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COMMISSIONS AND BOARDS
Article 12. Civil Service Commission

Chapter 2, Article 12 was amended by Ordinance 1999, 2/21/2017

§2-1201 CIVIL SERVICE; TERMS, DEFINED.

For the purposes and conditions of Civil Service, the following definitions apply unless the context otherwise requires:

(1) Act shall mean the Nebraska Civil Service Act Nebraska Revised Statutes §19-1825 et seq. as amended.

(2) Application process shall mean all activities of the commission and/or officials that precede the commission certifying the names of persons eligible for the position or positions.

(3) Appointing authority shall mean the mayor with the approval of the council.

(4) Appointment shall mean all means of selecting, appointing, or employing any person to hold any position or employment subject to civil service.

(5) Civil Service Code shall mean Chapter two (2), Article twelve (12) of the Crete Municipal Code.

(6) Commission shall mean the Crete Civil Service Commission, created and maintained pursuant to the Nebraska Civil Service Act.

(7) Commissioner shall mean a voting member of the Commission appointed to such position by the appointing authority.

(8) Department shall mean the Crete Police Department.

(9) Full-time police officers shall mean police officers in positions which require certification by the Nebraska Law Enforcement Training Center, who have the power of arrest, who are paid regularly by the City, and for whom law enforcement is a full-time career, but shall not include clerical, custodial, or maintenance personnel.

(10) Governing body shall mean the Crete mayor and city council.

(11) Municipality shall mean the City of Crete which currently employs full-time police officers.

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(12) Official shall mean any City employee assisting the commission, in any capacity.

(13) Position shall mean an individual job which is designated by an official title indicative of the nature of the work.

(14) Promotion or demotion shall mean changing from one position to another, accompanied by a corresponding change in current rate of pay. (Ref: 19-1826 R.S. Neb)

§2-1202 Civil service; commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.

(1) The Crete Civil Service Commission has been created and is maintained by the City of Crete, a city of the first class, which employs full-time police officers. The members of the Commission shall be appointed by the appointing authority.

(2) The Commission shall consist of five (5) members who shall serve without compensation. No person shall be appointed a member of the Commission who is not a citizen of the United States, a resident of the municipality for at least three (3) years immediately preceding such appointment, and an elector of Saline County. The term of office for each member shall be five (5) years.

(3) Any member of the civil service commission may be removed from office for incompetency, dereliction of duty, malfeasance in office, or other good cause by the appointing authority, except that no member of the commission shall be removed until written charges have been preferred, due notice given such member, and a full hearing had before the appointing authority. Any member so removed shall have the right to appeal to the District Court of Saline County, which court shall hear and determine such appeal in a summary manner. Such an appeal shall be only upon the ground that such judgment or order of removal was not made in good faith for cause, and the hearing on such appeal shall be confined to the determination of whether or not it was so made.

(4) The members of the civil service commission shall devote due time and attention to the performance of the duties specified and imposed upon them by the Nebraska Civil Service Act. Three (3) commissioners shall constitute a quorum for the transaction of business. At the time of any appointment, not more than three (3) commissioners, including the one or ones to be appointed, shall

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be registered electors of the same political party. (Ref: 19-1827 R.S. Neb; Ordinance No. 1377 [April 15, 1997])

§2-1203 Civil service; SUBJECT EMPLOYEES; APPOINTMENT; PROMOTION.

This Article shall only apply to full-time police officers of the municipality, including the full-time police chief. All appointments to and promotions in the department shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation. If the appointing authority fills a vacancy in a position subject to this Article, the appointing authority shall consider factors including, but not limited to:

- (1) The multiple job skills recently or currently being performed by the applicant which are necessary for the position;
- (2) The knowledge, skills, and abilities of the applicant which are necessary for the position;
- (3) The performance appraisal of any applicant who is already employed in the department, including any recent or pending disciplinary actions involving the employee;
- (4) The employment policies and staffing needs of the municipality and department together with contracts, ordinances, and statutes related thereto;
- (5) Required federal, state, or local certifications or licenses necessary for the position; and
- (6) The qualifications of the applicants who are already employed in the department and have successfully completed all parts of the examination for the position. No person shall be reinstated in or transferred, suspended, or discharged from any such position or employment contrary to this Article. (Ref: 19-1829 R.S. Neb)

§2-1204 Civil service; commission; organization; meetings; appointment; discharge; duties; enumeration; rules and regulations.

- (1) The commission shall organize annually by electing one member as chairperson. The commission shall hold meetings as may be required for the proper discharge of its duties. The commission shall appoint a secretary and a chief examiner who shall keep the records of the commission, preserve all reports made to it,

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superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe. The commission may merge the positions of secretary and chief examiner and appoint one person to perform the duties of both positions. The commission shall appoint the municipal clerk as secretary and chief examiner, if requested to do so by the appointing authority. The secretary and chief examiner shall be subject to suspension or discharge upon the vote of a majority of the appointed members of the commission.

(2) The commission shall adopt and promulgate procedural rules and regulations consistent with the Nebraska Civil Service Act and the Crete Civil Service Code. Such rules and regulations shall provide in detail the manner in which examinations may be held and any other matters assigned by the appointing authority. At least one copy of the rules and regulations, and any amendments, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any amendments shall be given to each full-time police officer, including the full-time police chief.

(3) The commission shall provide that all tests shall be practical and consist only of subjects which will fairly determine the capacity of persons who are to be examined to perform the duties of the position to which an appointment is to be made and may include, but not be limited to, tests of physical fitness and of manual skill and psychological testing.

(4) The commission shall provide, by the rules and regulations, for a credit of ten (10) percent in favor of all applicants for an appointment under civil service who, in time of war or in any expedition of the armed forces of the United States, have served in and been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from the armed forces of the United States and who have equaled or exceeded the minimum qualifying standard established by the appointing authority. These credits shall only apply to entry-level positions as defined by the appointing authority.

(5) The commission may conduct an investigation concerning and report upon all matters regarding the enforcement and effect of the Act and the rules and regulations prescribed. The commission may inspect all institutions, departments, positions, and employments affected by such act to determine whether such act and all such rules and regulations are being obeyed. Such

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investigations may be conducted by the commission or by any commissioner designated by the commission for that purpose. The commission shall also make a like investigation on the written petition of a citizen, duly verified, stating that irregularities or abuses exist or setting forth, in concise language, the necessity for such an investigation. The commission may be represented in such investigations by the municipal attorney, if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission in any such investigation. In the course of such an investigation, the commission, designated commissioner, or chief examiner shall have the power to administer oaths, issue subpoenas to require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and to cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for like depositions in civil actions in the courts of this state. The oaths administered and subpoenas issued shall have the same force and effect as the oaths administered by a district judge in a judicial capacity and subpoenas issued by the district courts of Nebraska. The failure of any person so subpoenaed to comply shall be deemed a violation of the Nebraska Civil Service Act and be punishable as such. No investigation shall be made pursuant to this section if there is a written accusation concerning the same subject matter against a person in the civil service. Such accusations shall be handled pursuant to section 2-1207 of this Article.

(6) The commission shall provide that all hearings and investigations before the commission, designated commissioner, or chief examiner shall be governed by the Nebraska Civil Service Act, the Crete Civil Service Code and the rules of practice and procedure adopted by the commission. In the conduct thereof, they shall not be bound by the technical rules of evidence. No informality in any proceedings or hearing or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission, except that no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect unless it is concurred in by a majority of the appointed members of the commission, including the vote of any commissioner making the investigation.

(7) The commission shall establish and maintain a roster of officers and employees.

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(8) The commission shall provide for, establish, and hold competitive tests to determine the relative qualifications of persons who seek employment in any position and, as a result thereof, establish eligible lists for the various positions.

(9) The commission shall make recommendations concerning a reduction-in-force policy to the governing body. The governing body shall consider such recommendations, but shall not be bound by them in establishing a reduction-in-force policy. Prior to the adoption of a reduction-in-force policy, the governing body shall, after giving reasonable notice to each police officer by first-class mail, conduct a public hearing.

(10) The governing body shall adopt and maintain a reduction-in-force policy which shall consider factors including, but not limited to:

(a) The multiple job skills recently or currently being performed by the employee;

(b) The knowledge, skills, and abilities of the employee;

(c) The performance appraisal of the employee including any recent or pending disciplinary actions involving the employee;

(d) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;

(e) Required federal, state, or local certifications or licenses; and

(f) Seniority.

(11) The commission shall keep such records as may be necessary for the proper administration of the Nebraska Civil Service Act and the Crete Civil Service Code. (Ref: 19-1830 R.S. Neb)

§2-1205 Civil service; applicant for position; qualifications; fingerprints; when required; restrictions on release.

(1) An applicant for a position of any kind under civil service shall be able to read and write the English language, meet the minimum job qualifications of the position as established by the appointing authority, and be of good moral character. An

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applicant shall be required to disclose his or her past employment history and his or her criminal record, if any, and submit a full set of his or her fingerprints and a written statement of permission authorizing the appointing authority to forward the fingerprints for identification. Prior to certifying to the appointing authority the names of the persons eligible for the position or positions, the commission shall validate the qualifications of such persons.

(2) The appointing authority shall require an applicant, as part of the application process, to submit a full set of his or her fingerprints along with written permission authorizing the appointing authority to forward the fingerprints to the Federal Bureau of Investigation through the Nebraska State Patrol, for identification. The fingerprint identification shall be solely for the purpose of confirming information provided by the applicant.

(3) Any fingerprints received by the commission or appointing authority pursuant to a request made under subsection (2) of this section and any information in the custody of the commission or appointing authority resulting from inquiries or investigations made with regard to those fingerprints initiated by the commission or appointing authority shall not be a public record within the meaning of sections 84-712 to 84-712.09 R.S. Neb and shall be withheld from the public by the lawful custodians of such fingerprints and information and shall only be released to those lawfully entitled to the possession of such fingerprints and information. Any member, officer, agent, or employee of the commission, appointing authority, or municipality who comes into possession of fingerprints and information gathered pursuant to subsection (2) of this section shall be an official within the meaning of section 84-712.09 R.S. Neb. (Ref: 19-1831 R.S. Neb)

§2-1206 CIVIL SERVICE; EMPLOYEES; DISCHARGE; DEMOTION; GROUNDS.

The tenure of a person holding a position of employment under this Article and the Act shall be only during good behavior. Any such person may be removed or discharged, suspended with or without pay, demoted or reduced in rank, for any of the following reasons:

(1) Incompetency, inefficiency, or inattention to or dereliction of duty;

(2) Dishonesty, prejudicial conduct, immoral conduct, insubordination, discourteous treatment of the public or a fellow

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employee, any act of omission or commission tending to injure the public service, any willful failure on the part of the employee to properly conduct himself or herself, or any willful violation of this Article, the Act or the rules and regulations adopted pursuant to thereto;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Drunkenness or the use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such an extent that the use interferes with the efficiency or mental or physical fitness of the employee or precludes the employee from properly performing the functions and duties of his or her position;

(5) Conviction of a felony or misdemeanor tending to injure the employee's ability to effectively perform the duties of his or her position; or

(6) Any other act or failure to act which, in the judgment of the civil service commissioners, is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. (Ref: 19-1832 R.S. Neb)

§2-1207 Civil service; employees; discharge; demotion; procedure; investigation; appeal.

(1) No person in the civil service who shall have been permanently appointed or inducted into civil service under the Civil Service Act shall be removed, suspended, demoted, discharged or reduced in rank except for cause and then only upon the written accusation of the police or fire chief, appointing authority, or any citizen or taxpayer.

(2) The governing body shall establish by ordinance procedures for acting upon such written accusations and the manner by which suspensions, demotions, removals, discharges, or other disciplinary actions may be imposed by the appointing authority. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time police officer, including the full-time police chief.

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(3) Any person so removed, suspended, demoted, discharged or reduced in rank may, within ten days after being notified by the appointing authority of such removal, suspension, demotion, discharge or reduction in rank, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The governing body of the municipality shall establish procedures by ordinance consistent with this section by which the commission shall conduct such investigation. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time police officer, including the full-time police chief. Such procedures shall comply with minimum due process requirements. The commission may be represented in such investigation and hearing by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission for any such investigation and hearing. The investigation shall be confined to the determination of the question of whether or not such removal, suspension, demotion, discharge or reduction in rank was made in good faith for cause which shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons.

(4) After such investigation, the commission shall hold a public hearing after giving reasonable notice to the accused of the time and place of such hearing. Such hearing shall be held not less than ten or more than twenty (20) days after filing of the written demand for an investigation and a decision shall be rendered no later than ten (10) days after the hearing. At such hearing the accused shall be permitted to appear in person and by counsel and to present his or her defense. The commission may affirm the action taken if such action of the appointing authority is supported by a preponderance of the evidence. If it shall find that the removal, suspension, demotion, discharge or reduction in rank was made for political or religious reasons or was not made in good faith for cause, it shall order the immediate reinstatement or reemployment of such person in the position or employment from which such person was removed, suspended, demoted, discharged or reduced in rank, which reinstatement shall, if the commission in its discretion so provides, be retroactive and entitle such person to compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion, discharge or reduction in rank.

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The commission upon such hearing, in lieu of affirming the removal, suspension, demotion, discharge or reduction in rank, may modify the order of removal, suspension, demotion, discharge or reduction in rank by directing a suspension, with or without pay, for a given period and the subsequent restoration to duty or demotion in position or pay. The findings of the commission shall be certified in writing to and enforced by the appointing authority.

(5) If such judgment or order be concurred in by the commission or a majority thereof, the accused or governing body may appeal to the district court. Such appeal shall be taken within forty-five (45) days after the entry of such judgment or order by serving the commission with a written notice of appeal stating the grounds and demanding that a certified transcript of the record and all papers, on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten (10) days after the filing of such notice, make, certify, and file such transcript with and deliver such papers to the district court. The district court shall proceed to hear and determine such appeal in a summary manner. The hearing shall be confined to the determination of whether or not the judgment or order of removal, discharge, demotion, or suspension made by the commission was made in good faith for cause which shall mean that the action of the commission was based upon a preponderance of the evidence, was not arbitrary or capricious, and was not made for political or religious reasons. No appeal to such court shall be taken except upon such ground or grounds.

If such appeal is taken by the governing body and the district court affirms the decision of the commission, the municipality shall pay to the employee court costs and reasonable attorney's fees incurred as a result of such appeal and as approved by the district court. If such appeal is taken by the governing body and the district court does not affirm the decision of the commission, the court may award court costs and reasonable attorney's fees to the employee as approved by the district court. (Ref: 19-1833 R.S. Neb)

§2-1208 Civil service; municipality provide facilities and assistance.

The municipality shall afford the commission and its members and employees all reasonable facilities and assistance to inspect all books, papers, documents, and accounts applying or in any way appertaining to any and all positions and employments subject to civil service and shall produce such books, papers, documents,

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and accounts. All municipal officers and employees shall attend and testify whenever required to do so by the commission, the accused, or the appointing authority. (Ref: 19-1834 R.S. Neb)

§2-1209 Civil service; Vacancies; Procedure.

(1) Whenever a position subject to this Article and the Act becomes vacant, the appointing authority shall make requisition upon the commission for the names and addresses of the persons eligible for appointment and may decline to fill such vacancy for an indefinite period.

(2) The commission, upon request of the Mayor, shall establish and maintain a list of those eligible for appointment to or promotion within the department. This list shall remain valid for a period of one (1) year or until the Mayor directs the commission to establish a subsequent eligibility list, whichever is less. Such list shall be established and maintained through the open competitive examinations required by section 2-1203, with the time and date of any examination to be established by the Mayor. Any person having satisfactorily passed the examinations for any position shall be placed on the list of those eligible for appointment or promotion to such position.

(3) Upon the request of the appointing authority, the commission shall certify the names of the persons who are the three highest on the eligible list, following the most recent examination, and whose qualifications have been validated by the commission for the vacant position. If fewer than three names are on the eligible list the commission shall certify those that do appear. If the commission certifies fewer than three names for each vacancy to the appointing authority, the appointing authority may appoint one of such persons to fill the vacancy, may decline to fill the vacancy, or may order that another examination be held by the civil service commission.

(4) If a vacancy occurs and there is no eligible list for the position or if the commission has not certified persons from the eligible list, a temporary appointment may be made by the appointing authority. Such temporary appointment shall not continue for a period longer than four months. No person shall receive more than one temporary appointment or serve more than four months as a temporary appointee in any one fiscal year.

(5) To enable the appointing authority to exercise a choice in the filling of positions, no appointment, employment, or

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promotion in any position in the service shall be deemed complete until after the expiration of a period of six (6) months after certification by the Nebraska Law Enforcement Training Center for police officers, as may be provided in the rules of the commission, during which time the appointing authority may terminate the employment of the person appointed by it if, during the performance test thus afforded and upon an observation or consideration of the performance of duty, the appointing authority deems such person unfit or unsatisfactory for service in the department. The appointing authority may appoint one of the other persons certified by the commission and such person shall likewise enter upon such duties until some person is found who is fit for appointment, employment, or promotion for the probationary period provided and then the appointment, employment, or promotion shall be complete. (Ref: 19-1835 R.S. Neb)

§2-1210 Civil service; CREATION OR ELIMINATION OF POSITIONS.

All positions subject to this Article or the Act shall be created or eliminated by the governing body of the municipality. This Article and the Act shall not be construed to infringe upon the power and authority of (1) the governing body of the municipality to establish the salaries and compensation of all employees employed hereunder, pursuant to section 16-310 R.S. Neb or (2) the city administrator's authority to establish an employee's initial salary within the compensation schedule or ranges established by the governing body for the positions. (Ref: 19-1836 R.S. Neb)

§2-1211 Civil service; employees; salaries; compliance.

The municipal clerk/treasurer or any other officer or employee of the municipality subject to this Article or the Act shall not approve the payment of or be in any manner concerned in paying, auditing, or approving any salary, wage, or other compensation for services to any person subject to the jurisdiction and scope of this Article or the Act unless the person to receive such salary, wage, or other compensation has been appointed or employed in compliance with such act. (Ref: 19-1837 R.S. Neb)

§2-1212 Civil service; leave of absence.

A leave of absence, with or without pay, may be granted by the appointing authority to any person under civil service. The appointing authority shall give notice of such leave to the commission. All appointments for temporary employment resulting

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from such leaves of absence shall be made from the eligible list, if any, of the civil service. (Ref: 19-1838 R.S. Neb)

§2-1213 Civil service; commission; conduct of litigation; representation.

It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this Article, the Act and of the rules of the commission. The commission may be represented in such suits and all investigations pursuant to this Article and the Act by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by it in any particular case. (Ref: 19-1839 R.S. Neb)

§2-1214 Civil service; OBSTRUCTING EXAMINATIONS.

No commissioner or any other person shall by himself or herself or in cooperation with one or more persons (1) defeat, deceive, or obstruct any person in respect to the right of examination according to the rules and regulations made pursuant to this Article or the Act, (2) falsely mark, grade, estimate, or report upon the examination and standing of any person examined or certified in accordance with such act or aid in so doing, (3) make any false representation concerning the same or concerning the persons examined, (4) furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined or certified or to be examined or certified, or (5) persuade any other person or permit or aid in any manner any other person to impersonate him or her in connection with any examination, application, or request to be so examined. (Ref: 19-1840 R.S. Neb)

§2-1215 Civil service; political service disregarded.

No person holding any position subject to civil service shall be under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever. No person shall be removed, reduced in position or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service, or promise or threaten to do so, for giving, withholding, or neglecting to make any contribution of money, services, or any other valuable thing for any political purpose. (Ref: 19-1841 R.S. Neb)

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§2-1216 Civil service; Municipality; duty to provide quarters and equipment; failure; effect.

The governing body shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated, lighted, and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in the municipality subject to this Article and the Act. Failure upon the part of the governing body to do so shall be a violation of this Article and the Act and shall be punishable as such. (Ref: 19-1843 R.S. Neb)

§2-1217 Civil service; Commission; duty to organize; rules and regulations; failure; effect.

It shall be the duty of the commission to organize and adopt, maintain and promulgate procedural rules and regulations, consistent with the purpose of this Article and the Act. The failure upon the part of the commission or any commissioner to do so shall be a violation of this Article and the Act and shall be punishable as such. (Ref: 19-1845 R.S. Neb)

§2-1218 Civil service; Municipality; duty to make appropriation.

It shall be the duty of the municipality to appropriate each fiscal year, from the general funds of such municipality, a sum of money sufficient to pay the necessary expenses involved in carrying out the purposes of such act, including, but not limited to, reasonable attorney's fees for any special counsel appointed by the commission when the municipal attorney is not authorized by the appointing authority to represent the commission. The appointing authority may establish the hourly or monthly rate of pay of such special counsel. (Ref: 19-1846 R.S. Neb)

§2-1219 Civil service; VIOLATIONS; PENALTY.

Any person who shall willfully violate any of the provisions of the Act shall be guilty of a misdemeanor. (Ref: 19-1847 R.S. Neb)