

## VERMILION CIVIL SERVICE COMMISSION MEETING

Minutes of July 28, 2020

8:00 AM ★ City Hall – 5511 Liberty Avenue (Lower Conference Room), Vermilion, Ohio

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**ROLL CALL:** Jeff Lucas, Dave Deucher, Dan Kernell (late arrival)

G. Fisher called the Monday, July 28, 2020 meeting to order.

### **Election of Chairman/Vice Chairman:**

**D. Deucher MOVED**, Jeff Lucas seconded to appoint Jeff Lucas as Chairman. Vote 2 YEAS.  
**MOTION CARRIED.**

**J. Lucas MOVED**, D. Deucher seconded to appoint Dave Deucher as Vice Chairman. Vote 2 YEAS.  
**MOTION CARRIED.**

### **Approval of Minutes:**

**J. Lucas MOVED**, D. Deucher seconded to approve the meeting minutes of July 20, 2020. Vote 2 YEAS. **MOTION CARRIED.**

### **New Business:**

Mayor Forthofer thanked the members for volunteering their time to serve on the Civil Service Commission. He explained this is an important commission and the process ensures integrity for the hiring of the city's employees and it eliminates things like nepotism and cronyism. He conveyed the situation the city is under right now is that they are under a Judge's order to test two patrolmen (Chandler and Davis). On behalf of the committee, he inquired from the city's attorney's regarding Rule IV, which pertained to why these two gentlemen were not tested previously. The attorney's made a recommendation on how they would change Rule IV and the necessity for Public Hearing to verify the rule. D. Deucher confirmed that the served time is thirty-six (36) months and Mayor Forthofer said correct. He said rightly or wrongly there was some confusion on the clarity of this rule, so to make sure they do not have problems again, the attorney's suggested a revision of this rule as follows:

Members of the Vermilion Police Department shall not be eligible to compete in a promotional examination until they have served a minimum of at least thirty-six (36) months (1,095 days) **by the date of the written examination** in the next lower rank in the **Vermilion Police** Department **as a full-time police officer.**

G. Fisher said for the commission to understand what happened in this case, on page 5 of the rules – Rule II Definition of Terms (2.) it states "Classified Civil Service" refers to and includes all full-time regular members of the Police Department and such other positions in the service of the City of Vermilion as Council shall determine from time to time, in Accordance with Article VII, Section 2 of the Charter. She said so when the Civil Service Commission gave the

promotional examination for Sergeant - Rule IV Examinations 5 (c) iv.) states: Members of the Vermilion Police Department shall not be eligible to compete in a promotional examination until they served a minimum of at least thirty-six (36) months (1,095 days) in the next lower rank in the department. She explained that when Chandler and Davis took the written test, the Commission determined they did not meet the 36 months to proceed with the oral board. She said the notice of exam said, "Applicants must have held the full-time law enforcement position of Police Officer within the Vermilion Police Department for a minimum of the past thirty-six (36) months by the date of the written examinations (Phase I). The commission determined these applicants were ineligible to take the test because they had not served a minimum of 36 months in the department. She said the Judge felt as though there were discrepancies between the criteria of the notice and the rule. She explained these two applicants did take the written test, but were told by the Commission they were ineligible to proceed with the Oral portion of the test, so the Judge wants them to proceed with the Oral portion of the test. To fulfill this order, the Civil Service Commission needs to authorize her to notify Clancy & Associates to proceed with administering the Phase II Oral Assessments. She explained that Clancy & Associates is the firm that administers their Civil Service testing. She believed there are three Chiefs who ask the questions for the Oral portion of the test. S. Holmes said they are members of the Ohio Police Chiefs Association. G. Fisher said the Civil Service Commission will need to make a motion authorizing her to notify Clancy & Associates to proceed with administering the Phase II Oral Assessments for Officers Chandler and Davis.

She said previously she had spoken with Clancy & Associates to give them a heads up that an oral assessment would need to be given to these two applicants and Clancy informed her that if they use the same assessors and the same content the cost will be \$2,650, and if they use different assessors and a different content then it would cost \$5,300. She said Clancy cautioned her by the fact that if they use the same content and assessors, the information could get be out there from the officers who already took Phase II, which could skew the grading. However, if you use a different content and the applicants do better than the eligible candidates, then they could argue the scores are different because it was a completely different content. Clancy suggested the city's law director should be guiding the Civil Service Commission on which way to proceed. Mayor Forthofer said the Civil Service Commission can decide on this, but he feels the consistency with going ahead with the same questions is more defensible than changing it and explaining why these questions are better regardless of the cost.

J. Lucas said from the integrity of the exam, are they just talking specifically about the oral portion. G. Fisher concurred. J. Lucas said these two officers would then take a test that was used previously, so they set precedence for many years? G. Fisher believed the oral assessments are different for each promotional testing period. S. Holmes said this was correct and explained the oral board exam has three members on the board and they present scenarios to the officer, and the officer must react as if they are a Sergeant in this case. There could be a counseling session or a specific incident. He said it is about a half hour process and they have specific scenarios or questions they ask the candidates to answer. Everyone gets those same questions at the time of the Promotional exam, so it is the same scenarios, etc.

J. Lucas asked from a cost standpoint the reason they are going to double the charge is to create another set of questions. G. Fisher said the costs may be higher because they are bringing in different assessors and having different questions/scenarios. She said because of the number of applicants at the time of the first go around with the Oral Assessment, it technically was going to extend into a second day of testing, so the lesser cost could be the amount it originally was for the second day that actually never occurred. She was uncertain of the difference in the costs. J.

Lucas asked if they feel that malfeasance is going on now that would cause them to have some concern. Mayor Forthofer asked what he was referring to. J. Lucas said the integrity of the questions. Mayor Forthofer said they do not have any evidence of it. G. Fisher said the only thing the Commission should be aware of is the fact that there is potential of a lawsuit from the other officers who took the promotional exam because as Clancy noted they can argue the fact that they are giving the same questions and another officer could have told someone what the questions were, but then again the other examinees who sue either way. They have no way of knowing this at this time and they may not win in either situation when deciding which way to administer the test. Mayor Forthofer said to answer his question, there is no evidence of this. J. Lucas said without any proof of any malfeasance what you are doing is creating an equal opportunity for the past and the two individuals who have yet to take the test without any evidence of any wrongdoing. It is like-opportunities in theory. If there is no malfeasance that would have allowed them to have prior knowledge of the test. On the other hand, you have got a brand-new test and they could say those questions are so much easier. D. Kernell asked what would happen if they tested all of them. G. Fisher said this could cause another problem and they could all sue. Mayor Forthofer said this is true because they all followed the rules and took the test that was presented, and they were scored. J. Lucas asked if the Judge had any language within his ruling of a direction. G. Fisher provided him with a copy of the Judgment as it says the commission is to allow Chandler and Davis to complete the promotional process, including the oral examination.

D. Deucher asked if the other five who took the test have ill-feelings and would pursue a lawsuit just because.

**D. Deucher MOVED**, Jeff Lucas seconded to move into executive session to discuss imminent litigation. Vote 3 YEAS. **MOTION CARRIED**.

J. Lucas reconvened the regular meeting.

**J. Lucas MOVED**, D. Deucher seconded to authorize the Clerk to order the testing by directing Clancy & Associates to administer the Phase II Oral Assessments to Officers Chandler and Davis at the cost of \$2,650, which will consist of the same assessors and content given to the other examinees. Vote 3 YEAS. **MOTION CARRIED**.

### **Review of Civil Service Rules and Regulations:**

Mayor Forthofer provided the members with a copy of recommendations to the rules as determined by the city attorney's to revise rules within the rule books so it's more clear of the qualifications of officers, so they may not run into these issues in the future. He asked the members to take time to look at this and put thought into it and the next time they meet they can proceed with any modifications as they feel necessary to make.

Dan Kernell said he read about this matter in the newspaper and said if someone worked part time, but the total accumulation was 36 months, he would think they could take the written examination. G. Fisher said according to the rules they must have 36 months in the next lower rank in the department. She again addressed Rule II Definition of Terms (2). "Classified Civil Service" refers to and includes all full-time regular members of the Police Department, so to take the promotional exam you must be a full-time member within the police department. She said these officers were part time in other places, and they did not have 36 months within the department, so the Commission did not count their part time employment elsewhere. She said

for the future they need to clarify the rules as there is a lot of perception of how these rules read.

J. Lucas said he would like to address these rule modifications at the next meeting.

### **Protest Periods – Entrance Examinations**

G. Fisher explained that Clancy & Associates had brought an issue to the former Commission's attention about the protest periods which exist of five and 10-day protest periods. She said Clancy informed them that most municipalities are eliminating their protest periods because they are finding that the protest period process takes too long, and they are losing eligible candidates from the lists right from the start. She said 95% of their clients have eliminated the protest periods from their rules so they can be effective as possible. She said from hundreds of examinations they administer they have only received one protest which was four years ago. She said the former commission was in favor of discussing the elimination of the protest periods, so she would like this commission to think about doing the same. She said by eliminating the protest periods, then Clancy can finalize the scores and the Commission can proceed immediately with the final scores, so they can certify the list to the Mayor timely.

Mayor Forthofer said the law director had suggested that a Public Hearing should be set for any proposed rule changes and he is in favor of this as well. G. Fisher said this has always been done in the past and she thinks it is a good process to follow. The commission members agreed with proceeding in this fashion.

The next meeting to discuss the rules and protest periods has been scheduled for Thursday, August 13, 2020 at 8:00 a.m. at City Hall, 5511 Liberty Avenue, Vermilion, Ohio.

J. Lucas, Chairman adjourned the meeting upon no further discussion.

