

City of Portland
Police Citizen Review Subcommittee

AGENDA
December 13, 2023
6:00 PM

1. Zoom information

- a. On Wednesday, December 13, 2023 at 6:00 p.m., the Police Citizen Review Subcommittee will conduct a virtual meeting. This meeting will take place remotely using Zoom.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Police Citizen Review Subcommittee and as authorized under 1 M.R.S. 403-B . Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available following the meeting.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

You are invited to a Zoom webinar.

When: December 13, 2023 06:00 PM Eastern Time (US and Canada)

December 13, 2023 06:00 PM

Topic: December 13, 2023 PCRS Meeting

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/89129715334?pwd=a1BiN0ZlczRodl83VFpxVnVXSklHQ09>

Passcode: 798099

Or One tap mobile :

US: +13092053325,,89129715334# or +13126266799,,89129715334#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 309 205 3325 or +1 312 626 6799 or +1 646 931 3860 or +1 929 205 6099 or +1 301 715 8592 or +1 305 224 1968 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 669 444 9171 or +1 669 900 6833 or +1 689 278 1000 or +1 719 359 4580

Webinar ID: 891 2971 5334

International numbers available: <https://portlandmaine-gov.zoom.us/j/89129715334>

2. Call to Order
3. Approval of November 8, 2023 minutes
 - a. Attachment - draft November 8, 2023 minutes
4. Executive session pursuant to 1 M.R.S. Sec. 405(6)(F) to discuss IA2023-009, IA2023-014, IA2023-015, and IA2023-016.
5. Discussion of bolstering awareness of the subcommittee's work, and increasing public interest and attendance of the subcommittee's meetings.
6. Update on the new Civil Police Review Board ordinance.
 - a. Attachment - memo & draft ordinance
7. Public comment on agenda items.
8. Adjourn

MINUTES
POLICE CITIZEN REVIEW SUBCOMMITTEE

November 8, 2023
Meeting Held Remotely Via Zoom

Members present: Anne Hardcastle, Vice-Chair; Xavier Botana; Reverend Kenneth Lewis; Tim Smith; Kaylin Kerina (joined in Executive Session at 6:22)

Members absent: Reggie Parson and Jean-Raymond Desruisseaux (Gino)

Staff present: Associate Corporation Counsel Rachel Millette; Police Chief Mark DuBois; Tracy Boyd

6:07 Call to order.

Motion was made by Xavier and seconded by Reverend Lewis to adopt minutes of the October 11, 2023 meeting. Passage 4-0.

Executive session pursuant to 1 M.R.S. Sec. 405(6)(F) to discuss IA2023-011.

6:09 Motion was made to enter into Executive Session by Xavier and seconded by Reverend Lewis. Passage 4-0.

7:03 Out of Executive Session.

Motion was made by Tim to find that IA 2023-011 was fair; seconded by Reverend Lewis; Discussion: Xavier expressed that he initiated having the three remaining items tabled in the last meeting and after tonight's discussion he learned more about the investigation and is comfortable with voting on items in the affirmative. Reverend Lewis stated his ongoing concerns about the category U cases and that he looks forward to ongoing subcommittee discussion in engaging the police department on assessing how the subcommittee goes about this particular work as it relates to category U cases; roll call vote 5-0.

Motion was made by Reverend Lewis to find that IA2023-011 was thorough; seconded by Tim; roll call vote 5-0.

Motion was made by Xavier to find that IA 2023-011 was objective; seconded by Reverend Lewis; roll call vote 5-0.

No public comment was offered.

Discussion of bolstering awareness of the subcommittee's work, and increasing public interest and attendance of the subcommittee's meetings was postponed to next month. Xavier commented that this topic is also connected to the development of the new subcommittee as it relates to the Charter changes and making way for new levels of engagement. Anne agreed that the changes will broaden the scope.

Rachel updated the subcommittee on the new Civil Police Review Board ordinance. Since the subcommittee sent a letter with the group's thoughts on the new draft ordinance to the City Council and they held a workshop, the City Council recommended their own changes to the draft ordinance, some coinciding with the subcommittee's recommendations, some of their own which are slightly different. Rachel prepared a revised draft which has been sent to the police unions. The unions have not responded with any feedback regarding the draft ordinance. Rachel does not know when it will be put on the City Council agenda. Anne asked what happens next? Rachel responded that the ordinance needs to be on the agenda for two reads, then if it passes, it disbands the current board and the City Council and the Mayor elect individuals to serve on the new board, the Charter calls for preference of existing members being elected to the new board, however, the new board is bigger. The Legislative and Nominating Committee makes their member recommendations to the City Council and the Mayor appoints one new member. It may take a month or two until the new board is in place. If the new ordinance is voted down, the ordinance will need to be restructured and the process will begin again. Xavier asked about the timeline for the unions to respond, Rachel does not know how long it will take as the City is presently engaged with the unions in collective bargaining. Xavier followed up asking why, if it is not in the Charter, are the unions asked to provide feedback? Rachel expressed that the City's position in the past has been to allow the unions to provide feedback. Xavier asked if the draft ordinance is available to the public, Rachel will check in with Attorney Albert to see if the draft can be shared. Xavier expressed frustration over the delay in getting the ordinance passed. Reverend Lewis inquired about the timeline for the upcoming changes. Rachel speculated that the subcommittee will continue in its present form through December and January, though she is unsure about February. Rachel believes the new ordinance calls for ten members, three non-voting, and seven voting, she will confirm that information. A draft of the proposed ordinance will be shared as soon Rachel confirms that it is okay to share it. Anne asked Rachel to keep the group informed of the future dates for when the ordinance will be on the City Council agenda. Rachel will email the group when she knows when the new ordinance will be on the City Council agenda.

Anne checked in with subcommittee members regarding whether the group will have a quorum for the December 13, 2023 meeting. After a poll of the group it was determined that there will probably be enough members attending the meeting to meet the quorum.

Next month's agenda: Anne believes that there will possibly be two Cat. 1 cases to review. This month's postponed discussion will be added onto the agenda. The subcommittee will review the changes to the ordinance. Rachel will also update the subcommittee on the status of the proposed ordinance.

Reverend Lewis would like to maintain active engagement with the ordinance process to ensure the recommendations offered have been considered, implemented, or not, and speak to it. The subcommittee could potentially write another letter to the City Council. Reverend Lewis

asked Rachel if it would be possible to have an ad hoc meeting with proper notice. Rachel responded that it was possible.

7:32 Motion was made by Reverend Lewis to adjourn, seconded by Tim. Passage 5-0.

DRAFT



MEMORANDUM

To: Police Citizen Review Subcommittee

From: Rachel Millette, Associate Corporation Counsel

Date: December 13, 2023

Subject: Ordinance Creating Civilian Police Review Board

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The City is currently in the process of making changes to the City Code in order to implement Ballot Question #7 - Civilian Police Review Board, which was approved by the voters during the November 2022 election and added Article IX to the City Charter as of July 1, 2023. Article IX creates a new Civilian Police Review Board (the “New Board”), which will replace the City’s existing Police Citizen Review Subcommittee (“PCRS”) and requires the Council to adopt an ordinance that will govern that board. The New Board, like the existing PCRS, is charged with reviewing internal affairs investigations. A copy of Article IX of the City Charter is attached to this memo.

As of the date of this memo, the City Council has met at two separate workshops to discuss its preferences with respect to the New Board. Following the City Council’s first workshop, my office prepared an initial draft of the ordinance which was reviewed by the PCRS. The PCRS then provided a letter to the City Council outlining its feedback on the initial draft. The City Council proposed a number of changes to the initial draft during its second workshop. As a result, my office prepared a second draft of the ordinance. A copy of that second draft has been circulated to the police unions and is attached to this memo.

Below I have highlighted the major changes to the City Code since the initial draft of the ordinance. These changes were made largely at the direction of the City Council.

General Code Structure

- The Civilian Police Review Board was removed from the Civil Service Commission and relocated to Article IV-A within Chapter 2 of the Code. Article IV regarding the Civil Service Commission has been updated accordingly.

Qualifications of Board Members

- The qualification requirements of board members have been updated to make clear that they apply equally to city and school department employees and members of the City Council and School Board. This change has been made both with respect to the New Board and the Civil Service Employment Commission (Sec. 2-49 & Sec. 2-78).
- The time any former city or school employee or City Council or School Board member must wait before being eligible for the New Board or the Civil Service Employment Commission has been reduced from ten (10) years to one (1) year (Sec. 2-49 & Sec. 2-78).

Board Structure

- The size of the New Board has been increased from nine (9) to ten (10) members, including seven (7) voting members and three (3) non-voting members, in order to provide an odd number of voting members (Sec. 2-77).
 - The additional voting member shall be appointed by the City Council and serve a three (3) year term on the initial board. (Sec. 2-79)
- The New Board shall, whenever possible, elect its chair and vice chair from the nonvoting members (Sec. 2-83).
 - A member cannot serve as chair for more than three (3) consecutive years. (Sec. 2-83)
- The ability of non-voting members to vote in the absence of a quorum of voting members has been removed. (Sec. 2-84(b))

Staff Support

- The secretary of the New Board shall be designated by the City Manager (Sec. 2-83).
- The New Board's Community Liaison shall be designated by the City Manager (Sec. 2-85(f)).

Functions and Duties of the New Board (Sec. 2-85)

- The New Board may receive complaints of police misconduct by civilians or police officers, rather than being limited to receiving them through the Community Liaison (Sec. 2-85(a)(1)).
 - It is my office's interpretation that the existing ordinance would allow the New Board discretion to determine a process by which it would receive such complaints.
- A twenty-four (24) hour deadline has been added requiring all complaints received by the New Board to be referred to police internal affairs within that time period for investigation (Sec. 2-85(a)(1)(a)).
- The New Board is tasked with reviewing internal affairs reports for "due process issues" which includes fairness, thoroughness, objectivity, and timeliness, but is not limited to those four categories (Sec. 2-85(a)(2)).
- The New Board's written annual report may include policy and funding recommendations regarding police policies, practices, and procedures (Sec. 2-85(a)(5)).
- The New Board has the power to request additional funding from the City Manager through the City's annual budget process, but neither the City Manager or City Council are required to provide any particular amount of funding (Sec. 2-85(a)(9)).

Board Training

- In addition to existing training requirements, language has been added requiring the New Board to be trained on the proper techniques for receiving internal affairs complaints prior to assuming their duties (Sec. 2-85(e)).

Appeal Process

- Additional detail regarding the appeal process has been outlined, including that an appeal must be provided in writing to the mayor, state the basis for the appeal, and be filed within thirty (30) days of the New Board's report (Sec. 2-87(a)).
- A time period of sixty (60) days is then outlined during which the City Council shall hold a hearing on the appeal (Sec. 2-87(b)).

- The City Council's appeal is similarly tasked with reviewing internal affairs reports for "due process issues" which includes fairness, thoroughness, objectivity, and timeliness, but is not limited to those four categories (Sec. 2-87(b)).
- The City Council's advisory opinion is designated as not legally binding and will not be appealable (Sec. 2-87(b)).

I hope this memo is helpful in explaining the proposed changes to the City Code since the initial draft of the ordinance. Please do not hesitate to contact me beforehand if you have any questions or concerns.

ARTICLE IX: CIVILIAN POLICE REVIEW BOARD

Section 1. Purposes, composition, term, appointment, first board, qualifications, vacancies, removal, compensation.

(a) Purposes. For the purposes of increasing public trust and confidence in the Portland Police Department, there shall be a civilian police review board.

(b) Composition, term, appointment, first board. The civilian police review board shall be composed of nine (9) or more members who shall hold office, except as hereinafter provided, for a term of three (3) years unless appointed to fill a vacancy, and until their successors are appointed and qualified, but in no case longer than 120 days after expiration of their term. A minimum of four (4) voting members shall be appointed by the city council, one (1) voting member shall be appointed by the mayor and three (3) non-voting members shall be appointed by the city council. A majority of the total number of voting members appointed shall constitute a quorum of the board and the board shall act by a majority of voting members present and voting.

For the first board appointed following its creation, the city council and mayor shall first select from the current members of the police citizen review subcommittee, currently established by City ordinance, which subcommittee shall be supplanted by the board, in making appointments to the board. On the first board, two voting members shall serve for a one (1) year term, two voting members shall serve for a two (2) year term, and the voting member appointed by the mayor shall serve for a three (3) year term; and one non-voting member shall serve for a one (1) year term, one non-voting member shall serve for a two (2) year term, and one non-voting member shall serve for a three (3) year term. Thereafter, all members shall serve for a term of three (3) years. 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 board. Following appointment of the first board, the city council shall exercise its power of appointment only after the city clerk has published a notice announcing the availability of board positions, describing the responsibilities thereof and soliciting applications by qualified persons, in a newspaper of general circulation at least 15 days before the city council acts to appoint to the board.

(c) Qualifications. All candidates for the civilian police review board must be at least 18 years of age and must be residents of the City for a period of at least three (3) months prior to the date on or before which the board member is to be seated.

(d) Vacancies and Removal. The City Council shall provide by ordinance procedures for vacancies and removal of members.

(e) Training. Prior to assuming their duties hereunder, civilian police review board members shall attend training provided by city staff as to the board's duties and responsibilities, applicable state and local law, ordinances and rules and regulations, accepted police practices and the police department's internal affairs investigation process.

(f) Confidentiality. Each member of the civilian police review board 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 constitute "cause" for removal from the board under (d) above. All reports prepared by the board and all requests received by the board for disclosure of any information or documents in the custody of the board or its members shall be referred to the corporation counsel for review prior to release.

(g) Transition. The city council shall promptly consider and enact an ordinance to implement this Article, which ordinance upon its effective date also shall repeal the existing Police Citizen Review Committee ordinance provisions in Chapter 2, Art. IV, Div. 4 of the Code of Ordinances, City of Portland, Maine.

(Referendum 11/8/2022)

Section 2. Powers and duties.

(a) Complaints. The civilian police review board shall receive all complaints brought by civilians regarding the Portland police department and shall refer such complaints to the Portland police internal affairs department. Members of the police department may bring complaints to the board, to internal affairs, or to command; the board shall refer any such complaints it receives to internal affairs. Portland police department command shall review internal affairs draft findings on complaints and shall submit its report on the conclusions of any investigation on complaints to the board for consideration no more than fourteen (14) days after the findings become final and after any final disciplinary action has been taken and all appeals exhausted or settled or the case has been closed with no disciplinary action. Neither police officers nor their representatives may file complaints regarding disciplinary actions or personnel matters under this subsection.

(b) Review, reports. The board shall review all final investigation reports submitted by internal affairs and/or command staff under Section 2. (a) above for due process issues, including but not limited to, issues of fairness, thoroughness, objectivity, and timeliness. Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the board issued to address complaints filed under Section 2. (a) above shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable. Reports of the board 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.*

(c) Appeals. The city council shall by ordinance adopt an appeal process consistent with federal, state, and local law for persons aggrieved by a report issued by the civilian police review board on complaints filed with the board under Section 2. (a) above to appeal that board report to the city council or such other body as the city council may designate or create for

a hearing, in executive session where required, and for the issuance of an advisory opinion which shall not be legally binding on the city, the police department, police officers, or individuals, and which hearing and advisory opinion shall not include or address any disciplinary proceedings. Neither police officers nor their representatives may file appeals regarding disciplinary actions or personnel matters under this subsection.

(d) Policy. The civilian police review board shall be able to make policy recommendations to the mayor, the city council, and the chief of police.

(e) Annual report, communications, additional duties. The civilian police review board shall hold a public hearing at least annually to receive comments upon the community complaint process and to engage City residents as to the board's purposes and goals, and shall prepare and present to the mayor, city council, and chief of police an annual report, including but not be limited to, policy and funding recommendations, and the number of complaints submitted to the board and the number of complaints resolved during the previous year. Any recommendations made by the board regarding the police department shall be based on policy evaluations, may be assigned by the city council and mayor to staff for research, and may be enacted or implemented. The board also may, in its discretion, address the city council on an as-needed basis. The city council and mayor may add to the board's duties by ordinance at any time.

(f) Board Officers & Procedural Rules. The civilian police board shall annually elect one of its members to serve as chair, and shall annually elect one of its members to serve as vice-chair, to serve in the absence of the chair. The City Council shall by ordinance establish rules of procedure and board member roles. The board may recommend such rules to the City Council¹.
(Referendum 11/8/2022)

Section 3. Funding, staff, resources.

(a) Funding, staff. The civilian police review board shall be funded as needed by the city council through the annual budget. Such funding shall include professional staff, including but not limited to a "Community Liaison" and a "Police Liaison" familiar with Portland police department standard operating procedures. The city council shall decide whether the community liaison and police liaison positions are part-time or full-time and/or whether the duties of these positions may be assigned to existing employees. The community liaison shall serve at the direction of the board and shall ensure the public is aware of the methods for filing complaints, and shall assist the board with carrying out its duties, powers and functions, conducting outreach and with other duties as the board may assign. The board may request additional funding from the city council at any time. The police liaison may be the same person/position as the "technical advisor" described in Section 3(b) below.

(b) Resources. The city shall make available to the board the services of a technical advisor, as needed by the board. The technical advisor may be used for the purposes of training; briefing the board on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the board on aspects of the internal investigation process. The technical advisor shall be retained by the city manager after consultation with the chief of police, representatives of the police unions and the chair of the board. 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 board to conduct its duties hereunder. In no case shall the board 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 Maine Freedom of Access Act.

(c) Coordination. The board shall work in conjunction with the City's communications department, internal affairs, and any other city departments or offices to effectuate all powers and duties granted to it in this charter and any additional duties assigned to it by the city council or mayor.

(Referendum 11/8/2022)

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.

Art. I. In General, §§ 2-1 -- 2-15

Art. II. Officers, §§ 2-16--2-30

Div. 1. Generally, §§2-16-2-20

Div. 2. Prohibition on Immigration Status Checks §§2-21-2-30

Art. III. Boards, Commissions, Committees, etc., §§ 2-31--2-40

Art. III-A. Portland Land Bank Commission; Fund, §§ 2-41-2-45

Art. IV. Civil Service, §§ 2-46--2-90

Div. 1. Generally, §§ 2-46

Div. 2. Civil Service Employment Commission, §§ 2-47--2-57

Div. 3. ~~Employment Subcommittee~~Fire and Police Department
Employment, §§ 2-58-2-75

~~Div. 4. Police Citizen Review Subcommittee, §§ 2-76-2-90~~

Art. IV-A. Civilian Police Review Board, §§ 2-76-2-90

Art. V. Employee Benefits, §§ 2-91--2-200

Div. 1. Generally, §§ 2-91--2-100

Div. 2. Retirement, §§ 2-101--2-200

Art. VI. Funds Due to City, §§ 2-201--2-300

Div. 1. Generally, §§ 2-201--2-220

Div. 2. Provisional Payments, §§ 2-221--2-229

Div. 3. Interest, §§ 2-230--2-300

Art. VII. Procurement and Contracting Procedures, §§ 2-301--2-400

Div. 1. Generally, § 2-301

Div. 2. Competitive Process for Contracts, §§ 2-302-2-312

Div. 3. Sale or Disposal of Real or Personal Property §§ 2-313-2-400

Art. VIII. Civil Emergency Preparedness, §§ 2-401--2-415

Art. X. Exemption from Vehicle Excise Tax for Certain Military Personnel, §§ 2-436--2-437

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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) Except as otherwise specified in the Charter, ~~T~~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) Reserved;
- (4) Cable television committee (CATV);
- (5) Civil service ~~commission~~ employment ~~subcommittee~~commission;
- (6) ~~Civil service commission police citizen review subcommittee~~Civilian police review board;
- (7) Community development block grant allocation committee;
- (8) ~~Friends of the park~~Parks commission;
- (9) Historic preservation committee;
- (10) Land bank commission;
- (11) Planning board; and
- (12) Portland public art committee;

(b) Except as otherwise specified in the Charter, ~~T~~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.

***Editor's Note**—In reference to Section 2-33(b) above, "passage of this amendment" refers to Council Order 118-08/09, passed on December 1, 2008.

(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.

(f) If an individual who served as a member of the police citizen review subcommittee is appointed to serve on the civilian police review board, the years that the individual served on the police citizen review subcommittee and the years served on the civilian police review board will count toward the nine-year limitation in section 2-32(a).
(Ord. No. 301-91, 4-1-91; Substitute Ord. No. 233-99, §2, 4-5-99; Ord. No. 118-08/09, 12-1-08; Ord. No. 219-17/18, 6-4-2018)

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)

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ARTICLE IV. CIVIL SERVICE*

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

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

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

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

DIVISION 1. GENERALLY

Sec. 2-46. Definitions.

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

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; 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 employment 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").

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

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

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

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

(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; Ord. No. 143-17/18, 2-5-2018)

DIVISION 2. CIVIL SERVICE EMPLOYMENT COMMISSION*

Sec. 2-47. Created.

There is hereby created a civil service employment 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 seven (7) commissioners who shall serve in the absence of any commissioner.~~
(Code 1968, § 201.3; Ord. No. 89-80 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-49. Qualifications.

(a) *Qualifications of commissioners.* Every civil service employment commissioner and alternate shall be a resident of the City of Portland. 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 or school department, who was employed by the city or school department within the previous one ten (10)-year periods;
- (2) Any present or former member of the City Council or School Board, who ~~has~~ held that position in the previous one ten (10)-years period; ~~or~~
- (3) Any civil service employment commissioner who has completed three (3) consecutive full terms of three (3) years as provided in Chapter 2, Article III;
- (4) Any individual presently serving as a member of the civilian police review board; or-
- (5~~b~~) Any relative of a present member of the police or fire departments. Additional subcommittee eligibility requirements:

~~(1) Employment subcommittee. The following persons shall not be eligible to serve on the employment subcommittee:-~~

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

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

~~a. any member of the applicant's immediate family is or has been a Portland police officer in the previous ten (10)-years;~~

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

(~~b~~e) 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.

(~~c~~d) Any civil service employment 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 commission 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.

(~~d~~e) Reasonable efforts shall be made to ensure that the appointments to the civil service employment 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; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-50. Appointment.

Civil service employment 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 employment 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 ~~IIII~~ shall apply to service on ~~each of the subcommittees of~~ the civil service employment commission.

(c) *Applicability.* The limitation on terms provided by this amendment shall apply to any person serving on the civil service employment 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 employment commission shall annually elect one (1) of its members as the chair. ~~Each The commissionsubcommittee~~ may, at its option, also elect one (1) of its members as the vice chair, to serve in the absence of the chair. The Director of Human Resources or his or her designee shall serve as secretary to the ~~employment subcommittee~~commission 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; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-55. Commissioners pro tem.

In the case of temporary absence from the city, temporary disability of the civil service employment commission members and alternate, or other circumstances, so that a quorum of ~~a subcommittee~~the commission 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 Employment 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~~commission. The Chair ~~of a Subcommittee~~ shall call a meeting upon request from any ~~Subcommittee c~~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~~ Commission 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 employment 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 employment 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~~FIRE AND POLICE DEPARTMENT
EMPLOYMENT

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~~commission:

- (1) To establish a system of personnel administration for members of the departments based on competition, merit principles, and scientific methods, and to prevent unlawful discrimination based upon race or color, religion, age, sex (including pregnancy), sexual orientation, gender identity or expression, ancestry or national origin, physical or mental disability, veteran status, genetic information, previous assertion of a claim or right under Maine's Workers' Compensation Act, previous actions taken protected under Maine's Whistleblowers' Protection Act, or any other protected group status as defined by applicable law, or political affiliation;
- (2) To oversee the process of creating lists of names of persons eligible for specific appointments; and
- (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.

(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; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-59. Reserved.

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

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

- (1) *Age.* Have reached the age of twenty-one (21), or have reached the age of twenty (20) with two years of post-high school education.
- (2) *Good character.* Be of good character; which includes a personal history of honesty, fairness, and respect for the rights of others and for state and federal law. No person shall be appointed who has a history which includes a disqualifying criminal offense or conviction.
- (3) *Education and experience.* Have a high school diploma or general equivalency diploma (GED);
- (4) *Licensing.* Possess a valid State of Maine Emergency Medical Technician license of EMT-B or higher;
- (5) *Motor vehicle driver's license.* Possess a valid motor vehicle driver's license for the three (3) years immediately preceding the date of application. If such license is from a state other than the State of Maine, the candidate must be qualified to receive a State of Maine driver's license; and
- (6) *Citizenship or immigration status.* Be a citizen of the United States or eligible to work in the United States.

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

- (1) *Disqualified Individuals.* Disqualification from participating in federal funded health care programs under the Social Security Act.
- (2) *Criminal Convictions/Conduct.* Disqualifying criminal conviction;
- (3) *Protection Orders.* An active Protection from Abuse or Protection from Harassment Order (temporary or permanent) served on the applicant;
- (4) *Military Service.* Dishonorable discharge from the military or a bad conduct discharge from the military;

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

(Ord. No. 143-17/18, 2-5-2018)

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

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

- (1) *Job-related aptitude capacity test.* All applicants for original appointment must pass a job-related aptitude capacity test.
- (2) *Physical fitness test.* All applicants for original appointment must pass a physical fitness test.
- (3) *Oral interview.* All applicants for original appointment must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the ~~employment subcommittee~~commission and designees of the fire chief. No member of the panel may be a candidate for the position nor a relative of a candidate.

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

- (1) *Background check.* All applicants for original appointment must satisfactorily complete a background check, including criminal history, driving record, and credit check.
- (2) *Medical examination.* The applicant must satisfactorily complete a medical exam to determine whether the applicant is physically capable of performing the essential functions of the job.
- (3) *Job suitability assessment.* The applicant must satisfactorily complete a job suitability assessment.

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

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

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

(Ord. No. 143-17/18, 2-5-2018)

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

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

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

(b) *Temporary withdrawal of applicants for original appointments.* An applicant for original appointment may, for sufficient cause, temporarily withdraw from consideration for a limited period of time with the prior approval of the fire chief. During the period of temporary disqualification the applicant's eligibility for appointment shall automatically expire 12 months after the date the applicant passed the aptitude capacity test.
(Ord. No. 143-17/18, 2-5-2018)

Sec. 2-59.4. Fire department promotional process.

(a) *Minimum qualifications.* All candidates for promotion within the fire department shall satisfactorily complete the minimum

requirements in this section. The ~~employment subcommittee~~commission may, by rule, establish processes and procedures to implement these requirements, may set minimum passing scores, and may impose additional requirements for promotion.

- (1) *Time in service.* Promotional candidates must have the following amount of time in service to be eligible for a promotion:
 - a. Six years of continuous service in the fire department for promotion from firefighter to lieutenant.
 - b. One year of continuous service as a lieutenant for promotion from lieutenant to captain.
- (2) *Training.* Promotional candidates must possess the minimum amount of training, certification, and/or education for the rank to which he or she is seeking promotion.
- (3) *Departmental officer candidate program.* Promotional candidates must participate in and complete a fire department officer candidate program, which may include job-shadowing, mentorship, and similar requirements.
- (4) *Assessment center exam.* Promotional candidates must complete and pass an assessment center exam each year.
- (5) *Oral interview.* All promotional candidates must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the ~~employment subcommittee~~commission and designees of the fire chief. No member of the panel may be a candidate for the position nor a relative of a candidate. The president of the union, or ~~his~~their designee, shall have the right to observe, but not participate in, the interview.
- (6) *Job suitability assessment.* Candidates must undergo a job suitability assessment. Assessments within three (3) years from the date of examination may be used, or the fire chief may require an updated job suitability assessment at any time. Assessments may be taken into consideration in the promotional process.
 - (b) *Eligible promotion list.* Promotional candidates shall be placed on a ranked certified promotional list. A separate list shall be made for each promotional rank.
 - (1) The list shall be ranked based on a methodology established by the ~~employment subcommittee~~commission.
 - (2) The ~~employment subcommittee~~commission shall also establish rules governing the validity of the list, including the

minimum number of names required on the list, the duration and expiration of the list, and other requirements.

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

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

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

(Ord. No. 143-17/18, 2-5-2018)

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

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

(Ord. No. 143-17/18, 2-5-2018)

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

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

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

notice of its decision and the reasons therefor.

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

In the event an applicant is reinstated pursuant to this section, he or she shall have no right or entitlement to be considered for any vacancy that exists at or prior to the date of said reinstatement.

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

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

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

(Ord. No. 143-17/18, 2-5-2018)

Sec. 2-59.7. Fire department probationary period.

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

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

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

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

(Ord. No. 143-17/18, 2-5-2018)

Sec. 2-60. Reserved.

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

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

- (1) *Age.* Have reached the age of twenty-one (21) by the date of appointment;
- (2) *Good character.* Be of good character; which includes a personal history of honesty, fairness, and respect for the rights of others and for state and federal law. No person shall be appointed who has a history which includes a disqualifying criminal offense or conviction.
- (3) *Education and experience.* Have a high school diploma or general equivalency diploma (GED) and meet the admission standards of the Maine Criminal Justice Academy.
- (4) *Motor vehicle driver's license.* Possess a valid motor vehicle driver's license for- the three (3) years immediately preceding the date of application. If such license is from a state other than the State of Maine, the candidate must be qualified to receive a State of Maine driver's license.
- (5) *Citizenship or Immigration status.* Be a citizen of the United States or demonstrate a permanent right to work in the United States.

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

- (1) *Criminal Convictions/Conduct.* Any conviction for a disqualifying criminal offense or engaging in conduct that qualifies as a disqualifying criminal offense as defined in Maine law and the entrance standards of the Maine Criminal Justice Academy, including having no convictions for or have engaged in any conduct which would constitute Murder, Class A, Class B, Class C, or Class D crimes, or any provision of the —Maine Criminal Code, Chapters 15, 19, 25, or 45 which include Theft, Falsification in Official Matters, Bribery & Corrupt Practices, and Drugs.
- (2) *Domestic Violence.* Any conviction for a crime of domestic violence or any active Protection from Abuse Order (temporary or permanent) served on the applicant.
- (3) *Drug Activities.* The use, purchase, or possession of illegal

drugs or controlled substances within the five (5) years prior to the date of application.

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

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

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

(Ord. No. 143-17/18, 2-5-2018)

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

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

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

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

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

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

- (1) *Background check.* A conditional employee must be fingerprinted and satisfactorily complete a background check, including, but not limited to, criminal history, prior substance abuse, driving record, and credit check.
- (2) *Polygraph.* A conditional employee, shall be required to submit to a polygraph examination to the extent such examination is permitted by law.
- (3) *Medical examination.* A conditional employee shall undergo a medical examination to determine whether the applicant is physically capable of meeting the standards established by the Maine Criminal Justice Academy.
- (4) *Job suitability assessment.* Candidates for police original appointment shall be given a post-offer job suitability assessment as required by the Maine Criminal Justice Academy.

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

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

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

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

(b) *Temporary withdrawal of applicants for original appointments.*

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

(Ord. No. 143-17/18, 2-5-2018)

Sec. 2-60.4. Police department promotional process.

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

- (1) *Time in service.* Promotional candidates must have the following amount of time in service to be eligible for a promotion:
 - a. Three (3) years of continuous service in the police department for promotion from officer to the rank of Sergeant.
 - b. Twelve months of continuous service as a Sergeant in the police department for promotion to the rank of Lieutenant.
- (2) *Selection Components*
 - a. An annual professional development course.
 - b. A job-related aptitude capacity test.
 - c. Consideration of the candidate's last completed performance evaluation immediately prior to the date of the aptitude capacity test.
 - d. Seniority in the department as of the date of the aptitude capacity test.
- (3) *Oral interview.* All promotional candidates must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the ~~employment subcommittee~~commission, a member designated by the president of each of the affected unions and three (3) members appointed by the police chief.
- (4) *Job suitability assessment.* Candidates for the position of Sergeant must undergo a job suitability assessment. Assessments within three (3) years from the date of

examination may be used, or the police chief may require an updated job suitability assessment at any time. Assessments may be taken into consideration in the promotional process.

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

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

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

(c) *Creation of certified list for promotional appointment.*

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

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

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

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

(Ord. No. 143-17/18, 2-5-2018)

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

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

(Ord. No. 143-17/18, 2-5-2018)

Sec. 2-60.6. Police appeals and rights.

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

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

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

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

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

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

(Ord. No. 143-17/18, 2-5-2018)

Sec. 2-60.7. Police department probationary period.

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

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

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

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

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

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

(Ord. No. 143-17/18, 2-5-2018)

Sec. 2-61. Reserved.

Sec. 2-62. Reserved.

Sec. 2-63. Reserved.

Sec. 2-64. Reserved.

Sec. 2-65. Reserved

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~~commission, 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~~commission with respect to whether the candidate is physically capable of meeting the standards established by rule of the ~~subcommittee~~commission.

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~~commission 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~~commission 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 manager. 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~~commission by the Director. Upon request of the candidate, the ~~employment subcommittee~~commission may, in its discretion, waive the disqualification herein if: (i) the ~~subcommittee~~commission 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~~commission which may grant the request if (i) the ~~subcommittee~~commission 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~~commission 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~~commission 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~~commission 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~~commission.* The ~~employment-subcommittee~~commission 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~~commission 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~~commission, the chief of the department or the City Manager may, for the cause to be presented to the ~~subcommittee~~commission, suspend any member, without pay, until the next succeeding meeting of the ~~subcommittee~~commission; provided, however, that no suspension without pay pending a hearing by the ~~subcommittee~~commission 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~~commission or such charges are filed within ten (10) days thereafter, Saturday, Sunday and legal holidays excepted; and if the ~~subcommittee~~commission 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~~commission 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~~commission 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~~commission, the ~~subcommittee~~commission 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~~commission 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~~commission 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~~commission for the same conduct which is the subject matter of a pending criminal proceeding shall not be deferred unless the ~~subcommittee~~commission shall order such deferment at the request of the member charged, in which case the ~~subcommittee~~commission 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~~commission. 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~~commission, such member shall be removed.

(h) *Procedure at disciplinary hearings.* All hearings of the ~~subcommittee~~commission 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~~commission. In the conduct of such hearings, the ~~subcommittee~~commission 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~~commission shall invalidate any decision of the ~~subcommittee~~commission. Disciplinary action shall be taken only upon a preponderance of the evidence.

(i) *Decision.* After hearing, the ~~subcommittee~~commission 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~~commission 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~~commission 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 by members of the public 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; and~~
 - ~~b. 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: The subcommittee shall review all completed internal affairs investigations of citizen complaints.~~

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

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

~~(e) 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.~~

~~(f) 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.~~

~~(g) Resources. To facilitate the effectiveness and objectivity of the police citizen review subcommittee, the city shall make available to the subcommittee the services of a technical advisor, as needed by the subcommittee. The technical advisor may be used for the purposes of training; briefing the subcommittee on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the subcommittee on aspects of the internal investigation process. The advisor shall be retained by the City Manager after consultation with the Chief of Police, representatives of the police unions and the subcommittee chairperson. Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor.~~

~~The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the subcommittee to conduct its duties hereunder. In no case shall the subcommittee have access to~~

~~police officers' personnel records except to the extent that they are part of an internal affairs investigation report or are considered a public document under the state Freedom of Access law.
(Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 143-17/18, 2-5-2018)~~

~~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 thru 2-90. Reserved.~~

ARTICLE IV-A. CIVILIAN POLICE REVIEW BOARD

Sec. 2-76. Created.

Pursuant to Article IX of the Charter, there is hereby created a civilian police review board, the purpose of which is to increase public trust and confidence in the Portland Police Department.

Sec. 2-77. Composition.

The civilian police review board shall consist of ten (10) board members. Seven (7) of the board members shall be voting members, and three (3) of the board members shall be non-voting members.

Sec. 2-78. Qualifications.

(a) *Qualifications of commissioners.* Every board member shall be at least 18 years of age and a resident of the City of Portland for at least three (3) months prior to the start of their term. The following persons are not eligible to be members on the board:

- (1) Any present or former employee of the city or school department, who was employed by the city or school department in the previous one-year period;
- (2) Any present or former member of the City Council or School Board, who held that position in the previous one-year period; or
- (3) Any individual presently serving as a commissioner or alternate on the civil service employment commission;
- (4) In order to ensure an objective and unbiased audit of the police department's internal affairs investigation process,

any applicant for service on the civilian police review board shall be disqualified from serving on said board if:

- a. any member of the applicant's immediate family is or has been a Portland police officer in the previous ten (10) years;
- b. the applicant or any member of their immediate family has been arrested by any member of the Portland police department within the previous ten (10) years, or has had the final disposition of any criminal proceedings resulting from such an arrest within the previous ten (10) years, whichever is longer;
- c. the applicant or any member of their immediate family has filed a complaint with the internal affairs unit of the Portland police department within the previous ten (10) years;
- d. the applicant or any member of their immediate family has brought suit against the City of Portland, the Chief of Police, the police department or any individual police officer for a cause of action arising out of an officer's performance of their duties within the last ten (10) years or has had such a suit finally disposed of within the previous ten (10) years, whichever is longer; and
- 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 board and shall constitute "cause" within the meaning of section 2-82.

(d) Any board member who becomes ineligible to serve during his or her term shall resign, and failure to do so shall constitute "cause" within the meaning of section 2-82.

(e) Reasonable efforts shall be made to ensure that the appointments to the civilian police review board are diverse and representative of the community.

Sec. 2-79. Appointment.

(a) Subject to the provisions of section 2-80, members of the civilian police review board shall be appointed as follows:

- (1) Six (6) voting members appointed by the City Council;

- (2) One (1) voting member appointed by the Mayor; and
- (3) Three (3) non-voting members appointed by the City Council.

(b) 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 the city council. Applications may be solicited whether or not there is a vacancy, and such applicants may be considered for any vacancy that occurs within one hundred eighty (180) days of the closing date for such applications. Nothing herein shall limit the city's authority to solicit applications whenever the City Manager deems that it is necessary.

Sec. 2-80. Terms.

(a) Term. Each board member shall be appointed to a three-year term except as set forth in subsection (c) or unless appointed to fill a vacancy. A board member 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. 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 board.

(c) Initial Civilian Police Review Board. For the first civilian police review board appointed following its creation, the city council and mayor shall first select from the current members of the police citizen review subcommittee in making appointments to the board. Additional vacancies shall be filled in accordance with the process outlined in Section 2-79. On the first board, two (2) voting members appointed by the City Council shall serve for a one (1) year term, two (2) voting members appointed by the City Council shall serve for a two (2) year term; two (2) voting member appointed by the City Council shall serve for a three (3) year term; the one (1) voting member appointed by the mayor shall serve for a three (3) year term; one (1) non-voting member appointed by the City Council shall serve for a one (1) year term; one (1) non-voting member appointed by the City Council shall serve for a two (2) year term; and one (1) non-voting member appointed by the City Council shall serve for a three (3) year term.

Sec. 2-81. Compensation.

Civilian police review board members shall serve without compensation, except that reasonable expenses incurred by any member incidental to their duties under this article may be reimbursed upon prior approval of the city manager.

Sec. 2-82. Removal.

Any civilian police review board member may be removed from office by the city council for cause, after notice and the opportunity to be heard. "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 board 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 board member intended to affect or influence, or which could reasonably be expected to affect or influence any decision of the city manager, the chief of police, or the city council with respect to the department, or of any member of the police department with respect to the performance of their duty.

Sec. 2-83. Officers.

The board shall annually elect one (1) of its members as the chair and one (1) of its members as the vice chair, to serve in the absence of the chair. Whenever possible, non-voting members of the board shall serve as the chair and vice chair. A member may not serve as chair for more than three (3) consecutive years. The City Manager's designee shall serve as secretary to the civilian police review board and shall furnish any necessary administrative assistance to the board.

Sec. 2-84. Meetings.

(a) *Calling of meetings.* Meetings or hearings of the board 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 board. The Chair shall call a meeting upon request from any board member.

(b) *Quorum.* A quorum of the Civilian Police Review Board shall be a majority of the total number of voting members presently appointed to the board. The board shall act by a majority of voting members present and voting.

Sec. 2-85. Functions and duties.

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

(1) To receive complaints of police misconduct by civilians and police as follows:

a. Complaints received by the board, whether from civilians or police officers, shall be referred within twenty-four (24) hours after receipt to the police internal affairs department for investigation.

b. To the extent that the police department receives a

civilian complaint directly or through means other than referral by the board, the police department will provide the community liaison with a copy of the complaint within five (5) calendar days.

- c. The board will not accept any complaints from police officers or their representatives regarding disciplinary actions or personnel matters.
- (2) To review all final investigation reports submitted by internal affairs and/or police command staff for due process issues, including but not limited to, issues of fairness, thoroughness, objectivity, and timeliness;
- (3) To maintain the confidentiality of all information and documents provided to and/or reviewed by the board in accordance with state law;
- (4) To hold a public hearing at least annually to receive comments upon the complaint process and to engage the City residents as to the board's purposes and goals.
- (5) To provide a written annual report to the Mayor, City Council, City Manager, and Chief of Police that includes, but is not limited to, the following:
 - a. the board's policy and funding recommendations concerning the police internal affairs process, police policies, practices and procedures, and the board's functions and duties; and
 - b. the number of complaints submitted to the board and the number of complaints resolved during the previous year.
- (6) To ensure that all reports of the board shall be prepared in such a manner that particular complainants, witnesses, and officers are not personally identifiable.
- (7) To ensure that its reports are made available to the public but only to the extent permitted by the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 et. seq. and other applicable law.
- (8) To propose, from time to time, suitable rules governing the board's administrative procedures and board member roles. Such proposed rules will become effective only when approved by the city council.
- (9) To request additional funding from the city manager as part of the city's annual budget process and at such other times as it deems necessary, though nothing in this Article shall require the city manager or the city council to provide any particular amount of funding.

(b) *Timing of review.* All board reviews of internal affairs investigations shall take place only after final disciplinary action has been taken and all appeals exhausted or settled or the case has been finally closed with no disciplinary action taken. The police department shall submit its report on the conclusions of any internal affairs investigation no more than fourteen (14) calendar days after the findings become final and after final disciplinary action has been taken and all appeals exhausted or settled or the case has been finally closed with no disciplinary action.

(c) *Notification of review.* The board shall notify the complainant, in writing, of the board's review and any findings made by the board regarding due process in the internal affairs investigation, including but not limited to, issues of fairness, thoroughness, objectivity and timeliness.

(d) *Scope of authority.* The board shall have no power or authority to subpoena or call witnesses or to impose or modify any disciplinary action, or lack of action, against any police officer. The board shall make no recommendations or 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, board members shall attend training by city staff as to the board's duties and responsibilities, applicable state and local law, ordinances, and rules and regulations, accepted police practices, the department's internal affairs investigation process, and proper techniques for receiving internal affairs complaints. Such training shall be provided by the city at no cost to the board members.

(f) *Resources.* To facilitate the effectiveness and objectivity of the civilian police review board, the city shall make available to the board the services of a technical advisor, as needed by the board. The technical advisor may be used for the purposes of training; briefing the board on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the board on aspects of the internal investigation process. The technical advisor shall be retained by the city manager after consultation with the chief of police, representatives of the police unions and the chair of the board. Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor.

The City Manager shall designate a staff member to serve as the civilian police review board's Community Liaison. The Community Liaison shall ensure that the public is aware of the methods for filing complaints, and shall assist the board with carrying out its duties, conducting outreach, and other duties as assigned by action of the board.

The Police Department shall designate a staff member to serve as

the civilian police review board's Police Liaison. The Police Liaison shall be familiar with the police department's standard operating procedures and shall assist the board with questions concerning the department's standard operating procedures.

The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the board to conduct its duties hereunder. In no case shall the board 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.

Sec. 2-86. Confidentiality.

Each member of the civilian police review board 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 board. All reports and requests for disclosure of any information shall be referred to corporation counsel for review prior to release.

Sec. 2-87. Appeals.

(a) An individual aggrieved by the report on a complaint issued by the civilian police review board may submit a notice of appeal of the board's due process determinations to the city council. Any such appeal must be in writing addressed to the mayor, must state the basis for the appeal, and must be filed with the mayor on or before the day that is thirty (30) days after the date of the board's report.

(b) Within sixty (60) days after receipt of a notice of appeal, the city council shall hold a hearing during which it shall review the board's report, the internal affairs investigation materials, and the notice of appeal. After such hearing, the city council will provide an advisory opinion regarding due process issues of the internal affairs investigation, including, but not limited to, issues of fairness, thoroughness, objectivity, and timeliness. The city council's review shall be de novo and will occur in executive session where required by state law. The council's advisory opinion will not be legally binding on the city, the police department, police officers, or individuals. The city council will 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 city council's hearing will not address, and its advisory opinion will make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer or any other personnel matter. The city council's advisory opinion on any appeal will be final and not appealable.

(c) All such appeals to the City Council are subject to the same confidentiality requirements that are applicable to members of the police civilian review board. All reports or decisions of such appeals

and requests for disclosure of any information related to an appeal shall be referred to corporation counsel for review prior to release.

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.