

**MIDDLEBURG BOROUGH  
COUNTY OF SNYDER, PENNSYLVANIA**

**RESOLUTION NO. 2024-~~11~~**

**A RESOLUTION OF THE BOROUGH OF MIDDLEBURG, SNYDER  
COUNTY, PENNSYLVANIA, ADOPTING THE RULES AND  
REGULATIONS FOR THE MIDDLEBURG BOROUGH CIVIL SERVICE  
COMMISSION.**

**WHEREAS**, the Borough of Middleburg has created the Middleburg Borough Civil Service Commission and appointed individuals to serve on the commission; and

**WHEREAS**, Civil Service Rules and Regulations shall be adopted by Borough Council pursuant to the authority of Article XI, Sections 1171 through 1195, of the Borough Code of the Commonwealth of Pennsylvania (Borough Code).

**NOW THEREFORE**, in the exercise of the powers granted to the Council Borough of Middleburg under the health, welfare and safety provisions of the Borough Code, it hereby adopts the “Civil Service Rules and Regulations”, which are attached hereto, and resolves as follows:

1. The Civil Service Rules and Regulations shall govern the activities of the Borough of Middleburg Civil Service Commission (Commission) while hiring, suspending, terminating, reducing in rank or otherwise affecting the employment status of the police officers of the Borough.
2. The Civil Service Rules and Regulations may from time to time be amended or revised by ordinance or by resolution.
3. In the event of a conflict between any provisions of the Rules and Regulations and the terms of the current collective bargaining agreement between the Middleburg Borough Police Association and the Borough, the terms of the collective bargaining agreement shall prevail.
4. This resolution shall become effective immediately upon enactment or as

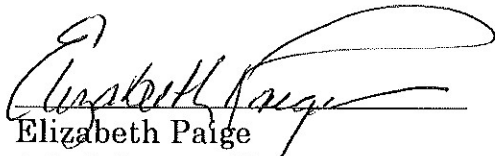
otherwise provided under law.


5. Any resolution or parts thereof which are in conflict herewith, are repealed and replaced only to the extent of such conflict.

RESOLVED AND ENACTED, ON May 14, 2024, UPON MOTION DULLY MADE AND SECONDED THE FOREGOING RESOLUTION IS HEREBY ADOPTED.

ATTEST:

MIDDLEBURG BOROUGH:

  
Elizabeth Paige  
Administrator/Secretary

BY:   
Donald Zechman, Council President

*(Middleburg Borough Seal)*

## CIVIL SERVICE RULES AND REGULATIONS

### **§ 1. Rules and Regulations**

- A. These Civil Service Rules and Regulations are adopted pursuant to the authority of Article XI, Sections 1171 through 1195, of the Borough Code of the Commonwealth of Pennsylvania (Borough Code) and are to be interpreted therewith. Council of the Borough of Middleburg (Borough Council) may from time to time approve future amendments or revisions to the rules and regulations by ordinance or by resolution.
- B. The following rules and regulations shall govern the activities of the Borough of Middleburg Civil Service Commission (Commission) while hiring, suspending, terminating, reducing in rank or otherwise affecting the employment status of the police officers of the Borough.
- C. In the event of a conflict between any provision of these rules and regulations and the terms of the current collective bargaining agreement between the Middleburg Borough Police Association and the Borough, the terms of the collective bargaining agreement shall prevail.

### **§ 2. Reserved.**

### **§ 3. Civil Service Commission: Organization, Officers, Meetings, Powers, and Duties.**

- A. Officers.
  - 1. Commissioners. The Commission shall consist of three Commissioners, who shall be qualified electors of the Borough and shall be appointed by Borough Council for terms of six years.
  - 2. Alternates. Borough Council may appoint no more than three qualified electors of the Borough to serve as alternate members of the Commission in accordance with the provisions of Section 1172 of the Borough Code. The term of office of the alternate members shall be six years. An alternate may participate in any proceeding or discussion of the Commission but shall not be entitled to vote as a member of the Commission unless designated as a voting alternate member pursuant to section 3(C). When seated pursuant to section 3(C), an alternate shall be entitled to participate in all proceedings and discussions of the Commission to the same and full extent as provided by law for Commission members, including specifically the right to cast a vote as a voting member during the proceedings.
  - 3. Vacancies. Any vacancy occurring in the Commission for any reason whatsoever shall be filled by the Borough Council for the unexpired term within the period of 30 days after such vacancy occurs.

4. Oath. Each member of the Commission, before entering upon the discharge of the duties of his/her office, shall take an oath or affirmation to support the Constitutions of the United States and of the Commonwealth of Pennsylvania and to perform his /her official duties with fidelity. No Commissioner shall receive compensation.
- B. Offices Incompatible with Civil Service Commissioner. No Commissioner shall at the same time hold an elective or appointed office under the United States government, the Commonwealth of Pennsylvania or any political subdivision of the commonwealth, except that one member of the Commission may be a member of Borough Council and one Commissioner may be a member of the teaching profession.
  - C. Organization of Commission; Quorum. The Commission shall meet and organize on the first Monday of February of each even-numbered year. The Commission shall elect one of its members as its Chairperson, one as Vice Chairperson, and one as Secretary. Three members of the Commission shall constitute a quorum. If by reason of absence or disqualification of a member a quorum is not reached, the Chairperson shall designate as many alternate members of the Commission to sit on the Commission as may be needed to provide a quorum. An alternate member of the Commission shall continue to serve on the Commission in all proceedings involving the matter or case for which the alternate was initially designated until the Commission has made a final determination of the matter or case. Designation of an alternate member pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among the alternates. No action of the Commission shall be valid unless it shall have the concurrence of at least two members.
  - D. Duties of the Chairperson. The Chairperson, or in his/her absence, the Vice Chairperson, shall preside at all meetings and hearings of the Commission, decide all points of order or procedure, and perform any duties required by law or these rules and regulations.
  - E. Duties of the Secretary. The Secretary shall maintain all minutes of meetings of the Commission and shall record all proceedings and official acts of the Commission. The Secretary shall, subject to the supervisory action of the Commission, carry on all official correspondence of the Commission, keep records of all proceedings involving the Commission, including examinations, keep charge of and be responsible for the books, records, papers and other property of the Commission, prepare and submit to Borough Council reports covering the work of the Commission, and perform all other duties required by law or by these rules and regulations. The administrative staff of the Borough shall assist the Secretary in the performance of these duties.
  - F. Meetings. Except for the biennial organizational meeting, all meetings shall be held either at the call of the Chairperson or at the call of two members of the Commission. The Secretary of the Commission shall give each Commissioner 24 hours' notice in writing of each and every meeting of the Commission. The Commission shall have the discretion to determine whether meetings shall be open to the public when not specifically regulated by law, including but not limited to the Sunshine Act, or these rules and regulations. No rule or regulation of the Commission shall be annulled, amended, or added to without prior

approval of Borough Council, except as otherwise provided herein. The order of business of all meetings of the Commission shall be as follows: (1) roll call; (2) approval of minutes of previous meeting; (3) ongoing business; (4) hearing of cases; (5) new business; and (6) communications and reports. The Secretary shall maintain minutes of all meetings, which shall include the time and place of each meeting, the names of the members present, and the votes given by members.

- G. Forms. The Commission may adopt and use such official forms as are necessary to carry out its official duties. Copies of official forms shall be maintained by the Secretary of the Commission.
- H. Conflicts of Interest. Should any member of the Commission believe that he/she is unable to carry out his/her duties faithfully and free of prejudice, such member may (i) elect to refrain from participation in official business of the Commission or (ii) participate in the official business, provided that such member makes full disclosure of such conflict and the other members of the Commission consent to such participation.
- I. Solicitor. When circumstances arise that require the Commission to retain a solicitor, Borough Council shall authorize such funds as necessary to retain the services of a solicitor for the Commission. The Commission shall select a solicitor to be approved by Borough Council and paid for by the Borough, subject to reasonable monetary limits set by Borough Council.
- J. Annual Report. The Commission shall make an annual report to Borough Council at the first meeting scheduled in March of each year. The annual report shall contain a brief summary of the Commission's work during the year.
- K. Powers and Duties. The Commission shall have all other powers and duties as reserved by the Borough Code or authorized by Borough Council.

#### **§ 4. Qualifications for Police Officers.**

- A. Applications.
  - 1. Requirement. Each person desiring to apply for examination for any position with the Police Department shall submit to the Commission, or its authorized agent, on the official form provided and before the deadline established by the Commission a sworn application giving such information as the Commission, or its authorized agent, may require, along with any examination fee, if applicable.
  - 2. Availability. Application forms shall be available to all interested persons in the office of the Borough Administrator, or at such other place as the Commission may designate.

3. Age Requirement. No person shall be eligible to apply for any position in the Police Department unless such person is at least 18 years of age on the date of application. Each applicant shall be required to present satisfactory evidence of date of birth.
  4. Recording Applications. Applications will be received by the Borough Administrator or such other person or entity as designated by the Borough Administrator. Upon receipt, all completed applications shall be dated, numbered, and recorded. Any application containing material errors or omissions may, at the discretion of the Borough Administrator or such other person designated by the Borough Administrator, be returned to the applicant for correction prior to the deadline for filing applications, after which no new applications or amended applications will be accepted. Once recorded, applications shall become Commission records and shall not be returned to the applicant.
  5. Penalty for False Statement. The statements made by the applicant in his/her application and all other documents submitted therewith shall contain no falsification, omission, or concealment of material fact. Should investigation disclose any material misstatement, falsification, omission, or concealment, the Commission shall disqualify the applicant from further consideration for the position or any future position with the Police Department. Any material misstatement, falsification, omission, or concealment that is not discovered until after appointment shall constitute grounds for dismissal from the Police Department.
- B. General Qualifications for Applicants of All Positions, Other Than Chief of Police. Every applicant for a position in the Police Department, other than Chief of Police shall (i) be a citizen of and legally entitled to work in the United States, (ii) have graduated from an accredited high school or possess a GED, (iii) possess Act 120 certification and a current Municipal Police Officer Education Training Commission (MPOETC) card, (iv) be physically and mentally fit to perform the full duties of a police officer, with or without reasonable accommodation, and (v) be of good moral character without any felony or misdemeanor convictions that relate to the applicant's suitability for employment. Prior to appointment, each applicant must obtain a valid motor vehicle operator's license issued by the Commonwealth of Pennsylvania. Upon appointment, all police officers shall comply with all residency requirements set forth in the collective bargaining agreement between the Borough and the Middleburg Police Association.
- C. Special Qualifications Required for Advanced Ranks in Police Service Other than Chief of Police. In addition to meeting the qualifications in section 4(B), all applicants for advance rank in the Police Department other than Chief of Police shall meet the following special qualifications:
1. Be a current Middleburg Police Officer with a minimum of two years continuous service in the Department on the date of application in the case of applicants for Sergeant and at least three years continuous service for all higher ranking positions;

2. Satisfactory completion of the basic training program for police officers and graduation from a recognized police school, or possession of an equivalent level of training and experience;
3. Demonstration of working knowledge of police science and administration, an ability to carry out orders from superiors, and an ability to deliver and supervise the work of subordinates;
4. Receipt of a grade of "satisfactory" or better on the latest service rating; and
5. Compliance with all relevant state and federal certification requirements.

D. Applicants for Chief of Police.

1. General Qualifications. All applicants for the position of Chief of Police shall:
  - (a) Be a citizen of and legally entitled to work in the United States, have graduated from an accredited high school or possess a GED, possess Act 120 certification and a current Municipal Police Officer Education Training Commission (MPOETC) card, be physically and mentally fit to perform the full duties of a police officer, with or without reasonable accommodation, and be of good moral character without any felony or misdemeanor convictions that relate to the applicant's suitability for employment;
  - (b) Have been continuously employed in police service for at least ten years or possess an equivalent combination of education and experience;
  - (c) Have satisfactorily completed the in-service training program for police officers as required by MPOETC, state law or regulation, be eligible for a waiver of the training, or be able to comply with requirements within one year of appointment to the position;
  - (d) Have demonstrated managerial and leadership skills and abilities
  - (e) Shall have two years of service in a supervisory capacity in a federal, state, or local law enforcement agency, branch of the armed forces, or other agency, enterprise, or institution.
2. Background Investigation. In the event an applicant for the position of Chief of Police is appointed through a non-competitive process without examination, such applicant shall be subject to a background investigation consistent with the requirements of the federal Fair Credit Reporting Act.

E. Rejection of Applicant.

1. **Basis for Rejection.** The Commission may refuse to examine or, if examined, may refuse to certify as eligible after examination, any applicant who is found to lack any of the minimum qualifications for examination prescribed in these rules and regulations for the particular position for which the applicant has applied, or who is physically unfit for the performance of the duties of the position to which the applicant has applied, or who is illegally using a controlled substance, or who has been found guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office, or who is affiliated with any group whose policies or activities are subversive to the form of government set forth in the constitutions and laws of the United States and Pennsylvania.
2. **Hearing for Disqualified Applicant.** Any applicant or other person who believes that he/she is aggrieved by the actions of the Commission in refusing to examine or to certify him/her as eligible after examination may request a hearing before the Commission. Within 10 days after such request, the Commission shall designate a time and place for the hearing. The applicant or aggrieved party must make the request for a hearing in writing within 10 calendar days of the date when the party knew or should have known of the Commission's action which is being challenged. The Commission's disposition of the matter shall constitute official action which shall occur at a public meeting; the decision of the Commission shall be final.

#### **§ 5. General Provisions Relating to Examinations.**

- A. **Public Notice.** Public notice of the time and place of every examination, together with the information as to the kind of position to be filled, shall be given by publication once in a newspaper of general circulation, at least two weeks prior to each examination, and a copy of the notice shall be prominently posted in the office of the Commission or other public place.
- B. **General Examination Requirements.**
  1. **Police Officers.** The examination for police officers will consist of a written and an oral examination which will be graded on a scale of 100 points, with the written examination representing 60% of the final score and the oral examination representing 40% of the final score. In addition, each applicant will undergo a physical fitness or agility examination that is job-related and consistent with business necessity. The physical fitness test will be graded on a pass/fail basis for every applicant. The physical fitness test will be administered prior to any written or oral examination, and only those applicants passing the physical fitness test will be permitted to take the written and oral examinations. Physical fitness or agility examination may, but need not be, required for promotions. Applicants certified to Borough Council for appointment in accordance with the rules and regulations will be subject to a background investigation. Where an applicant has received a conditional offer of employment, final appointment shall be contingent upon the applicant submitting to a physical and psychological examination, drug and alcohol test.



2. Positions above the Rank of Police Officer, Including Chief of Police where Competitive Process is Used. The examination for positions above the rank of police officer, including the Chief of Police where Competitive Process is Used, shall include a written and an oral examination which will be graded on a scale of 100 points, with the written examination representing 50% of the final score and the oral examination representing 50% of the final score. The written portion of the examination shall include a test of police knowledge, supervision, and performance and shall place emphasis upon those qualifications which are important in the position in question. In addition, each applicant may be required to undergo a physical fitness test, which will be graded on a pass/fail basis. Applicants certified to Borough Council for appointment in accordance with the rules and regulations will be subject to a background investigation. Where an applicant has received a conditional offer of employment, final appointment shall be contingent upon the applicant submitting to a physical and psychological examination and drug and alcohol test.

C. Conduct and Administration of Examinations.

1. Written Examinations. The PA Chiefs of Police Association, or such other agency designated by the Commission, shall be charged with overseeing the administration of written entry-level examinations, including but not limited to providing notice of examination; preparing, collecting, and tracking applications and examination fees, if applicable; ordering and grading examinations; compiling and distributing the eligibility list; and such other duties as agreed upon by the Commission. Examinations shall be open to all applicants who have the minimum qualifications required by the rules and regulations for the position in question. The Commission may also administer such written examinations.
2. Other Examination. The Commission shall appoint a qualified individual to administer such other examinations required by these rules and regulations. The oral examination shall be designed to permit evaluation of the appearance, manner, speech and general impression created by the applicant; it shall involve questioning applicants on how they would handle situations relevant to police work. The physical fitness or agility examination may require demonstration of such things as lifting, running, climbing, and shooting.
3. Improper Conduct. Should an applicant for an entry-level position be found guilty of an act tending to defeat the fair and proper administration or result of any examination, his/her name shall be removed from the eligibility list and the applicant shall not be permitted to make future application for any position in the Police Department or the Borough. Should any current member of the Police Department be found to have committed an act tending to defeat the fair and proper administration or result of any examination, such officer shall not be considered for promotion and shall be referred to the Mayor for appropriate action.

D. Passing Scores.

1. **Written Examination.** The written examinations shall be graded on a scale of 100 points. The passing grade for the position of police officer shall be 70%; the passing grade for positions above the rank of police officer shall be 80%. Applicants scoring less than the passing score shall be rejected. All applicants shall be given written notice of their test results.
2. **Oral Examination.** The oral examinations shall be graded on a scale of 100 points. An applicant for the position of police officer who does not obtain a score of 70%, after combining the weighted scores on the written examination and oral examination, shall be rejected. Applicants for positions higher than the rank of police officer must obtain a total weighted score of 80%.
3. **Veteran Preference.** Any applicant for the position of police officer who has completed the written examination and oral examination and has received a passing grade for both examinations shall receive 10 additional points on top of his/her total score if that applicant qualifies as a "veteran" pursuant to applicable law.

## **§ 6. Eligibility List and Manner of Filling Appointments.**

### **A. Eligibility List and Furlough List.**

1. **Preparation of Eligibility List.** At the completion of the testing process set forth above, the Commission, or its designated agent, shall rank the candidates who have satisfied the minimum requirements for appointment on an eligibility list. The eligibility list shall contain the names and scores of individuals eligible for appointment listed from highest to lowest based on their scores on the examinations administered by the Commission and any points for which the applicant was entitled by virtue of his/her status as a veteran. The eligibility list shall be filed in the office of the Borough Administrator and a copy shall be posted in the Borough Municipal Building.
2. **Breaking Tie Scores.** In the case of tied scores, the tie will be broken by giving preference to the applicant who scored the highest on the portion of the examination assigned the greatest weight. Should a tie persist, the tie will be broken by giving preference to the applicant whose completed application was submitted and recorded first.
3. **Life of Eligibility List.** The eligibility list will be valid for one year from the date the Commission formally adopts the eligibility list. Prior to expiration of the one-year period, the Commission may extend the validity of the eligibility list for up to an additional twelve months by a majority vote of the Commission at a duly authorized Commission meeting. In the absence of a lawful extension by the Commission, the list shall expire.
4. **Furlough List.** Whenever Borough Council shall determine the need for a temporary reduction in the number of police officers, the Commission shall prepare and maintain

a list of the names of all such furloughed officers, together with the position held by each such officer at the time of furlough. The names on the furlough list shall be arranged in priority order based on seniority at the time of furlough. Seniority shall be defined by the applicable collective bargaining agreement.

5. Removal of Names from Furlough and Eligibility Lists. The name of any person appearing on a furlough list or eligibility list shall be removed by the Commission if such person:
  - (a) Is appointed to a position in the Police Department;
  - (b) Declines appointment to a position in the Police Department, unless such position is of a lower rank than that for which he/she is eligible;
  - (c) Fails to make a written reply in response to notice of certification or notice of conditional appointment by the Commission within the time period provided by the Commission; or
  - (d) Is appointed to fill a vacancy but fails to report for duty at the time prescribed, unless, in the opinion of the Commission, such person can show good and sufficient reason for failure to report.

#### B. Filling Appointments.

1. Notice of Vacancy To Be Filled. When a vacancy is to be filled in the Police Department, Borough Council shall submit a written request to the Commission for certification of eligible applicants.
2. Filling an Existing Position. Borough Council may fill any vacancy in an existing position in the Police Department which occurs as a result of retirement, resignation, disability or death by the reappointment or reinstatement of a former employee of the Police Department who had previously complied with the rules and regulations set forth herein. Except for physical and psychological examinations, no other testing shall be required for a furloughed employee, except that the furloughed employee will be subject to a background investigation. If no furlough list exists, or if the total number of vacancies cannot be filled from the available names on the furlough list, the position shall be filled in the same manner as original positions are filled.
3. Filling an Original Position. Every original position or employment in the police force, except that of Chief of Police, shall be filled in the following manner:
  - (a) Upon receipt of a request from Borough Council, the Commission shall certify for each position to be filled, the names of three persons from the eligibility list, or a lesser number where three are not available, who have received the highest total score.

- (b) Borough Council shall conduct a background investigation into each certified individual in accordance with the provisions below.
  - (c) Borough Council may object to one or more of the persons certified for the reasons set forth in section 4(E). If the candidate to whom the Borough Council objects fails to timely exercise the right of appeal or should the objections be sustained by the Commission or should a conditional appointee be determined to be unqualified based upon the results of post-appointment examination, the Commission shall strike the name of the person from the eligibility list and certify from the eligibility list the next highest name for each name stricken.
  - (d) Borough Council shall make a conditional appointment from the three names certified, based solely on the merits and fitness of the candidates. The conditional appointee shall be notified of such appointment, the title of the position, and the starting salary, and shall have 14 days from the date of such notice to provide written acceptance to Borough Council. The appointment shall be conditional on undergoing a physical and psychological medical examination, drug and alcohol test within 14 days of acceptance of conditional appointment.
- 4. Notice of Certification and Background Investigation. Whenever the name of an eligible is certified to Borough Council from the eligibility list or furlough list, he/she shall be notified by Borough Council, or its designate, of such certification and he/she shall have 7 days from the date of such notice to provide Borough Council, or its designate, with written notice of availability for appointment and written authorization to complete a background investigation. The background investigation shall be conducted consistent with the provisions of the federal Fair Credit Reporting Act and may include investigation into the certified individual's criminal record, employment and educational history, credit history, driving record, general character, and such other relevant characteristics as permitted by law.
  - 5. Vacancy in the Office of Chief of Police. In the case of a vacancy in the office of Chief of Police, the vacancy may be filled through a non-competitive process, at the election of Borough Council. Where Borough Council so elects, Borough Council shall nominate a person to the Commission for the position of Chief of Police. Within 14 days of nomination, the Commission shall subject the nominee to a non-competitive examination that tests the nominee's knowledge of police management and administration. If the nominee receives a score of 80% on the examination and is certified by the Commission as qualified, he/she may then be appointed by Borough Council.

## **§ 7. Physical and Psychological Medical Examination**

- A. Examinations. Where an applicant certified from the eligibility list receive a conditional offer of appointment, employment shall be conditioned upon the conditional appointee undergoing a physical and psychological medical examination and a determination that the conditional appointee is capable of performing the essential functions of the position, with

or without a reasonable accommodation. Medical examinations shall be conducted at Borough expense and under the direction of a qualified medical professional appointed by Borough Council. In no event will physical or psychological medical examinations be conducted prior to conditional appointment.

- B. Compliance with Applicable Law. All such medical examinations shall be conducted in accordance with the Borough's obligations under the Americans with Disabilities Act (ADA) and other applicable federal and state laws.
- C. Opinion of Medical Professional. The qualified medical professional shall render an opinion within five days of the examination and on a form furnished by the Commission as to whether the conditional appointee has a physical or mental condition that calls into question the conditional appointee's ability to perform all essential functions of the position for which conditional appointment was made, with or without reasonable accommodation.
- D. Interactive Discussions. If the opinion of the qualified medical professional calls into question the conditional appointee's ability to perform all essential functions of the position, a person designated by Borough Council shall meet with the conditional appointee for the purpose of having one or more interactive discussions on whether a reasonable accommodation would enable the conditional appointee to perform the essential functions of the position. Additional communications with the qualified medical professional may be required to determine the availability or suitability of a reasonable accommodation to enable the conditional appointee to perform the essential functions of the position. If, at the conclusion of the interactive discussion, Borough Council determines in its discretion that the conditional appointee is not qualified, Borough Council shall give written notice to the conditional appointee and the Commission, and the conditional appointee shall not be considered further for the position.
- E. Medical Examination during Employment. During employment, Borough Council or the Commission shall have the authority to require members of the Police Department to submit to physical and/or psychological medical examinations in accordance with the provisions of the ADA and other applicable federal and state laws.

## **§ 8. Probationary Period.**

- A. All initial appointments to any position in the police force shall be for a probationary period of one year. During the probationary period, a probationer may be dismissed only for a cause specified in section 4(E) or because of incapacity for duty due to the use of alcohol or drugs. Throughout the probationary period, the Chief of Police shall review the performance and general acceptability of each probationer to determine whether such probationer is qualified for permanent appointment. The Chief of Police shall make a report on the performance, conduct, and fitness of each probationer at the end of the fourth and eighth months of the probationary period. Not less than 15 calendar days before the next regular meeting of Borough Council immediately preceding the end of the probationary period, the Chief of Police shall submit a final report to the Mayor for

presentation to Borough Council. Such final report shall include the recommendation of the Chief of Police either to dismiss the probationary appointee or make a permanent appointment. In the event the probationary appointee is for the Chief of Police, the Mayor shall evaluate the performance and conduct of the Chief. If at the close of the probationary period, the performance, conduct or fitness of the probationer has not been satisfactory to Borough Council, the probationer shall be notified in writing that he/she will not receive a permanent appointment, and the appointment shall cease. If the probationer is not notified or dismissed in accordance with this section, the probationer's retention shall be equivalent to a permanent appointment. The decision of Borough Council to suspend or discharge a probationer shall be final and shall not be subject to appeal.

### **§ 9. Provisional Appointments.**

- A. Provisional Appointment. Whenever there are urgent reasons for permanently filling a vacancy in any position in the police force and there are no names on the eligibility list for the appointment, Borough Council may nominate a person to the Commission for noncompetitive examination, and if the nominee shall be certified by the Commission as qualified after noncompetitive examination, the nominee may be appointed provisionally to fill the vacancy. Within three weeks of the provisional appointment, the Commission shall hold a competitive examination and certify an eligibility list and a regular appointment shall then be made from the name or names submitted by the Commission, provided that nothing in this section shall prevent the appointment, without examination, of persons, temporarily as police officers in cases of riot or other emergency. Nothing in this provision shall require the Borough to make a provisional appointment or limit the Borough's ability to make a temporary appointment to a position within the Police Department consistent with its practice and the terms of the collective bargaining agreement.

### **§ 10. Promotions.**

- A. Examination. Promotions shall be based on merit to be ascertained by examination. Promotional examinations shall be conducted by the Commission; candidates for promotion must attain a combined weighted score of 80% on any written or oral examinations given in order to be eligible for promotion. An eligibility list shall be prepared in accordance with the provisions of section 7.
- B. Promotional Appointment. Borough Council shall notify the Commission of a vacancy in the police force in the Borough which is to be filled by promotion and shall request the certification of an eligibility list. The Commission shall certify for each vacancy the names of three persons on the eligibility list who have received the highest average score in the last preceding promotional examination held within a period of two years preceding the date of the request for the eligibility list. If three names are not available, the Commission shall certify the names remaining on the eligibility list. Borough Council shall make an appointment from the names certified based solely on the merits and fitness of the candidates, unless Borough Council makes objections to the Commission regarding one or more of the persons so certified for any reason provided under section 4(E).

- C. Increase in Duties or Salary as Promotion. Borough Council shall have the power to determine in each instance whether an increase in duties or salary shall constitute a promotion for purposes of this section.

**§ 11. Disciplinary Suspensions, Removals, and Reductions in Rank.**

- A. Grounds for Disciplinary Action. No person appointed to a position in the Police Department pursuant to these rules and regulations may be suspended without pay, removed, or reduced in rank by Borough Council except for the reasons set forth below:

1. Physical or mental disability affecting the officer's ability to continue in service, in which case the officer shall receive an honorable discharge from service;
2. Neglect or violation of any official duty;
3. Violation of any law of which provides that such violation constitutes a misdemeanor or felony;
4. Inefficiency, neglect, intemperance, disobedience of orders or conduct unbecoming an officer;
5. Intoxication while on duty;
6. Engaging or participating in or conducting of any political or election campaign other than the officer's exercise of the right of suffrage; or
7. Engaging or participating in the conduct of a political or election campaign for an incompatible office as provided in Article XI, Section 1104(f) of the Borough Code.

- B. Procedures.

1. Notice. Whenever a member of the police force is suspended without pay, removed, or reduced in rank, a written statement by the Mayor stating the specific charges warranting such actions shall be furnished to the officer and the Commission within five days. The charges shall be stated clearly and in sufficient detail to enable the officer to understand the charges and the factual basis supporting the charges and to allow the officer to response to the same.
2. Demand of Hearing. The officer so charged may submit a timely written request for a hearing under section 12 to the Secretary of the Commission. The request must be received by the Commission within 10 days of the officer's receipt of the notice of charges.

- C. Mayor's Power to Suspend. Nothing herein shall limit the authority of the Mayor to suspend any police officer for cause and without pay until the succeeding regular meeting

of Borough Council, at which time Borough Council may, subject to these rules and regulations, suspend, remove, or reduce in rank or reinstate with pay, the police officer.

- D. Furloughs. Nothing herein shall limit the ability of the Borough to reduce the number of paid employees of the police force for reasons of economy or other reasons for which it shall be deemed necessary.

## **§ 12. Hearings on Suspensions, Removals, and Reductions.**

- A. Grant of Hearing. The Commission shall grant a formal hearing within 10 days of receipt of the request for such hearing by the officer. The hearing may be continued by the Commission in its own discretion or for good and sufficient reason at the request of Borough Council or the officer. Council may suspend the officer, without pay, pending the determination of the charges against the officer, but in the event the Commission fails to uphold the charges, then the officer shall be reinstated with full pay for the period during which the officer was suspended and no charges shall be officially recorded in the officer's record.
- B. Answer of Officer. The officer may make written answers to any charges filed not later than the date fixed for the hearing. Failure of the officer to provide written answers to any of the charges shall not be deemed an admission by the officer.
- C. Conduct of Hearing. At any such hearing, the officer against whom the charges have been made may be present and represented by counsel, may call witnesses, and present testimony and documentation in defense. The Borough may also be represented by counsel, call witnesses and present evidence as is necessary to support the charges. A stenographic record of all testimony shall be taken at every hearing and preserved by the Commission. In the event the charges are dismissed, the record shall be sealed and not be available for public inspection.
- D. Nature of Hearing. Unless Borough Council or the officer sought to be suspended, removed, or reduced in rank requests that the proceedings before the Commission be open to the public, the proceedings shall not be open to the public. Any such request shall be presented to the Commission before the hearing commences. The deliberations of the Commission, including interim rulings on evidentiary or procedural issues, may be held in private and shall not be subject to a request for being open to the public, Borough Council, or the officer. The Commission's disposition of the disciplinary action shall constitute official action which shall occur at a public meeting.
- E. Subpoenas. The Commission shall have the power to issue subpoenas to require the attendance of witnesses and the production of records and papers pertaining to the hearing in accordance with the provisions of Article XI, Section 1179 of the Borough Code. The officer charged and the Borough may issue written requests for a subpoena from the Commission, provided such request is filed with the Secretary of the Commission within five days from the date of hearing. Such requests for subpoena will be ruled on by the Commission in its discretion.



F. Hearing Procedure.

- (1) Standard of Review. In conducting the hearing, the Commission's standard of review shall be to determine whether sufficient evidence has been presented to support the statutory reason for the disciplinary action.
- (2) Sworn Testimony. All testimony presented at the hearing shall be given under oath. The Chairperson shall administer all oaths.
- (3) Procedure. Each hearing shall be conducted in the following manner:
  - (a) The Chairperson shall commence the hearing by stating the general purpose of the hearing;
  - (b) The Secretary shall read the written charges against the officer, together with the record of action taken against such officer, and any written reply of the accused, unless both parties waive a reading of the same;
  - (c) The Borough shall be given the opportunity to produce any witnesses, testimony, or documents in support of the charges;
  - (d) The officer shall be given the opportunity to cross-examine any witnesses produced by the Borough;
  - (e) The officer shall be given the opportunity to produce any witnesses, testimony, or documents in defense;
  - (f) The Borough shall be given the opportunity to cross-examine any witnesses produced by the officer;
  - (g) The parties shall be given an opportunity to make a closing summation.
  - (h) The hearing shall be concluded by the Chairperson.
- (4) Evidence. The Commission shall be the judge of admissible evidence and procedure and shall not be bound by technical rules of evidence. The Commission, at any time during the hearing, may question or examine the parties or any witnesses presented.

- G. Decision of the Commission. Within 30 days of the later of the conclusion of the hearing or receipt of the hearing transcript, the Commission shall issue its decision in the form of a written order approved by at least two members of the Commission. The written order shall include all findings of fact. A copy of the written order shall be provided to the parties.

H. Right of Appeal. The officer sought to be suspended, removed, or reduced in rank and Borough Council shall have the immediate right of appeal to the Court of Common Pleas of Snyder County, and the case there shall be determined as the court deems proper. The appeal shall be by petition and shall be taken within 30 days from the date of entry by the Commission of its final order.