

from the office (name of office) by recall? Beneath the aforesaid question shall be placed the names of the candidates to fill the vacancy. The name of the officer whose removal is sought shall not appear on the ballot as a candidate to succeed himself.

(g) In any such election, if a majority of the votes cast on the question of removal be affirmative, the candidate receiving the highest number of the votes cast shall be declared elected and if more than one councilman is removed at such election the candidates receiving the highest number of votes, equal in number to the number of councilmen removed, shall be declared elected. The officer whose removal is sought shall thereupon be deemed removed from office upon the announcement of the official canvass of the election. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. In case the person or persons receiving the highest number of votes shall fail to qualify within ten (10) days after receiving notification of his election, the office shall be deemed vacant. The question of the removal of any officer shall not be submitted to the electors a second time during the same term of office, until after the expiration of one year from the determination of the first application for his removal. The method of removal herein provided is cumulative and additional to such other methods as may be provided by law.

(Acts 1972, Ch. 260, § 1; Acts 1974, Ch. 256, § 1)

ARTICLE XI. PERSONNEL [CIVIL SERVICE]

Sec. 11.01. Civil service commission: Creation and term of office.

There shall be in the city a civil service commission, which shall be composed of three (3) persons of known sympathy with the merit system.

Notwithstanding the provisions of section 15.1-7.1 of the Code of Virginia, the civil service commission shall retain and exercise all of the power and authority granted in this article, including the power or review of disciplinary ac-

tions of the appointing authority. These powers shall not be exercised by any other administrative body.

The members of such commission shall be appointed by the judges of the circuit court for the City of Portsmouth. No person shall be appointed a member of such commission who is not a citizen of the United States, and a resident of the City of Portsmouth, or who holds any office or post of employment under said city, or the State of Virginia or any political subdivision thereof, or any public service corporation owned by said city or state, other than the office of notary public, or who is an officer or member of any national, state or local committee of any political party, or an officer of such party, or who is an officer or member of a committee of a partisan political club, or an officer of such club, and who is known to be not in sympathy with the merit system. Such appointments shall be made without regard to race, color, religion, sex or national origin.

The term of office of such commissioners shall be four (4) years. As and when the terms of office of the commissioners in office prior to the effective date of this charter shall expire, their successors shall be appointed for terms of four (4) years. Any vacancy occurring after such effective date shall be filled by such judge for the unexpired portion of the term of the commissioner whose office became vacant.

Any member of such commission may be removed from office for incompetency, incompatibility, or dereliction of duty, or malfeasance in office, or for injecting, or attempting to inject, political, religious, racial or other unlawful discriminatory influence into the administration of the provisions of this article, or for other good cause, by the circuit court for the City of Portsmouth; provided, however, that no member of the commission shall be removed until charges have been preferred in writing, due notice and a full hearing had.

The members of such commission shall devote due time and attention to the performance of the duties herein specified and imposed upon them. Two (2) members of such commission shall constitute a quorum and the votes of any two (2) members of such commission concurring shall be sufficient for the decision of all matters and the

transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this article.

(Acts 1974, Ch. 256, § 1; Acts 1975, Ch. 278, § 1)

Sec. 11.02. Functions and duties.

The commission shall hold regular meetings upon call of the chairman and at least once a quarter and such additional meetings as may be required for the proper discharge of their duties.

- (a) It shall be the duty of the civil service commission to make suitable rules and regulations not inconsistent with the applicable provisions of law and this article. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges shall be made, and may also provide for any other matters connected with the general subject or [of] personnel administration, and which may be considered desirable to further carry out the general purposes of the civil service provisions of this article, or which may be found to be in the interest of good personnel administration. The rules and regulations and any amendments thereof shall be printed, mimeographed or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.
 - (b) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and of manual skill.
 - (c) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the civil service provisions of this article, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions and employments affected hereby, and ascertain whether the civil service provisions of this article and all such rules and regulations are being obeyed.
- Such investigations may be made by the commission or by the commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission, as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuse exist, or setting forth in concise language, in writing, the necessity for such investigation.
- (d) In the course of such investigation or hearing as hereinafter provided for, the commission or designated commissioner, or secretary, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents and accounts appertaining to the investigation and also to cause the depositions of witnesses residing within or without the city to be taken in the manner prescribed by law for like depositions in civil actions in the court of original and unlimited jurisdiction in civil suits of the state; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a circuit judge in his judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of the civil service provisions of this article, and punishable as such.
 - (e) All hearings and investigations before the commission shall be governed by this article and by the rules and practice and procedure to be adopted by the commission, and in the conduct thereof the commission shall not be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the

commission, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

- (f) The commission shall hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; appeals of officers or employees, who are included in the classified service by the provisions of this article, for an investigation of their removal, suspension, demotion or discharge, as hereinafter provided for; the rejection of any examination, and such other matters as may be referred to the commission.
- (g) The commission shall establish or maintain in card or other suitable form a roster of officers and employees.
- (h) The commission shall provide for, formulate and hold competitive tests devised in accordance with applicable laws to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that men laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed.
- (i) The commission shall certify to the appointing authority, which has made a written request, the names of the persons on the eligibility list for the class for which one or more vacant positions exist; (and if there is no such list, to establish a provisional or temporary appointment list of such class). No temporary or provisional appointment shall continue for a period longer than four (4) months; nor shall any person receive more than one provisional appointment or serve more than four (4) months as a provisional appointee in any fiscal year.
- (j) The commission shall keep such records as may be necessary for the proper administration of the civil service provisions of this article.

- (k) The civil service commission shall make such reports as the council may by ordinance or resolution require; provided, however, it shall be the duty of the commission to report at least annually to the council showing its own action, the rules in force, the practical effects thereof, and any suggestions it may have for the improvement of the classified service.

(Acts 1974, Ch. 256, § 1; Acts 1993, Ch. 968, § 1)

Sec. 11.03. Annual appropriation.

There is hereby appropriated out of the general funds of the City of Portsmouth an appropriation to carry out the purposes of this article, which appropriation shall be one-fourth of one per centum of the total payroll of those included under the jurisdiction and scope of the civil service provisions of this article; provided, however, that if the city council shall make an appropriation for the support of said commission equal to more than the said continuing appropriation in any year, this section shall not be operative for said year but otherwise shall be in full force and effect.

Sec. 11.04. Rooms, office supplies, etc., for commission.

The city council shall provide the commission with suitable and convenient rooms and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons coming within the purview of the civil service provisions of this article, and the failure upon the part of the city council to do so shall be considered a violation of the civil service provisions of this article and shall be punishable as such.

Sec. 11.05. Civil suits.

It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of the civil service provisions of this article and of the rules of the commission. The commission shall be represented in such suits by the city attorney of the City of

Portsmouth; but in any case of controversy with the city administration of the said city, it shall be represented by the Commonwealth's Attorney of the said City of Portsmouth, but said commission may in any case be represented by special counsel employed by it.

Sec. 11.06. Compensation for commission members.

The city council of the City of Portsmouth may hereafter, if and when it deems that the work of the civil service commission warrants it, fix the salary or compensation to be paid the members of the said commission, and provide for the method of its payment, and the said council shall make any necessary provisions for carrying out the intent and purposes of this article.

Sec. 11.07. Legislation to put commission into effect.

The city council shall enact appropriate legislation to implement this article, and the failure upon the part of the city council so to do shall be considered a violation of the civil service provisions of this article and be punishable as such.

Sec. 11.08. Administration of civil service.

The classified civil service provisions of this article shall include all firefighters and policemen employed on a regular full-time basis by the police and fire departments and all other employees of the city who may come within the purview of this article as hereinafter provided, but shall not include the chief or deputy chief of the police or fire departments or the head or assistant head of any other department. However, if a member of the police department or fire department is appointed as chief or deputy chief of that department and is afterwards removed from such position, he shall be reinstated to his former position in the department for which he has qualified under the civil service regulations, provided he is not subject to dismissal under any of the provisions of Section 11.12 of this article [charter]. All appointments to and promotions in said departments shall be made solely on merit, efficiency

and fitness, which shall be ascertained by open competitive examination and impartial investigation.

Sec. 11.09. Adoption and induction of incumbents.

All persons holding a position in the police or fire departments, not including the chiefs and deputy chiefs thereof, when this article takes effect, who shall have served in such position for a period of at least one year last past continuously are hereby declared eligible for permanent appointment under civil service to the offices, places, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation; and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if such person has been permanently appointed thereto under civil service after examination and investigation.

Sec. 11.10. Appointments to vacant positions.

(a) Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the names and addresses of persons eligible for appointment thereto. The commission shall certify the names on the eligibility list for the class to which the vacant position has been allocated who are willing to accept employment. The appointing power shall forthwith appoint such a person to such vacant position.

[(b)] Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the names of the persons eligible for appointment to the appointing power, and said appointing power shall forthwith appoint a person so certified to said position. No person so certified shall be laid off, removed, discharged, suspended or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in

writing and after an opportunity to be heard by the commission and then only with its consent and approval, as provided in this article.

[(c)] To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment, or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of not more than one year probationary service, as may be provided in the rules of the civil service commission, during which the appointing power may terminate the employment of the person certified to him, or it, if during the performance test thus afforded, upon observations or considerations of the performance of duty, the appointing power deems him unfit or unsatisfactory for service in the department. Whereupon the appointing power shall designate a person or persons so certified for such position and such person or persons shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete.

(Acts 1974, Ch. 256, § 1; Acts 1993, Ch. 968, § 1)

Sec. 11.11. False marking, etc., prohibited.

No commissioner or any other person shall, by himself or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his right of examination or registration according to the rules and regulations of the civil service provisions of this article, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the civil service provisions of this article, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or impersonate any other person in connection with any examination or registration or application or request to be examined or registered.

Sec. 11.12. Tenure of office; discharge.

The tenure of everyone holding office, place, position or employment under the civil service provisions of this article, shall be only during good behavior and efficient performance of duty. Any such person may be removed, discharged, suspended without pay, or reduced in rank, or deprived of vacation privileges or other privileges for any of the following reasons:

- (a) Incompetent or inefficient performance of duty or inattention to or dereliction of duty;
- (b) Insubordination, discourteous treatment of the public or a fellow employee or any other act of omission or commission of similar nature tending directly to discredit or injure the public service or to jeopardize the effective functioning of the service; or any wilful violations of the provisions of this article or the rules and regulations to be adopted hereunder;
- (c) Mental or physical unfitness for the position which the employee holds;
- (d) Any conduct which is dishonest, deceitful, immoral or declared criminal by statute or common law, regardless of whether a criminal conviction is obtained;
- (e) Drunkenness or use of intoxicating liquors, narcotics or any other dangerous drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the functions and duties of his position;
- (f) Conviction of a felony, or a misdemeanor involving moral turpitude, or a pattern of misconduct as manifested by a series of convictions of misdemeanors not involving moral turpitude;
- (g) Reserved;
- (h) Failure to report to an appropriate superior authority administrative errors, incompetence, misconduct, inefficiency, ne-

glect of duty, or any other form of misconduct or negligence of which the employee has knowledge;

- (i) Failure of a supervisory employee or commanding officer to take appropriate corrective action with regard to such employees under his supervision or command as may be guilty of any form of neglect of duty or misconduct where the supervisor or commanding officer knows or should have known of such derelictions;
- (j) Failure to achieve professional progress and advancement in accordance with reasonable and definitive criteria established by the civil service commission and set forth in its rules and regulations; provided, however, that such failure must be a personal failure of the employee and not one directly caused by conditions beyond the control of the employee; provided, further, that no person shall be disciplined under this rule unless and until he is given adequate written notice of his deficiencies and a reasonable time to correct them.

(Acts 1974, Ch. 256, § 1; Acts 1975, Ch. 278, § 1)

Sec. 11.13. Disciplinary procedure.

(a) No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this article, shall be removed, suspended, demoted or discharged except for cause, and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, within forty-eight (48) hours from the time of his removal, suspension, demotion or discharge, and a duplicate thereof filed with the commission at the same time. Any person so removed, suspended, demoted or discharged may, within ten (10) days from the time of his removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not

made for political, religious, racial or other unlawfully discriminatory reasons and was or was not made in good faith for cause. After such investigation the commission may arm the removal, suspension, demotion or discharge, or, if it shall find that the removal, suspension, demotion or discharge was made for political, religious, racial or other unlawfully discriminatory reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade or pay; the commission may direct a lesser penalty than that given, but not a greater [penalty]; the findings of the commission shall be certified in writing to the appointing power, and shall be forthwith enforced by such officer.

(b) If the appointing power fails to properly notify the accused or the commission of the removal, suspension, demotion or discharge of a person permanently appointed or inducted into civil service within forty-eight hours from the time the removal, suspension, demotion or discharge was made, the commission shall set a date, within fifteen (15) days, for a hearing of the accused person and approve or disapprove the action taken by the appointing power, and so notify the appointing power and the accused, as provided above.

(c) If for good and sufficient reason any member or members of the commission, the accused, or the appointing power should be prevented from attending the hearing on the date set by the commission, the commission may in its discretion adjourn the hearing to a later date, but said date must be set at the time of adjournment, and must be within the next ensuing fifteen (15) days,

unless it is duly shown to the commission, that it will be impossible to hold the hearing within said fifteen (15) days, in which event the commission shall set the time for the hearing at the earliest possible date.

(d) All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense.

(e) If such order of removal, suspension, demotion or discharge be concurred in by the commission or a majority thereof, the person so removed, suspended, demoted or discharged shall have the right to appeal therefrom to the circuit court in the City of Portsmouth, Virginia. Such appeal shall be taken by serving the commission, within thirty (30) days after the entry of such order of judgment, a notice of appeal, stating the grounds thereof and demanding that a certified transcript of the record and all papers on file in the office of the commission affecting or relating to such order or judgment 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. The circuit court shall thereupon proceed to hear and determine such appeal in a summary manner and may confirm, modify or reverse the order of the commission; provided, however, that such hearing shall be confined to the determination of whether the order or judgment of removal, suspension, demotion or discharge made by the appointing power and concurred in by the commission was or was not made in good faith for cause, or was or was not for political, religious, racial or other unlawfully discriminatory reasons, and no appeal to such court shall be taken except upon such ground or grounds.

(f) No letter of reprimand, censure or admonition shall be made a part of the personnel record of a member of the civil service unless and until such letter has been authorized and signed by the member's department head and a copy thereof has been given to such member and another copy has been received by the civil service commission.

This subsection shall not be construed as granting the subject member an appeal to the commission concerning such letter. No letter of reprimand, censure or admonition shall remain a part of a member's personnel record for a period longer than two (2) years from the date of said letter. (Acts 1974, Ch. 256, § 1)

Sec. 11.14. Leave of absence.

Leave of absence, without pay, may be granted by any appointing power to any person under civil service; provided, that such appointing power shall give notice of such leave to the commission. All temporary employment caused by leave of absence shall be made from the eligible list of classified civil service.

Sec. 11.15. Political services disregarded and prohibited; other discriminatory actions prohibited.

(a) No person holding any office, place, position or employment subject to civil service is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing to do so.

(b) No public officer whether elected or appointed shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or services, or any other valuable thing, for any political purpose.

(c) No person shall be appointed to or promoted to, suspended from, demoted, removed or discharged from any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his race, color, religion, sex, national origin or political affiliations.

(d) No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service. No recommendation for any person who applies for office or position in the classified service, or for

examination under the provisions of this chapter [article], except, as to character, and, in the case of former employers, as to ability, shall be considered by the commission, director, or the appointing authority in giving any examination, appointment, promotion or reinstatement under this article.

(e) No person shall use, or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(f) No person in the classified service, and no member of the commission, shall, directly or indirectly, pay or promise to pay any assessment, subscription, or contribution for any political organization or purpose, or solicit or take part in soliciting, or receive any such assessment, subscription or contribution. No person shall solicit any such assessment, subscription or contribution of any employee in the classified service.

(g) No person in the classified service, and no member of the commission, or the personnel director, should one be appointed, shall take any active part in the management of any political party or in any political campaign; provided, however, that nothing in this article shall be construed to prohibit or prevent any such officer or employee from exercising his rights as a citizen privately to express his opinion or from enjoying entire freedom from all interference in casting his vote, or from seeking or accepting election or appointment to public office.
(Acts 1974, Ch. 256, § 1)

Sec. 11.16. Creation of employments and compensation.

All offices, places, positions and employments coming within the purview of the civil service provisions of this article shall be created by the person or group of persons who, acting singly or in conjunction with others, is or are vested by law with power and authority to select, appoint or

employ any person coming within the purview of this article and nothing herein contained shall infringe upon the power and authority of any such person or group of persons, or appointing power, to fix the salaries and compensation of all employees employed hereunder.

Sec. 11.17. Procedure in order to come under civil service.

Upon petition in writing signed by ten (10) percent of the employees or appointees of any department of the City of Portsmouth, with the exceptions hereinafter made, to the city council of the City of Portsmouth, requesting that their department be put under the civil service provisions of this article, it shall be the duty of the said city council to set a date for the hearing of the said petition, at which hearing the council shall consider the written petition, shall hear the verbal plea of the petitioners or their representative or representatives, shall hear the written or verbal opposition to the said plea, made by the city administration or its representative or representatives, or any citizen or citizens of the said city and shall, by resolution or ordinance, either reject the petition, or decree that on and after a certain day the said petitioning department shall come within the provisions of and be subject to and governed by the provisions of this civil service article and the rules and regulations of the civil service commission created hereby as fully and completely as if it had been originally included herein.

Sec. 11.18. Officers and employees who are excluded.

The civil service provisions of this article shall not be extended to include the following officers, employees or other persons:

- (a) Officers elected by the people and persons appointed to fill vacancies in such elective offices.
- (b) The head or director of each department and his immediate assistant or deputy.
- (c) The deputy or deputies or assistant or assistants, secretary or secretaries, clerk or clerks, appointed by an elective officer.

- (d) The city manager and the members of his office staff.
- (e) The city clerk and deputy city clerk.
- (f) Officers or members of boards, or other persons, elected or appointed by the city council, under provisions of law.
- (g) The city attorney and all employees of the department of law.

Sec. 11.19. Definition of terms.

As used in this article, the following mentioned terms shall have the following described meanings:

- (a) The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three (3) members of that commission.
- (b) The term "appointing power" shall mean the city manager or other officer with appointing authority or his duly authorized representative.
- (c) The term "appointment" includes all means of selecting, appointing or employing any person to hold any office, place, position, or employment in the civil service.

Sec. 11.20. Penalties.

Any person who shall wilfully violate any of the civil service provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) or by imprisonment in the city jail for not longer than one year, or by both such fine and imprisonment. The court of original and unlimited jurisdiction in criminal matters shall have jurisdiction of all such offenses defined by this article. If such convicted person be in the classified service he shall be dismissed therefrom by the court, in addition to any penalty imposed hereunder.

ARTICLE XII. MISCELLANEOUS

Sec. 12.01. Present ordinances and rules and regulations continued in effect.

All ordinances of the city and all rules, regulations and orders legally made by any department, board, commission or officer of the city, in force at the effective date of this charter, insofar as they or any portion thereof are not inconsistent herewith, shall remain in force until amended or repealed.

Sec. 12.02. Severability.

If any provision of this charter or the applicability thereof to any person or circumstance is held invalid, the remainder of this charter and the applicability thereof and of such provision to other persons or circumstances shall not be affected thereby.

