
Chapter 13 — Police Civil Service

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Article I – Title

§ 13-101 Short Title.

This Chapter shall be known, and may be cited, as the “Alburtis Police Civil Service Rules and Regulations.”

Article II – Definitions

§ 13-201 In General.

Unless otherwise expressly stated, the following words and phrases, wherever used in these Rules and Regulations, shall be construed to have the meaning indicated in this Article II, whether with or without initial capital letters.

§ 13-202 Applicant.

The term “Applicant” shall mean any individual who applies in writing to the Commission in response to a legally advertised notice of vacancy and/or examination for any position in the Police Department.

§ 13-203 Borough.

The term “Borough” shall mean the Borough of Alburtis, Lehigh County, Pennsylvania.

§ 13-204 Borough Council.

The term “Borough Council” shall mean the Borough Council of the Borough.

§ 13-205 Borough Manager.

The term “Borough Manager” shall mean the Borough Manager of the Borough.

§ 13-206 Certification.

The term “Certification” shall mean the submission by the Commission to the Borough Council of an appropriate number of names taken from the eligibility list developed by the Commission, at the request of Borough Council.

§ 13-207 Chair.

The term “Chair” shall mean the Chair of the Commission.

§ 13-208 Commission.

The term “Commission” shall mean the Civil Service Commission of the Borough of Alburdis, Pennsylvania.

§ 13-209 Eligible.

The term “Eligible” shall mean a person whose name is recorded on a current eligibility list or furlough list.

§ 13-210 Examination.

The term “Examination” shall mean the series of tests given to applicants to determine their qualifications for a position in the Police Department.

§ 13-211 Furlough List.

The term “Furlough List” shall mean the list containing the names of persons temporarily laid off from positions in the Police Department because of a reduction in the number of officers.

§ 13-212 Mayor.

The term “Mayor” shall mean the Mayor of the Borough.

§ 13-213 Police Department.

The term “Police Department” shall mean the police department of the Borough.

§ 13-214 Police Officer.

The term “Police Officer” shall mean a member of the Police Department who devotes his or her normal working hours to police duty and who is paid a stated salary or compensation for such work by the Borough, *except* that the term shall not include: (1) any special police appointed by the mayor to act in emergencies; (2) any person appointed solely for parking meter enforcement duties; (3) any special school police; (4) any extra police serving from time to time, or on an hourly or daily basis; or (5) any auxiliary policeman appointed under 53 PA. STAT. ANN. §§ 731-736.

§ 13-215 Probationer.

The term “Probationer” shall mean an officer in the Police Department who has been appointed from an eligibility list, but who has not yet completed twelve months of service.

§ 13-216 Reduction in Rank.

The term “Reduction in Rank” shall mean a change to a lower ranking position of employment with the Police Department, where the employee fulfilled all of the requirements of these Rules and Regulations for both the prior and new position of employment.

§ 13-217 Removal.

The term “Removal” shall mean the permanent separation of a Police Officer from the Police Department.

§ 13-218 Rules and Regulations.

The term “Rules and Regulations” shall mean the Alburdis Police Civil Service Rules and Regulations as set forth in this Chapter.

§ 13-219 Secretary.

The term “Secretary” shall mean the Secretary of the Commission.

§ 13-220 Suspension.

The term “Suspension” shall mean the temporary separation without pay of a Police Officer from the Police Department.

Article III — Positions of Employment

§ 13-301 In General.

Borough Council shall establish all positions of employment with the Police Department and the types of duties which may be assigned to persons holding any given position. A mere change of duty assignments by a person holding a particular position of employment shall not constitute a change in position or rank if both the prior and new duties are encompassed within the position of employment.

§ 13-302 Rank.

Borough Council shall establish relative rankings among the various positions of employment so that each position is of either higher, lower, or the same rank compared to another position. Borough Council may determine in each instance whether an increase in salary shall or shall not constitute a promotion to a higher ranking position. For purposes of these Rules and as among Police Officers, the rank of Corporal shall be considered higher than the rank of entry level patrol officer; the rank of Sergeant shall be considered higher than the rank of Corporal; the rank of Lieutenant shall be considered higher than the rank of Sergeant; the rank of Captain shall be considered higher than the rank of Lieutenant; and the rank of Chief shall be the highest ranking position within the police department. All members of the Police Department who are not Police Officers (*e.g.*, extra police/part-time police officers) shall have such rank as may be determined by the Borough Council from time to time, but all such ranks shall be considered lower than the rank of the lowest-ranking Police Officer.

Article IV — The Commission

§ 13-401 Civil Service Commission

(a) **Composition; Term.** The Commission shall consist of three commissioners who shall be qualified electors of the Borough and shall be appointed by Borough Council initially to serve for the terms of two, four and six years, and as terms thereafter expire shall be appointed for terms of six years.

(b) **Vacancies.** Any vacancy occurring in the Commission for any reason whatsoever shall be filled by the Borough for the unexpired term within the period of thirty (30) days after such vacancy occurs.

(c) **Alternate Members.**

(1) Borough Council may appoint no more than three qualified electors of the Borough to serve as alternate members of the Commission. The term of office of the alternate members shall be six years.

(2) An alternate member may not hold another office in the Borough.

(3) An alternate may participate in any proceeding or discussion of the Commission, but may not vote as a member of the Commission unless designated as a voting alternate member under § 13-404(b).

(4) If designated to sit on the Commission under § 13-404(b) in order to provide a quorum, an alternate member shall be entitled to participate in all proceedings and discussions of the Commission to the same and full extent as provided by law for Commission members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties specified in this Chapter and as otherwise provided by law. An alternate member shall continue to serve on the Commission in all proceedings involving the matter or case for which the alternate was initially designated until the Commission has made a final determination of the matter or case.

(d) **Oath.** Each member of the Commission, before entering upon the discharge of the duties of his/her office, shall take an oath or affirmation of office under 53 PA. CONS. STAT. ANN. § 1141 (relating to form of oaths of office).

(e) **Compensation.** No civil service commissioner shall receive compensation.

§ 13-402 Offices Incompatible with Civil Service Commissioner.

No commissioner shall at the same time hold an elective or appointed office under the United States government, the Commonwealth of Pennsylvania or any political subdivision of the Commonwealth, *except* that one member of the Commission may be a member of Borough Council, and one commissioner may be a member of the teaching profession.

§ 13-403 Organization of the Commission.

The Commission first appointed shall organize within ten days of its appointment and shall elect one of its members as its chair, one as vice chair, and one as the Secretary. The Commission shall thereafter meet and organize of the first Monday of each even-numbered year.

§ 13-404 Quorum, etc.

(a) **Quorum.** Three members of the Commission shall constitute a quorum.

(b) **Designation of Alternate Members.** If, by reason of absence or disqualification of a member, a quorum is not reached, the chair shall designate as many alternate members of the Commission to sit on the Commission as may be needed to provide a quorum. Designation of an alternate member under this subsection shall be made on a case-by-case basis in rotation according to declining seniority among the alternates.

(c) **Validity of Commission Action.** No action of the Commission shall be valid unless it shall have the concurrence of at least two members.

§ 13-405 Duties of the Chair.

The Chair, or in his or her absence, the vice chair, shall preside at all meetings and hearings of the Commission, decide all points of order or procedure and perform any duties required by law or these Rules and Regulations.

§ 13-406 Duties of Secretary.

The Secretary shall carry on at the direction of the commission all official correspondence of the commission, send out all notices required by law and these Rules and Regulations, keep a record of each examination or other official action of the commission, and perform all other duties required by law or these Rules and Regulations.

§ 13-407 Meetings.

Except for the biennial organization meeting, all meetings shall be held either at the call of the Chair or at the call of two members of the Commission. The Commission shall have the discretion to determine whether meetings shall be open to the public when not specifically regulated by law or these Rules and Regulations. The Secretary shall give each commissioner 24 hours notice in writing of each and every meeting of the Commission.

§ 13-408 Clerks, Supplies, and Solicitor.

The Borough shall:

(a) Furnish to the Commission, on its requisition, clerical assistance that may be necessary for the work of the Commission.

(b) Provide a suitable and convenient room for the use of the Commission. The Commission shall order from the Borough the necessary stationery, postage, printing, and supplies.

(c) Provide the services of a solicitor for the Commission to be appointed by the Commission and paid by the Borough. The Borough may place a reasonable limit on the amount allowed each year for the services of the Commission solicitor.

(d) Through its elected and appointed officials, aid the Commission in all proper ways in carrying out the provisions of this Chapter relating to police civil service.

§ 13-409 Minutes & Records.

(a) **In General.** The Secretary shall keep minutes of the Commission's proceedings, showing the vote of each member upon each question. If a member is absent or fails to vote, the Secretary shall indicate that fact in the minutes. The Commission shall preserve its minutes and the records of examinations and other official actions. All recommendations of applicants for appointment received by the Commission shall be kept and preserved for a period of five years. Records may only be disposed of in accordance with the *Retention and Disposition Schedule for Records of Pennsylvania Municipalities* issued by the Local Government Records Committee under the authority of the Municipal Records Act, 53 PA. CONS. STAT. § 1381 *et seq.*

(b) **Public Inspection.** The records of the Commission shall be open to public inspection only to the extent required by applicable law (*see, e.g.,* Sections 1176, 1177 and 1191 of the Borough Code, 8 PA. CONS. STAT. §§ 1176, 1177, 1191, and the Right to Know Law, 65 PA. STAT. ANN. § 67.101 *et seq.*), and public inspection shall be subject to reasonable regulation. These Rules and Regulations and all modifications thereof shall be made available for public distribution or inspection.

§ 13-410 Investigations.

The Commission may conduct investigations concerning all matters touching the administration and enforcement of these Rules and Regulations. The Chair of the Commission is authorized to administer oaths and affirmations in connection with such investigations.

§ 13-411 Subpoenas.

(a) **In General.** The Commission may issue subpoenas over the signature of the Chair to require the attendance of witnesses and the production of records and papers pertaining to any

investigation or inquiry. The fees of such witnesses for attendance and travel shall be the same as for witnesses appearing in the courts and shall be paid from appropriations for the incidental expense of the Commission.

(b) Borough Officers and Employees. All officers in public service and employees of the Borough shall attend and testify when required to do so by the Commission.

(c) Enforcement. Subpoenas shall be enforced in accordance with applicable law. (*See, e.g.,* Borough Code § 1179, 8 PA. CONS. STAT. § 1179.)

§ 13-412 Annual Report.

The Commission shall make an annual report to the Borough Council containing a brief summary of its work during the year. The annual report shall be available for public inspection.

Article V — Applications & Qualifications

§ 13-501 Applications.

(a) Timely Application Required. In order to be eligible for participation in any competitive examination for any position with the Police Department, an Applicant must submit a completed application to the Commission before the deadline stated by the Commission for that specific examination.

(b) Form of Application. The application shall be in the form prescribed by the Commission for that specific examination, and shall include information relating to:

(1) the Applicant's full name (and prior or alias names), the Applicant's citizenship, and place and date of birth;

(2) the Applicant's current and past residence addresses for the last ten years;

(3) the Applicant's current telephone number;

(4) the Applicant's vehicle operator licenses (and whether the Applicant ever had a license suspended or revoked);

(5) the Applicant's business and employment history since high school;

(6) whether the Applicant satisfies the general qualifications for the position;

(7) whether the Applicant is entitled to any veteran's preference;

(8) whether the Applicant may be rejected for any of the reasons set forth in Borough Code § 1183, 8 PA. CONS. STAT. § 1183;

(9) whether the Applicant can perform the essential functions of the position with or without reasonable accommodation;

(10) the names, addresses, and phone numbers of five character references (not including relatives or former employers);

(11) proof of current certification under the Act of June 18, 1974, Pa. Laws 359, No. 120, as amended, codified at 53 PA. CONS. STAT. § 2161 *et seq.*;

(12) whether there are any incidents in the Applicant's life not mentioned otherwise which may reflect upon the Applicant's suitability to perform the duties of a Police Officer; and

(13) such other information as may be required by the Commission.

(c) **Notarization.** The application must be supported by Applicant's statement under oath or affirmation before a Notary Public that the responses provided in the application are true, correct, and complete.

(d) **Falsifications, etc.** In the event the Commission shall determine at any time that an Applicant's application contains any falsification, omission, or concealment of material fact, the Applicant shall be deemed guilty of infamous conduct and/or conduct unbecoming an officer or violation of a law which provides that the violation constitutes a misdemeanor or felony, and shall be subject to sanctions under § 13-507 or § 13-801 *et seq.*

§ 13-502 Discrimination.

The Borough is an equal opportunity employer. It is the Borough's and the Commission's policy to grant equal employment opportunities to qualified persons without regard to race, religion, color, ancestry, national origin, sex/gender, age, veteran's status, familial status, nonjob-related physical or mental handicap or disability, genetic information, or other legally-protected status (other than legally-recognized preferences or bases for distinguishing among Applicants, such as veteran's preference and the age of persons under age 40). The Borough and the Commission will provide equal opportunities in employment and promotion.

§ 13-503 Availability.

Application forms shall be available to all interested persons in the office of the Borough Manager, and from such other offices and officers that the Commission, from time to time, may choose to designate. Application forms may be mailed upon written or telephone request. However, the Commission assumes no responsibility for missed filing deadlines due to a delay in the mail.

§ 13-504 Age and Residency Requirements.

All Applicants must have reached their twenty first (21) birthday before the deadline for submitting completed applications. Applicants shall, within one (1) year of being employed by

the Borough, reside within the Borough or within ten (10) air miles of the nearest Borough boundary.

§ 13-505 General Qualifications for All Applicants.

(a) **In General.** Every Applicant for any position in the Police Department shall possess a diploma from an accredited high school or a graduate equivalency diploma. In addition, every applicant must be a United States citizen, be physically and mentally able to perform the essential functions of the position with or without reasonable accommodation, be certified by the Municipal Police Officers' Education and Training Commission under the Act of June 18, 1974, Pa. Laws 359, No. 120, as amended, codified at 53 PA. CONS. STAT. § 2161 *et seq.*, and, prior to appointment, possess a valid motor vehicle operators license issued by the Commonwealth of Pennsylvania.

(b) **Essential Job Functions.** Each of the following are essential functions of a Police Officer:

- (1) Running for several hundred yards;
- (2) Climbing over obstacles;
- (3) Crawling;
- (4) Pushing motor vehicles;
- (5) Pulling or carrying accident, fire, or crime victims;
- (6) Using physical force to apprehend and subdue arrestees;
- (7) Withstanding prolonged exposure (as long as eight hours) to extreme weather conditions;
- (8) Withstanding prolonged periods of standing and sitting;
- (9) Withstanding frequent exposure to stress-producing situations, such as encountering persons injured or killed by accidents, crimes, or suicide;
- (10) Dealing with domestic disputes;
- (11) Dealing with verbal and physical abuse of the Police Officer, including taunts, insults, and threats to the Police Officer, family members, or fellow Police Officers;
- (12) Communicating effectively with individuals suffering from trauma;
- (13) Operating a motor vehicle for long periods of time;
- (14) Using a firearm effectively;
- (15) Filling out written reports in a clear and concise manner;
- (16) Hearing;
- (17) Walking;

(18) Using hands to finger, handle, or operate objects, controls, or tools, such as a police car, police radio, VASCAR unit, telephone, handgun and other weapons, handcuffs, breathalyzer, pager, first aid equipment, and a personal computer, including word processing software;

(19) Reaching with hands and arms;

(20) Balancing;

(21) Smelling;

(22) Stooping and kneeling;

(23) Seeing, including close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus;

(24) Working in an environment with a noise level that is generally moderate, although occasionally louder;

(25) Working near moving mechanical parts;

(26) Working in high, precarious places;

(27) Working with explosives;

(29) Withstanding exposure to wet and/or humid conditions, extreme heat, or extreme cold; and

(30) Withstanding short-term exposure to fumes, airborne particles, toxic or caustic chemicals, and/or vibration.

§ 13-506 General Qualifications for Ranking Officers.

(a) **No Recent Suspensions.** In addition to meeting the qualifications in § 13-505, all Applicants for a promotional position, except Chief of Police, shall not have been suspended without pay at any time five (5) years prior to the deadline for submitting applications. Any suspension to which the Applicant has filed a timely appeal pursuant to a grievance procedure or these Rules and Regulations shall be disregarded unless the appeal is resolved prior to the creation of the eligibility list. If the suspension is upheld following the creation of the eligibility list, but before the Applicant is appointed to a promotional position from the eligibility list, the Commission shall, in accordance with § 13-507, remove the Applicant from the eligibility list or, if certified, revoke the Applicant's certification, due to lack of the minimum qualifications under this § 13-506(a).

(b) **Prior Service.** All Applicants for promotional positions shall have at least two (2) years of continuous prior service with the Police Department.

§ 13-507 Rejection of Applicant.

The Commission may refuse to examine, or, if examined, may refuse to certify as eligible after examination, or, if certified, may revoke the certification of, any Applicant who is found to

lack any of the minimum qualifications for examination prescribed in these Rules and Regulations for the particular position for which the Applicant has applied. In addition, the Commission may refuse to examine, or if examined, may refuse to certify, or, if certified, may revoke the certification of, any Applicant who is physically or mentally unfit to perform the essential functions of the position applied for (with or without reasonable accommodation), or who is illegally using a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802), who is guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct in office, or who is affiliated with any group whose policies or activities are subversive to the forms of government set forth in the constitutions and laws of the United States and the Commonwealth of Pennsylvania.

§ 13-508 Recording & Filing Applications.

Applications for positions in the Police Department shall be received at the Borough offices only after an examination has been properly advertised and before the deadline for receiving applications which must be set forth in the public advertisement. Applications will be received by the Borough Manager. The Borough Manager will record the receipt of all applications and provide each Applicant with notice of the time and place for the first portion of the testing procedure, the written examination. Any application containing material errors or omissions may, at the discretion of the Commission, be returned to the Applicant for correction prior to the deadline for filing applications, after which no new applications or amended applications will be accepted.

§ 13-509 Hearings for Disqualified Applicants.

(a) **Request for Hearing.** Any Applicant or person who is aggrieved by the refusal of the Commission to examine or certify the Applicant or person as eligible after examination, or the Commission's revocation of any certification, may request a public hearing before the Commission. The Applicant or other aggrieved person must make his/her request for a hearing in writing within ten calendar days after the date when he/she knew or should have known of the Commission's action which is being challenged.

(b) **Hearing—In General.** Within ten days after a request for a hearing under subsection (a), the Commission shall designate a time and place for the hearing which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 PA. CONS. STAT. § 101 *et seq.*, and at which the Commission shall take testimony and review its refusal to provide examination or certification or its revocation of a certification. The Applicant or other person aggrieved may appear with or without counsel.

(c) **Private vs. Public Matters.** The hearing shall be public. The deliberations of the Commission, including interim rulings on evidentiary or procedural issues, may be held in the nature of a closed executive session. The Commission's disposition of the matter shall constitute official action which shall occur at a public meeting held under 65 PA. CONS. STAT. chapter 7 (relating to open meetings).

§ 13-510 Public Notice.

At least two weeks prior to the close of the application period, the Commission shall post in a conspicuous location in the Borough offices notice of the time and place of every examination, together with the information as to the type of position to be filled, the requirements for that position, where applications may be obtained for the examination, and the deadline for filing those applications. In addition, at least two weeks prior to each examination, the Commission shall publish the notice in at least one newspaper of general circulation in the Borough. Additional public notice by publication, posting, or other means may be given at any time at the discretion of the Commission

Article VI — Examination & Grading Procedure**§ 13-601 General Examination Requirements for the Position of Patrol Officer.**

The examination for an entry-level patrol officer position in the Police Department will consist of a written and an oral examination which will be graded on a one hundred (100) point scale, with the written examination representing seventy percent (70%) of the final score and the oral examination representing thirty percent (30%) of the final score. In addition, each Applicant will undergo a physical fitness test under § 13-608 and a background investigation under § 13-609, which will be graded on a pass/fail basis for every Applicant. After an Applicant has been extended an offer of employment, final appointment shall be contingent upon the Applicant passing physical and psychological examinations under § 13-703.

§ 13-602 General Examination Requirements for Ranking Officer Positions.

The examination for the positions of Corporal, Sergeant, Lieutenant, and Captain shall include a written and an oral examination which will be graded on a one hundred (100) point scale, with the written examination representing seventy percent (70%) of the final score and the oral examination representing thirty percent (30%) of the final score. In addition, each Applicant will undergo a physical fitness test under § 13-608, which will be graded on a pass/fail basis for every Applicant. After an Applicant has been extended an offer of promotion, the final appointment to the promotional position shall be contingent upon the Applicant passing physical and psychological examinations under § 13-703.

§ 13-603 Administering Examinations.

The Commission may designate the Department of Community Affairs, Municipal Consulting Services Division, the State Civil Service Commission of the Commonwealth of Pennsylvania, or any other recognized examining agency to act as examiner for the written examinations. The Commission shall reserve the right to accept or reject, in whole or in part, the recommendations of the regularly appointed examining agency. The Commission may conduct the oral examination and the evaluation of the service or performance record of any Applicant, *and/or* the Commission may designate, from time to time, such persons (other than members of Borough Council) qualified in oral examining procedures and techniques, or qualified to evaluate performance or service records, as are considered necessary to assist in or perform such examination and evaluations. All written and oral examinations shall be practical in character and shall relate to such matters and include such inquiries as will fairly test the merit and fitness of the persons examined to discharge the duties of the employment sought by them. Except as otherwise provided in these Rules, the content and structure of the examinations shall be determined by the designated examiners. While the content and structure may be different for different positions or for the same position at different times, they shall be the same for all Applicants tested at any specific time for any specific position. The Commission may designate agents to administer physical fitness examinations.

§ 13-604 Written Examinations.

The written examination shall be graded on a 100 point scale, and an Applicant must score seventy percent (70%) or higher in order to continue in the application process. Applicants scoring less than seventy (70) percent shall be rejected. Within thirty (30) days after the administration of the written examination, all Applicants shall be given written notice of their test results and passing Applicants shall be scheduled for an oral examination appointment.

§ 13-605 Oral Examinations.

Every Applicant who scored seventy percent (70%) or higher in the written examination shall be given an oral examination which will be graded on a 100 point scale, with a score of seventy percent (70%) or higher necessary for passing. The Chief of Police, or his representative, shall develop a set of questions, which may be included, in whole or in part, in the oral examination. Applicants will not be graded by the Chief of Police or his representative. The oral examination shall involve questioning applicants on how they would handle situations relevant to police work, and, in the case of promotional examinations, how they handled similar situations in the past. Within thirty (30) days after an Applicant's oral examination, the Commission shall inform the Applicant of his/her score in the oral examination and the total overall score in the written and oral examinations (*see* § 13-606), and shall inform each passing Applicant of the date for physical fitness testing.

§ 13-606 Total Score for Written and Oral Examinations.

The total score for the written and oral examinations shall equal the sum of:

- (a) the written examination score under § 13-604 multiplied by seventy percent (70%);
- (b) the oral examination score under § 13-605 multiplied by thirty percent (30%); and
- (c) any applicable veterans' preference points under § 13-607.

§ 13-607 Veterans' Preference Points.

Any Applicant for the entry-level position of patrol officer who is a "soldier" within the meaning of the Veterans' Preference Act, 51 PA. CONS. STAT. § 7101 *et seq.*, and who has received a passing score under *both* the written and the oral examinations, shall receive an additional ten (10) points in addition to his/her total weighted scores for the written and oral examinations.

§ 13-608 Physical Fitness Testing.

An Applicant for any position as a Police Officer must pass a physical fitness test demonstrating the ability to satisfy each of following requirements, which are job-related and consistent with business necessity:

(a) **Body Drag.** An Applicant is required to remove a simulated motor vehicle operator weighing approximately 200 lbs. from behind the steering wheel of a motor vehicle and drag the simulated operator to a point 50 feet from the vehicle.

(b) **Quarter Mile Run.** An Applicant is required to run a distance on one quarter mile on a pre-measured course in less than 110 seconds.

(c) **Pull-ups.** An Applicant is required to perform three (3) pull-ups in thirty (30) seconds.

(d) **Push-ups.** An Applicant is required to perform twenty-five (25) push-ups in sixty (60) seconds.

(e) **Sit-ups.** An Applicant is required to perform twenty (20) sit-ups in sixty (60) seconds.

§ 13-609 Background Investigation.

(a) **Investigation by Chief or Designee.** The Commission shall request the Chief of Police or the Chief's designee to conduct a background investigation on an Applicant for the entry-level position of patrol officer who has passed the written examination, the oral examination, and the physical fitness test, at such time as the Commission determines under § 13-701(b). The background investigation shall include interviews with the Applicant's family,

acquaintances, current and former employers, current and former neighbors, references, and current and former teachers and school officials. In addition, the Applicants record of criminal convictions should be investigated. The Applicant may be interviewed directly when the information collected during the background investigation requires clarification or explanation.

(b) Recommendation to Commission. After the background investigation is completed, the Chief of Police, or designee, shall make a written recommendation to the Commission on whether the Applicant is appropriate for consideration for appointment as a Police Officer. Appropriateness of the Applicant shall be based on the criteria set forth in § 13-507. This recommendation shall be in writing and if the recommendation is to disqualify, then a detailed written explanation of the reasons for disqualification must be included.

(c) Determination by Commission. The Commission shall make the final determination on whether the information collected during the background investigation warrants rejection of an Applicant.

(d) Notification of Applicant. The Commission shall inform each Applicant whether he/she has passed the background investigation within thirty (30) days after the Commission considers the recommendation of the Chief of Police or designee.

Article VII — Certification of Eligibility List; Appointment

§ 13-701 Creation of Eligibility List.

(a) In General. At the completion of the written examination, oral examination, and physical fitness test, the Commission shall rank all Applicants who have passed all of those required examinations and satisfied the minimum requirements for appointment on an eligibility list. The eligibility list shall contain the names of passing individuals eligible for appointment listed from highest to lowest based on their total scores under § 13-606 (including applicable veterans' preference points), subject to subsection (b) (relating to background investigation) and § 13-703 (relating to physical and psychological examinations). For promotional positions, fulfilling the performance requirement set forth in § 13-506 is also required. In the case of tied scores, the tie will be broken by giving preference to the Applicant who submitted a final completed application first. If both tied Applicants submitted their complete applications on the same day, then the Applicants shall be ranked in alphabetical order by surname.

(b) Background Investigation. The Commission shall, from time to time, request that background investigations under § 13-609 be conducted on such number of persons on the current eligibility list for the entry-level position of patrol officer as the Commission desires, *provided* that background investigations shall be conducted for persons higher on the eligibility list before or concurrently with background investigations for persons lower on the eligibility list. The Commission shall indicate on the eligibility list whether a person on the list has passed

the background investigation or is still subject to a background investigation in the future. Upon determining that a person on the eligibility list has passed the background investigation, the Commission shall amend the eligibility list accordingly. Upon determining that a person on the eligibility list has failed the background investigation and warrants rejection, the Commission shall amend the eligibility list to delete that person.

(c) Duration of List. The eligibility list shall be valid for a period of one year from the date the Commission first ranks all passing Applicants, assigns veterans preference points, and formally adopts the eligibility list. The Commission may, at its sole discretion before the original expiration date, extend the list for up to an additional twelve (12) months by a majority vote of the Commission at a duly authorized Commission meeting. In the absence of a lawful extension by the Commission, the list shall expire.

(d) Posting of List. The Commission shall post the eligibility list, containing the names and grades of those who have passed the examination, in a publicly accessible portion of the Borough offices.

§ 13-702 Appointment.

(a) Former Borough Police Officers. The Borough Council may fill any vacancy in an existing position in the Police Department which occurs as a result of retirement, resignation, disability, or death by the reappointment or reinstatement of a former employee of the Police Department who had been appointed previously in accordance with Borough civil service rules. Except for physical and psychological examinations, no other testing shall be required for such a former employee. If the number of Police Officers in the Police Department shall be increased, the Borough Council shall fill the new positions by reinstating persons on the furlough list in accordance with § 13-802 so long as there are persons remaining on the furlough list who timely request reinstatement.

(b) General Rule. Except as provided in subsection (a), every position, except that of Chief of Police, shall be filled only in the following manner:

(1) The Borough Council shall notify the Commission of any vacancy which is to be filled and shall request the certification of three (3) names from the eligibility list;

(2) If the Commission has not conducted a background investigation on the three (3) highest persons on the eligibility list for the position to be filled (or, if there are fewer than three (3) persons on the list, all of the persons on the list), the Commission shall request additional background investigations under § 13-701(b) until such time as the three (3) highest persons on the list have all passed the background investigation, or all of the persons remaining on the list have passed the background investigation;

(3) Thereafter, if three (3) or more persons are on the eligibility list for the position to be filled and have passed the background investigation, the Commission shall certify the names of the three (3) highest persons on the list to Borough Council. If three (3) names are not available, then the Commission shall certify the names(s) remaining of the list;

(4) The Borough Council shall make a conditional appointment from one of the names certified, based solely on the merits and fitness of the Applicants. However, for entry-

level appointments to the position of patrol officer, when one of the three Applicants on the certified list is a “soldier” within the meaning of the Veterans’ Preference Act, 51 PA. CONS. STAT. § 7101 *et seq.*, that Applicant shall be selected, and when two of the Applicants on the certified list are “soldiers,” one of those two Applicants shall be selected. The appointment shall be conditioned solely on passage of the physical and psychological examinations under § 13-703.

(c) Objections by Borough Council. The Borough Council may object to one or more of the Applicants certified by the Commission for any of the reasons set forth in § 13-507. Within ten days after such objections are filed, the Commission shall designate a time and place for a public hearing on such objections, which shall be conducted pursuant to the procedures set forth in § 13-509. If the Commission sustains the objections as to any Applicant, the Commission shall strike the name of that Applicant from the eligibility list and certify the next highest name for inclusion on the list of Applicants submitted to the Borough Council (following the completion of any necessary background investigations).

§ 13-703 Physical & Psychological Examinations.

(a) In General. After the Borough Council makes a conditional appointment under § 13-702 or § 13-704, the Commission shall direct the conditional appointee to submit to a physical medical examination and a psychological medical examination to determine whether the conditional appointee is capable of performing the essential functions of the position to which he/she has been conditionally appointed with or without reasonable accommodation, and what types of accommodations would be required, if any.

(b) Medical Examinations and Persons to Conduct Them.

(1) Physical medical examinations shall be under the direction of a physician or other qualified medical professional appointed by Borough Council. The term “physician” shall have the meaning given to it in 1 PA. CONS. STAT. § 1991. The term “qualified medical professional” shall mean an individual, in collaboration with or under the supervision or direction of a physician, as may be required by law, who is licensed:

(A) as a physician assistant pursuant to the act of December 20, 1985 (P.L. 457, No. 112), known as the “Medical Practice Act of 1985,” 63 PA. STAT. ANN. § 422.1 *et seq.*, or the act of October 5, 1978 (P.L. 1109, No. 261), known as the “Osteopathic Medical Practice Act,” 63 PA. STAT. ANN. § 271.1 *et seq.*; or

(B) as a certified registered nurse practitioner pursuant to the act of May 22, 1951 (P.L. 317, No. 69), known as “The Professional Nursing Law,” 63 PA. STAT. ANN. § 211 *et seq.*

(2) Psychological medical examinations shall be under the direction of a psychiatrist or psychologist appointed by Borough Council.

(3) For purposes of this section, the term “medical examination” shall mean any examination, procedure, inquiry, or test designed to obtain information about medical history or a physical or mental condition which might disqualify an Applicant if it would prevent the Applicant from performing, with or without reasonable accommodation, all of the essential functions of the position to which the Applicant has been conditionally appointed.

(4) The person(s) appointed by Borough Council to conduct the physical medical examination and psychological medical examination (hereinafter, “**Medical Examiners**”) shall render an opinion as to whether the conditional appointee has a physical or mental condition which calls into question the person’s ability to perform all of the essential functions of the position to which the person was conditionally appointed.

(c) **Interactive Discussions.** If the opinion rendered by the Medical Examiners calls into question the conditional appointee’s ability to perform all of the essential functions of the position to which the person was conditionally appointed, a person designated by Borough Council shall meet with the conditional appointee for the purpose of having one or more interactive discussions on whether the conditional appointee can, with or without reasonable accommodation, perform all of the essential functions of the position.

(d) **Appointment of Qualified Individual.** If the opinions rendered by the Medical Examiners do not question the conditional appointee’s ability to perform all of the essential functions of the position to which the person was conditionally appointed, or if Borough Council determines after the interactive discussions under subsection (c) that the conditional appointee is qualified, then the conditional appointee’s appointment shall become a final probationary appointment.

(e) **Rejection of Unqualified Individual.** If, at the conclusion of the interactive discussion under subsection (c), Borough Council determines that the conditional appointee is not qualified, Borough Council shall give written notice to the conditional appointee and the Commission, the conditional appointee’s conditional appointment shall be revoked, and the conditional appointee shall be rejected from further consideration.

(f) **New Certifications in the Event of a Rejection.** If a conditional appointee is rejected, the Commission shall strike the name of the conditional appointee from the eligibility list and certify the next highest name for inclusion on the eligibility list submitted to the Borough Council, and the appointment process shall proceed in accordance with § 13-702.

(g) **No Other Medical Examinations.** Nothing in these Rules and Regulations shall be construed to authorize physical or psychological medical examinations prior to the conditional appointment of a person to a position as a Police Officer.

§ 13-704 Appointment of Chief of Police.

(a) **Nomination.** In the case of a vacancy in the office of Chief of Police, the Borough Council shall have full discretion to nominate any person who satisfies the general qualifications for a Police Officer set forth in § 13-505 to fill the position of Chief of Police. It shall thereupon become the duty of the Commission to examine the qualifications of such person and subject such person to a non-competitive examination.

(b) **Examination.** The non-competitive examination shall consist of:

(1) a written examination *and/or* an oral examination, administered by such persons as the Commission shall designate and with such passing scores as shall be established by the Commission prior to the administration of the examination(s) to the nominee;

(2) the physical fitness test described in § 13-608; and

(3) a background investigation similar to that described in § 13-609, to be conducted by such person(s) as the Commission shall designate.

(c) **Certification and Appointment.** If, following the completion of the non-competitive examination, the Commission shall determine that the nominee is qualified for the office of Chief of Police, the Commission shall certify the nominee to Borough Council. Borough Council may then grant the nominee a probationary appointment to the office of Chief of Police, conditioned upon passing physical and psychological examinations under § 13-703. Thereafter, the Chief of Police may only be suspended, removed from office, or reduced in rank pursuant to the provisions of § 13-705 or Article VIII.

(d) **Rejection of Nominee.** If the Commission shall determine that the nominee is not qualified, Borough Council shall not appoint the nominee. However, the nominee may appeal the decision under § 13-509.

§ 13-705 Probationary Period.

(a) **In General.** Every successful Applicant to the position of patrol officer or to a promotional position with the Police Department or the position of Chief of Police shall serve a twelve (12) month probationary period. During the probationary period, a newly hired officer may only be dismissed, and a promoted officer may only be returned to prior rank, for cause for the reasons set forth in § 13-507 or because of incapacity for duty due to the use of alcohol or drugs. The Mayor or the Chief of Police or his designee shall prepare a written evaluation at three months, six months, and nine months. Evaluations shall be reviewed with the probationer. A final report will be submitted at twelve months with a recommendations for dismissal/reduction in rank or permanent appointment.

(b) **Conduct During Probationary Period.** If, at the close of the probationary period, the conduct or fitness of the probationer is questioned by the Chief of Police, the Mayor, or any member of Borough Council, the Borough Council shall determine whether the conduct or fitness of the probationer has been satisfactory to Borough Council. If not, the probationer shall be notified in writing that he/she will not receive a permanent appointment. At that time, the probationary appointment shall end; a newly-hired probationer's employment shall terminate, and a promoted probationer shall be returned to his/her previous rank.

(c) **Permanent Appointment.** If, at the close of the probationary period, the conduct and fitness of the probationer has been satisfactory to Borough Council, the probationer shall receive a permanent appointment to his/her position. His/her retention in the position without adverse action and notification by Borough Council within a reasonable period following the expiration of the probationary period shall be deemed to be a permanent appointment.

§ 13-706 Provisional Appointments.

Whenever there are urgent reasons for the filling of a vacancy in any position in the Police Department and there are no names on the eligibility list for such appointment, the Borough

Council may nominate a person to the Commission for noncompetitive examination, and if such nominee shall be certified by the Commission as qualified after such noncompetitive examination, he/she may be appointed provisionally to fill such vacancy. It shall thereupon become the duty of the Commission within three weeks to hold a competitive examination and certify an eligibility list and a regular appointment shall then be made from the name or names submitted by the Commission; *provided*, that nothing within this Section shall prevent the appointment, without examination, of persons temporarily as police officers in cases of riot or other emergency.

Article VIII — Suspensions, Removals, and Reductions in Rank

§ 13-801 Grounds for Disciplinary Action.

(a) **In General.** No person who has received a permanent appointment to a position in the Police Department pursuant to these Rules and Regulations or prior to the creation of the Commission shall be suspended without pay or removed from office, and no person who has been promoted in rank and received a permanent appointment to such position pursuant to these Rules and Regulations or who has received a permanent appointment to a ranking position prior to the creation of the Commission shall be reduced in rank, except for the following reasons:

- (1) physical or mental disability affecting the officer's ability to continue in service, in which case the officer shall receive an honorable discharge from service;
- (2) neglect or violation of any official duty;
- (3) violation of any law which provides that such violation constitutes a misdemeanor or felony;
- (4) inefficiency, neglect, intemperance, disobedience of orders or conduct unbecoming an officer;
- (5) intoxication while on duty;
- (6) engaging or participating in the conduct of a political or election campaign while on duty or in uniform or while using Borough property otherwise than to exercise the person's own right of suffrage; or
- (7) engaging or participating in the conduct of a political or election campaign for an incompatible office as provided in Borough Code § 1104(f), 8 PA. CONS. STAT. § 1104(f).

(b) **Prohibited Grounds.** No Police Officer shall be suspended, removed, or reduced in rank for religious, racial, or political reasons.

§ 13-802 Furloughs.

If for reasons of economy or other reasons, it shall be deemed necessary by Borough Council to reduce the number of Police Officers in the Police Department, the Borough Council shall effect the reduction by furloughing the person(s) (including probationers) last appointed to the Police Department. Such removal shall be accomplished by furloughing in numerical order commencing with the person last appointed until such reduction shall have been accomplished. In the event that the Borough Council decides to increase the size of the Police Department, the furloughed officers shall be reinstated in order of their seniority in the Police Department if the furloughed officer accepts reinstatement in writing within thirty (30) days of receiving notice of the opening. These reduction in force provisions are not applicable to the Chief of Police.

§ 13-803 Notice of Suspension, Removal, or Reduction in Rank.

(a) **Statement of Charges.** Whenever a Police Officer is suspended, removed, or reduced in rank by the Mayor or Borough Council for cause under § 13-801, the Mayor or Borough Council shall file a written statement of the charges made against the Police Officer with the Commission. The charges shall be stated clearly and in sufficient detail to enable the Police Officer to understand and respond to the charges. The charges shall specify the particular cause(s) for disciplinary action invoked under § 13-801, and give a brief description of the factual circumstances upon which the Mayor or Borough Council relied in finding cause for disciplinary action.

(b) **Service.** The Borough shall serve a copy of the charges and a copy of the rights of appeal set forth in § 13-804 to the Police Officer within five days after the charges are filed. Service may be effected by handing the material to the Police Officer in person, or by certified or registered mail addressed to the Police Officer's last known address. Service shall be complete upon mailing.

§ 13-804 Hearings on Suspensions, Removals, and Reductions in Rank.

(a) **Request for Hearing.** A Police Officer suspended, removed, or reduced in rank for cause under § 13-801 may request a hearing before the Commission on the charges filed by the Mayor or Borough Council. The request must be in writing, and must either be delivered in person to the Borough Manager (or any person in charge of the office of the Borough Manager during normal business hours) as agent for the Commission, or by U.S. mail addressed to the Commission at the principal offices of the Borough (Borough Hall). The Police Officer may make written answers to any charges filed not later than the date fixed for the hearing. Failure of the Police Officer to provide written answers to any of the charges shall not be deemed an admission by the Police Officer.

(b) **Hearing.** The Commission shall schedule a hearing to be held within ten days from the Police Officer's written request for a hearing unless continued by the Commission for cause at the request of the Commission, the Police Officer, or the party which filed the charges against the Police Officer (the Borough Council or the Mayor). The failure of the Commission to hold a hearing within ten days from the filing of the written charges shall not result in the dismissal of

the charges filed. The hearing shall be conducted in accordance with the provisions of the Local Agency Law, 2 PA. CONS. STAT. § 101 *et seq.*, and all other applicable laws. The person against whom the charges are made may be present in person and by counsel. All testimony shall be given under oath administered by the Chair, or in absence of the Chair, the vice chair. The Commission shall have power to issue subpoenas as set forth in § 13-411. The hearing shall be conducted in closed executive session that shall not be open to the public, unless a public hearing is required by law or requested by the Police Officer or Borough Council prior to the commencement of the hearing. The deliberations of the Commission, including interim rulings on evidentiary or procedural issues, may be held in private and shall not be subject to a request by the Police Officer or Borough Council for being open to the public. The Commission's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 PA. CONS. STAT. chapter 7 (relating to open meetings). A stenographic record of all testimony shall be taken at every hearing and preserved by the Commission. In the event the charges are dismissed, the records shall be sealed and not be available for public inspection.

(c) Standard of Review; Decision. In conducting the hearing, the Commission's standard of review shall be to determine whether sufficient evidence has been presented to support the statutory reason(s) for the disciplinary action. If the Commission finds that sufficient evidence has been introduced to support the charge, the Commission shall not modify the penalty imposed by the Borough Council or the Mayor unless it finds that the penalty imposed was arbitrary, discriminatory or an abuse of the Borough Council's or the Mayor's discretion. In considering the appropriateness of the discipline, the Commission shall not substitute its judgment for that of the Borough Council or the Mayor. However, when the more serious charges brought are not fully substantiated, and/or the penalty imposed is severely disproportionate to any charges which are sustained, the Commission has authority to modify the penalty. The Commission may request posthearing briefs, and shall issue a written decision containing specific findings of fact and conclusions of law within sixty (60) days after receipt of the hearing transcript. No order of suspension shall be made by the Commission for a period longer than one year.

(d) Appeal of Decision. All parties shall have an immediate right of appeal to the Court of Common Pleas of Lehigh County, and the case shall there be determined as the court deems proper. The appeal shall be taken within thirty (30) days after the date of entry by the Commission of its final order, and shall be by petition. As provided by law, upon the appeal being taken and docketed, the court of common pleas shall schedule a day for a hearing and shall proceed to hear the appeal on the original record and additional proof or testimony as the parties concerned may desire to offer in evidence.

(e) Reinstatement. In the event that the Commission fails to uphold the charges, then the person sought to be suspended, removed or demoted shall be reinstated with full pay for the period of the suspension, removal, or demotion, and no charges related to the suspension, removal or reduction in rank shall be officially recorded in the Police Officer's record.

Article IX — Miscellaneous Matters

§ 13-901 Provisions Which Duplicate or Reference State Law.

In the case of any provision of these Rules and Regulations which restate a portion of the Borough Code or other applicable state laws or regulations, it is the intention of the Commission and Borough Council merely to follow the applicable state law, and not to create an independent standard applicable to the Borough of Albury even if state law should later become less restrictive or more permissive. Therefore, if any such state law or regulation shall be amended, the corresponding provision of these Rules and Regulations shall be deemed to be similarly amended. All direct or indirect references to any state law or regulation shall be construed as references to such state laws or regulations as they may be amended, supplemented, and/or redesignated from time to time.

§ 13-902 Discrimination on Account of Political or Religious Affiliations.

(a) **Information.** No question in any form of application for examination or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any Applicant, nor shall inquiry be made concerning such opinion or affiliations and all disclosures thereof shall be ignored. .

(b) **Prohibition.** No discrimination shall be exercised, threatened, or promised by any person against or in favor of any Applicant or employee because of political or religious opinions or affiliations or race, and no offer or promise or reward, favor, or benefit, directly or indirectly, shall be made to or received by any person for any act done or duty omitted or to be done under the civil service provisions of the Borough Code, 8 PA. CONS. STAT. §§ 1170-1194.

§ 13-903 Amendment of Rules & Regulations.

These Rules and Regulations may only be amended, revised, voided, or replaced if identical provisions are adopted by resolution of the Commission and ordinance of Borough Council.

Appendix

¶ 13-A Disposition of Ordinance 329.

Ordinance 329 was never codified to the 1981 Code.

Ordinance 3292003 Codified Ordinances

§ 101 (intro)	§ 13-201
§ 101(a)	§ 13-202
§ 101(b)	§ 13-203
§ 101(c)	§ 13-204
§ 101(d)	§ 13-205
§ 101(e)	§ 13-206
§ 101(f)	§ 13-207
§ 101(g)	§ 13-208
§ 101(h)	§ 13-209
§ 101(i)	§ 13-210
§ 101(j)	§ 13-211
§ 101(k)	§ 13-212
§ 101(l)	§ 13-213
§ 101(m)	§ 13-214
§ 101(n)	§ 13-215
§ 101(o)	§ 13-216
§ 101(p)	§ 13-217
§ 101(q)	§ 13-219
§ 101(r)	§ 13-220
§ 102(a)	§ 13-301
§ 102(b)	§ 13-302
§ 201	§ 13-401
§ 202	§ 13-402
§ 203	§ 13-403
§ 204	§ 13-404
§ 205	§ 13-405
§ 206	§ 13-406
§ 207	§ 13-407
§ 208	§ 13-408
§ 209	§ 13-409
§ 210	§ 13-410
§ 211	§ 13-411
§ 212	§ 13-412
§ 301	§ 13-501
§ 302	§ 13-502
§ 303	§ 13-503
§ 304	§ 13-504
§ 305	§ 13-505
§ 306	§ 13-506
§ 307	§ 13-507
§ 308	§ 13-508
§ 309	§ 13-509
§ 310	§ 13-510
§ 401	§ 13-601
§ 402	§ 13-602
§ 403	§ 13-603
§ 404	§ 13-604
§ 405	§ 13-605

<u>Ordinance 329</u>	<u>2003 Codified Ordinances</u>
§ 406	§ 13-606
§ 407	§ 13-607
§ 408	§ 13-608
§ 409	§ 13-609
§ 501	§ 13-701
§ 502	§ 13-702
§ 503	§ 13-703
§ 504	§ 13-704
§ 505	§ 13-705
§ 506	§ 13-706
§ 601	§ 13-801
§ 602	§ 13-802
§ 603	§ 13-803
§ 604	§ 13-804
§ 701	§ 13-901
§ 702	§ 13-902

¶ 13-B Source Ordinances.

Ordinance 329	03-27-1996
Ordinance 415	10-29-2003
Ordinance 429	12-29-2004
Ordinance 496	03-30-2011
Ordinance 526	01-28-2015
Ordinance 551	11-14-2018