

ORDINANCE NO. 74-16

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE CIVIL SERVICE RULES AND REGULATIONS OF THE CITY OF MEDINA RELATIVE TO NOTIFICATION PROCEDURES FOR CANDIDATES OR EMPLOYEES, AND DECLARING AN EMERGENCY.

WHEREAS: Ordinance No. 99-08, passed May 27, 2008, adopted revised Civil Service Rules and Regulations; and

WHEREAS: The Civil Service Commission respectfully requests City Council to consider and accept several revisions to the Medina Civil Service Rules pertaining to procedures to follow when notifying candidates or employees, through the mail, to include courier service.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

SEC. 1: That various sections of the Civil Service Rules and Regulations are hereby amended as set forth in the attachment marked Exhibit A, attached hereto, and incorporated herein.

SEC. 2: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

SEC. 3: That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason to proceed to start preparing for a patrol officer test; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: May 23, 2016

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: May 24, 2016

SIGNED: Dennis Hanwell
Mayor

5. That the applicant has been convicted of a crime or has been guilty of disgraceful conduct or has been dismissed from employment for flagrant delinquency or misconduct.
6. That the applicant was previously in the classified service or the unclassified service and was removed for cause or did not resign in good standing.
7. That the applicant is applying for a classified position in the Division of Police and is not a United States citizen or has not legally declared the intention of becoming a United States citizen. The applicant must, however, be a United States citizen in the event the applicant is appointed to a classified position in the Division of Police.

In addition, applications may be rejected for any just or reasonable cause that is job-related, and not discriminatory, as determined by the Commission.

Upon rejecting any application, the Commission shall promptly notify the applicant of the reason for the rejection by certified mail (return receipt requested) or personal delivery or Fed-Ex (with signature requested) or substantially similar commercial mailing system. The applicant may, within seven (7) calendar days after issuance of the notice, file a written complaint against such rejection. The Commission will not hear complaints that contest the qualifications established by the Commission. If a complaint from a rejection is pending at the time an examination is scheduled to be held, the applicant shall be allowed to take the examination pending decision in such inquiry. If the Commission finds the rejection justified, the examination paper shall not be graded.

(F) Accommodation

The examination announcement will advise potential applicants as to the procedures by which a potential applicant may request reasonable accommodation in order to participate in the application process and/or examination process.

(E) Change of Address

Each person on an eligible list shall file with the Commission a written notice of any change of address, and failure to do so may be considered sufficient reason for not certifying the eligible's name to the appointing authorities for consideration for appointment.

(F) Investigation and Disqualification of Eligibles

Upon the establishment of an eligible list, and except as otherwise prohibited by law, the Commission may conduct or authorize an investigation as to whether the eligibles possess the necessary standards of fitness, physical attributes, mental soundness, or other qualifications required to perform the duties and responsibilities of the position sought. The eligibles may be investigated before certification.

The investigation may include physical fitness examination, medical examination, psychological and/or psychiatric examination, polygraph examination, background investigation, personal interview, drug testing, or any other method necessary to ascertain the applicant's qualifications and abilities, as determined by the Commission.

If an eligible is found during the investigation to be unqualified or unsuitable for the position, the Commission shall remove the person's name from the eligible list. If the Commission removes a name from an eligible list, the person shall be promptly notified by certified mail (return receipt requested) or personal service or Fed-Ex (with signature requested) or other substantially similar commercial mailing system of the removal and advised that an appeal may be filed within seven (7) calendar days after issuance of the notice; however, no appeal may be made for reinstatement to an eligible list that has expired or been revoked.

The Commission may reinstate the person to the eligible list upon a showing of just cause. The Commission may dismiss the appeal if the person does not appear at the scheduled hearing. If testimony is heard concerning the appeal, the Commission shall have the witnesses placed under oath or affirmation of truthfulness, shall permit cross-examination, and shall announce its conclusions of fact.

Where the Commission is unable for practical or legal reasons to conduct examinations to determine whether applicants have medical or psychiatric conditions that would prevent satisfactory performance of all essential functions of the position, the Commission's certification of an eligible shall not signify that the person meets all requirements for the position relating to physical and psychological abilities.

(G) Revocation of List

An eligible list may be revoked and another examination ordered when the Commission deems revocation to be advisable for reasons of errors, fraud, or obviously inappropriate standards prescribed in connection with any examination. All eligible applicants in the

person's name; however, if a person is certified when more than one (1) position is to be filled, that person shall remain eligible through up to five (5) appointments from that particular certified list. If fewer than five (5) appointments are made from that certified list, the person shall be eligible for future certification until the person has been considered for appointment five (5) times.

(C) Names Not to Be Certified for Appointment

The name of any person appearing on an eligible list who:

1. fails to report or arrange within seven (7) calendar days for an interview with the appointing authority;
2. fails to respond to a notice from the Commission within seven (7) calendar days;
3. declines an appointment without reasons satisfactory to the Commission; or
4. cannot be located by the postal authorities

shall not thereafter be certified to any appointing authority as eligible for appointment unless a thoroughly satisfactory explanation of the circumstances is made to the Commission. A person removed from eligibility in this manner shall be notified by written notice sent by certified mail (return receipt requested), personal service, or Fed-Ex (with signature required) or other substantially, similar, commercial mailing system to the last address provided by the applicant. Where an eligible person's name appears on more than one (1) list, appointment to a position in one (1) class shall be considered a waiver for appointment from other eligible lists for classes of equal or lower salary.

(D) Objection by Appointing Authority

When an objection is made by an appointing authority that any person certified:

1. is unable to perform the essential functions of the position;
2. is currently a user of drugs of abuse;
3. has been guilty of infamous or notoriously disgraceful conduct;
4. has been convicted of a felony or of a misdemeanor involving moral turpitude or moral delinquency;
5. has been dismissed from a position in the civil service and removed for cause or did not resign in good standing;
6. has made a false statement of any material fact or practiced or attempted to practice any deception or fraud in an application or examination concerning employment by the City or the City Schools;
7. has a record of excessive traffic citations and/or chargeable accidents, and the position the individual is applying for requires driving; or
8. is unable to meet the Commission's qualification standards

the Commission shall, if such objection is shown to be well taken, vote to strike the name of such person from the eligible list and certify another name. Before striking the name of such person from the eligible list and/or certifying another name, the Commission shall

notify such person by certified mail (return receipt requested), or by personal service, or by Fed-Ex (with signature required) or other substantially, similar, commercial mailing system. The applicant may appeal such objection to the Commission within seven (7) calendar days after issuance of notification. If the person fails to appear for the hearing, or upon being heard, fails to show just cause why the Commission should reinstate the person's name to the eligible list, removal will stand and another name will be certified.

(E) Appointment from Certified List

Upon receipt from the Commission of a certified list of eligibles for appointment to a position, the appointing authority shall fill such position by appointment of one (1) of the five (5) persons certified. The appointing authority shall promptly report to the Commission the name of the appointee, the title of the position, the duties and responsibilities of the position, the salary or compensation of the position, and such other information as the Commission may require in order to keep its roster.

(F) Waiver of Certification

An eligible may waive certification by written notification to the Commission. A waiver of certification shall remain in effect until withdrawn in writing, at which time the eligible is reinstated to the position originally held on the eligible list. A waiver may not exceed six (6) months, and may not be used more than two (2) times. After two (2) waivers, or after six (6) months have passed on a waiver, the eligible's name shall be removed from the eligible list. Whenever one (1) or more of the eligibles who have been certified waive certification or fail to respond to notice of certification, the Commission shall supplement the certification from the eligible list by an equal number of additional names.

(G) Rejection of Appointment

An eligible who has declined appointment to a permanent position shall be removed from the eligible list and shall not thereafter be certified for the same position from that eligible list, unless a reason for declining the appointment is approved as satisfactory by the Commission.

(H) Promotional Appointments

The appointing authority of the department in which a vacancy is to be filled by promotion shall notify the Commission of the fact. If there is an eligible list for such position, the Commission shall immediately certify to the appointing authority the names of the three (3) persons standing highest on such list. The number to be certified shall be determined in the following manner:

1. For 1 through 4 vacancies, add 2 names to the number of vacancies.
2. For 5 through 8 vacancies, add 4 names to the number of vacancies.

A laid-off employee in the classified service has the right to displace the employee with the least seniority points in a lower classification in the same classification series. A classification series is any group of classification titles that have the identical name but different numerical designations. Any employee displaced by an employee shall have the right to displace another employee in a lower classification of the same classification series if the displacing employee has more seniority points. This procedure shall continue, if necessary, until the employee with the least seniority points in the lowest classification of the classification series of the same appointing authority has been reached and, if necessary, laid off.

Whenever it becomes necessary, due to lack of work or funds, to reduce the number of employees in a job classification in the Medina City Schools, the procedure accepted and adopted by the Medina City Board of Education through negotiations with OAPSE will be followed.

For purposes of this Rule IX, "lack of funds" means the appointing authority has a current or projected deficiency of funding to maintain current, or sustain projected, levels of staffing and operations. This Rule does not require any transfer of money between funds in order to offset a deficiency or projected deficiency of funding for programs funded by the federal government, special revenue accounts, or proprietary accounts. Whenever a program receives funding through a grant or similar mechanism, a lack of funds shall be presumed for the positions assigned to and the employees who work under the grant or similar mechanism if, for any reason, the funding is reduced or withdrawn.

(C) Seniority Points for Purposes of Layoffs

For purposes of layoff procedures, the Commission shall assign seniority points reflecting systematic consideration of seniority for all employees. Seniority points will be determined as follows:

1. Employees shall be assigned one (1) seniority point for each thirteen (13) weeks of continuous service with the appointing authority affected by the layoff. These seniority points shall be added to a base factor of one hundred (100) points, thus yielding total seniority points.

(D) Notification of Layoff, Displacement, and Recall

The appointing authority shall give advance written notice of a layoff to each employee to be laid off. The written notice shall be hand delivered to the employee (personal service) or sent by certified mail (return receipt requested), or delivered by Fed-Ex (with signature required) or other substantially, similar, commercial mailing system to the last address on file with the appointing authority. If hand delivered, such notice shall be given fourteen (14) calendar days before layoff, and the day of the hand delivery shall be the first day of the fourteen- (14) day period. If mailed, such notice shall be given

The Safety Director shall cause the Chief of Police and the affected employee to receive written notice of the judgment within the five- (5) day period. The Safety Director shall also forthwith advise, in writing, the Civil Service Commission of the action taken and the specific cause, and shall also forthwith advise the Finance Director in writing of the effective dates of suspension, reduction in grade, or dismissal.

The affected employee or the Chief of Police may file a written appeal with the Civil Service Commission within ten (10) calendar days of receipt of notification of the Safety Director's judgment, where the judgment involves a suspension of more than three (3) days, a reduction in grade, or dismissal. Suspensions of three (3) days or less shall not have the right of appeal.

(F) Notice

An employee will be deemed to have received a notice regarding a disciplinary order or decision on the earliest of the following dates: the date that the notice is delivered to the employee personally or delivered to the residence address last provided by the employee by Fed-Ex (with signature required) or other substantially, similar, commercial mailing system; or on the date that the notice or return receipt is signed for as certified mail directed to the residence address last provided by the employee; or three (3) calendar days (Sundays and federal holidays excepted) after the notice is placed in the United States mail directed to the residence address last provided by the employee. With the consent of the employee, a notice can be faxed to a number provided by the employee, which shall be considered as personal service. Records shall be kept of the manner of service, and any receipts of service shall also be kept.

When the Opinion and Official Entry has been written and signed by the members of the Commission or Trial Board, it shall be sent to the two (2) principal parties and their counsel by certified mail (return receipt requested) ~~or hand delivery~~ or by Fed-Ex (with signature required) or other substantially, similar, commercial mailing system, or by personal service. All other interested parties may be notified by regular mail or hand delivery.

(I) Disposition of Appeals

If the Commission determines that an appeal has not been timely filed or that jurisdiction is lacking for some other reason, the Commission's determination shall be noted in the minutes, and the Commission shall notify the employee and the appointing authority in the same manner as for an Opinion and Official Entry. These procedures shall also apply to any appeal that is dismissed at the request of the appellant or through resignation before the Commission's determination of the merits of the appeal.

Subject to certain restrictions, either the appointing authority, the officer, or the employee may appeal from the decision of the Commission or Trial Board to the Medina County Court of Common Pleas.

GUIDELINES FOR APPEALS TO THE CIVIL SERVICE COMMISSION

This summary is published by the Medina Civil Service Commission as a convenience to employees and others who may be interested in an overview of the appeal procedures. These Guidelines are intended to give an overview of the appeal procedures that apply to most appeal hearings; however, all procedures and situations are not necessarily addressed in these Guidelines. The law and regulations concerning appeals are contained in the Rules of the Medina Civil Service Commission and any operating procedures adopted by the Commission, along with the Medina Charter and any applicable statutes or constitutional provisions, not these Guidelines. If you need more detail about a procedure or if you have any questions about your appeal, you should contact the Commission or your legal counsel.

Types of disciplinary action that can be appealed.

An employee who has been discharged, demoted, or reduced in rank for disciplinary reasons or who has been suspended for more than three (3) days may file a written appeal with the Civil Service Commission.

Time limits for filing an appeal.

If a written appeal is not received by the Commission in time, the Commission cannot hear the appeal.

An employee's appeal from a disciplinary action must be received by the Civil Service Commission within ten (10) calendar days of the day that the employee is notified of the disciplinary decision. The employee is considered to have been notified of the disciplinary action on the earliest of the following: delivery of the notice to the employee personally or to the employee's residence address by Fed-Ex (with signature required) or other substantially, similar, commercial mailing system; the date that the notice is signed for as certified mail directed to the employee's residence address; or three (3) days (Sundays and federal holidays excepted) after the notice is placed in the United States mail, postage prepaid. For example, if a disciplinary notice is given to the employee at work and also mailed to the employee's home the same day, the ten (10) days will be counted from the day that the employee was given the notice personally, since that occurred first.

If the Commission's office is not open on the tenth (10th) day after notification, then an appeal received the next day that the Commission's office is open for business will be considered to have been filed on time. For example, if an employee received the disciplinary notice on a Monday, the appeal request must be received by the Commission no later than Thursday of the following week; if an employee received the disciplinary notice on a Wednesday, the appeal request must be received by the Commission no later than the Monday that falls twelve (12) days later, unless a City-recognized holiday intervenes.