

**ORDINANCE NO. F-1673**

**AN ORDINANCE AMENDING CHAPTER 2, ARTICLE V, DIVISION 3  
SECTION 2.293 OF THE WHEATON CITY CODE  
BOARD OF FIRE AND POLICE COMMISSIONERS**

BE IT ORDAINED by the City Council of the City of Wheaton, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Wheaton City Code is amended by deleting Section 2.293, "Rules and regulations adopted", of the Board of Fire and Police Commissioners in its entirety and substituting the following section in lieu thereof:

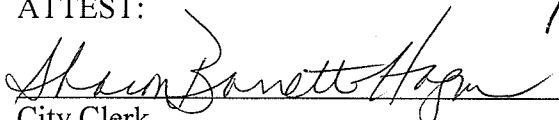
"Sec. 2-293. Rules and regulations adopted.

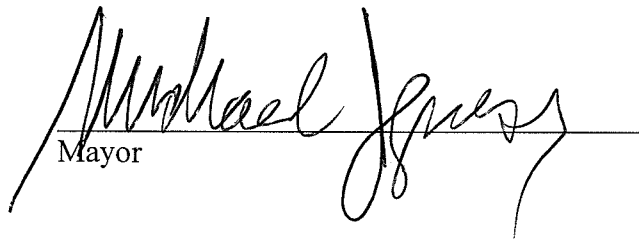
The rules and regulations of the Board of Fire and Police Commissioners are amended in their entirety by adopting the rules and regulations of the Board of Fire and Police Commissioners dated October 15, 2012, copies of which are on file in the office of the City Clerk and are incorporated into this division by this reference as though fully set forth therein."

Section 2: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 3: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:

  
City Clerk

  
Mayor

Roll Call Vote:  
Ayes: Councilman Mouhelis  
Councilman Rutledge  
Mayor Gresk  
Councilwoman Pacino Sanguinetti  
Councilman Scalzo  
Councilman Suess  
Councilwoman Ives  
Nays: None  
Absent: None  
Motion Carried Unanimously

Passed: October 15, 2012  
Published: October 16, 2012

**RULES AND REGULATIONS  
OF THE  
BOARD OF FIRE & POLICE  
COMMISSIONERS  
of the  
City of Wheaton  
State of Illinois**



**As Adopted by  
The Wheaton Board of  
Fire & Police Commissioners  
and  
The Wheaton City Council  
October 15, 2012**

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## **NOTICE**

These Rules, adopted by the Wheaton Board of  
Fire and Police Commissioners,  
and by the Wheaton City Council on October 15, 2012,  
supersede the Rules and Regulations  
previously adopted.

## **RULES AND REGULATIONS of the BOARD OF FIRE & POLICE COMMISSIONERS**

### **Chapter 1 - ADMINISTRATION**

#### **Sec. 1-1. Source of Authority**

Except where in conflict with the Rules and Regulations of the Board of Fire and Police Commissioners (the "Rules"), the Board of Fire and Police Commissioners of the City of Wheaton, a home rule unit, derives its power and authority from an Act of the General Assembly titled "Division 2.1, Board of Fire and Police Commissioners," as set forth in 65 ILCS, Sections 5/10-2.1-1 to 5/10-2.1-30 ("the Act"), adopted by virtue of Ordinance Chapter 2, Article V, Division 3, of the City Code.

#### **Sec. 1-2. Definitions**

The word "Commission" and the word "Board" wherever used shall mean the Board of Fire and Police Commissioners of the City of Wheaton or its agents. The word "Officer" shall mean any sworn person holding a full-time non-probationary appointment in the Police Department of the City of Wheaton. The word "Firefighter" shall mean any sworn person holding a full-time non-probationary appointment to the Fire Department of the City of Wheaton. The masculine noun or pronoun includes the feminine. The term "Fiscal Year" shall mean the relevant twelve-month period from May 1 to April 30.

#### **Sec. 1-3. Members of the Board and their Duties**

The Commission shall be comprised of five members. The Board shall annually elect a Chairperson and a Secretary to serve during the municipal fiscal year. Each person so elected shall hold offices for one year and until their successors are duly elected.

Any person appointed to the position of Commissioner must possess the qualifications as set forth in 65 ILCS Section 5/10-2.1-3 of the Act.

The Chairperson shall be the presiding officer at all meetings. In the absence of the Chairperson, the presiding officer for that meeting shall be selected by a majority of the vote of those Commission Members present, provided there is a quorum.

The Secretary shall keep the minutes of all meetings of the Board in a permanent record book and shall be the custodian of all forms, papers, books, records and completed examinations of the Board. The minute book shall be kept in the office of the City.

#### **Sec. 1-4. Meetings**

Regular meetings of the Board shall be held at dates and times designated by the Board, at designated locations in the City of Wheaton. Meetings shall be held in accordance with the Illinois Open Meetings Act, 5 ILCS 120/1 et seq.

Special meetings may be called by the Chairperson or any two members of the Board, with not less than 48 hours written notification to other members of the Board, and in no event any sooner than allowed by public notice pursuant to 5 ILCS 120/1 et seq. Notice shall contain the general subject matter of the business to be considered and the time and place of such special meeting. Such public notice as required by statute shall be given to the City Clerk upon notification from the member or members calling the special meeting.

During any regular or special meeting, a closed session may be held for any purpose permitted by law as set forth in 5 ILCS 120/2. Closed sessions may be limited to Commissioners and such invited persons as the Board deems necessary. The Secretary shall record the motion to close the meeting, record the roll call vote of the Commissioners on said motion, and keep minutes of the closed session.

If a member is unable to be physically present at a meeting of the Board, whether it be for personal illness or disability reasons, the need to conduct job related business or the business of the Board, or due to a family or other emergency, that member may attend and participate at a Board meeting by telephonic or video conference means provided that a quorum of the Board's members are physically present at the meeting and vote to approve the attendance of the missing member(s) by way of telephonic or video conference. The minutes of the meeting shall reflect, by name, those members of the Board who are physically present as well as those attending by telephonic or video conference. Notice that a Board member will be in attendance and participating at a Board meeting, not in person but electronically, shall be provided to the Board's recording secretary or Human Resources office at least 48 hours prior to the scheduled meeting.

#### **Sec. 1-5. Quorum**

Three (3) members of the Board shall constitute a quorum for the conduct of all business.

#### **Sec. 1-6. Order of Business**

The order of business at any meeting shall be at the discretion of the Chairperson. The agenda of each meeting shall include time for public comment.

The typical order of business at any meeting shall be:

1. Call to Order
2. Roll Call
3. Public Comment

4. Approval of Minutes
5. Approval of Payments
6. Old Business
7. New Business
8. Miscellaneous
9. Adjournment

#### **Sec. 1-7. Procedure**

The procedures prescribed in Robert's Rules of Order shall be followed as far as applicable, unless these Rules prescribe otherwise.

The Chairperson shall preside at all meetings, and shall perform such duties as are imposed by law, and shall have a vote on all matters. The Secretary shall be responsible for insuring all resolutions, reports, communications, and any other papers presented to or acted upon by the Commission are carefully filed and preserved, and shall perform such duties as are imposed by law.

#### **Sec 1-8. Voting**

The ayes and nays shall be taken on all votes. All aye and nay votes shall be taken in the following order: the motioner shall vote first, the second shall vote second, and the remaining Commissioners. All ayes and nays taken shall be recorded in the meeting's minutes. A concurrence of a majority of all Commissioners present at a meeting shall be necessary to the passage of any such proposition unless otherwise provided by law.

#### **Sec. 1-9. Amendments**

Amendments to these Rules may be proposed at any public meeting of the Board. All amendments or changes proposed shall be printed for distribution. Notices shall be posted stating where copies of the proposed amendments or changes may be obtained. At least ten (10) days before the date scheduled for review by the Board, the notices shall be conspicuously posted on the official bulletin boards at all Police and Fire Station facilities. The notices shall set forth the date and the place scheduled for the Board hearing on the proposed amendments or changes. At the conclusion of the hearing by the Board, all amendments to these Rules adopted by the Board shall be forwarded to the City Council for hearing and adoption pursuant to the City Ordinance. All amendments or changes so adopted to these Rules of the Board shall be in full force and effect immediately following the City Council enacting such amendment or change.

## **Sec. 1-10. Annual Report and Budget Request**

The Board shall submit an Annual Report of its activities as required by 65 ILCS 5/10-2.1-19 prior to the close of the municipal fiscal year. Submitting the minutes of all meetings held by the Board during such year to the City Council shall be sufficient to comply with the report provisions of this section.

A budget request for the ensuing year shall be submitted to the City Council prior to the close of the current fiscal year.

## **Chapter 2 – POLICE DEPARTMENT**

### **ARTICLE 1. POLICE OFFICER – ORIGINAL APPOINTMENTS**

#### **DIVISION 1. QUALIFICATIONS**

##### **Sec. 2-1. Age Requirements**

An applicant for Police Officer (hereinafter referred to as “Officer”) in the Police Department shall have passed their 20th birthday as of the date set for making application. All such applicants shall be under 35 years of age unless the applicant has previously been employed as an Officer in a regularly constituted police department of any municipality pursuant to 65 ILCS 5/10-2.1-6.

##### **Sec. 2-2. Standards**

An applicant shall meet the mental, medical, physical and psychological standards established by the Board and be able to successfully complete such screening examinations as required by the Board. An applicant who previously tested with the City and failed the polygraph, psychological, or background evaluation is not eligible to participate in any subsequent testing processes.

##### **Sec. 2-3. Residency Requirements**

Applicants shall be citizens of the United States. Residency shall be as prescribed by City ordinance for appointment as an Officer in the Police Department.

##### **Sec. 2-4. Character Requirements**

No person shall be appointed Officer in the Police Department unless that person is of good character. No person who uses or has used illegal substances or intoxicants or is a habitual gambler, or has been convicted of a felony or a crime involving moral turpitude shall be eligible for appointment as an Officer.

##### **Sec. 2-5. Educational Requirements**

An applicant for the Police Department shall have received a bachelor’s degree from an accredited college or university.

### **Sec. 2-6. License Requirements**

Applicants shall possess a valid Illinois driver's license prior to the date of hire. In addition, applicants shall be capable of qualifying for such other licenses which may from time to time be specifically required as an Officer in the Police Department.

### **Sec. 2-7. Training Requirements**

Applicants shall be capable of achieving a passing grade in all training courses as designated by the Chief of Police which may from time to time be specifically required as an Officer in the Police Department.

### **Sec. 2-8. Waivers**

An applicant may submit a written request to the Board for a waiver of any requirement specified in this chapter. A request for waiver must accompany the application packet or will not be considered. The Board, or its agent in conjunction with the Board Chair, shall have the power to waive any requirement as is appropriate according to the facts and reasons submitted in the written request. Each request shall be considered on an individual basis and shall be reported to the Board.

## **DIVISION 2. APPLICATIONS**

### **Sec. 2-10. Application Forms**

When a Notice of Examination has been posted, the Commission shall make application packets available to applicants as stated in the Notice.

Every applicant shall submit three certificates of character reference forms signed by persons who are acquainted with the applicant and who are reputable citizens. Citizens signing the reference forms shall state that they have known the applicant for at least three years, that it is their belief that the applicant is of good moral character, that in their opinion the applicant is qualified for the position the applicant seeks, that the citizens freely and willingly signed the certificate and that their endorsement of the applicant can be made public.

### **Sec. 2-11. Submitting Application Information**

Applicants shall submit application material as requested by the Board.

Application information shall be complete and include copies of all required documents. The applicant shall sign the forms as required. All questions shall be answered truthfully.

Incomplete applications will disqualify the applicant.

The Board is empowered to remove persons sworn to positions in the Police Department upon finding that false statements have been made or material facts have been misrepresented or omitted while applying for such position.



### **Sec. 2-12. Application Information Review**

The Director of Human Resources shall check the application material submitted for completeness.

### **Sec. 2-13. Character and Background Investigation**

A detailed character investigation of each applicant shall be conducted. This investigation will consist of a check of all credit references, school records, military records, interview of neighbors and previous employers, and a complete criminal background investigation (including a personal interview of the applicant by the person(s) conducting the background investigation).

Each eligible applicant shall submit to fingerprinting by the Police Department. Such fingerprints shall be submitted to the appropriate agency for clearance of the applicant.

### **Sec. 2-14. Releases Required**

Each applicant shall sign releases, waivers and consents as may be required by the Board.

## **DIVISION 3. SELECTION PROCESS**

### **Sec. 2-30. Fair and Equal Opportunity Employment**

It is the policy of the Board of Fire and Police Commissioners of the City of Wheaton to be a fair and equal opportunity employment agency. Applicants shall be considered only on the basis of their qualification relative to experience, physical and mental and psychological fitness, abilities, skills, knowledge and their personal character and integrity as they relate to the performance of duties as a member of the Police Department of the City of Wheaton. No illegal discrimination shall be exercised in any manner by any Official, Agent or employee of the City against or in favor of any applicant or employee because of political or religious opinions, sex, age, race, ethnic background or any other status protected by law.

### **Sec. 2-31. Disqualifications**

The Board may refuse to examine an applicant or, after examination, refuse to certify that person as eligible if that person:

- (a) Does not pass established requirements for the service for which the applicant applies;
- (b) Uses or has used illegal substances or intoxicants;
- (c) Has been convicted of a felony;
- (d) Has attempted to practice any deception or fraud in any part of the application, and/or for cases attempting to deceive during polygraph process as determined by

Board or its agents, which includes a finding by the Board of an untruthful answer in the application;

- (e) Fails to meet the mental, medical, physical or psychological standards established by the Board;
- (f) Has unsatisfactory character or employment references;
- (g) Submits an application that is incomplete and does not account for all periods of time; or
- (h) Has tested with the City previously for a Firefighter or Officer position and failed the polygraph, or psychological, or background portion.

Any applicant or eligible candidate deemed disqualified as provided herein shall be notified of the disqualification by the Board. The specific reason(s) for such disqualification shall be withheld from the candidate, shall be confidential and shall not be disclosed. Waivers signed by Applicants shall include this confidentiality policy.

#### **Sec. 2-32. Notice of Acceptance of Application**

The Board will notify all applicants found to be eligible Applicants of the date, time and location where the orientation and written test will be conducted.

### **DIVISION 4. QUALIFYING EXAMINATIONS**

#### **Sec. 2-40. Notice of Orientation and Qualifying Examinations**

The Board shall give public notice of examinations to be held for filling vacancies in the Fire or Police Department. All applications shall be filed within the period of time stated in the notice. All applicants shall attend a mandatory orientation session at times and places designated by the Board. The Board has the discretion to hold multiple orientations, written examinations and physical ability tests at different locations and dates. The Board has the discretion to charge an application fee. Those attending orientations and passing written tests and physical ability tests from all locations shall be consolidated into a single Interim Eligibility List.

#### **Sec. 2-41. Notice of Examinations**

Notice of examinations shall be published at least fourteen (14) days prior to the scheduled date(s) for these examinations. The examinations shall be held on the dates fixed thereby. Examinations may be postponed by order of the Board. Any such order shall state the reason for the postponement and applicants shall be notified of the postponement of any examination and of the new date fixed.

## **Sec. 2-42. Examinations**

The qualifying examinations shall fairly test the capacity of the applicant to discharge the duties of the position to which the applicant seeks appointment. Qualifying examinations may include, but need not be limited to, the following:

(a) Physical Ability Test

The Illinois Law Enforcement Training and Standards Board, in recognizing the importance of physical fitness status for academy performance (and eventual job performance), has established the Peace Officer Wellness Evaluation Report (POWER) test for entering any of the Illinois certified police academies. The POWER test will be provided to all Applicants prior to entering the academy to see if each individual meets the standards. These fitness entrance requirements help to ensure that each recruit can undergo both the physical and academic demands of an academy without undue risk of injury and with a level of fatigue tolerance to meet all academy requirements.

(2) Compliance with ADA

Any physical ability test prescribed by the Board shall conform to the standards of the Americans with Disabilities Act ("ADA").

(b) Written Test

Each applicant shall take such written test(s) as designated by the Board which are in compliance with the validity standards of the governing federal and state agencies.

(c) Ride Along

Police Officer applicants shall be required to attend a mandatory ride along with a current member of the Wheaton Police Department for one complete shift. Scheduling shall be at the discretion of the Police Department.

(d) Interview

(1) A candidate shall be interviewed by the Board to evaluate and grade the candidate on suitability for the position sought.

(2) The interview shall be conducted by no less than a quorum of Commissioners.

(e) Psychological Examination

Applicants shall take an individual psychological examination administered by a registered psychologist designated by the Board. Every such examination shall include, but not be limited to, a psychological interview, projective psychological evaluation and objective psychological evaluation.

The results of the psychological examination as well as admissions made by the applicant in the conduct of the psychological examination may be considered by the Board in determining whether or not the applicant should be disqualified pursuant to the standards set forth in these Rules.

(f) Polygraph Examination

The Board recognizes that a polygraph examination is an instrument of some investigatory utility and value. Therefore, the Board may require all applicants who are placed on the Interim Eligibility List described in Chapter VI of these Rules to take a polygraph examination. Questions to be asked of an applicant by the polygraph operator shall be reviewed by the Board to ensure that they are job-related. Criteria upon which a referral for polygraph examination is based shall be reviewed by the Board in order to ensure that it is neutral and job-related.

The Board shall select a polygraph examiner licensed by the State of Illinois to conduct the examination. In the event the polygraph test results are inconclusive, further testing may be allowed subject to the discretion of the Board or its agents.

The results of the polygraph examination as well as admissions made by the applicant in the conduct of the polygraph examination may be considered by the Board in determining whether or not the applicant should be disqualified pursuant to the standards set forth in these Rules.

(g) Medical Examination

Those applicants who have successfully completed all examinations and who are selected for appointment from the Final Eligibility List will receive conditional offers of employment. This offer will be made contingent upon successful completion of the medical examination as prescribed by the Board or required by the physician.

The medical examination will be conducted by a licensed physician designated by the Board. Failure to pass the medical examination will disqualify the candidate. Every examination shall include a medical history, a vision test, an electrocardiogram, urine, blood and other blood chemistry tests, drug screening, stress examination, X-rays of the back and chest and any other tests as deemed necessary by the examining physician. The examining physician shall complete and sign such forms as shall be designated by the Board or required by the physician.

**Sec. 2-43. Finality**

The candidate's examination forms as filled out and signed by the examining physician shall be and do become the property of the Board and the grading thereof by the Board shall be final and conclusive and not subject to review by any other board or tribunal of any kind or description.

**Sec. 2-44. Minimum Passing Scores**

All tests and examinations designated by the Board will be held in the sequence prescribed by the Board except a medical examination will not be required until after an applicant has received a conditional offer of employment.

The written examination shall be based upon a maximum achievable grade of 100%. Any applicant who fails to achieve a minimum score of 70% on the written examination will be disqualified from any further participation.

Failure of an applicant to pass a physical ability test, if any is prescribed, shall disqualify the applicant from any further participation.

The highest grade achievable on the interview is 100%. Any applicant failing to score 70% or better on the interview will be disqualified from any further participation.

A finding by the Board that any of the criteria for disqualification, as set forth in Chapter IV, Section 2 of these Rules, exists shall disqualify the applicant from any further participation.

An unsatisfactory psychological examination will disqualify the applicant from any further participation.

The inability to complete a background check to the satisfaction of the Board will disqualify the applicant from any further participation.

An unsatisfactory medical examination will disqualify the applicant from any further participation.

#### **Sec. 2-45. Notification of Results**

Interim and Final Eligibility Lists will be posted on the City's website for applicants to view their results. The Lists will also be posted at City Hall and appropriate Police Department or Fire Department locations.

### **DIVISION 5. ELIGIBLE REGISTER AND APPOINTMENT**

#### **Sec. 2-50. Military Preference Points**

Applicants who are eligible for military preference points shall make a claim in writing within 10 days after the date the Orientation is held or the claim shall be deemed waived. The claim shall be submitted to the Board's office – Human Resources Dept. – and include verifiable evidence and proof of qualifying preference credit requested, such as a DD-214 or other official documents which confirm active duty service time.

Five (5) points will be added to the score for those who qualify for preference for original appointment pursuant to the provisions of 65 ILCS Section 5/10-2.1-9. In order to qualify for the application of military preference points, a candidate must have served on Active Duty in the National Guard, Reserve Component or served in the Active Component of the U.S. Armed Forces for at least 1 year, and if discharged, the applicant must have received an Honorable Discharge. A candidate who has 3 or more years of service in the National Guard or Reserves (still serving or past service) will have 2 points added to their score. The maximum military preference points that can be awarded are 5 points.

### **Sec. 2-51. Interim Eligibility List**

The Board will create, post and keep a list of the Applicants qualified for further participation (the "Interim Eligibility List") after the completion of the applicable orientation, written test, and physical ability test. Applicants will be ranked on the Interim Eligibility List in the order of their scores on the written test. To that score will be added up to 5 points for those who qualify for military preference according to Sec. 2-50 Military Preference Points.

Applicants will remain on the Interim Eligibility List for two (2) years from the date of posting. In the event of a vacancy in the Police Department, Applicants shall be selected for further participation in the examination process in the order in which their names appear on the Interim Eligibility List.

In the event an applicant has not completed the college requirement, the applicant may be skipped over without loss of place on the Interim Eligibility List, if it is anticipated by the Board or its agents that the college requirement would not be completed by date of hire. It is then the responsibility of the applicant to inform the Director of Human Resources of a degree completion.

In order to determine their eligibility for the Final Eligibility List, the Interim Applicants shall take the interview, psychological and polygraph examinations described in these Rules.

### **Sec. 2-52. Final Eligibility List**

The Board will prepare, post and keep a list of the Applicants qualified for further participation (the "Final Eligibility List") after the completion of the interview and psychological and polygraph examinations. Applicants listed on the Final Eligibility List (the "Final Applicants") will remain on the Final Eligibility List for two (2) years from the date on which they were listed on the Interim Eligibility List.

A candidate's final score, to be posted on the Final Eligibility List, shall be the sum of the written examination score and the interview score.

Final Applicants shall be given conditional offers of employment based upon the order in which they are ranked on the Final Eligibility List. The offer of employment shall be conditioned upon the successful completion of a medical examination(s) as described in these Rules.

### **Sec. 2-53. Annual Interim Eligibility List**

The Board reserves the right to conduct annual qualifying examinations as set forth in these Rules and to post a new Interim Eligibility List based upon the results of these qualifying examinations. However, Applicants on the new Interim Eligibility List will not be eligible for selection on a Final Eligibility List until the previous year's Interim Eligibility List has been depleted or has expired.

## **Sec. 2-54. Waiver of Appointment**

An applicant certified for appointment may request the Board for a waiver of appointment without loss of place on the Final Eligibility List. If the request for waiver is refused, the applicant may withdraw the waiver or the applicant's name shall be removed from the Final Eligibility List.

## **DIVISION 6. PROBATION**

All persons appointed as an Officer to the Police Department shall be on probation for a period of twelve (12) months following completion of certified police academy training. At any time during the probationary period, the Chief of the Police Department, as the case may be, may recommend to the Board the termination of the probationary Officer. The Board shall consider the termination recommendation of the Chief and, after consideration, may discharge the probationary Officer or continue with the appointment. The probationary Officer is not entitled to a hearing before the Board.

In any case, the Chief of the Police Department shall recommend to the Board no less than thirty (30) days before the expiration of the probationary period that the probationary Officer either be terminated or be granted a non-probationary appointment.

## **DIVISION 7. OATH OF OFFICE**

Any person about to become a member of the Police Department shall take such oath and sign an employment agreement as prescribed by ordinance.

## **DIVISION 8. TEMPORARY APPOINTMENTS**

The Board may make temporary appointments to the Police Department, such appointments to remain in force until regular appointments are made. A temporary appointment shall not exceed sixty (60) days. Temporary appointments may be made to prevent a stoppage of public business, to meet extraordinary emergencies, or to prevent material impairment of the Police Department. No one person shall have a temporary appointment more than twice in any calendar year (65 ILCS 5/10-2.1-16).

## **DIVISION 9. REIMBURSEMENT OF EXPENSES**

In the event a member of the Police Department resigns from a position with the department prior to the expiration of three (3) years of continuous employment, the resigning member-employee of the department shall reimburse to the City the costs of the member-employee's training and education which are not reimbursed through other agencies together with related costs for uniforms, as follows:

<u>Length of Employment</u>	<u>Percent of Reimbursement</u>
0 - 1 year	100%
1 - 2 years	50%
2 - 3 years	25%

Prior to appointment as a probationary Officer, the appointees shall sign a document reciting their agreement regarding reimbursement as provided for in this Section or any other reimbursement requirement established by ordinance or amendment to ordinance subsequent to adoption of these Rules.

## **ARTICLE 2. POLICE DEPARTMENT – PROMOTIONAL EXAMINATIONS**

### **DIVISION 10. EXAMINATIONS**

Promotions in the Police Department shall be based upon a consideration of several factors, including but not limited to the following: a candidate's promotional potential rating; the results of a written examination; the results of an Assessment Center, the results of a leadership assessment profile; the results of an interview; and seniority.

It is the policy of the Board, in all cases where reasonable, that vacancies to be filled by promotion be filled from within the Police Department. However, the Board reserves the right to seek external Applicants to fill such vacancies. All examinations for promotion shall be competitive among all sworn members of the Police Department who voluntarily submit to such examination.

The Board adopts a policy of extending the promotional examination through all levels of sworn personnel in the Police Department in an endeavor to identify qualified Applicants for supervisory/management positions from within each department so long as those Applicants satisfy the minimum eligibility requirements described below.

### **DIVISION 11. ELIGIBILITY**

In order to be eligible for Police Department promotional examinations, sworn members shall have received a bachelor's degree from an accredited college or university and have either: 1) completed five (5) years of continuous service with the Wheaton Police Department; or 2) completed five (5) years of continuous service as a full-time certified police officer with another police department and have successfully completed the probationary period with the Wheaton Police Department.

### **DIVISION 12. THE PROMOTIONAL EXAMINATION PROCESS**

The Promotional Examination Process for the Wheaton Police Department follows:

#### **Sec. 2-121. Promotional Potential Rating**

To identify a candidate's promotional potential (as opposed to job performance), each candidate shall receive a promotional potential rating. The manner in which the rating is prepared shall be at the discretion of the Police Chief. With respect thereto, the Police Chief shall:

- (a) No less than three weeks prior to the rating process, and prior to notification of each participating candidate, forward to the Board of Fire and Police Commissioners information concerning the nature and scope of the rating procedure. The Board



shall review that information and make any recommendation or change it deems appropriate.

- (b) Notify each candidate in writing, no less than two weeks prior to the rating, the manner in which the rating will be prepared.
- (c) If a candidate does not attain a score of 70 on the Promotional Potential Rating, the candidate will not be eligible for promotion.

#### **Sec. 2-122. Written Examination**

The Board shall direct applicants to take a written examination of its selection. Failure to pass such examination shall disqualify the candidate.

If a candidate does not attain a score of 70 on the written examination (or in any evaluation administered by an assessment center in lieu of a written examination), the candidate will not be eligible for promotion.

#### **Sec. 2-123. Assessment Center**

All Applicants shall participate in an assessment center prescribed by the Board which meets the validity standards of applicable federal, state, and local statutes, laws, codes, rules and regulations. Failure to pass such examination shall disqualify the candidate.

#### **Sec. 2-124. Leadership Assessments**

Each candidate shall submit to an in-depth leadership assessment. If a candidate fails the leadership assessment, the candidate will not be eligible for promotion.

#### **Sec. 2-125. Interviews**

The candidate shall be interviewed enabling the Board, and/or any other persons and/or agencies employed to assist in conducting the interview to properly evaluate and grade the candidate as to the candidate's qualifications for the position sought. If a candidate does not attain a score of 70 on the interview, the candidate will not be eligible for promotion.

#### **Sec. 2-126. General**

An assessment center or any other agency or person may be used by the Board in the conduct of the Promotional Examination Process. All Applicants shall be notified of the nature of the examination to be used, minimum passing grades and the weighing of scores at least 30 days prior to the commencement of the examination process.

All Officers who submit to the Promotional Examination Process will be graded according to the following schedule:

EXAMINATION	MINIMUM PASSING GRADE ON A SCALE OF 100	WEIGHING %/RAW SCORE
Promotional Potential Rating	70	50%
Written Examination	70	(Not Weighted)
Assessment Center	70	28%
Leadership Assessment	Pass or Fail	-
Interview	70	19.5%
Seniority (1/4 point per year, to a maximum of 10 years)		<u>2.5%</u>
	Maximum Grade	100.0%

*Note: The maximum attainable points on the Promotional Potential Rating, the Assessment Center, and Interview are 100 for each. The points awarded for seniority shall be applied when all phases of the Promotional Examination Process have been completed but prior to final compilation of the final promotional eligibility list.*

### **DIVISION 13. PROMOTIONAL PREFERENCE**

Promotional preference shall be given to U.S. Armed Forces veterans who have served on active duty in accordance with the provisions of 65 ILCS Section 5/10-2.1-11. Pursuant to 65 ILCS Section 5/10-2.1-11, a promotional candidate shall receive promotional preference of 7/10 of one point for each 6 months or fraction thereof of active duty service not exceeding 30 months, for a maximum allowance of 3.5 points. Veterans who have served in the Active Reserve or National Guard shall receive promotional preference of 3/10 of one point for each 6 months or fraction thereof of Active Reserve or Active National Guard service not exceeding 30 months, for a maximum allowance of 1.8 pts.

### **DIVISION 14. WAIVERS**

The Board may waive any of the requirements of this Chapter as it deems appropriate.

### **DIVISION 15. NOTIFICATION OF RESULTS**

Upon completion of each phase of the Promotional Examination Process, each candidate will be notified by Human Resources whether the candidate passed or failed that phase of the examination.

## **DIVISION 16. POSTING OF ELIGIBILITY LIST**

The Board will prepare an eligible register of all Police Applicants successfully passing all examinations for the position of Police Commander. The Police Applicants shall be listed in alphabetical order only. The eligible register of Police Applicants shall be signed by all members of the Board, and will remain in effect for two (2) years. This eligible register will be posted by the Secretary in a prominent and appropriate place.

## **DIVISION 17 - PROMOTIONS**

All promotions of personnel in the Police Department will be made by the Chief with the advice and consent of the City Manager. Applicants whose names appear on the eligibility lists submitted by the Board shall be eligible for promotion.

### **Sec. 2-171. Probationary Period**

All appointments to the position of Police Commander shall be considered as probationary assignments. Accordingly, those members so assigned shall be subject to a probationary period of up to twelve (12) months. Said appointee's job performance will be evaluated using the form designated by the Chief of the Department, at the end of each ninety (90) day period. Copies of said evaluation shall be reviewed with the appointee and forwarded to the City Manager and the Board.

### **Sec. 2-172. Expiration of Probationary Period**

No less than thirty (30) days prior to the expiration of said probationary period, the Chief of the respective Department shall recommend to the City Manager either the retention or the reassignment of the appointee. When approved by the City Manager, the decision of the Chief of the Department shall be final and shall not be subject to review by the Board.

## **DIVISION 18. REDUCTION IN RANK/ASSIGNMENT/PAY GRADE**

Any time following the twelve (12) month probationary period, the Chief of Police may, in writing, advise any Police Commander that said Police Commander is receiving a reduction in assignment due to the fact that the job performance of the Police Commander does not meet the standards and requirements of the Department for the Police Commander position. The Chief of Police shall advise the Police Commander of the basis for the opinion of the Chief that the job performance of the Police Commander does not conform to the Department standards for the position.

The Police Commander may appeal the reduction in assignment decision of the Chief of Police to the Board by filing a written request for review of the decision with the Secretary of the Board within forty-eight (48) hours following receipt by the member of the notice of reduction in assignment. Thereafter, the Board shall conduct a hearing regarding the job performance of the Police Commander and the decision of the Chief of Police; the hearing shall be governed by the applicable procedures recited in Chapter VIII of these Rules.

Upon completion of the hearing, the Board will affirm or reverse the decision of the Chief of Police in writing. A finding by the Board in favor of the Police Commander does not preclude the Chief of Police from filing a subsequent notice of reduction in assignment as to said Police Commander in the future.

## **DIVISION 19. COMMANDER POSITIONS**

### **Sec. 2-191. Positions**

The Police Commander position consists of Division Commander, Watch Commander, and Shift Commander.

### **Sec. 2-192. Subject to Discipline**

The Police Commander position is subject to the discipline provisions of the Board of Fire and Police Commission Act, as modified by these Rules and ordinances of the City of Wheaton.

## **DIVISION 20. EXEMPT POSITIONS**

### **Sec. 2-201. Chief of Police**

The Chief of Police shall be the Chief Operating Officer of the Police Department. Such position is exempt from and not subject to the provisions of the Board of Fire and Police Commission Act.

### **Sec. 2-202. Deputy Chief of Police**

The Deputy Chief of Police shall be the second highest ranking Officer in the Police Department. The position is exempt from and not subject to the provisions of the Board of Fire and Police Commission Act.

## **Chapter 3 – FIRE DEPARTMENT**

## **ARTICLE 1. FIREFIGHTER – ORIGINAL APPOINTMENTS**

## **DIVISION 1. QUALIFICATIONS**

### **Sec. 3-1. Age Requirements**

An applicant for Firefighter in the Fire Department must have passed their 20th birthday as of the date of receipt of application by the Human Resources office and must be under 35 years of age as of the date of receipt of application by the Human Resources office, or must be under 45 years of age as of receipt of application by the Human Resources office if the applicant has previously been employed as a firefighter in a regularly constituted fire department of any Illinois municipality or Fire Protection District, pursuant to Illinois State Statutes, 65 ILCS 5/10-2.1-6.3(c)(1). The minimum age at the time of hire is 21 years of age.

### **Sec. 3-2. Standards**

An applicant shall meet the mental, medical, physical and psychological standards established by the Board and be able to successfully complete such screening examinations as required by the Board. An applicant who previously tested with the City and failed the polygraph, psychological, or background evaluation is not eligible to participate in any subsequent testing processes.

### **Sec. 3-3. Residency Requirements**

Applicants shall be citizens of the United States. Residency shall be as prescribed by City ordinance for appointment as Firefighter in the Fire Department.

### **Sec. 3-4. Character Requirement**

No person shall be appointed Firefighter in the Fire Department unless that person is of good character. No person who uses or has used illegal substances or intoxicants or is a habitual gambler, or has been convicted of a felony or a crime involving moral turpitude shall be eligible for appointment as Firefighter.

### **Sec. 3-5. Educational Requirements**

An applicant for the Fire Department shall have received an associate's degree, or shall have completed 48 credit hours in a semester system or 60 credit hours in a quarter system (with grade C or better) from an accredited college or university, and shall hold an Illinois Fire Fighter II Certification, and EMT-B license/certification as of the application date.

### **Sec. 3-6. License Requirements**

Applicants for the Fire Department shall possess a valid Illinois driver's license prior to the date of hire and maintain the license throughout their employment with the City of Wheaton. In addition, applicants shall be capable of qualifying for such other licenses which may from time to time be specifically required as a Firefighter in the Fire Department.

### **Sec. 3-7. Training Requirements**

Applicants shall be capable of achieving a passing grade in all designated training courses which may from time to time be specifically required as a Firefighter in the Fire Department.

### **Sec. 3-8. Waivers**

An applicant may submit a written request to the Board for a waiver of any requirement specified in this chapter. A request for waiver must accompany the application packet or will not be considered. The Board, or its agent in conjunction with the Board Chair, shall have the power to waive any requirement as is appropriate according to the facts and reasons submitted in the written request. Each request shall be considered on an individual basis and shall be reported to the Board.

## **DIVISION 2. APPLICATIONS**

### **Sec. 3-10. Application Forms**

The Commission shall make application packets available to applicants for positions in the Fire Department.

Every applicant shall submit three certificates of character reference forms signed by persons who are acquainted with the applicant and who are reputable citizens. Citizens signing the reference forms shall state that they have known the applicant for at least three years, that it is their belief that the applicant is of good moral character, that in their opinion the applicant is qualified for the position the applicant seeks, that the citizens freely and willingly signed the certificate and that their endorsement of the applicant can be made public.

### **Sec. 3-11. Submitting Application Information**

Applicants for the Fire Department shall submit all application material requested by the Board.

Application information shall be complete and **include** all required documents. The applicant shall sign the forms, waivers, releases and consents as required. All questions shall be answered truthfully.

Incomplete applications will disqualify the applicant.

The Board is empowered to remove persons sworn to positions in the Fire Department upon finding that false statements have been made or material facts have been misrepresented or omitted while applying for such position.

## **DIVISION 3. SELECTION PROCESS**

### **Sec. 3-30. Fair and Equal Opportunity Employment**

It is the policy of the Board of Fire and Police Commissioners of the City of Wheaton to be a fair and equal opportunity employment agency. Applicants shall be considered only on the basis of their qualification relative to experience, physical ability, mental aptitude, preferences, moral character and health, abilities, skills, knowledge and their personal character and integrity as they relate to the performance of duties as a member of the Fire Department of the City of Wheaton. No illegal discrimination shall be exercised in any manner by any Official, Agent or employee of the City against or in favor of any applicant or employee because of political or religious opinions, sex, age, race, ethnic background or any other status protected by law.

### **Sec. 3-31. Disqualifications**

The Board may refuse to examine an applicant or, after examination, refuse to certify that person as eligible if that person:

- (a) Does not pass established requirements for the service for which the applicant applies;
- (b) Uses or has used illegal substances or intoxicants;
- (c) Has been convicted of a felony;
- (d) Has attempted to practice any deception or fraud in any part of the application, and/or for cases attempting to deceive during polygraph process as determined by Board or its agents, which includes a finding by the Board of an untruthful answer in the application;
- (e) Fails to meet the mental aptitude, medical, physical ability or psychological standards established by the Board;
- (f) Has unsatisfactory character or employment references;
- (g) Submits an application that is incomplete and does not account for all periods of time; or
- (h) Has tested with the City previously for a Firefighter position and failed the polygraph, or psychological, or background portion.

Any applicant or eligible candidate deemed disqualified as provided herein shall be notified of the disqualification by the Board. The specific reason(s) for such disqualification shall be withheld from the candidate, shall be confidential and shall not be disclosed. Waivers signed by Applicants shall include this confidentiality policy.

### **Sec. 3-32. Notice of acceptance of application**

The Board will notify all applicants found to be eligible of the date, time and location where the orientation and written test will be conducted.

## **DIVISION 4. INITIAL ELIGIBILITY LIST**

### **Sec. 3-40. Notice of Orientation and Qualifying Examinations**

The Board shall give public notice of examinations to be held for filling vacancies in the Fire Department. All applications shall be filed within the period of time stated in the notice. All applicants shall attend a mandatory orientation session at the time and place designated by the Board. The Board has the discretion to hold multiple orientations, written examinations and physical ability tests at different locations and dates. Those attending orientations and passing written tests and physical ability tests from all locations shall be consolidated into a single Initial Eligibility List.

### **Sec. 3-41. Notice of Examinations**

Notice of examinations shall be published on the City Website pursuant to Section 1 of this Chapter V at least fourteen (14) days prior to the scheduled date(s) for these examinations. Notices shall describe the time, place, general scope, merit criteria for subject components, and fee of every examination. The Board has the discretion to charge an application fee. The examinations shall be held on the dates fixed thereby. Examinations may be postponed by order of the Board. Any such order shall state the reason for the postponement and applicants shall be notified of the postponement of any examination and of the new date fixed.

### **Sec. 3-42. Examinations to establish an Initial Eligibility List**

The qualifying examinations shall fairly test the capacity of the applicant to discharge the duties of the position to which the applicant seeks appointment. A person's position on the Initial Eligibility List shall include, but need not be limited to, the following: the person's score on the written examination and the person successfully passing the physical ability component.

#### **(a) Physical Ability Test**

The Board shall require proof of successful completion of the Candidate Physical Ability Test (CPAT) plus a Ladder Climb. CPAT cards plus a Ladder Climb proving successful completion will be considered valid within one year of the date issued.

It is the responsibility of the candidate to make sure their CPAT card is up to date, and includes the Ladder Climb.

Any candidate not possessing a valid CPAT card with Ladder Climb at the time of conditional offer of hire will be disqualified and the conditional offer will be rescinded.

#### **(b) Written Test**

Each applicant shall take such written test as designated by the Board which is in compliance with the validity standards of the governing federal and state agencies. The written test shall be graded on a 100-point scale. In order to qualify for placement on the Initial Eligibility List, an applicant's written exam score, before any applicable preference points are applied, shall be at or above the median.

#### **(c) Initial Eligibility List**

An Initial Eligibility List of applicants and their written test grades will be established in numeric order based on written examination scores. Applicants who are tied shall receive respective positions on the list through lottery. The list will be published on the City's website no more than 60 days after the completion of the written test.



## **DIVISION 5. FINAL ELIGIBILITY LIST**

### **Sec. 3-50. Applicants Claim for Preference Points**

Applicants who are eligible for preference credit shall make a claim in writing within 10 days after the posting of the Initial Eligibility List on the City Website, or the claim shall be deemed waived. The claim shall be submitted to the Board's office – Human Resources Dept. – and include verifiable evidence and proof of qualifying preference credit requested.

### **Sec. 3-51. Preference Points provided for in 65ILCS 10.2.1-6.3 shall be as follows:**

- (a) Veterans Preference – 5 Points.
- (b) Fire cadet preference – No Points
- (c) Educational Preference – 5 Points. Must have bachelor's degree from an accredited college or university.
- (d) Paramedic Preference – No Points
- (e) Experience Preference – 2.5 Points. Must have Illinois Office of State Fire Marshall Firefighter III Certification.
- (f) Residency Preference – No Points.
- (g) Additional Preferences – Maximum 7.5 Points

Must be:

- Current Contract Paramedic with Wheaton Fire Department for a minimum of 12 consecutive months – 1 Point per year up to a maximum of 5 Points
  - Must have Illinois Office of State Fire Marshall Fire Apparatus Engineer Certification – 2.5 Points
- (h) An applicant may not receive the full amount of preference points if the amount of points awarded would place the applicant before a veteran on the eligibility list. If more than one applicant receiving experience preference points is prevented from receiving all of their points due to not being allowed to pass a veteran, the applicants shall be placed on the list below the veteran in rank order based on the totals received if all points under this subsection were to be awarded. Any remaining ties on the list shall be determined by lot.

### **Sec. 3-52. Final Eligibility List**

The Final Eligibility List will be established in numeric order after the awarding of verified preference points. The List will be posted on the City's website and Fire Station.

The Final Eligibility List will be effective for 2 years from date of approval by the Board of Fire & Police Commissioners.

## **DIVISION 6. POST ELIGIBILITY LIST PROCEDURES**

**Sec. 3-60.** Additional tests and examinations designated by the Board will be held in the sequence prescribed by the Board. Failure on one step disqualifies the candidate from further participation in the selection process.

**Sec. 3-61.** Applicants shall be appointed from the Final Eligibility List in descending order. Notwithstanding anything to the contrary contained herein, the Board, at its discretion, may bypass a higher ranking candidate and appoint a lower ranking candidate if, in the Board's opinion, the lower ranking candidate is more qualified for the position and that candidate's name appears within the top 5% of the names remaining on the list or, if there is less than 100 names remaining on the list, the applicant's name is within the top 5 names remaining on the list. Applicants will be asked to participate in and advance through the following steps. Failure to successfully complete any part of one step disqualifies the candidate from further participation in the selection process:

Polygraph examination	Pass/Fail
Background investigation including but not limited to criminal history, moral character, business, education, and employment history.	Pass/Fail
Oral Interview with the Board	Pass/Fail
Conditional offer of employment will be based on successful completion of	
Providing Valid CPAT card	
Psychological Examination	Pass/Fail
Medical Examination	Pass/Fail

### **Sec. 3-62. Waiver of Appointment.**

An applicant may decline the offer of employment one time without loss of place on the Final Eligibility List. The applicant who declines an offer of employment will receive another conditional offer of employment at the next hiring opportunity.

## **DIVISION 7. PROBATION**

All persons appointed as a Firefighter to the Fire Department shall be on probation for a period of twelve (12) months, unless extended as permitted by 65ILCS 10-2.1-6.3. At any time during the probationary period, the Chief of the Fire Department may recommend to the Board the termination of the probationary Firefighter. The Board shall consider the termination recommendation of the

Chief and, after consideration, may discharge the probationary Firefighter or continue with the appointment. The probationary Firefighter or Officer is not entitled to a hearing before the Board.

In any case, the Chief of the Fire Department shall recommend to the Board no less than thirty (30) days before the expiration of the probationary period that the probationary Firefighter either be terminated or be granted a non-probationary appointment.

## **DIVISION 8. OATH OF OFFICE**

Any person about to become a member of the Fire Department shall take such oath and sign an employment agreement as prescribed by ordinance.

## **DIVISION 9. TEMPORARY APPOINTMENTS**

The Board may make temporary appointments to the Fire Departments, such appointments to remain in force until regular appointments are made. A temporary appointment shall not exceed sixty (60) days. Temporary appointments may be made to prevent a stoppage of public business, to meet extraordinary exigencies, or to prevent material impairment of the Fire Department. No one person shall have a temporary appointment more than twice in any calendar year.

## **DIVISION 10 - REIMBURSEMENT OF EXPENSES**

In the event a member of the Fire Department resigns from a position with the department prior to the expiration of three (3) years of continuous employment, the resigning member-employee of the department shall reimburse to the City the costs of the member-employee's training and education which are not reimbursed through other agencies together with related costs for uniforms and Personal Protective Equipment, as follows:

<u>Length of Employment</u>	<u>Percent of Reimbursement</u>
0 - 1 year	100%
1 - 2 years	50%
2 - 3 years	25%

Prior to appointment as a probationary Firefighter, the appointees shall sign a document reciting their agreement regarding reimbursement as provided for in this Section or any other reimbursement requirement established by ordinance or amendment to ordinance subsequent to adoption of these Rules.

## **ARTICLE II. FIRE DEPARTMENT – PROMOTIONAL EXAMINATIONS**

### **Sec. 3-101. Examinations**

The promotion criteria for the Wheaton Fire Department may be found in the Wheaton Firefighters Collective Bargaining Agreement.

It is the policy of the Board, in all cases where reasonable, that vacancies to be filled by promotion be filled from within the Fire Departments. However, the Board reserves the right to seek external

Applicants to fill such vacancies. All examinations for promotion shall be competitive among all sworn members of the Fire Departments who voluntarily submit to such examination.

The Board adopts a policy of extending the promotional examination through all levels of sworn personnel in the Fire Departments in an endeavor to identify qualified Applicants for supervisory/management positions from within each department so long as those Applicants satisfy the minimum eligibility requirements described below.

The promotion process shall be conducted in accordance with the provisions of the "Agreement Between the Wheaton Fire Fighters Union I.A.F.F. Local 3706 and the City of Wheaton", dated May 1, 2007, as amended from time to time ("Agreement"). Procedures described under the "Rules and Regulations of the Board of Fire and Police Commissioners of the City of Wheaton", adopted October 15, 2012, as amended from time to time ("Rules"), shall continue to apply to the extent they do not conflict with or are not inconsistent with the terms of the Agreement. To the extent not addressed in the Agreement or the Rules, the provisions of the Fire Department Promotion Act (50 ILCS 742/1 et seq., as amended) shall apply.

#### **Sec. 3.102. Promotional Preference**

Promotional preference shall be given to U.S. Armed Forces veterans who have served on active duty in accordance with the provisions of 65 ILCS Section 5/10-2.1-11. Pursuant to 65 ILCS Section 5/10-2.1-11, a promotional candidate shall receive promotional preference of 7/10 of one point for each 6 months or fraction thereof of active duty service not exceeding 30 months, for a maximum allowance of 3.5 points.

#### **Sec. 3.103. Waivers**

The Board may waive any of the requirements of this Chapter as it deems appropriate.

#### **Sec. 3.104. Notification of Results**

Upon completion of each phase of the Promotional Examination Process, each Applicant will be notified by Human Resources whether the candidate passed or failed that phase of the examination.

#### **Sec. 3.105. Probationary Period**

All appointments to the position of, Fire Captain or Fire Lieutenant within the Fire Department shall be considered as probationary assignments. Accordingly, those members so assigned shall be subject to a probationary period of up to twelve (12) months. Said appointee's job performance will be evaluated using the form designated by the Chief of the Department, at the end of each ninety (90) day period. Copies of said evaluation shall be reviewed with the appointee and forwarded to the City Manager and the Board.

#### **Sec. 3.106. Expiration of Probationary Period**

No less than thirty (30) days prior to the expiration of said probationary period, the Chief of the respective Department shall recommend to the City Manager either the retention or the

reassignment of the appointee. When approved by the City Manager, the decision of the Chief of the Department shall be final and shall not be subject to review by the Board.

### **Sec. 3.107. Exempt Positions**

#### Fire Chief

The Fire Chief is the Chief Operating Officer of the Fire Department. Such position is exempt from and not subject to the provisions of the Board of Fire and Police Commission Act.

#### Deputy Fire Chief

The Deputy Fire Chief position is superior to that of the Fire Captain and Lieutenant. The position of the Deputy Fire Chief is exempt from and not subject to the provisions of these Rules.

## **Chapter 4 – FIRE AND POLICE DEPARTMENTS - DISCIPLINARY ACTIONS WITHOUT HEARING, HEARING OF CHARGES, REMOVALS, SUSPENSIONS AND DISCHARGES**

### **DIVISION 1. DEFINITIONS**

Words used herein are defined as follows:

- (a) **"Appeal"** is any complaint filed with the Board by a member of the Police or Fire Department contesting a suspension imposed by the Police or Fire Chief.
- (b) **"Board's Office"** shall mean the Human Resources Office at Wheaton City Hall, 303 W. Wesley Street, Wheaton, Illinois.
- (c) **"Cause"** is some substantial shortcoming which renders continuance in employment in some way detrimental to the discipline and efficiency of the public service and something which the law and sound public opinion recognize as cause for the Officer no longer occupying the position. The right to determine what constitutes cause is at the discretion of the Board.
- (d) **"Complainant"** shall mean the Chief of the Fire or Police Department in the event of a Charge or the complaining member of the Fire or Police Department in the event of an Appeal.
- (e) **"Complaint"** shall mean the plain and concise statement of the facts upon which the Charge or Appeal is based.
- (f) **"Charge"** is any complaint filed with the Board by the Police Chief or Fire Chief against a member of the Police or Fire Department.

- (g) **"Counsel"** means one who has been admitted to practice as an attorney-at-law in this State.
- (h) **"Preponderance of Evidence"** is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.
- (i) **"Respondent"** shall mean the complaining member of the Fire or Police Department in the event of a Charge or the Chief of the Fire or Police Department in the event of an Appeal.
- (j) **"Work Day"** as used herein means an eight (8)-hour period of employment.

## **DIVISION 2 - DISCIPLINARY ACTION WITHOUT HEARING**

**Sec. 4.20.** The Board may suspend any Firefighter (the "Firefighter") or Police Officer (the "Police Officer") against whom a Charge has filed under Section 3 of this Chapter VIII of the Rules, pending a hearing upon the Charge by the Board, but not to exceed thirty (30) calendar days, without pay, at any one time.

**Sec. 4.21.** The Chief of the Fire Department and the Chief of the Police Department shall have the authority to suspend any Firefighter or Police Officer under their command for a period not to exceed five (5) working days, provided no charges on the same offense have been filed against the individual which are pending before the Board. The Chief shall notify the Board in writing of any such suspension within twenty-four (24) hours of the time of such suspension. In any event, the Chief shall not file any charge with the Board if such a Charge is already the subject matter of a suspension without pay ordered by said Chief. Any Firefighter or Police Officer so suspended may file an Appeal to the Board for review of the suspension within five (5) calendar days after such suspension by filing notice of such Appeal in writing with the Secretary of the Board of Fire and Police Commissioners through the Human Resources Office who will then notify the Secretary of the Board as soon as practical. The Board shall hold a hearing on such Appeal. Due notice of the hearing shall be given to the Chief of the Department who suspended that person and to the person so suspended in the same manner as if a Charge had been originally filed before the Board.

**Sec. 4.22.** Upon the hearing following an Appeal, the Board may, depending upon the evidence presented: a) sustain the action of the Chief of the Department, b) reverse it with instructions that the person so suspended receive pay for the period involved, c) suspend the Officer for an additional period of not more than thirty (30) calendar days, d) discharge that person. The Board also reserves the right to reverse, reduce or increase any other penalties, conditions or punishment imposed in addition to or in conjunction with any suspension imposed by the Chief of the Department.

## **DIVISION 3. HEARING PROCEDURE**

### **Sec. 4.30. Complaints**

A written Complaint setting forth a plain and concise statement of facts upon which the Charge or Appeal is based shall be filed, in quadruplicate, with the Secretary of the Board, along with a copy to the Respondent.

#### **Sec. 4.31. Probable Cause**

The Board may, in its discretion, hold a preliminary hearing to determine whether or not there is probable cause for hearing a Complaint based upon a Charge and may conduct such hearing as may be necessary for such purpose.

#### **Sec. 4.32. Notification of Hearing**

Upon the filing of a Complaint with the Secretary of the Board (and the determination by the Board of probable cause, if applicable), the Secretary of the Board shall notify the Complainant and Respondent, either by registered or certified mail, return receipt requested, or personally. The notice shall set forth the time and place of the hearing on the Charge or Appeal contained in the Complaint. The Respondent also shall be served with a copy of the Complaint. If an Order of Suspension is entered by the Board, the Respondent, the Complainant and the City Manager shall be notified of the Order of Suspension. The Order shall be served either personally or by registered mail or certified mail, return receipt requested.

#### **Sec. 4.33. Date of Hearing**

In the event of a Charge filed by the Police or Fire Chief, the hearing on the Complaint shall be conducted by the Board within thirty (30) days of the date of filing of the underlying Charge with the Board. In the event of an Appeal filed by a member of the Police or Fire Department, the hearing on the Complaint shall be conducted by the Board within sixty (60) days of the date of filing of the underlying Appeal with the Board.

#### **Sec. 4.34. Continuances**

Continuances may be granted from time to time upon motion of any party to the proceeding or by appropriate motion of the Board and by order of the Board. The Board shall, in its discretion, grant a continuance or refuse to grant a continuance on a hearing based upon the facts and circumstances presented.

#### **Sec. 4.35. Motions**

Except as otherwise set forth herein, all motions shall be in writing, unless waived by the Board, and served upon the other party and upon the Board at least five (5) working days prior to the date upon which they are to be considered by the Board.

#### **Sec. 4.36. Withdrawal of Complaint**

A party may withdraw a Complaint which that party has filed with the Board by serving written notice of that party's withdrawal of the Complaint upon the other party and through the office of the Board at least five (5) working days prior to the date scheduled for hearing by the Board on that Complaint.

In the event a party seeks to withdraw a Complaint less than five (5) working days prior to the date for hearing on that Complaint before the Board, that party shall serve a Motion to Withdraw Complaint upon the other party and upon the Board as soon as practicable. This Motion to Withdraw Complaint shall set forth the reasons for the requested withdrawal of the Complaint and the circumstances which prevented the party from notifying the Board of this Motion to Withdraw Complaint at least five (5) working days prior to the date of hearing upon the Complaint. At the commencement of the scheduled hearing on the Complaint, the Board shall, in its discretion, grant or deny the Motion to Withdraw Complaint based upon the facts and circumstances presented. In this event, all parties shall appear before the Board at the hearing and shall be prepared to proceed with the hearing on the Complaint in the event the Board denies such a Motion to Withdraw Complaint.

#### **DIVISION 4. MISCELLANEOUS**

**Sec. 4-40.** Either the Complainant or the Respondent may, at any time prior to five days before the hearing, make application to the Board by filing with it a written request for subpoenas for any individual to appear for a hearing or have them produce books, papers, records, accounts and other documents as may be deemed by the Board to be relevant to the hearing. On the filing of such application with tender of the witness fee and mileage as provided by the Supreme Court Practice Rules for Civil Matters, subpoenas will be issued for the persons named. Subpoenas may be served by any person of the age of 21 years and upwards designated by the party requesting the subpoenas. Application for subpoenas should contain the names and addresses of the individuals to be subpoenaed and the identity of any documents which they are to produce. Subpoenas will not be issued to anyone residing outside of the State of Illinois. The Board reserves the right to subpoena any additional witnesses whom are deemed necessary by the Board for any such hearing.

- (a) Any request for continuance because of inability to serve subpoenas shall be filed in the office of the Board at least five (5) days before the date set for such hearing. The Board in its discretion may waive this rule.
- (b) The Complainant and the Respondent may conduct written discovery upon each other subject to limitations imposed by the Board pursuant to motion by either party or pursuant to the Board's own motion.

**Sec. 4-41.** All papers required by these Rules to be served shall be delivered personally to the party designated or mailed by United States mail in an envelope properly addressed, with postage prepaid, to the designated party at the designated party's last known residence as reflected by the complaint filed with the Board, except as herein otherwise provided. Proof of service of any paper may be made by the certification of any person so mailing the paper or delivering the same to the designated party personally, or by filing the return receipt showing that a paper was mailed by either registered or certified mail, return receipt requested, to a party's address where it was received by a named party.

**Sec. 4-42.** All papers may be filed by addressing them to the Secretary of the Board and either mailing them or delivering them personally to the office of the Board at Wheaton City Hall, Wheaton, Illinois. For the purposes of these Rules, the filing date of any paper shall be the date it was received in the office of the Board if the paper is delivered personally or by messenger. In the



event a paper is forwarded by mail, then the filing date shall be the date which is postmarked on the envelope of such paper.

**Sec. 4-43.**

- (a) All papers filed in any proceedings shall be typewritten or printed and shall be on one side of the paper only.
- (b) The original of all papers filed shall be signed in black or blue ink by the party filing the paper or by an officer, agent, or attorney thereof.
- (c) If papers are filed by an attorney, the attorney's name, address telephone number and party represented shall appear thereon.

**Sec. 4-44.** The time within which any act under these Rules is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday, or is a holiday as defined or fixed in any statute now or hereafter in force in the State, and then it shall also be excluded. If the day succeeding such Sunday or holiday is also a holiday or Sunday, then such succeeding day shall also be excluded.

**Sec. 4-45.** All Hearings shall be held in compliance with Illinois Revised Statutes Chapter 102, Section 41 et seq. (Meetings of Public Agencies) as amended.

- (a) Hearings shall be conducted by the Attorney of the Commission and the Attorney shall make all procedural and evidentiary rulings.
- (b) Hearings before the Board are not common law proceedings. The provisions of the "Civil Practice Act" do not apply to hearings before the Board.
- (c) At the time and place of hearing, both parties may be represented by Counsel if they so desire.
- (d) All proceedings before the Board during the conduct of the hearing shall be recorded by the reporter to be employed by the Board.
- (e) The records of all hearings will not be transcribed by the reporter unless requested to do so by the Board or any party of interest. The party requesting the transcript shall be liable for the cost of the transcript.
- (f) All witnesses shall be sworn in by a member of the Board or the court reporter prior to testifying.
- (g) The Board will first hear the witnesses for the Complainant. Thereafter, the Board will hear witnesses for the Respondent to be followed by any rebuttal witnesses for the Complainant. All parties shall have the right to cross-examine witnesses. The Board at all times reserves the right to call or to examine any witnesses as it deems necessary.

- (h) The Board reserves the right to determine the extent, if any, of any option to the Complainant and the Respondent to present opening and closing statements.
- (i) The Complainant bears the burden of proof by a Preponderance of the Evidence in proving the applicable Charge or Appeal.

## **DIVISION 5. BOARD ACTION AFTER HEARING**

### **Sec. 4-50. Finding:**

The Board may find the subject "guilty of all charges", "guilty as to some charges and not guilty as to other charges", and "not guilty." The finding and decision of the Board shall be preserved by the Secretary. Notice of the finding and decision shall be sent to the Firefighter or Police Officer involved and to the Chief of the Department for enforcement. If the finding and decision is that of guilty and removal or discharge is ordered, such order for removal or discharge shall become effective forthwith. If the finding and decision is that of guilty and a suspension is ordered, the subject shall be suspended without pay for a period not exceeding thirty (30) calendar days. If the finding and decision is that of guilty and a demotion rank and/or grade in pay is ordered, the Board may order the demotion of any Firefighter or Police Officer by one (1) rank and/or grade in pay from the rank and pay possessed by the Firefighter or Police Officer at the time the written charges were filed against the Firefighter or Police Officer, the demotion in rank and/or reduction in pay shall become effective forthwith. The reduction in rank shall be indefinite, and the reduction in pay grade shall be for a specific period of time from the date of ruling by the Board.

### **Sec. 4-51. Aggravation and Mitigation:**

The Board may hear matters in aggravation or mitigation the same as are heard in criminal trial procedures, except that the failure to present any evidence in mitigation may not be held against the Firefighter or Officer involved. Except upon mutual agreement of the Complainant, the Respondent and the Board, no hearing relative to aggravation and mitigation shall be held without a prior finding of "guilty" of any of the charges.

### **Sec. 4-5.2 Discharge, Suspension, or Demotion in Rank/Reduction in Pay:**

- (a) Discharge from office or suspension from service in the Fire or Police Department shall be in accordance with the Act of the General Assembly titled "Division 2.1, Board of Fire and Police Commissioners," as set forth in 65 ILCS, Sections 5/10-2.1-1 to 5/10-2.1-30.
- (b) Demotion in rank and/or reduction in pay grade shall be effective immediately upon finding and decision by the Board. The reduction in rank shall be indefinite and the reduction in pay grade shall be for a specific period of time from the date of ruling by the Board.
- (c) The Board shall enter the findings on the records of the Board within a reasonable amount of time after the conclusion of the hearing.

## **Chapter 5 - GENERAL**

### **Sec. 5-1. Observance of Rules**

All Firefighters in the Fire Department and Officers in the Police Department shall observe and obey the Rules and orders of the Board of Fire and Police Commissioners presently in force or which may be adopted hereafter as well as the rules and regulations, policy, and procedures for the operation of the Fire Department and the Police Department as adopted by the City Council and in force or which may be adopted hereafter.

Violation of such rules and regulations shall be cause for the filing of charges before the Board, a subsequent hearing, and action by the Board on such charges.

### **Sec. 5-2. Severability**

If any section of these Rules is declared invalid in whole or in part by a court of competent jurisdiction, such determination shall not invalidate any other section or all of these Rules.

### **Sec. 5-3. Conflict with Collective Bargaining Agreement**

Nothing in these Rules shall be intended to be or construed as being in conflict with any collective bargaining agreements ("CBAs") between the City of Wheaton and any bargaining unit on behalf of the members of the Fire or Police Department. In the event of any conflict between these Rules and any such CBA, the provisions of the applicable CBA (including all disciplinary and promotional provisions) shall prevail over these Rules.