

# **Kirkland Civil Service Commission**

**Rules and Regulations**



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## KIRKLAND CIVIL SERVICE COMMISSION RULES AND REGULATIONS

- I. These rules and regulations are intended to clarify and augment Kirkland Municipal Code Chapter 3.54, which shall be a part of these rules and regulations.

### II. DEFINITION OF TERMS

Section 1: Administration. Senior Management staff which directs the affairs of the Kirkland Fire Department or Kirkland Police Department.

Section 2: Appointing Authority. The City Manager, or, when the City Manager so delegates, the appropriate department official. The words appointing authority, appointing official, or appointing power shall be construed to be synonymous terms.

Section 3: Assessment Center. The testing venue used to assess the job-related qualifications of Employees for a position, typically in a promotional process.

Section 4: Chairperson. The Civil Service Commission member selected by the Commission to perform duties described in Article III Section 1 of these Rules and Regulations.

Section 5: City. Referring to the City of Kirkland.

Section 6: Civil Service Ordinance. Chapter 3.54 of the Kirkland Municipal Code pertaining to the duties of the Civil Service Commission.

Section 7: Class. A group of positions sufficiently similar with respect to duties and responsibilities so that the same title may reasonably be used for each, the same qualifications may be required, and the same salary range may be applied with equity.

Section 8: Classified Service. All positions in the City service subject to the provisions of these rules are defined in the Civil Service Ordinance.

Section 9: Commission. The Civil Service Commission appointed by the City of Kirkland.

Section 10: Compensation. An allowance, fee, salary, or wage paid to an Employee in the classified service for performing the duties and responsibilities of his/her position or office.

Section 11: Consultant. A professional who provides expert advice; often for an assessment center testing process.

Section 12: Demotion. A reduction in employment status of an Employee to a class having a lower maximum rate of pay.

Section 13: Department. The Kirkland Fire Department or Kirkland Police Department.

Section 14: Discharge. The separation of a regular Employee from the classified service for cause.

Section 15: Eligible. The conditions of being qualified, or a person who has become qualified by examination or prior service to serve in a position.

Section 16: Eligibility List. A list of names of persons arranged in order of preference, who are eligible for appointment to a position in the Classified Service.

Section 17: Emergency Appointment. An appointment to serve in a classified position under emergency conditions for not more than ten (10) days.

Section 18: Employee. A person occupying a position and who is paid a salary or wage in the Classified Service of the City or who is on authorized leave of absence.

Section 19: Firefighter. An Employee serving on a full-time, fully compensated basis with the responsibility to perform firefighting and fire protection activities and emergency medical services.

Section 20: Layoff. The termination of an Employee's employment because of lack of funds or work or because of material change in organization.

Section 21: Original Appointment. The original date of hire (appointment) of an Employee to a position within the classified service.

Section 22: Personnel Rules. Kirkland Municipal Code Chapter 3.80 or collective bargaining agreement, as applicable.

Section 23: Police Officer. An Employee serving on a full-time, fully compensated basis as a commissioned, sworn Officer to enforce the criminal laws of the State of Washington.

Section 24: Probation. The term of employment or trial service period during which an Employee works prior to attaining regular appointment and is subject to termination without hearing or trial.

Section 25: Promotion. A change of an Employee's employment in accordance with these rules from a position in the Classified Service with a lower maximum rate of pay to a position with a higher maximum rate of pay.

Section 26: Provisional Appointment. A noncompetitive appointment to a position in the Classified Service made in the absence of eligibles pending the establishment of an eligibility list for the class.

Section 27: Public Notice. Giving notice by posting in a conspicuous place in a public office or building or by publication in a newspaper, or on the City's website.

Section 28: Reduction of Class. The movement of an Employee from a higher class to a lower class of employment for reasons other than cause.

Section 29: Reemployment. Appointment of a former regular Employee who had achieved regular status in a class.

Section 30: Regular Employee. An Employee who has successfully completed the probation period.

Section 31: Regular Status. The status of an Employee who has acquired rights to hearing prior to discharge by reason of prior service or by successful completion of his/her probationary period.

Section 32: Rejection. The separation of a probationary Employee from the service.

Section 33: Rule of Three. Appointing authority's discretion to choose individuals for appointment or promotion from the top three scores from an eligibility list.

Section 34: Suspension. Temporary separation of an Employee from the service without pay for disciplinary purposes.

Section 35: Temporary Appointment. Appointment of eligible persons from a list with regard to willingness to accept a position for a limited time not to exceed four months.

Section 36: Transfer. Movement of an Employee from a position to another position within the classified service.

Section 37: Written Notice. The service of notice in writing either to the person directly or by mail, or by e-mail or other electronic means with confirmation as being sent and received noted by the Commission's Secretary. If by mail, the service shall be deemed completed at the time of deposit in the Post Office.

### **III. THE CIVIL SERVICE COMMISSION**

Section 1: Appointment, Organization, Meetings and Quorum. The Civil Service Commission shall be composed of three members appointed by the City Manager and confirmed by the City Council.

Upon the appointment of a new member, the Commission shall proceed to the election of a Chairperson who shall continue in the office until subsequent reorganization becomes necessary whether as aforesaid or by resignation of the Chairperson. At the beginning of each year, the Commission shall proceed to elect a Chairperson.

All meetings of the Commission shall be public, except that upon unanimous vote, the Commission may as authorized by RCW Chapter 42.30 meet in executive session.

Regular meetings shall be held on the 2nd Tuesday of each month at 4:00 PM PST at the Kirkland City Hall and at other times upon call of the Chairperson, any two members, or the Secretary; provided, however, that no meeting shall be held in violation of the

requirements of RCW Chapter 42.30 (Open Meeting Act), insofar as said Act is applicable to the business of the Civil Service Commission. A Commissioner may participate via telephone or other electronic means if unable to attend the meeting in person. In the event that a regular meeting day falls upon a legal holiday, then such regular meeting shall be held on the following day.

Two members shall constitute a quorum, and two affirmative votes shall be required for the transaction of any official business. If a quorum is not present at the appointed time, but is expected, those present shall wait fifteen (15) minutes before dismissing the meeting for lack of quorum.

The Secretary, at the request of the Commission, shall attend such meetings and shall record the votes taken and how the Commissioners voted and shall cause the minutes to be prepared and presented to the Commission for approval or correction at the next regular meeting. Upon approval, the minutes shall be signed by the Secretary and shall become a part of the permanent files of the Commission.

Roberts Rules of Order shall be the final authority on all questions of procedure and parliamentary law not otherwise provided by these rules.

Section 2: Powers and Duties. The Civil Service Commission shall:

- 1) Adopt rules for the regulation of personnel matters within the Classified Service.
- 2) Appoint, whenever necessary, a Secretary.
- 3) Approve minutes of the Commission's meetings and records of procedure.
- 4) Approve the creation, amendment, or discontinuance of the classification plan as prepared by the Secretary, appointing authority, or qualified agency.
- 5) Provide for the holding of competitive tests either by the Secretary or by any other qualified authority or agency to determine the relative qualifications of persons for employment in the Classified Service.
- 6) Prepare and maintain lists of Eligible candidates for vacancies under the classified Police and Fire Service and certify same.
- 7) Conduct all civil proceedings necessary for the proper enforcement of the Civil Service Ordinance and these rules.
- 8) Hear and determine appeals arising from the administration of the Civil Service Ordinance and these rules.
- 9) Investigate and report on all matters involving the enforcement and effect of the Civil Service Ordinance and these rules.
- 10) Have such other powers and duties as are imposed upon said Commission by virtue of KMC 3.54.

#### **IV. THE SECRETARY/CHIEF EXAMINER**

The selection and duties of the Secretary/Chief Examiner shall be in accordance with Kirkland Municipal Code (KMC) 3.54. (Referenced throughout this document as “Commission’s Secretary”)

#### **V. HEARINGS, APPEALS AND INVESTIGATIONS**

Hearings and investigations which the Commission is authorized to conduct may be made by the Commission or may be delegated to any Commissioner, but no official decision of the Commission shall be rendered until at least two members have reviewed the evidence and concurred in an opinion. A person presenting a claim or defending a privilege before the Commission shall, unless incapacitated as determined by the Commission, appear personally and shall not be excused from answering questions and supplying information on the record under oath or affirmation to tell the truth under penalty of perjury except upon claim of the constitutional privilege in respect to self-incrimination. All decisions, opinions and recommendations arising from a hearing or investigation by the Commission shall be written and subscribed to by the members concurring, and shall be signed and filed as a permanent record by the Secretary. Any member may submit a minority or supplemental decision or report which shall be filed as a matter of record.

##### **Section 1: APPEALS**

- A.** Any regular Employee who is demoted, suspended, or terminated may appeal such action to the Commission.
- B.** Any Employee alleged to be Probationary by the disciplining Department may appeal to the Commission the question of the Employee’s Probationary status and whether the procedures for Discharge of Probationers, as found in the Personnel Rules, were properly followed.
- C.** Statutory Authority: The Commission’s jurisdiction is founded in RCW Chapter 41.08 (Civil Service for City Firefighters) and RCW Chapter 41.12 (Civil Service for City Police) and KMC 3.54.

##### **Section 2: ELECTION OF REMEDIES EFFECT**

The Commission shall dismiss any appeal if the subject of the appeal is presently pending within, or has been the subject of, a collective bargaining agreement or binding arbitration proceeding.

### **Section 3: HEARINGS**

The Commission may designate one member to serve as presiding officer for the case. The presiding officer shall rule on all pre-hearing matters. If the Commission does not designate a presiding officer for a case, the Chairperson shall serve as Presiding Officer.

### **Section 4: APPEALS - TIME – FORM**

A notice of appeal must be received at the Commission office no later than ten (10) days after the date of the final notice from the Department of the action that is the subject of the appeal. The notice of appeal shall be in writing and include the mailing address and street address where process and other papers may be served upon the appellant. The notice of appeal may also include an e-mail address where the appellant or appellant's representative consents to service of communication and documents related to the appeal. The notice of appeal shall also contain a brief description of the facts giving rise to the appeal, and a concise statement of the reason for the appeal.

### **Section 5: APPEALS - INITIAL REVIEW**

1. The Commission's Secretary shall review all appeals to determine whether the Employee has timely filed an appeal, whether the action appealed is a final action, and if the appeal falls within the Commission's jurisdiction.

**A. UNTIMELY APPEALS:** Upon a determination that the appeal is not timely, the Commission's Secretary shall issue a written order of dismissal with prejudice. Such orders may be appealed to the Commission within twenty (20) days after the date of the order.

**B. PREMATURE APPEALS:** In the case of an action that is not final, the Commission's Secretary shall dismiss the appeal without prejudice. The Employee may re-file the appeal after the action becomes final.

**C. DISMISSAL OF AN APPEAL:**

1. If the Commission's Secretary determines that an appeal on its face does not fall within the Commission's jurisdiction, the Commission's Secretary shall dismiss the appeal by a dismissal order stating the reasons for the dismissal. Such notices may be appealed to the Commission within twenty (20) days after the date of the order.

2. If the notice of appeal is timely and from a final action upon which the appeal is being taken, and is not referred to another City agency, the Commission's Secretary

shall send a letter of receipt and a copy of the Notice of Appeal to all parties. The appeal shall be placed on the agenda for the next regularly scheduled Commission meeting at which time the Commission shall decide who will hear the appeal or how to proceed with the appeal. The Commission may also delegate the authority to assign an appeal to the Commission's Secretary.

2. **SPECIAL MEETING** - The Commission may decide if a special meeting is required in order to determine how to proceed with an appeal.
3. **NOTIFICATION** - The Commission's Secretary shall notify the affected City Department that an appeal has been filed.

#### **Section 6: APPEALS, REPRESENTATION OF APPELLANT**

Attorneys representing a party shall serve the Commission and the other party with a Notice of Appearance within ten (10) days of the filing of the appeal or at least fifteen (15) days prior to the scheduled hearing, or if counsel is retained thereafter, as soon as counsel is retained.

- A. When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Commission of the name, address, and telephone number of that designated representative. The person designated as the party representative shall exercise the rights of such appellants. Notice or other communication to the party representative, is notice or communication to the party.

#### **Section 7: COMPUTATION OF TIME**

Except as otherwise provided by the Code, computation of any period of time prescribed or allowed for all matters before the Commission shall begin with the first day following the day on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national, state or City holiday, the period shall extend to the end of the next day the City of Kirkland is open for business.

#### **Section 8: FILING AND SERVICE OF DOCUMENTS**

- A. Documents shall be deemed filed with the Commission on the date received at the Commission's Office unless the Commission has specified otherwise.
- B. Documents shall be served personally unless otherwise provided by applicable ordinance. It shall be each party's responsibility to maintain the generally accepted form of proof of timely fax, service or other delivery to and receipt by the Commission's Secretary. Written acknowledgment shall be by affidavit of the person who mailed the

papers, or by certificate of any attorney, or the Commission's Secretary in the case of Commission papers. Service shall be regarded as complete upon deposit in the regular facilities of the U.S. Mail of a properly stamped and addressed letter or packet, or at the time personally delivered, or transmitted by fax.

### **Section 9: PREHEARING CONFERENCE**

The Commission may on its own order, or at the request of a party, hold a conference prior to the hearing to consider:

- A. Identification, clarification, and simplification of the issues.
- B. Disclosure of witnesses and exhibits.
- C. Motions.
- D. Other matters deemed by the Commission appropriate for the orderly and expeditious disposition the proceedings.

The Commission's Secretary shall schedule all pre-hearing conferences.

- 1) Pre-hearing conferences may be by telephone conference call.
- 2) The Commission's Secretary shall give notice to all parties of any pre-hearing conference. Notice may be written or oral.
- 3) All parties shall be present at any pre-hearing conference unless they waive the right to be present or represented and are granted permission by the Commission not to attend.
- 4) Following the pre-hearing conference, the Commission may issue an order reciting the actions taken or ruling on motions made at the conference.

### **Section 10: OATH OR AFFIRMATION**

- A. All testimony before the Commission at hearing shall be taken under oath or affirmation to tell the truth under penalty of perjury.
- B. Every interpreter, before beginning to interpret, shall take an oath that a true interpretation shall be made under penalty of perjury that is understandable for the person needing the interpreter and that the interpreter shall repeat statements in English to the Commission, to the best of the interpreter's ability.

**Section 11: WITNESSES**

- A. All witnesses are subject to cross-examination by the other party(s).
- B. The rules of privilege shall be effective to the extent recognized by law.
- C. Hearings are open to the public. However, in appeal hearings, persons who are not parties are generally not permitted to testify unless called as witnesses.
- D. The Commission may limit the length of testimony to expedite the proceedings and avoid the necessity to continue the hearing. Maximum practicable advance notice will be provided if such time limitations are to be imposed. If parties are unable to complete their arguments and testimony within the allotted time, an opportunity will be granted to submit written materials after the close of the hearing; other parties will be allowed an opportunity to offer written rebuttal to any such materials.
- E. At the discretion of the Commission, or where the parties agree and the rights of the parties will not be prejudiced, the Commission may allow testimony via telephone or similar electronic means. Each party to the proceeding shall have the opportunity to listen to witness testimony given in this manner and to question the person giving such testimony.

**Section 12: MOTIONS**

- A. All motions, other than those made during a hearing, shall be in writing and state the order or relief requested and the grounds for the motion. Each party representative shall receive every motion, answering statement and accompanying papers on the day it is filed with the Commission.
- B. Within seven (7) days after service of any written motion, or such longer or shorter period as may be designated by the Commission, the other party(s) shall file a written answer. When the Commission has received the answering statement(s), or the seven (7) days or other period designated by the Commission has elapsed, whichever occurs first, the Commission shall rule on the motion. Failure of a party to file a timely response may be considered by the Commission as evidence of that party's consent to the relief requested in the motion.
- C. The Commission may call for oral argument prior to ruling.
- D. For motions made at hearing or for motions made for the extension of time or the expedition of hearings, the Commission may waive the requirements of this section and may also rule upon such motions orally.

**Section 13: EVIDENCE**

- A. Evidence, including hearsay, may be admitted if, in the judgment of the Commission, it is relevant to the issue(s) on appeal, comes from a reliable source, and has probative (proving) value. Such evidence is that which responsible persons would commonly rely upon in the conduct of their important affairs.
- B. The Commission may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.
- C. Documentary evidence may be received in the form of copies or excerpts. The Commission may require that the parties are given an opportunity to compare the copy with the original, and all parties must make the complete document from which an excerpt is taken available for inspection.
- D. With a Commission appeal hearing, each party shall provide four (4) paper copies of all filings.

**Section 14: OFFICIAL NOTICE**

- A. The Commission shall take official notice of judicially cognizable facts. In addition, a Commission member may take notice of general, technical, or scientific facts within his or her specialized knowledge.
- B. Parties must be notified during the hearing, or before issuance of the decision, of the specified facts or material noticed and the source thereof, and afforded an opportunity to contest or rebut the facts or material so noticed. The Commission shall not take such notice of disputed adjudicative facts that are at the center of an appeal.
- C. A Commission ruling, decision, or recommendation may refer to and utilize any part of the Kirkland Municipal Code, the Revised Code of Washington and any issued Commission decision.

**Section 15: CONTINUING OR REOPENING HEARING**

- A. A scheduled hearing may be continued for good cause as determined by the Commission. Written Notice of the date, time, and place of the continued hearing shall be provided to each party. The notice of a rescheduled hearing need not observe the time requirements to which the original notice was subject.
- B. Prior to the issuance of the subject decision, the Commission may continue or reopen proceedings for good cause and may permit or require written briefs or oral argument.

- C. If the Commission determines at hearing that there is good cause to continue such proceeding and then and there specifies the date, time, and place of the new hearing, no further notice is required.
- D. If a matter is reopened after conclusion of the hearing, parties shall be provided at least ten (10) days notice of the reopened hearing.

**Section 16: LEAVING THE RECORD OPEN**

- A. The Commission may leave the record of a hearing open at the conclusion of the hearing in order to receive argument or for other good cause. Parties shall be provided notice of the consideration of any evidence received after the hearing and shall have an opportunity to review such evidence and to file rebuttal evidence or argument.
- B. Unless the Commission has left the record open, information submitted after the close of the record shall not be included in the hearing record or considered by the Commission.

**Section 17: PROCEEDINGS RECORDED**

All proceedings before the Commission, except deliberations, shall be audio recorded. The recordings of hearings shall be part of the official case record. Copies of the recordings shall be made available to the public upon request, subject to payment of a reasonable fee for copying. Third party notification may be required for some records.

**Section 18: CLARIFICATION**

The appellant shall provide clarification, additional information, or other submittal(s), as the Commission deems necessary in order that the appeal be made complete and understandable. The Commission shall rule on the request of any party for clarification of an appeal. Request for clarification shall be made in ten (10) days as to afford reasonable opportunity for other parties to prepare response(s) for hearing.

**Section 19: AMENDMENT**

The Commission may allow an appeal to be amended within thirty (30) days after it has been filed for shown good cause. In deciding whether to allow such an amendment, the Commission shall consider whether the fair hearing opportunity of other parties is prejudiced by the amendment.

**Section 20: WITHDRAWAL OF AN APPEAL**

- A. Only the appellant or the appellant's counsel of record may withdraw an appeal.
- B. Where several persons, a group, organization, or other entity files an appeal, the person who has been designated the party representative shall file the withdrawal.
- C. An appellant's request to withdraw an appeal shall be granted as a matter of right and the appeal shall be dismissed.
- D. If the appellant withdraws an appeal the Commission shall issue a dismissal order.
- E. If an appeal is withdrawn after parties decide on a settlement and there is a signed settlement agreement, a copy of the agreement may be submitted to the Commission, along with the withdrawal request.
- F. In any subsequent proceeding, the Commission shall consider the following factors in determining where to give legal effect to the settlement agreement:
  - 1. The agreement is written and easily understood without legal assistance;
  - 2. There is a clause that encourages the Employee to seek review of the agreement prior to signing;
  - 3. It is clear, what, if any, appeal rights the Employee is giving up by signing the agreement.

**Section 21: INTERVENTION**

- A. Upon a showing of a substantial or significant interest that is not otherwise adequately represented, the Commission may, in its discretion, permit an interested person, group, organization, corporation, or other entity, who has not filed an appeal, to participate in that appeal.
- B. A written request for intervention must be submitted to the Commission at least five (5) business days prior to the day on which the hearing begins. The intervention request must state the basis for the intervention and how the person, group, organization, corporation, or other entity making the request is affected by or interested in the matter appealed. In considering the requested intervention, the Commission shall seek to ensure that intervention will not unduly delay the hearing process, will not expand the issues beyond those within the appeal, and will not prejudice the rights of any of the original parties. In granting intervention, the Commission may limit the nature and scope of the intervention.

- C. Intervention is not a substitute means of appealing a decision for those who could have appealed but failed to do so.

**Section 22: NOTICE OF HEARING-** The notice of hearing shall include:

- A. The time, place, and nature of the hearing;
- B. The legal authority and jurisdiction for the hearing;
- C. The file number, address, or other identifying information for the underlying decision or action being appealed;
- D. A brief statement as to the issue(s) to be considered;
- E. Reference to the applicable Kirkland Municipal Code section(s).

**TIME** - Notice of the hearing shall be given within the time required by applicable ordinance(s).

**RECORD OF NOTICE** - A copy of the notice of hearing shall be made part of each official case record.

**Section 23: DISCOVERY**

- A. Appropriate pre-hearing discovery is permitted. The Commission may prohibit or limit discovery where the Commission determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal.
- B. Parties shall exchange, review, discuss and agree upon documents and witness' lists no less than two (2) weeks prior to any scheduled pre-hearing conference or hearing, unless another time period is specified in the hearing or pre-hearing order. Disagreements that cannot be resolved shall be brought to the attention of the Commission for determination.
- C. Witness lists shall include a list of all witnesses, a summary of each witness' testimony and a statement establishing how the testimony will contribute to the issue of the appeal.

**Section 24: SUBPOENAS**

- A. A request or motion shall be made in writing to the Commission for a subpoena to require a person to appear and testify at a hearing, or for a person to produce specified

documents or other physical exhibits at a pre-hearing conference or at hearing.

- B. A request for a subpoena for a person shall: include the person's name and address; show the relevance of that person's testimony; and, demonstrate the reasonableness of the scope of subpoena sought.
- C. A request for a subpoena for documents or other physical exhibits shall: include the name and address of the person who is to produce the documents or other physical exhibit; specify the materials to be produced; indicate the relevance of the materials subpoenaed to the issues on appeal; and, demonstrate the reasonableness of the scope of the subpoena sought.
- D. The party requesting the subpoena shall be responsible for serving the subpoena and for any associated cost. An affidavit or declaration of personal service or of mailing shall be submitted to the Commission as proof of that service.
- E. Except as otherwise allowed by the Commission, subpoenas shall be served no less than seven (7) days prior to the appearance or production ordered.
- F. Any motion to limit or quash (i.e., vacate or void) a subpoena shall be filed with the Commission within three (3) business days of receipt of the subpoenas or such other time as specified by Commission.
- G. Requests for subpoenas and the rulings upon such requests may be made ex parte to the Commission unless otherwise ordered by the Commission.

## **Section 25: PARTIES' RIGHTS AND RESPONSIBILITIES**

- A. Each party in an appeal proceeding shall have the right to: due notice of hearing, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights determined by the Commission as necessary for the full disclosure of facts and a fair hearing.
- B. Parties have the right to be represented by an attorney. Representation by an attorney is not required.
- C. Where a party has designated a representative, the representative shall exercise the rights of the party.
- D. All parties, witnesses, and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

**Section 26: DEFAULT**

The Commission may dismiss an appeal by an order of default where the appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

**Section 27: HEARING FORMAT**

- A. Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Commission to make the relevant evidence most readily and efficiently available to the Commission and to provide the parties a fair and efficient opportunity for hearing.
- B. The order of hearing is generally as follows:
  - 1. Commission's introductory statement (including type of appeal and CSC file number)
  - 2. Introduction of Parties
  - 3. Parties' opening statements (optional)
  - 4. Appellant's presentation of evidence
  - 5. Department's presentation of evidence
  - 6. Rebuttal
  - 7. Closing argument of parties.
- C. The order of hearing may be modified or a different order established, as the Commission deems necessary for the efficient, clear, and fair presentation of evidence. The order of the hearing may also be modified as agreed upon by the parties with approval of the Commission.
- D. The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

**Section 28: COMMUNICATIONS FROM NON-PARTIES**

- A. In the event written communications are received by the Commission or the

Commission's Secretary from non-parties regarding a pending matter, such communications absent good cause will not be reviewed or considered by the Commission or the Commission's Secretary and its receipt will be promptly disclosed by the Commission at hearing for the review of all parties.

- B. The Commission, after considering the objections of the parties and determining that undue delay or prejudice will not result, may permit relevant oral or written statements or both, by persons who are not parties or called by parties as witnesses. Limitations may be imposed on the length of such statements and cross-examination by the parties may be permitted for oral statements.

### **Section 29: BURDEN OF PROOF**

- A. In cases of termination, Demotion, or Suspension, the Department must show by the applicable standard of proof that the Department's decision or action was with justifiable cause. In other cases, the Appellant bears the burden of proof.
- B. Unless otherwise provided by applicable ordinance(s), statute, or case law, the standard of proof is a preponderance of the evidence.

### **Section 30: COMMISSION DECISION**

- A. ISSUANCE:** The Commission shall issue a written decision and provide a copy of that decision to each party representative within fifteen (15) days from the close of the record.
- B. JUDGMENT ON RELIEF REQUESTED:** Unless proscribed by applicable ordinance(s), the Commission's decision may affirm, reverse, modify, or remand the Department's decision or other action that is the subject of the appeal.
- C. CONTENTS:** Decisions of the Commission's appeals shall include, but not be limited to, a statement regarding the following:
  - 1. Background or Introduction: The introduction shall include the nature and background of the proceeding, including identification of party representatives participating in the hearing, pre-hearing determinations, and other similar information.
  - 2. Finding: The individual facts that the Commission finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and those matters officially noticed. This may include recitation of relevant provisions of ordinance, other regulation, or case law.

3. Conclusion: Legal and factual conclusions based upon specific provisions of law and the findings of fact.
4. Decision: Commission's decision as to the outcome of the appeal (affirms, modify, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record.
5. Post Decision Procedures: Information regarding subsequent procedural step(s), if any, for appealing the Commission's decision.

The decision may also include an order disposing of contested issues and/or directing parties to take actions consistent with the decision.

### **Section 31: COMMISSION'S DECISION**

If the Commission decides to hear an appeal, the Commission shall issue its decision within thirty (30) days of the close of record. The Commissioners' may sign the decision or authorize the Commission's Secretary to sign the decision.

### **Section 32: DELIBERATION**

The Commission may deliberate on an appeal in closed session. No person other than the Commission's Secretary, necessary Commission staff and legal counsel for the Commission shall be present.

### **Section 33: SANCTIONS**

In the interest of justice, to reduce injury to a disadvantaged party, or to secure obedience to its orders, the Commission, in its discretion and for good cause, may impose sanctions as authorized by Charter and Ordinance.

### **Section 34: RECONSIDERATION OF COMMISSION DECISION**

A party may move for reconsideration of a Commission decision only on the following basis:

- A. Irregularity in the proceedings of Commission or opposing party, or any order of the Commission, or abuse of discretion, by which such party was prevented from having a fair hearing;
- B. Misconduct of prevailing party;
- C. Accident or surprise which ordinary prudence could not have guarded against;

- D. Newly discovered evidence, material for the party making the application, which that party could not with reasonable diligence have discovered and produced at the hearing;
- E. That there is no evidence or reasonable inference from the evidence to justify the decision of the Commission, or that it is contrary to law;
- F. Error in law occurring at the hearing and objected to at the time by the party making the application; or
- G. That substantial justice has not been done.

Such motion shall be filed with the Commission within ten (10) days of the Commission's final decision.

### **Section 35: JUDICIAL REVIEW**

A final decision, judgment or order of the Commission may be appealed by a party to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the Commission, within thirty (30) days after the entry of such judgment or order, a Written Notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the Commission affecting or relating to such judgment or order, be filed by the Commission with such court. The Commission shall, within ten (10) days after the filing of such notice, make, certify and file such transcript with such court.

## **VI. CLASSIFICATION**

Section 1: Procedure and Effect. The Appointing Authority shall classify all positions in the Classified Service, assigning to each Class of position the appropriate title, experience, knowledge, capacity, skill, education, and other qualifications including the minimum prerequisites, to be required for appointment. The classification plan shall be so developed and maintained that all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same Class, and that the same schedules of Compensation shall be made to apply with equity under like working conditions to all positions within the Class. The classification plan so developed shall be transmitted to the Commission for adoption.

Section 2: New Positions and the Classification Plan. The Appointing Authority intending to establish a new position or positions shall notify the Commission and, except as otherwise provided by law or these rules, no person shall be appointed or employed for any such position until it has been properly classified as herein provided and an appropriate Eligibility List established therefor.

Section 3: Reclassification. Positions whose duties have changed materially so as to necessitate reclassification shall be allocated to a more appropriate Class, whether new or already created, in the same manner as originally classified. No reclassification to a Class having either a greater or a lower maximum salary range shall be effective, however, unless recommended jointly by the Appointing Authority and the Commission's Secretary and unanimously approved by the Commission. Nor shall reclassification be used for the purpose of avoiding the restrictions surrounding Demotions and Promotions.

## **VII. VACANCIES**

Section 1: Announcements of Vacancy. When a vacancy occurs and/or an appropriate Eligibility List has expired or is about to expire, it is the responsibility of the Commission's Secretary to provide Public Notice of the position opening. Persons interested in participating in the competitive examinations shall complete applications as instructed on the vacancy announcement.

Section 2: Rejection of Application. Whenever an applicant or Eligible is found

- to lack any of the minimum prerequisites established for the Class of position; or
- to have made false statement of material facts in his/her application; or
- to have practiced deception or fraud in securing eligibility; or
- to have otherwise violated the provisions of law or these rules;

the Commission's Secretary may:

- refuse to accept the application or after acceptance may reject the application; or
- after examination disqualify the successful candidate; or
- remove the name of the successful candidate from the Eligibility List; or
- refuse to certify the name of a successful candidate.

The cause for Rejection shall be entered upon the application form or record of the candidate and filed in conformity with these rules.

## **VIII. EXAMINATIONS**

Section 1: Conduct May Be Delegated. The Commission's Secretary shall arrange for the use of public buildings and equipment for conducting examinations and shall designate the person or agency who shall conduct and score the examination.

Section 2: Qualifying Grade. Final grades shall be based upon all factors of the examination, including educational requirements, training, experience, and other qualifying elements as shown in the application of the candidate or other verified information. Failure in one part of an examination may be grounds for declaring the applicant as failing in the entire examination, or as disqualified for subsequent parts of an examination.

Section 3: Identity of Examinees. The identity of persons taking competitive written tests may be concealed from the examiners by the use of an identification number.

Section 4: Assessment Lab Interview. Whenever the number of applicants successfully passing the requisite examinations exceeds the number of positions open, interviews may be limited for each position to be filled. The applicants to be interviewed shall be those achieving the highest combined scores in the written examination and physical agility test.

Section 5: Veteran's Scoring Criteria. The names of persons successfully passing all parts of the examination process shall be listed in order of their earned ratings except that veterans (as defined in RCW 41.04.007) shall be given a scoring criteria status by adding to the passing mark, grade or rating only, based upon a possible rating of 100 points as perfect, a percentage in accordance with the following:

- 1) Ten percent to a veteran who served during a period of war or in an armed conflict (as defined in RCW 41.04.005) and does not receive military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations.
- 2) Five percent to a veteran who did not serve during a period of war or in an armed conflict (as defined in RCW 41.04.005) or is receiving military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations.
- 3) Five percent to a veteran who was called to active military duty from employment with the State of Washington or any of its political subdivisions or municipal corporations. The percentage shall be added to promotional examinations until the first Promotion only.

All veterans' scoring criteria may be claimed upon release from active military service.

Section 6: Notification of Results. Each applicant shall be notified by mail of the results of the examination and of his/her final ranking.

Section 7: Promotional Examinations. As the needs of the Department may require, promotional examinations may be conducted from time to time and may include evaluations of prior service, accomplishments in special training courses, or other

pertinent areas. All candidates for Promotion must possess the minimum prerequisites as set forth in the specifications of the Class to which Promotion is sought. The Appointing Authority, after consideration of the Eligible candidates from the promotion list, shall have the authority to appoint one of the top three applicants on the Eligibility List for each position declared vacant.

Section 8: Appeals. An applicant who believes that there is an irregularity in the content or procedure of the exam may file an appeal with the Commission's Secretary.

All appeals must be in writing and must include a description of the specific item the applicant believes was in error, the reasons why the applicant believes the item is in error, and the correction the applicant believes should be made.

In order to be considered valid, the Commission's Secretary must receive the appeal within ten (10) days of the administration of that step (i.e., written exam, Assessment Center exercise) of the exam process. No Eligibility List will be certified by the Civil Service Commission until all appeals are decided upon by the Commission.

Upon receiving a timely appeal from an applicant, the Commission's Secretary will notify the appropriate Fire or Police Administration. Upon notification, the Fire or Police Administration will have three (3) business days to prepare and submit a written response to the Commission's Secretary regarding the applicant's appeal. The Consultant(s) administering the testing process may assist the Administration in preparing the response.

Upon receipt of the Administration's response, the Commission's Secretary shall schedule a Commission meeting at their earliest convenience—ideally within two (2) business days. Copies of all appeal materials shall be forwarded to the Commission, and to the individual filing the appeal in advance of the meeting. The appeal will be handled per Article V: Hearings, Appeals and Investigations.

If no appeals are received, the Commission meeting to certify an Eligibility List shall be scheduled as soon as possible after ten (10) days from the conclusion of the testing process. After certification, applicants may review the assessor notes/results from the exam.

## **IX. ELIGIBLE LISTS**

Section 1: Order of Names on Lists. Names on Eligible lists for a Class shall be in order of preference according to final earned rating in the examination, including veteran preference credits, except that Employees laid off from a position in that Class shall be given prior preference over original applicants in inverse order of Layoff. Whenever two

or more persons have equal claim to a position on a list, their names shall be arranged according to the date of application, and if the same, then alphabetically.

Section 2: Effective Life of Lists. Eligibility lists shall become effective upon the approval thereof by the Commission's Secretary's signature to the effect that the list was legally prepared and represents the relative rating of the names appearing thereon. Eligibility lists, including promotional lists, shall remain in effect for not more than twelve months with an option to extend the life of the list for an additional six months or unless otherwise ordered by the Commission.

Section 3: Removal of Names from Lists. The name of any person appearing on an Eligible list shall be removed by the Commission's Secretary if the candidate fails to respond to a notice of certification, or if he/she cannot be located by postal authorities within thirty (30) days. In case of such removal, the Commission's Secretary shall notify in writing the candidate affected at his/her last known address. The name of a person so removed may be reinstated only if satisfactory explanation of the circumstances is made to the Commission in writing within two weeks from the notification date. The names of persons on promotional Eligibility Lists who resign from the service shall be automatically dropped from such lists.

Upon determination by the Appointing Authority that an Eligible applicant, whose name appears on a certified list, does not satisfy the qualifications for employment in a covered position, the City shall notify the Commission and the applicant stating in general terms its reasons for such determination. The Commission shall remove the name of the particular applicant from the Eligibility List unless the applicant, within ten (10) days of service or delivery of said notice of his disqualification, appeals said determination to the Commission. The appeal will be handled per Article V: Hearings, Appeals and Investigations.

Section 4: Notice of Change of Address. Each person on an Eligibility List shall file notice of any change of name or address with the Commission's Secretary within twenty (20) days of the date the change occurs. Failure to do so may cause removal of his/her name from the list.

Section 5: Revocation of List. An employment or promotional list may be revoked and another examination ordered only upon recommendation of the Commission's Secretary and approval of the Commission. Such action is deemed advisable on account of fraud, errors, or of obviously inappropriate standards prescribed in connection with the examination and of plainly inadequate results obtained therefrom. No list shall be altered or revoked except upon Written Notice to all persons whose standing may be affected and upon entry of the reasons in the minutes of the Commission.

## **X. APPOINTMENT**

Section 1: Type of Appointment. All vacancies or new positions(s) in the Classified Service shall be filled by entry-level appointment, lateral-entry appointment, Temporary Appointment, Reemployment, Promotion, Transfer or Demotion.

An entry-level appointment is typically made when there is a planned vacancy or new position(s) with adequate time allowed for academy and on-the-job training.

A lateral-entry appointment (as defined below in Section 3) typically occurs when there is an immediate and pressing need to fill a vacancy, i.e., sudden resignation, injury, etc. Another reason would be when the Appointing Authority desires to hire a more experienced Firefighter or Police Officer to better serve the Department's particular staffing needs at that time.

Separate Eligibility Lists shall be maintained for entry-level candidates and for lateral-entry candidates.

Section 2: When Vacancies Occur. When a vacancy occurs, the Appointing Authority shall determine which of the above manners of appointment shall be used to fill the opening and communicate that method to the Commission's Secretary. The Commission's Secretary shall then certify to the Appointing Authority the names of the top three (3) candidates which appear on that specific Eligibility List. The Appointing Authority, after consideration of those three candidates, shall have the authority to appoint one such candidate to the vacant position.

If a candidate under lateral-entry employment consideration does not satisfy the qualifications for employment, the Commission shall be notified and the candidate's name shall be removed from the Eligibility List per Article IX, Section 3. The Commission's Secretary/Examiner then once again certifies the names of the top three (3) candidates to the Appointing Authority. If there are fewer than three (3) names on the Eligibility List, or the list becomes exhausted, then the Appointing Authority is authorized to utilize the entry-level Eligibility List in place at that time.

In filling vacant positions, the Appointing Authority shall attempt to make the appointment from the method (i.e., entry-level, lateral entry, etc.) selected at the outset in order to maintain integrity of the "Rule of Three" approach used in filling Civil Service vacancies.

Section 3: Requirements for Lateral Entry.

Lateral Entry Requirements – Police Officer

Lateral entry means entry into the Police Department by an applicant already trained and experienced in law enforcement at the Police Officer level.

The applicant must have successfully completed a Police Basic Training Academy curriculum that meets Washington Administrative Code (WAC) 139-05-210 requirements, and is recognized by the Washington State Criminal Justice Training Commission in their reciprocity summary. They must have a minimum of 12 months full-time service (current employment preferred) as a sworn municipal or county Officer. Must be at least 21 years of age at the time of the written test and a U.S. citizen and have or be able to obtain a valid Washington State Driver's License by time of hire.

A candidate must successfully pass a fitness ability test, and an oral board interview. Prior to appointment, the candidate must also pass a background investigation, a polygraph/CVSA (Computer Voice Stress Analysis) exam, a psychological exam, and a medical exam.

Lateral Entry Requirements – Firefighter

Applicants for lateral entry into the Kirkland Fire Department shall have no less than two years' experience and have served for a minimum of one (1) out of the past three (3) years in the capacity of a full-time paid (career) Firefighter with an agency providing emergency medical and fire protection services. The applicant shall have graduated from a training academy which meets current at time of hire NFPA (National Fire Protection Association) Firefighter I requirements. The applicant must also possess a current E.M.T. – D. (Emergency Medical Technician - Defibrillator) level certification within the State of Washington, or equivalent certification from outside the State of Washington that is transferable and acceptable to the Medical Director of King County Emergency Medical Services, King County, Washington.

A candidate shall be required to successfully pass a physical ability test, an oral interview, and a Chief's interview. In addition, prior to confirming the conditional job offer, the candidate must successfully complete a medical examination, a psychological examination, and a reference/background check, and any other testing or check as might be referenced within or required by a Collective Bargaining Agreement.

Candidates applying for the position of lateral-entry Firefighter who receive an appointment to Firefighter from such list shall have subsequent Promotions based upon the requirements of the agreement between the City of Kirkland and IAFF Local 2545.

Section 4: Certification and Duration of Eligibility Lists. When testing is conducted on a continuous basis, the Eligible candidates produced by the most current testing cycle will be merged into the current Eligibility List in rank order according to their overall score as compared to the scores of those already on the current list. The Eligibility List will be continually updated as a result of the continuous testing process.

Candidate names appearing on Eligibility Lists for positions in the Police and Fire services shall remain effective for the following periods:

	<u>FIRE</u>	<u>POLICE</u>
1) Entry Level:	12 months	12 months
2) Promotional:	per contract	12 months
3) Lateral Entry:	12 months	12 months

Section 5: Procedure. All vacancies in the Classified Service shall be filled either by Original appointment, Temporary Appointment, Reemployment, Promotion, Transfer or Demotion. Upon being advised by the Appointing Authority as to the type of appointment to be made, the Commission's Secretary shall, if there are Eligible candidates on a list which the Commission's Secretary deems valid, certify to the Appointing Authority the names of the top three (3) persons. The Appointing Authority, after consideration of those persons so certified, shall have the authority to appoint one such person to the position declared vacant.

Section 6: Failure to Respond. Whenever a candidate whose name has been certified for appointment fails to answer an inquiry of the Commission's Secretary, or of the appointing official, within five (5) business days following the mailing of such notice, or fails to accept an appointment when offered in person, or by telephone, within two (2) business days, he/she may be deemed to have declined the appointment. If a candidate accepts appointment within the period outlined and fails to present himself/herself for duty within three (3) business days of the date specified in the notice, he/she may be deemed to have declined appointment.

Section 7: Dropping Name from List. Any person who declines certification or appointment or who fails to report shall be dropped from the list on which his/her name appears, unless he/she shows satisfactory cause to the Commission for his/her action in writing within two weeks of the notification date.

Section 8: Emergency Appointment. To meet the immediate requirements of an emergency condition which threatens life or property, appointing authorities may employ

any person or persons whom they are legally empowered to appoint without restriction of Civil Service law and rules. Such employment shall be limited to the duration of the emergency period and shall in no event exceed ten (10) days.

Section 9: Provisional Appointment. Provisional Appointments may be made only in the absence of lists appropriate for the position to be filled. In such cases, the Appointing Authority may select a person meeting the minimum prerequisites for the Class to which the position is allocated for nomination to the Commission's Secretary. The Commission's Secretary shall interview, or may use any other methods to determine whether or not the nominee possesses the necessary experience, training, and other prerequisites for the position. If satisfactory, his/her name shall be certified for the position, to the Appointing Authority for appointment, and his/her application accepted for an examination to establish an Eligibility List for the position. As soon as possible, the Commission's Secretary shall announce and conduct the examination and shall certify a name for regular appointment in the specified manner. No Provisional Appointment shall be continued longer than four months and no person appointed provisionally shall be again appointed in the same year unless he/she qualified by competitive examination and is appointed in the specified manner. No time spent as a provisional appointee shall be credited to the probationary period, or be utilized for computing any privilege accruing under the Civil Service Ordinance or these rules.

Section 10: Temporary Appointment. Temporary Appointment is appointment from an employment or promotional list in the usual manner, to fill a position for a duration not to exceed four months. In making such an appointment, the Appointing Authority shall submit a requisition to the Commission's Secretary in the manner provided for regular appointment but shall indicate the time it is estimated the position will terminate. The Commission's Secretary shall notify the person or persons appearing on the appropriate Eligibility List, indicating the nature of the position and its duration, to learn who may be willing to accept Temporary Appointment. The most qualified person or persons willing to accept shall be certified for appointment. No Temporary Appointment shall be continued and no person shall be employed on a temporary basis for more than four months in any one year. Temporary service shall not be credited on any probationary period or be used in computing any privilege accruing under the Civil Service Ordinance or these rules.

Section 11: Limited Appointment. A Limited Appointment is defined as an appointment established to meet current and future work needs in unusual and extraordinary circumstances requiring additional personnel resources. A Limited Appointment is made in the usual manner from a valid Eligibility List. As such, the appointee filling a limited appointment is required to meet the minimum qualifications for the classification. Duration of a Limited Appointment shall not exceed twelve (12) months, unless extended by approval of the Commission. The acceptance of a Limited Appointment position shall not affect an appointee's standing on an Eligibility List for regular appointment, nor shall it

create entitlement to a regular position for the appointee. No time spent as a limited appointee shall be credited as to time served in regard to the regular position.

## **XI. PROBATIONARY PERIOD**

Section 1: Length of Period. No person shall be finally appointed to a position until he/she has satisfactorily served a probationary period for one year. The Commission may extend the probationary period by an additional six months upon recommendation of the Appointing Authority.

Section 2: Rejection of Probationer. During the probationary period, the Appointing Authority at its discretion may reject a probationary Employee. Notice of Rejection with the reason therefor shall be given the probationer and a copy forwarded to the Commission's Secretary.

Section 3: Termination of Probationary Status. If at the end of the probationary period the Appointing Authority has not notified the Commission that the person appointed has been discharged, such appointment shall achieve Regular Status.

Section 4: Rejection after Promotion. A promotional appointee who is rejected during the probationary period from the position to which he/she was promoted shall be restored to the position from which he/she was promoted if the position is available.

## **XII. TRANSFERS, LAYOFFS AND REDUCTIONS**

Section 1: Transfers. Transfers consist of the change of an Employee from one position to another position of comparable Class. This does not include a Promotion from a lower paying position to a higher paying position, nor does it include a Demotion from a higher paying position to a lower paying position. Promotions and/or Demotions may be accomplished only in the manner provided in these rules. No increase nor decrease in salary shall be made upon Transfer. Transfers of Employees from one Department or organization unit to another Department or organization unit may be made with the approval of the appointing authorities concerned and the Commission's Secretary. An Appointing Authority may at any time transfer an Employee from one position to another within the same Class under his/her jurisdiction.

Section 2: Layoff. Whenever an Appointing Authority contemplates a reduction of staff because of shortage of funds, lack of work or material, or reorganization of the Department, notice shall be sent to the Commission's Secretary, who shall cooperate with the Appointing Authority in determining the most advisable procedure and readjustment as to personnel and reassignment of duties. When it is decided which positions are to be

discontinued, Employees holding positions with a Class shall be laid off in inverse order to their length of service. The last hired will be the first to be laid off.

Notice of Layoff shall be given the Employee concerned and the Commission's Secretary at least one week before the effective date thereof. Employees laid off shall have their names placed on the Eligible list of the Class to which their position was allocated in accordance with these rules.

Section 3: Reductions. When the quality of work of an Employee is of low service value and does not conform to required standards, the Appointing Authority may reduce the salary of the Employee within the salary range established for the Class. The Appointing Authority shall give the Employee and the Commission's Secretary Written Notice of his intention at least five (5) business days before the effective date thereof.

Section 4: Appeals. Any Regular Employee who may have been laid off or reduced under Section 2 or 3 of this Article XII, may appeal to the Commission. The procedure for such appeal shall be as set forth in Article V. If the Commission finds that such Layoff or reduction is irregular or made in bad faith, it may order reinstatement.

Section 5: Exempt or Non-covered Positions. When a Civil Service covered Employee is appointed to an exempt or non-covered position with the City, that covered Employee shall serve in that position subject to the tenure rules pertaining to the exempt or non-covered position, and the Employee's removal, Demotion, or Suspension (or any other disciplinary action) with respect to that position shall not be subject to Civil Service Rules and Regulations.

Notwithstanding the foregoing, the employment status of such covered Employee, as a Civil Service covered Employee of the City, shall continue and the Employee shall maintain the same Civil Service rank or grade held by such Employee immediately prior to appointment to the exempt or non-covered position.

Upon leaving such exempt or non-covered position for any reason, voluntary or otherwise, such covered Employee shall be entitled to –

- A. Be returned to any existing available or vacant classified position within the Department of equivalent grade or rank to the highest ranking position in which such covered Employee attained regular Civil Service status; or
- B. In the event such a position is not available, nor can be made available by the Appointing Authority except by voluntary termination or Demotion of another covered Employee, then said covered Employee will be appointed to the highest ranking position in which said covered Employee previously attained Regular Status. If there is more than one position at said grade or rank, then the least senior Employee occupying such position shall be bumped. A junior covered Employee displaced by this process may then similarly bump down the ranks based on seniority. A covered Employee shall be paid at the rate applicable to the position

occupied if appointment to the position occupied resulted from bumping down as detailed in this subparagraph. For the purpose of this Article, "seniority" means total time as a civil service covered Employee of the City of Kirkland.

Provided, however, nothing in this Article shall be deemed to prevent the Appointing Authority from terminating from employment with the City such covered Employee while holding a covered or non-covered position with the City, but only pursuant to the termination provisions of the Civil Service Rules and Regulations.

### **XIII. SUSPENSIONS, DEMOTIONS, DISCHARGES**

Section 1: Pre-disciplinary Hearing Required - Standards. An Appointing Authority shall provide and arrange for a pre-disciplinary hearing prior to Demotion, Suspension without pay or Discharge of any covered Regular Employee. The pre-disciplinary hearing process shall be in accordance with the following:

- A. A Regular Employee shall be provided in writing with a notice of the charge and an explanation of the evidence. The Regular Employee shall be given an opportunity to respond to the charges orally or in writing as to why the appointing authority's proposed action should not be taken.
- B. The Regular Employee may have legal counsel or union representation present at a pre-disciplinary hearing, one of whom can represent during the proceedings.
- C. The Appointing Authority's explanation of the evidence supporting the charge at the pre-disciplinary hearing shall be sufficient to apprise the Regular Employee of the basis for the proposed action. This Article, however, shall not be construed to limit the Appointing Authority at subsequent hearing from presenting a more detailed and complete case including presentation of witnesses and documents not available at the pre-disciplinary hearing.
- D. Should the Appointing Authority determine to discipline following the pre-disciplinary procedure Written Notice of discipline shall be given to the Regular Employee. Such notice shall include the charges against the Employee and a general statement of the evidence supporting the charges.
- E. The Commission shall not consider on any appeal hereinafter provided for, any basis for disciplinary action not previously presented to the Employee.

Section 2: Suspension. An Appointing Authority, for disciplinary purposes, may suspend a Regular Employee without pay for a period not to exceed thirty (30) days in any twelve-month period. Such action shall immediately be reported to the Commission's Secretary. A suspended Employee may appeal within ten (10) days by written request for a hearing.

The Commission shall grant a hearing to determine whether or not the Suspension was made in good faith for cause.

Section 3: Demotion and Discharge. An Appointing Authority may demote or Discharge a Regular Employee for inefficiency or other just cause. In all such cases, written reason therefor shall be furnished the Employee and the Commission's Secretary at least five (5) business days prior to the effective date of the Demotion or dismissal. Within ten (10) days after the effective date of the dismissal or Demotion, the Employee may file a written request for hearing before the Commission. The Commission within fifteen (15) days after receipt of the request shall hold, or provide for holding, a hearing at which the Employee and the Appointing Authority shall have the privilege to be heard either personally or through counsel or union representative. All hearings shall be held in the manner required by KMC Chapter 3.54 and shall be informal. Such hearings shall be conducted with the object of obtaining the facts in the matter and of arriving at a just and equitable conclusion as to whether or not the Demotion or Discharge was made for religious or political reasons or for cause in good faith. Within ten (10) days of the conclusion of the hearing, the Commission shall render its decision. If the decision orders a modification of the Demotion or Discharge, it shall be accompanied by a supporting statement showing wherein the Commission believes religious or political prejudice was practiced, poor faith exemplified, or cause was lacking.

Section 4: Cause for Discharge, Suspension or Demotion. The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

- 1) Incompetency, inefficiency or inattention to or dereliction of duty;
- 2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or Employee of the City of Kirkland, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the Employee to properly conduct himself/herself; or any willful violation of the Civil Service Ordinance, or the rules and regulation adopted pursuant thereto;
- 3) Mental or physical unfitness for the position which the Employee holds;
- 4) Dishonest, disgraceful, immoral or prejudicial conduct;
- 5) Drunkenness or use of intoxicating liquors, controlled substances, narcotics, or any other drug, liquid or preparation to such extent that the use thereof interferes with or precludes the Employee from properly performing the function and duties of any position under Civil Service;
- 6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

- 7) Any other act or failure to act which in the judgment of the Civil Service Commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

#### **XIV. LEAVES, REDUCTION OF CLASS, AND RESIGNATION**

Section 1: Leaves of Absence Without Pay. Subject to the approval of the Commission's Secretary, an Appointing Authority may grant a Regular Employee leave-of-absence without pay for a period not to exceed six months. No leave without pay shall be granted except upon written request of the Employee. Whenever granted, such leave shall be in writing and signed by the Appointing Authority; a copy shall be filed with the Commission's Secretary. Upon the expiration of a regularly approved leave without pay, the Employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an Employee on leave to report promptly at the expiration of a leave shall be cause for Discharge.

Section 2: Vacations. Vacation leave with pay shall be granted to all Regular Employees in the Classified Service in accordance with the general Personnel Rules and ordinances of the City of Kirkland.

Section 3: Sick Leave. Sick leave with pay shall be granted to all Regular Employees in the Classified Service in accordance with the general rules and ordinances of the City of Kirkland governing sick leave. All Employee under State of Washington LEOFF I retirement system are exempt from this section.

Section 4: Reduction of Class. An Employee desiring reduction from a presently held position to one of a lower rank in which the Employee has established previous regular standing, shall file a written request with the Commission's Secretary. The reduction request must be approved by the Fire Chief/Police Chief (or designee), and subsequently reported to the Civil Service Commission. The approved reduction shall take effect on the date specified by the appropriate Department Chief. At this time, the reduction shall be considered in effect with the Employee holding regular standing in the lower rank. The Employee shall have one year to seek reinstatement under this section. If the Employee does seek reinstatement, he/she must provide the Fire Chief/Police Chief with a written statement detailing the resolution of the issues that led to the initial reduction request. The Fire Chief/Police Chief shall subsequently report to the Civil Service Commission and make a recommendation as to whether the Employee should be reinstated to the previously held position. Additionally, the Employee seeking reinstatement must possess the current minimum qualifications for the position sought. Providing these conditions are satisfied, and the Commission approves the Fire Chief / Police Chief recommendation, the Employee shall then be placed on a supplemental list for a period not to exceed one year. During this time, an Employee(s) on this supplemental list may be considered in

addition to candidates on the regular Eligibility List by the Appointing Authority when an opening occurs.

Section 5: Reinstatement. Within one year a resigned employee, with the approval of the appointing authority and with concurrence of the Commission, may be reinstated in the position from which he/she resigned, if vacant, or in a vacant position in the same or comparable class, or with the approval of the Commission, may be placed on the eligibility list for the class to which his/her former position was allocated. No person resigning during the probationary period shall be reinstated, but with the approval of the Secretary and Chief Examiner, may be placed on the list from which he was certified and appointed.

## **XV. RECORDS AND REPORTS**

Section 1: Examination Records. The Commission's Secretary shall maintain files of all examinations for entry level and promotional Eligibility Lists.

Section 2: Access of Public Records. The Commission's Secretary shall have access to all Department and public documents and records, the examination of which will aid him/her in the discharge of duties.

Section 3: Records – Open to the Public. All certified lists shall be open to the public during office hours and may be inspected upon application to the Commission's Secretary.

Section 4: Destruction of Records. The preservation or destruction of records of the Civil Service Commission shall be according to RCW Chapter 40.14, "Preservation and Destruction of Public Records."

Section 5: Reports. Appointing authorities shall report to the Commission's Secretary in writing any appointments or changes in the status of personnel and shall report from time to time additional information covering the competitive services. Any performance report or rating shall be available for inspection by the Employee concerned who may discuss it with the official making the report or rating and may file a statement in explanation of any advance report or rating. This statement shall be appended to the report or rating and shall be made a part of the Employee's record.

## **XVI. COMPLAINTS**

Any person having an interest therein may file with the Commission's Secretary a complaint against any decision, action of the Appointing Authority or others involving administration of these rules, or a petition in support of any privilege or right involving personnel matters. The Commission's Secretary, if he/she is not directly a party, shall

investigate and attempt to adjust the matter and shall report the complaint with any explanation of the facts and his/her recommendations to the Civil Service Commission. The Commission may investigate further or hold a hearing and may issue recommendations or, if authorized, a directing order, or may allow appeal from any party to the complaint. If a complaint to which the Commission's Secretary is a party is made, he/she shall file a statement of the facts and an explanation of his/her action with the Commission, which may investigate, grant hearing and issue recommendations, or, if authorized, a directing order.

## **XVII. AMENDMENTS**

After adoption, these rules may be amended by the Commission. Public Notice of proposed revised rules shall be given and a vote thereon shall be taken at a regular meeting. If approved by at least two members of the Commission, the amendment shall be adopted and shall be in immediate effect.

Amendments:

Article X, Police/Fire Lateral Entry language	Added, May, 2005
Article X, Section 7: Limited Appointment	Added June, 2007
Article VIII, Section 5: Veteran's Scoring Criteria	Amended, October, 2009
Comprehensive Revisions and Edits	Amended, May, 2015
Article X, Section 3: Requirements for Lateral Entry	Amended, April, 2017