager.

(b) *Supplies, materials and/or services procurement.* The City Manager shall have the authority to award any bid and to execute any contract or approve any purchase for and in behalf of the City for supplies and/or materials to be furnished and/or services to be performed for the city, including without limitation professional consulting services, provided that:

- (1) The Finance Director certifies that funds are available for such procurement; and
- (2) The bid is awarded and the contract or purchase executed as the result of a competitive process, which shall mean either by competitive bidding or request for proposals.

(c) *Competitive bidding.* Competitive bidding, as used herein, shall include, at a minimum, prior public notice of the procurement, including publication in a newspaper of general circulation in the City, unless the Finance Director determines in a particular case that publication elsewhere would be reasonably expected to provide effective competition; solicitation of sealed bids based on identical specifications; and intent to award the bid to the lowest qualified and responsible bidder who meets the specifications.

(d) *Competitive request for proposal.* The request for proposal competitive process shall consist of the following:

- (1) *Request for proposals.* A request for proposals shall be issued identifying all significant evaluation factors, including price or cost, and their relative importance or weighting.
- (2) *Solicitation.* Proposals shall be solicited from an adequate number of qualified sources to permit reasonably competition consistent with the nature and requirement of the procurement. The request for proposals shall be published at a minimum in a newspaper of general

circulation in the city, unless the Finance Director determines in a particular case that publication elsewhere would be reasonably expected to provide effective competition.

- (3) *Evaluation.* The Finance Director shall provide mechanisms for technical evaluation of the proposals received, determinations of qualified and responsible proposers for the purposes of further written or oral negotiations, and the selection for contract award. Said evaluation of proposals shall include a determination of compliance with the request for proposals and its evaluation factors. The evaluation process may include interviews with some or all of the proposers.
- (4) *Negotiations.* Negotiations may be undertaken with the qualified and responsible proposer(s) whose proposal(s) is determined to be most advantageous to the city, considering the price and the evaluation factors set forth in the request for proposals.
- (5) *Award.* The contract shall be awarded by the City Manager to the qualified and responsible proposer whose proposal and the result of the subsequent negotiations are determined by the City Manager to be in the best interest of the city.

(e) *Exceptions to required competitive process.* The requirement of a competitive process set forth in subsection (b) above may be waived by the City Manager, in his or her discretion, if one (1) or more of the following conditions are met, and the Finance Director has certified that funds are available for such procurement:

- (1) Such procurement does not equal or exceed the aggregate sum of ten thousand dollars (\$10,000.00) and the procurement is done in accordance with the Finance Director's rules for said procurement; or
- (2) The City Manager determines in writing that the procurement of such services, supplies and/or materials is of such an emergency nature that the requirements of a competitive process cannot be followed, in which event the Manager shall specify such efforts in aid of a competitive process which he or she determines to be feasible under the circumstances; or
- (3) In connection with any project funded or reimbursable by state or federal sources, such source requires a

different procurement process to be followed and procurement is effected through or in accordance with such process; or

- (4) The procurement is through an award by any governmental entity or group of governmental entities, which award is the result of a competitive process by said entity or group; or through any public or private group purchasing program; or
- (5) There has been a competitive process but no bids or proposals were received or the City Manager determines that the bids or proposals received are unreasonable or in excess of the funds available for such procurement or not independently reached in open competition. In such cases, he or she may negotiate a contract if he or she determines:
 - a. That it is not feasible to re-solicit bids or proposals again; and
 - b. Each qualified and responsible bidder or proposer, if any, has been notified of the intention to negotiate with the bidders or proposers, starting with the lowest qualified bidder or proposer first and proceeding consecutively until a contract acceptable to the city is reached; or
- (6) The procurement is of computer equipment, investment services, appraisal services, repair parts, travel, transportation, island transportation, maintenance contracts and similar purchases to the extent specified by rule of the Director of Finance; or
- (7) The procurement is of legal services, including but not limited to lawyers, paralegals, court reporters and other persons necessary to provide legal services to the city, said procurement to be after consultation with the corporation counsel; or
- (8) The procurement is of medical services, including but not limited to physicians, physician assistants, nurses and related medical or dental personnel; or other specialized professional services, needed for the administration of city programs.

(Ord. No. 376-90, §3, 6-6-90; Ord. No. 244-93, § 3, 4-16-93; Ord. No. 142-96, 1-17-96; Ord. No. 131-00, 12-18-00)

Sec. 2-303. Sole source.

Unless otherwise prohibited by applicable state or federal law, the City Manager may authorize a contract or purchase of supplies, materials and/or services in any amount without any competitive process if:

- (a) The Finance Director certifies that funds are available for said procurement; and
- (b) The City Manager makes a written finding that said supplier, contractor or consultant is the sole available source for said goods or services, and the basis for said finding.

(Ord. No. 376-90, §3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-304. Brand names.

Unless otherwise prohibited by applicable state or federal law, nothing herein shall prevent or prohibit the City from soliciting bids for supplies or materials on the basis of brand names so long as;

- (a) The Finance Director certifies that funds are available for said procurement;
- (b) The solicitation is approved in advance by the City Manager; and
- (c) The solicitation is in furtherance of a policy of standardization of such supplies or materials; and
- (d) The City Manager determines that there is a sufficient number of dealers in said brand-name supplies or materials in the area of the solicitation to provide a reasonable expectation of competition for the bid.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-305. Rights of the City.

The City Manager may waive any informality or irregularity in any bid or proposal received and shall have the right to reject any or all bids or proposals received for whatever reason he or she deems in the best interest of the City.

(Ord. No. 376-90, §3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-306. Rules and regulations.

(a) The Finance Director is authorized to issue rules and regulations which are not inconsistent with this article, which

rules and regulations may include, but are not limited to, requirements for bid security, performance and payment bonds, insurance and payment practices.

(b) The Finance Director is further authorized to issue rules and regulations to govern purchases of supplies, materials and/or services of less than ten thousand dollars (\$10,000.00), which rules may include, but not necessarily be limited to, a procedure for the solicitation of informal quotations for purchases of less than ten thousand dollars (\$10,000.00) and for the City use of purchase orders.

(c) All rules and regulations promulgated hereunder shall be effective upon approval by the City Manager. A copy of all such rules and regulations shall be kept on file, at a minimum, in the office of the Finance Director.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-307. Termination for convenience.

Any contract executed or purchases awarded by the City Manager without council approval shall be subject to termination at the convenience of the City, with the City responsible only for payment for supplies, materials and/or services provided or amounts expended or incurred in reliance thereon prior to the effective date of such notice.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-308. Contractor or consultant qualifications.

(a) The City Manager or the Finance Director may inspect or inquire into the qualifications of any bidder or proposer to determine whether they are qualified and responsible bidders or proposers. The failure of any bidder or proposer to promptly supply information or submit to such inspection shall be grounds for a determination that the bidder or offeror is not a qualified and responsible bidder or proposer. The right to inspect shall include the plant or business of a contractor, consultant or any subcontractor or subconsultant under any procurement contract awarded or to be awarded by the city and the right to audit the books and records of any person seeking to become a contractor, consultant or subcontractor or subconsultant under any procurement contract with the city. The City Manager or Finance Director may establish rules and regulations for the qualification or prequalification of bidders or proposers. Such rules and regulations may apply to any procurement methods as set forth in this section, or may be specifically promulgated for any particular procurement situation.

(b) In determining whether a bidder or proposer is a qualified and responsible bidder or proposer, in addition to price and compliance with all applicable bid specifications, the City Manager or Finance Director may consider:

- (1) The documented quality of performance of other contracts or services for the city or for others;
- (2) Whether the bidder or proposer can perform the contract or service within the time specified, without delay or interference;
- (3) The past and current compliance with City laws and ordinances;
- (4) Whether the bidder or proposer is current on its obligations to the City, including taxes, sewer assessments and any other City accounts receivable; and
- (5) The sufficiency of the manpower and financial resources of the bidder or proposer to perform the contract or provide the service.

(c) In addition to the foregoing determination, the Finance Director may disqualify a bidder or proposer from contracting with the city for a period of time, up to and including two years, for good cause shown. Such cause shall include, but not be limited to, the foregoing factors used for determining the qualifications of a bidder or proposer.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-309. Disqualification appeal procedure.

In the event of disqualification of any bidder or proposer under section 2-308(c) above, the affected party may appeal the disqualification as follows:

- (a) First, by filing a complaint, in writing or orally, with the Finance Director for an informal discussion of the basis of the disqualification by the city. Such complaint shall be filed within five (5) business days after the affected party had notice of the action taken by the city. Following such discussions, the Finance Director, or his or her designee, shall provide the complaining party with a written decision on the complaint.
- (b) In the event the complaint is not resolved in step 1 above to the satisfaction of the complaining party, then such party may appeal the decision to the City Manager

within five (5) business days of the Finance Director's decision. Within ten (10) business days thereafter, the City Manager shall each have the opportunity to be heard. The City Manager shall issue a written decision, which decision shall be final.

(Ord. No. 131-00, 12-18-00)

Sec. 2-310. No prohibition.

Nothing herein is intended, nor shall it be deemed, to prevent or prohibit the City Manager from requiring Council approval of any proposed City contract, purchase or lease should he or she choose to do so. Nothing in this article shall bind the City Council in its choice of a contractor or consultant including, but not limited to, the choice of an auditor pursuant to article VII, section 1 of the Charter.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-311. Applicability to schools.

(a) The procedures provided in this division shall apply to the procurement of supplies, materials and/or professional, consulting or other services for the City's schools, provided, however, that the Portland Superintending School Committee shall designate the person or persons within the school department to assume the authority of the Finance Director as provided herein.

(b) All reference to "City Manager" herein, when applied to school procurement, shall mean the superintendent of schools, unless another person within the school department is designated by order of the said school committee. All references to the "City Council" herein, when applied to school procurement, shall mean the said School Committee. All proposed rules and regulations to be issued by the responsible school department official under § 2-308 shall be submitted to the City's Finance Director for review and comment prior to their final adoption by the said School Department.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-312. Employment contracts.

Nothing herein shall be construed or required to apply to teaching or other employment contracts in which the relationship is that of employer-employee rather than that of independent contractor to the city or the school department.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

DIVISION 3. SALE OR DISPOSAL OF REAL OR PERSONAL PROPERTY

Sec. 2-313. Sale or disposal of real or personal property.

(a) *Redemption of tax-acquired real property.*

- (1) Property acquired by the City by reason of delinquent property taxes or sewer user charges may be reconveyed to the person or persons from whom the property was acquired after the expiration of the statutory period for redemption, upon the following conditions:

The payment of the full amount of all taxes, sewer user charges, and other charges and assessments of any kind owed on all property located within the city, owned by the person seeking to redeem the property.

- (2) The City Manager may attach such further conditions as he or she may determine to be reasonable and appropriate for any reconveyance.
- (3) Nothing herein shall be construed to create any entitlement to reconveyance.

(b) *Real property.*

- (1) Subject to the provisions of section 2-313(a) above for redemption by the prior owner, the Finance Director shall promulgate rules and regulations for the review and disposition of all real property. Such properties may be offered for sale pursuant to said rules and regulations. All sales shall be subject to the approval of the City Council, except as follows:

Vacant lots that do not meet minimum lot size for construction and are less than five thousand dollars (\$5,000.00) in value as determined by the assessor do not require City Council approval and may be finally sold by the Finance Director, subject to the approval of the City Manager, except to the extent provided otherwise by rule.

- (2) All rules and regulations promulgated hereunder shall be effective upon approval by the City Manager, and a copy of all such rules and regulations shall be kept on file in the office of the Finance Director.
- (3) Nothing herein shall limit or modify the discretion of the City Manager or the City Council to reject any sale or offer to purchase by any person should they deem it in

the best interest of the City to do so.

(c) *Acceptance of sewer and drainage easements.* The Finance Director, upon approval by the City Manager, shall have the authority to accept sewer and drainage easements and shall cause such easements to be recorded in the Cumberland County Registry of Deeds.

(d) *Personal property.* The Finance Director shall conduct all disposal of personal property determined by the City Manager to be surplus, such disposal to be either:

- (1) By competitive bid;
- (2) By competitive negotiation including, but not limited to, trading property, the value of any single piece of which does not exceed five thousand dollars (\$5,000.00);
- (3) By public auction; or
- (4) By discarding it as he or she determines to be in the best interest of the city, if he or she determines it to be of no economic value.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 244-93, § 3, 4-16-93; Ord. No. 142-96, 1-17-96; Ord. No. 131-00, 12-18-00)

Sec. 2-314. Leases of real and personal property.

All leases of real or personal property by or to the City shall be authorized by the City Council, except that the City Manager is authorized to execute such leases without City Council authorization if the following conditions are met:

- (a) The City Council has appropriated funds to pay the entire term of the lease; or
- (b) The lease is on a month-to-month basis or has a clause permitting the city to terminate for convenience upon no more than ninety (90) days notice with no further City obligation thereunder.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-315. Reserved.

Sec. 2-316. Reserved.

Sec. 2-317. Reserved.

Sec. 2-318. Reserved.

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Sec. 2-400. Reserved.

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ARTICLE VIII. EMERGENCY PREPAREDNESS

Sec. 2-401. Purpose.

It is the intent and purpose of this article to establish a bureau of emergency preparedness in compliance and in conformity with the provisions of Title 37-B, M.R.S.A., Section 781 et seq., to ensure the complete and efficient utilization of the city's facilities and resources to prevent, prepare and respond to all hazards, natural and manmade, that may occur in the City of Portland and the surrounding region.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-402. Definitions.

The following definitions shall apply in the interpretation of this article:

Bureau. "Bureau" shall mean the bureau of emergency preparedness as established by this article.

Disaster. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, critical material shortage, infestation, explosion or riot.

Emergency preparedness. "emergency preparedness" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy attacks, sabotage, riots, terrorism or other hostile action, or by fire, flood, earthquake or other natural or man-made causes. These functions include, without limitation, firefighting, police, medical and health, emergency welfare, rescue, engineering, and communications services; evacuation of persons from stricken areas; allocation of critical materials in short supply; emergency transportation; other activities related to civilian protection and other activities necessary to the preparation for the carrying out of these functions.

Emergency Preparedness Forces. "Emergency preparedness forces" shall mean the employees, equipment and facilities of all city departments, boards, institutions and commissions; and in addition, it shall include all volunteer persons, equipment and facilities contributed by or obtained from volunteer persons or agencies.

Fire Chief. "Fire Chief" means the Fire Chief of the City of Portland.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-403. Organization.

(a) The City Manager shall be responsible for the bureau's organization, administration and operation. The City Manager may employ such permanent or temporary employees as he deems necessary and prescribe their duties.

(b) The City Council shall review the existing operational organization to ascertain the bureau's ability to cope with its responsibilities and shall approve the city's emergency preparedness plan.

(Ord. No. 377-90, 6-6-90)

Sec. 2-404. Appointment of Fire Chief; duties and responsibilities

The City Manager shall appoint the Fire Chief as Director of the Bureau, who shall coordinate the activities of all city departments, organizations and agencies for emergency preparedness within the city and maintain a liaison with other emergency preparedness agencies, public safety agencies, and have such additional duties as prescribed by the City Manager.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-405. Rules and regulations.

The Fire Chief shall prepare, under the direction of the City Manager, such policies as may be deemed necessary for the administration and operational requirements of the bureau, which policies must be approved by the City Council prior to becoming effective.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-406. Emergency proclamation.

(a) The City Manager shall have the power and authority, after consultation with the Mayor, or senior city Council members in the Mayor's absence, to issue a proclamation that an emergency exists whenever a disaster or civil emergency exists or appears imminent. The proclamation may declare that an emergency exists in any or all sections of the city. If the City Manager is temporarily absent from the City or otherwise unavailable, the Assistant City Manager may issue the proclamation that an emergency exists. If neither the City Manager nor the Assistant City Manager are available, then the following persons shall have the power and authority to issue a proclamation that an emergency exists, in the following order of succession: the Fire Chief; if he is unavailable, the Chief of Police; if he is unavailable, the Director of Public Works. A copy of such proclamation shall be filed within twenty-four (24) hours in the office of the City Clerk.

(b) Notwithstanding the above, when consultation with the Mayor would result in a substantial delay in an effective response in alleviating or preventing an emergency or disaster, the City Manager is authorized to take whatever actions are necessary to

prevent the loss of life and property in the City.

(c) The City Manager and the Fire Chief shall be responsible for submitting a full report to the City Council of all actions taken as a result of the declared emergency as soon as the City Council can be convened.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-407. Termination of emergency.

(a) When the City Manager is satisfied that a disaster or civil emergency no longer exists, he shall terminate the emergency proclamation by another proclamation affecting the sections of the city covered by the original proclamation, or any part thereof. Said termination of emergency shall be filed in the office of the City Clerk.

(b) No state of emergency may continue for longer than five (5) days unless renewed by the City Council.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-408. City Manager's duties and emergency powers.

(a) During any period when an emergency or disaster exists or appears imminent, the City Manager may promulgate such regulations as he deems necessary, and consistent with the purposes of this article, to protect life and property and to preserve critical resources. Such regulations may include, but are not limited to, the following:

- (1) Regulations prohibiting or restricting the movement of vehicles in areas within or without the city;
- (2) Regulations facilitating or restricting the movement of persons within the city;
- (3) Regulations pertaining to the movement of persons from hazardous areas within the city;
- (4) Such other regulations necessary to preserve public peace, health and safety.

Nothing in this section shall be construed to limit the authority or responsibility of any department to proceed under powers and authority granted to them by state statute, city ordinance or the charter of the city.

(b) The City Manager or his designee may order the evacuation of persons from hazardous areas within the city.

(c) The City Manager shall be authorized to request aid or assistance from the state or any political subdivision of the state and shall render assistance to other political subdivisions under the provisions of Title 37-B, M.R.S.A.

(d) The City Manager may obtain vital supplies, equipment and other items found lacking and needed for the protection of health, life and property.

(e) The provisions of this section will terminate at the end of the declared emergency.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-409. Emergency operational plans.

The Fire Chief shall prepare an emergency operational plan for the city, which shall be submitted to the City Council for approval. The emergency plan shall reflect the use of the National Incident Management System (NIMS) as its primary command and control system for all city, county, state and federal agencies.

It shall be the responsibility of all municipal departments and agencies to perform the functions assigned and to maintain their portions of the plan in a current state of readiness. The city plan shall be reviewed periodically by the City Manager in conjunction with all city department heads and the Fire Chief.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-410. Immunity from liability.

All members of emergency preparedness forces, while engaged in emergency preparedness activities, shall be immune from liability, as set forth in Title 37-B, Section M.R.S.A. § 822.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-411. Compensation for injuries.

All members of emergency preparedness forces shall be deemed to be employees of the state when engaged in training or on duty and shall have all of the rights of state employees under the Workmen's Compensation Act, as set forth in Title 37-B, M.R.S.A. § 823.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-412. Violation of regulations.

It shall be unlawful for any person to violate any provisions of this article or of the regulations or plans issued pursuant to

the authority contained herein, or to obstruct, hinder or delay any member of the emergency preparedness organization as herein defined in the enforcement of the provisions of this article or any regulation or plan issued thereunder.

(Ord. No. 377-90, 6-6-90; Ord. No. 293-04/05, 6-20-05)

Sec. 2-413. Penalty.

Any person, firm or corporation violating any provision of this article or any rule or regulation promulgated thereunder, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) and the costs of prosecution.

(Ord. No. 377-90, 6-6-90)

Sec. 2-414. Severability.

Should any provision of this article be declared invalid for any reason, such declaration shall not affect the validity of other provisions, or of this article as a whole, it being the legislative intent that the provisions of this article shall be severable and remain valid notwithstanding such declaration.

(Ord. No. 377-90, 6-6-90)

Sec. 2-415. Conflicting ordinances, orders, rules and regulations suspended.

At all times when the orders, rules and regulations made and promulgated pursuant to this article shall be in effect, they shall supersede all existing ordinances, orders, rules and regulations, insofar as the latter may be inconsistent herewith.

(Ord. No. 377-90, 6-6-90)

Sec. 2-416. - 2-435. Reserved.

***Editor's Note:** Article IX, §§2-430--2-435 (Portland's Property Tax Relief Program) was repealed in its entirety due to the Law Court's decision on 2/20/04 finding this Article to be unconstitutional.
