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Lyndhurst, Ohio
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The Civil Service Commission of The City of Lyndhurst met in Regular Session on Thursday, May 14, 2020 at 8:30 a.m. via the permitted Zoom platform.

Members Present: R. Schmidlin, Chair
S. Franks, R. Sweeney

Others Present: J. Luskin, Director of Law
C J White, Secretary
P. Rhode, Chief of Police
M. Carroll, Fire Chief
Sergeant M. Scipione, Police Department
Sergeant R. Reese, Police Department
Patrolman J. Romano, Police Department

It was moved by Mr. Schmidlin, seconded by Ms. Sweeney that the reading of the minutes of the Regular Meeting held February 13, 2020, copies of which were sent to all members, be dispensed with and said minutes stand approved as circulated.

The question was put to a voice vote and passed unanimously.

Motion carried.

Review Rules for Applications & Update on Joint Fire Test

Chief Carroll explained that the applications for the upcoming fire test has been reviewed by all cities involved. He stated that in the past, this Commission has spoken about removing the notarization rule, found in Rule III, Section 3.

Mr. Schmidlin stated that the trend has been to do away with notarization, stating that it is an unnecessary step and if someone was to commit fraud on their application, a notary wouldn't discover it. The Commission concurred.

Chief Carroll stated that he would like to bring this issue up to the Joint Civil Service Commission, involved in the upcoming fire test for their opinions on removing the notary clause from the applications.

It was moved by Mr. Schmidlin, seconded by Ms. Sweeney that the proper procedures be taken to remove the notary clause in Rule III, Section 3 of the Civil Service Rules.

The question was put to a voice vote and passed unanimously.

Motion carried.

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Correspondence from Mayor Ward

“May 11, 2020

Lyndhurst Civil Service Commission
5301 Mayfield Road
Lyndhurst OH 44124

Commissioners:

This is to advise that the Lyndhurst Police Department will have a position available for one Patrol Officer.

Therefore, I am hereby notifying you of the position to be filled and requesting that you certify to me the names and addresses of individuals from the Eligibility List for the Lyndhurst Police Department.

I would appreciate receiving the requested list as soon as possible. Thank you for your assistance and cooperation.

Sincerely,

Patrick A. Ward
Mayor

PAW:cjw

c: Chief Rhode”

The Secretary explained that the current certified list, established April 11, 2019 is still valid, and there are six names on that list to proceed with.

Correspondence from Sergeant Scipione (Dated May 1, 2020)

“**Date:** May 1, 2020

To: Civil Service Commission Members
City of Lyndhurst

From: Sergeant Michael Scipione

Re: Current Promotional Eligibility List – Lieutenant

I am writing the civil service commission today regarding two (2) matters of importance; **A)** A request for the immediate *termination* of the current promotional eligibility list for the position of Lieutenant in the Lyndhurst Police Department – which expired and was not renewed on April 11, 2020.

AND

B) A request for the *repeal* of the following language in LCO Chapter 171 Rule V Section 5 “*An eligible list may be further extended for a second one-year period or less, if deemed necessary by the Commission. Such extension shall be shown in, or by the Commission minutes. (Amended by Res. 2010-8 Passed 10-14-10)*”.

My reasons for the above-mentioned request is as follows:

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- The current eligibility list reached its expiry date on April 11, 2020 and was not extended as required by civil service commission rules.
- The current eligibility list does not allow for 50% of the eligible Sergeants, able to take an examination as of this date, to be promoted to any future openings at the rank of Lieutenant.
- The remaining Sergeants on the current eligibility list, placing at spots #3 and #4, have attained their retirement service dates through the State of Ohio – thus creating a scenario where either one could terminate employment with the police department at any given time moving forward.
- The integrity of all promotional examinations administered by the Ohio Association of Chiefs of Police (OACP) and overseen (directly and/or indirectly) by former Chief of Police Llewellyn is in question, due to his actions regarding the promotional examination for the rank of Sergeant.
- A promotional examination and its subsequent eligibility list should not be held to the same standards as an examination for new hires.

It is important for both the police department and city to maximize the investment made in their police supervisors, making sure we allow for each and every candidate eligible for promotion to the next higher rank – the opportunity to be assessed against his or her peers. It would be shortsighted from a planning perspective to be forced to select from only 50% of eligible candidates, if a vacancy should occur in the near future. An argument will be made about the financial benefits of extending any current eligibility list, but the costs involved in administering another promotional examination is minimal at best - when considering the benefit to the police department and city in being able to promote the best possible candidate to the next higher rank.

**Respectfully Submitted,
Michael Scipione, Sergeant
Lyndhurst Police Department”**

Correspondence from Sergeant Scipione (dated May 11, 2020)

“Commissioner Schmidlin,

I have attached documentation to this email regarding my request to repeal/remove the language allowing the civil service commission to extend an eligibility list for a 3rd year. I have included the minutes from the October 2010 meeting where the commission allowed the extension of a promotional eligibility list for the one and only time since my twenty years with the police department. It was also the meeting where a resolution (2010-8) was created dealing with this particular matter. Again, I believe this move by the commission was not consistent with Chapter 124 of the Ohio Revised Code and should not have been completed. I have included copies of the Chapter 124 codes which I believe govern this matter and also a summary of my findings when exploring the various house bills where 124.26 was changed over the years. But the basic premise of not allowing an eligibility list extend past two (2) years was in effect prior to October 2010. I also have included a sample of municipal civil service rules governing the length of eligibility lists, from all over the State of Ohio - which shows we are in the vast minority of communities allowing for a term of more than the allowed two (2) years.

Thank you for taking the time to allow me to make my argument and I apologize for the quality of the scans, as I was forced to use a handheld scanner...

Sergeant Michael Scipione”

Mr. Schmidlin stated that one of the items that Sergeant Scipione mentioned was the integrity of the test, and a possible relationship between Sergeant Eden and Mr. Llewellyn. He then stated that he has done some investigating and spoken with Sergeant Eden and it was found that both had children involved in hockey, and did not see anything that created a conflict or anything unethical. He further stated that there is no evidence that there was any undue influence on the outcome of the promotional test. He then stated that he appreciates that it was brought to the attention of the Commission. The Commission concurred.

Correspondence from Sergeant Reese and Patrolman Romano

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“May 12, 2020

Lyndhurst Civil Service Commission
5301 Mayfield Road
Lyndhurst, Ohio 44124

Dear Mr. Schmidlin,

Please accept this letter as an addition to my previous correspondence dated 5/7/2020. After further consideration in this matter, Patrolman Romano and myself feel there is additional information that is essential for consideration into our request. We would also like to expand our request based on this information.

Attached to this correspondence are supporting facts that I have gathered from the online Civil Service Commission minutes. Since 2008, there have been five (5) eligibility lists established for original appointment as patrolman, three (3) eligibility lists established for the rank of Sergeant and Lieutenant, and two (2) eligibility lists established for the rank of Police Chief. Out of the five patrolman lists, two have been extended into the third and last year extension term, two have expired after the second year extension term, one expired while in the second year extension term, and the last is currently in its second year extension term. Of the three Sergeant and Lieutenant promotional eligibility lists, one has been extended to the third and last year extension term, one expired after the second year extension term, and the last is being considered for its second year extension term. Of the two Police Chief's eligibility lists, one expired after the second year extension term, the other is current and has been extended into the second year extension term.

Additionally, in the Fire Department since 2010, there have been four (4) eligibility lists established for the original appointment of Firefighter, three (3) eligibility lists established for the rank of Lieutenant and Captain, and one (1) eligibility list for the rank of Fire Chief. Out of the four firefighter eligibility lists, two have been extended into the third and final year term, one (joint exam with Pepper Pike FD) expired after the second year term, and the last is current and has been extended into the second year extension term. Of the three Lieutenant and Captain promotional eligibility lists, all three have expired after the second year extension term. The Fire Chief eligibility list was extended into its third and last year extension term.

At the October 14, 2010, Civil Service meeting, Rule V, Section 5, of the Rules of the Civil Service Commission was amended, to allow “all” eligibility lists to be extended for a third and final year term (Res. 2010-8) At this meeting, it was moved by Mr. Schmidlin, citing the cost involved with administering a new test and time involved, to extend the current Lieutenant and Sergeant's eligibility list for its third and final year term. In light of the current COVID situation, I urge the commission to consider what the possible financial impact on the city could be, in complying with current and/or future social distancing requirements during the testing and assessment process.

The circumstances surrounding the Police Sergeant and Lieutenant eligibility list extension in 2010, is very similar to the circumstances surrounding Ptl. Romano and my request for the current eligibility list to be extended. However, our request does not require the full third year term, as permitted by Rule V, Section 5. In 2010, the list was scheduled to expire on 11/6/2010. With the mandatory retirement of Lt. Porter scheduled for 11/1/2011, it was in the City's best interest, financially as well as time conducive, to extend the current list. Rather than let expire and be forced to give another promotional exam eleven months later for only one promotion. Fast forward to present, according to D.R.O.P. requirements, Lt. Alexander will reach his mandatory retirement date on 9/12/2021. Lt. Alexander's mandatory retirement date will be a mere five months and one day from the expiration of the second year extension term, and less than six months into the third year extension term.

Of the remaining supervisors currently enrolled in the D.R.O.P. program, the next mandatory retirement is Sgt. McConville, scheduled for April of 2024. If the current lists are left to expire prior to Lt. Alexander's retirement, the city will be forced to give a Lieutenant and Sergeant's exam in the summer of 2021, and another Sergeant's exam in the spring of 2024. By granting our request to extend the current lists to cover Lt. Alexander's retirement (2 years, 6 months), the city would not have to needlessly incur the cost of two promotional exams, yielding only one promotion each. I would also like to point out, that most officers enrolled in the D.R.O.P. program almost always retire at least two or three months prior to their mandatory retirement date. Most in part to

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ensure there are no complications with paperwork, perhaps risking losing a portion of their D.R.O.P. funds. Therefore, the likelihood of Lt. Alexander retiring months prior to the expiration of our requested extension is highly probable.

At this time, I would like to address possible opinions that might be brought against our request. Although, I don't know all the specifics surrounding the eligibility lists that were or were not extended, I would like to again point out that since 2011, there were in fact six Fire Department eligibility lists extended into the second year extension term. Three of which were further extended into the third and last year extension term. Of the eight eligibility lists established for the Police Department since 2008, all but one has been extended into the second year extension term. Three of which have been further extended into the third and last year extension term. One could only assume that these extensions were decided with the best interest of all involved, including the city.

In 2017, Sgt. Cianciolo and Ptl. Scipione requested that the current Sergeant and Lieutenant's eligibility list, established 9/11/2015, be extended for the third and last year extension term. During this meeting, Chief Porrello was asked when he felt the next promotional test will be given, Chief Porrello stated that he anticipates a few retirements in the next three years, however, none within the next year. I suspect that the commission recognized that if Sgt. Cianciolo and Ptl. Scipione's request to extend the list was granted, it would be a moot point and ineffective, due to no anticipated retirements within the extended term. In fact, there were no retirements until spring of 2019, well past the requested third year extension term. Sgt. Cianciolo and Ptl. Scipione's request was not granted by the commission, and the list was left to expire.

As I briefly referenced in my letter dated 5/7/2020, the uncertainty of the COVID pandemic continues to place not only increased health risks in our everyday lives, but also financial adversities upon everyone, including public entities such as local governments. Both of which if not already, will eventually experience. To support this statement I would like to make note, that as of this correspondence, most if not all bargaining units within the city have been broached to extend current contracts, which are set to expire at the end of 2020, and accept 0% raises for the year of 2021. This request was made, citing a decline in tax revenue for the city, which is projected not to get any better. Furthermore, it was communicated to me that budget cuts to all departments within the city have already commenced.

With the insurgence of the COVID pandemic expected in the Fall of 2020, and no way to gauge what financial impact the city will experience in 2021, I propose cautious decisions moving forward. I invite the commission to contemplate these three questions while considering Patrolman Romano and my request, to extend the Sergeant and Lieutenant's eligibility list until October 11, 2021. Is there a current eligibility list in place with viable candidates? Would it be practical to allow the list to expire prior to Lt. Alexander's mandatory retirement date in September of 2021, requiring new exams be given? Or would it be better served to extend the lists at least to a 2 year 6-month term, covering Lt. Alexander's retirement?

In closing, over the last several months the world has been forced to adapt to a new way of life never imagined by anyone. Impacting all facets of not only our personal lives, and how they once were, but also our professional lives. Until the COVID pandemic is better contained and better understood, allowing the world including the city of Lyndhurst, time to recover from the financial impact incurred. I encourage the Civil Service Commission to consider extending all of the current eligibility lists to their full term.

Patrolman Romano and I would like to thank the members of the Civil Service Commission for their time and consideration given to our official request to extend the Sergeant and Lieutenant's current eligibility list to October 11, 2021.

Respectfully

Sgt. Robert L. Reese

Ptl. Joseph Romano"

Also included in this correspondence was a history of Police and Fire Department appointments, which will be included in the permanent file.

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Mr. Schmidlin explained that extending the established lists, at any time, whether it be for one year, or three years, would have both positive and negative impacts on the personnel in that department. He then asked the Commission members if the Commission should have the option of renewing an established list for a third time.

Mr. Franks stated that presently, the Commissioners have always expressed a reluctance to extend a list beyond two years; however he doesn't feel that the language in the rules is problematic and the Commission should have the ability, if needed, to extend an established list for a third time, whether it be for a month or a year.

In answer to Ms. Sweeney's question, Mr. Schmidlin stated that currently, the list is just over a year old. Ms. Sweeney then stated that although the established list can become stale, it is beneficial to have the option of renewing an established list for a third time, if need be. She then stated she is in favor of leaving the rule as it stands, but using it judiciously.

Sergeant Scipione stated that the issue with the assessment center wasn't so much the issue that Sergeant Eden and Mr. Llewellyn knew each other, but the fact that the other candidates were not told of the relationship; they should have had the option to voice their concern if they felt the test could be biased in any way, and possibly choose another assessor. He then stated he would like to see a rule that would prevent this situation in the future.

Mr. Schmidlin agreed that there should be some type of process to bring a relationship between assessors and candidates to light in the future.

Sergeant Reese stated that he agrees that there will always be candidates that will or will not benefit if the established lists are extended or not. He further stated that time and cost should and do play a factor in the Commission determining on whether or not to extend an established list. He stated that leaving in the rule to extend for a third time allows the wiggle room to consider financial impact to the city.

Officer Romano stated that extending an established list a third time has been done at least seven (7) times in the police and fire departments in the past ten (10) years. When extending the established original appointment list, it is for unknown candidates; when extending an established list for promotionals, it is for known and proven, viable candidates. It is his opinion that it would be a mistake to not maintain the rule and to consider extensions.

Chief Rhode stated he would recommend maintaining as much consistency as possible in terms of extending the established promotional list. It is his recommendation that the established lists for sergeant and lieutenant be extended for one year.

Mr. Schmidlin explained that the current lists for sergeant and lieutenant was due to expire on April 11, 2020, but due to circumstances beyond everyone's control, number one being the Secretary was quarantined by the County Health Department, number two there was an order on March 22, 2020 that was in place, and an Ohio Supreme Court polling statute of March 22, 2020 and the Civil Service Rule XII, which allows the Commission to waive the rules in case of unforeseeable circumstances.

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It was moved by Mr. Schmidlin, seconded by Mr. Franks to waive the rules in order to allow to rule upon the ability to extend the eligibility list for sergeant and lieutenant.

The question was put to a voice vote and passed unanimously.

Motion carried.

Extend Eligibility List for Sergeant in the Police Department – Established April 11, 2019.

It was moved by Mr. Schmidlin, seconded by Ms. Sweeney that the Eligibility List for Sergeant, established April 11, 2019, be extended for one year, retroactive from April 11, 2020 to April 11, 2021.

The question was put to a voice vote and passed unanimously.

Motion carried.

Extend Eligibility List for Lieutenant in the Police Department – Established April 11, 2019.

It was moved by Mr. Schmidlin, seconded by Ms. Sweeney that the Eligibility List for Lieutenant, established April 11, 2019, be extended for one year, retroactive from April 11, 2020 to April 11, 2021.

The question was put to a voice vote and passed unanimously.

Motion carried.

Tabled Item:

Elect Chair & Vice Chair for the Year 2020

It was moved by Mr. Schmidlin, seconded by Ms. Sweeney that these items be removed from table.

The question was put to a voice vote and passed unanimously.

Motion carried.

In answer to Mr. Franks' question, Mr. Schmidlin explained that this item has been tabled due to the fact that he is the Assistant Law Director for the City, and questioned whether being Chairman of the Civil Service Commission would be in conflict. He was waiting on an answer from the Ohio Attorney General, through the County Prosecutor, but since the pandemic, has not heard back. This request is considered a compatibility check.

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In answer to Ms. Sweeney's question, asking if Mr. Schmidlin would prefer to wait for an answer from the County Prosecutor, Mr. Schmidlin stated that he received a letter from Mr. John Luskin, City's Law Director and that it is his opinion, that there is no conflict.

Mr. Luskin stated that he has had conversations with the County Prosecutor's Office, the Ohio Ethics Commission and the Ohio Attorney General's Office with respect to this matter, and it is his opinion that Mr. Schmidlin's duties of assistant law director does not interfere with his decisions with respect to him serving as Chairman of the Civil Service Commission. He further explained, that if there was a legal issue that arose with respect to the Civil Service Commission in all due deference, Mr. Schmidlin would recuse himself as the assistant law director, and Mr. Luskin would handle the issue and seek outside counsel if needed. He further stated that this is the ruling from the Attorney General's office, the Ohio Ethics Commission and the Cuyahoga County Prosecutor's office.

It was moved by Mr. Franks, seconded by Ms. Sweeney to elect Mr. Schmidlin as Chairman for the year 2020.

The question was put to a voice vote and passed unanimously.

Motion carried.

It was moved by Mr. Schmidlin, seconded by Mr. Franks to elect Ms. Sweeney as Vice Chair for the year 2020.

The question was put to a voice vote and passed unanimously.

Motion carried.

It was moved by Mr. Schmidlin, seconded by Ms. Sweeney that the meeting be adjourned.

The question was put to a voice vote and passed unanimously.

Motion carried, meeting
adjourned at 9:18 a.m.

R. Schmidlin, Chairman

Approved: _____

Attest: _____