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## 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 Secretary.**

The term “Borough Secretary” shall mean the Secretary 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 eligible list developed by the Commission, at the request of Borough Council.

**§ 13-207 Chairperson.**

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

**§ 13-208 Commission.**

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

**§ 13-209 Eligible.**

The term “Eligible” shall mean a person whose name is recorded on a current eligible 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 eligible 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 Certification.**

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) **Oath.** Each member of the Commission, before entering upon the discharge of the duties of his/her office, shall take an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform his/her official duties with fidelity.

(d) **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 chairperson, one as vice chairperson, and one as the Secretary. The Commission shall thereafter meet and organize on the first Monday of February of each even-numbered year.

### § 13-404 Quorum.

Two members of the Commission shall constitute a quorum and no action of the Commission shall be valid unless it shall have the concurrence of at least two members.



**§ 13-405 Duties of Chairperson.**

The Chairperson, or in his or her absence, the vice chairperson, 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 Chairperson 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.**

Borough Council shall furnish the Commission with such supplies and clerical assistance as may be necessary for the Commission to fulfill its duties. In addition, the Commission may retain counsel, and any other consultants or experts, including physicians and psychiatrists, as are necessary. The elected and appointed officials of the Borough shall assist the Commission with all reasonable and appropriate efforts, including compensation for any counsel or experts retained by the Commission.

**§ 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. 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, 1968 Pa. Laws 961, Act No. 428, as amended, codified at 53 PA. STAT. ANN. § 9001 *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 1177 and 1191 of the Borough

Code, 53 PA. STAT. ANN. §§ 46177, 46191, and the Right to Know Act, 65 PA. STAT. ANN. § 66.1 *et seq.*), and public inspection shall be subject to reasonable regulation.

### § 13-410 Investigations.

The Commission shall have the power to make investigations concerning all matters relating to the administration and enforcement of these Rules and Regulations. The Chairperson of the Commission is authorized to administer oaths and affirmations in connection with such investigations.

### § 13-411 Subpoenas.

(a) **In General.** The Commission shall have the power to issue subpoenas over the signature of the Chairperson, or his/her designee, 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, 53 PA. STAT. ANN. § 46179.*)

### § 13-412 Annual Report.

The Commission shall make a report to the Borough Council on or before the last Wednesday in September each year containing a brief summary of its work during the preceding year and a full accounting for any expenditures of public monies. 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);
- (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 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, 53 PA. STAT. ANN. § 46183;
- (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); and
- (11) 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.

**(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, national origin, gender, age, veteran's status, marital status, or nonjob-related physical or mental handicap or disability (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 Secretary, 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 under the Act of June 18, 1974, Pa. Laws 359, No. 120, as amended, codified at 53 PA. STAT. ANN. § 740 *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.

(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 full duties of the position applied for, or who is a habitual substance abuser, 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 Secretary. The Secretary 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.**

Any Applicant or other person who believes that he/she is aggrieved by the actions of the Commission, in refusing to examine or to certify them as eligible after examination, or in revoking any certification, may request a hearing before the Commission. Within ten days after such request, 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.* The Applicant or aggrieved party must make his/her request for a hearing in writing within ten calendar days after the date when the party knew or should have known of the Commission's action which is being challenged.

**§ 13-510 Public Notice.**

The Commission shall post in a conspicuously 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 four weeks prior to each examination, the Commission shall publish the notice shall occur in at least one newspaper of general circulation in the Borough.

**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 examina-

tions. 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. The Commission may designate agents to administer physical fitness examinations. The Commission may designate qualified persons to perform medical or psychological 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:

(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 each Applicant. 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 List of Eligibles; Appointment

### § 13-701 Creation of Eligibility List.

(a) **In General.** At the completion of the examination requirements set forth in Article VI (written examination, oral examination, background investigation, and physical fitness test), the Commission shall rank all passing Applicants on a list, with the Applicant receiving the highest score at the top of the list and the Applicant receiving the lowest passing score at the bottom of the list. Applicants who qualify for veterans' preference points shall have those points added to their passing score prior to being ranked on the eligibility list. 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) **Duration of List.** The eligibility list shall be valid for a period of two years from the date the Commission ranks all passing Applicants, assigns veterans preference points, and formally adopts the eligibility list. The Commission may, in its sole discretion, void an eligibility list at any time for any reason.

### § 13-702 Appointment.

(a) **Furloughed Former Police Officers.** The Borough Council may fill any vacancy in an existing position in the Police Department which occurs as a result of expansion of the police force, retirement, resignation, disability, or death by the reappointment or reinstatement of a former employee of the Police Department who had been furloughed. Except for physical and psychological examinations, no other testing shall be required for a furloughed former employee.

(b) **General Rule.** If no furlough list exists or if positions remain to be filled after all of the officers on the furlough list were offered reemployment, 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 list of eligibles;

(2) If three (3) names are not available, then the Commission shall certify the names(s) remaining of the list;

(3) The Borough Council shall make a conditional appointment from one of the three names certified, with reference to 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. 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 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 hearing on such objections which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 PA. CONS. STAT. § 101 *et seq.* If the Commission sustains the objections, 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.

### § 13-703 Physical & Psychological Examinations.

(a) **In General.** After the Borough Council makes a conditional appointment under § 13-702, the Commission shall direct the Applicant to submit to a physical examination and a psychological examination to be conducted by qualified individuals designated by the Commission, who shall determine whether the Applicant can perform 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) **Accommodations.** If the physical and/or psychological examinations determine that an Applicant can perform the essential functions of the position only with accommodations, and both Borough Council and the Applicant shall agree on the accommodations to be provided, the Applicant shall be deemed to have passed such examination(s). However, if Borough Council and the nominee cannot agree on accommodations, the Applicant shall be deemed to have failed such examination(s).

(c) **Appointment or Rejection.** If the Applicant shall pass both examinations, the Applicant’s appointment shall become a final probationary appointment. Otherwise, the Applicant’s conditional appointment shall be revoked, the Applicant shall be rejected from further consideration, and the Applicant’s name shall be stricken from the list of persons certified and the list of eligibles. The Applicant may appeal this decision under § 13-509.

(d) **New Certifications in the Event of a Rejection.** If an Applicant is rejected, the Commission shall certify a new list of eligibles to the Borough Council, and the appointment process shall proceed in accordance with § 13-702.

### § 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;

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

(4) physical and psychological examinations to be conducted by qualified individuals designated by the Commission, who shall determine whether the nominee can perform the essential functions of the position of Chief of Police with or without reasonable accommodation, and what types of accommodations would be required, if any. If the physical and/or psychological examinations determine that the nominee can perform the essential functions of the position only with accommodations, and both Borough Council and the nominee shall agree on the accommodations to be provided, the nominee shall be deemed to have passed such examination(s). However, if Borough Council and the nominee cannot agree on accommodations, the nominee shall be deemed to have failed such examination(s).

(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. 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 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. The Chief of Police of 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) Hearing on 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 conduct a hearing pursuant to the provisions of the Local Agency Law, 2 PA. CONS. STAT. § 101 *et seq.* After the conclusion of the hearing, 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 end 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 eligible 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 a list of eligibles and then 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; or
- (6) engaging or participating in or conducting of any political or election campaign other than the officer's exercise of the right of suffrage.

(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 Secretary (or any person in charge of the office of the Borough Secretary 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 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 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. All testimony shall be given under oath administered by the Chairperson, or in absence of the Chairperson, the vice chairperson. The Commission shall have power to issue subpoenas as set forth in § 13-411. The hearing shall be conducted in executive session, unless a public hearing is required by law or requested by the Police Officer prior to the commencement of the hearing. 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 conduction 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.** If the Commission sustains the charges, the Police Officer who was suspended, removed or reduced in rank may file an appeal with the Court of Common Pleas of Lehigh County within thirty (30) days after the date of entry by the Commission of its final order.

(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 Alburty 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 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 329

§ 101 (intro)  
 § 101(a)  
 § 101(b)  
 § 101(c)

#### 2003 Codified Ordinances

§ 13-201  
 § 13-202  
 § 13-203  
 § 13-204



<u>Ordinance 329</u>	<u>2003 Codified Ordinances</u>
§ 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
§ 406	§ 13-606
§ 407	§ 13-607
§ 408	§ 13-608
§ 409	§ 13-609
§ 501	§ 13-701

Ordinance 329

2003 Codified Ordinances

§ 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