

Rule 114

Appointments

Article I: General Provisions

Applicability: Article I, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Article II: Appointment by Reinstatement

Applicability: Article IV, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Article III: Reappointment

Applicability: Article V, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Article IV: Appointment by Transfer

Applicability: Article VI, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Article V: Employment in Class 8304/8504 Deputy Sheriff and Class 8302 Deputy Sheriff I

Applicability: Article VII, Rule 114, shall apply only to employees in Class 8304/8504 Deputy Sheriff and Class 8302 Deputy Sheriff I.

Article VI: Exempt Appointment

Applicability: Article VIII, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Article VII: Director of Elections

Applicability: Article IX, Rule 114, shall apply to the Director of Elections as provided for in Charter Section 13.104.

Rule 114

Appointments

Article I: General Provisions

Applicability: Article I, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Sec. 114.1 **Appointment - General Provisions**

114.1.1 **Report of Appointment**

Except with the permission of the Human Resources Director, all appointments shall be reported by the appointing officer to the Department of Human Resources on the prescribed form prior to the appointee's starting date of employment.

114.1.2 **Validation of Appointment**

No appointee may begin working except with permission of the Human Resources Director until the appointing officer has received official notice of validation of appointment from the Department of Human Resources.

114.1.3 **Finality of Appointing Officer's Decision**

Except as otherwise provided in these Rules, ordinances, or the Charter, the decision of the appointing officer in all matters regarding appointment shall be final.

Sec. 114.2 **Permanent Appointment - Definition**

A permanent appointment is an appointment made as a result of certification from an eligible list to a permanent position.

Sec. 114.3 **Method of Appointment - Permanent Appointment**

Permanent appointments shall be made in the following order of priority:

114.3.1 by the return to duty of a permanent holdover;

114.3.2 by the reinstatement of a promotive probationary employee consistent with the provisions in the Reinstatement Rule governing such employees;

Sec. 114.3 **Method of Appointment - Permanent Appointment (cont.)**

114.3.3 by the appointing officer through use of any one of the following options:

- 1) advancement of a part-time or school-term employee to full-time status consistent with the requirements found elsewhere in this Rule; or
- 2) transfer; or
- 3) from requests for reinstatement other than by the reinstatement of a promotive probationary employee consistent with the provisions in the Reinstatement Rule governing such employees; or
- 4) by reappointment following resignation; or
- 5) by certification by the Department of Human Resources of eligibles from a regular list or reemployment register.

114.3.4 Exercise of one option will preclude the use of any other method of appointment except as a result of any settlement arising following an appeal or other litigation. Departments may also fill permanent vacancies through internal reassignment of permanent employees consistent with departmental procedures. Such reassignments are not within the jurisdiction of the Civil Service Commission or the Department of Human Resources except as specifically provided elsewhere in these Rules.

Sec. 114.4 **Temporary Appointment**

114.4.1 Temporary appointment shall be one of the following:

- 1) An appointment from an eligible list to a temporary position. Such appointment is time limited to a maximum duration of the hourly equivalent of 130 working days based on the regular daily work schedule of the employee, and in no case may the maximum exceed 1040 hours; or
- 2) An appointment from an eligible list to a temporary position established to perform a special project or investigation. The establishment of such position shall require the express approval of the Human Resources Director. It must be readily foreseeable that the duties and responsibilities and products must be completed by the time limit of a maximum of the hourly equivalent of 260 working days based on the regular daily work schedule of the employee, and in no case may the maximum exceed 2080 hours.

Sec 114.4 Temporary Appointment (cont.)**114.4.1 (cont.)**

3) When no eligible list exists or no eligible is available on an existing eligible list for a position in the class requisitioned by an appointing officer, and immediate service in the position is required by the appointing officer and another eligible list exists which is deemed by the Human Resources Director to be suitable to provide temporarily the service desired, the Human Resources Director shall certify for civil service temporary appointment an eligible from such eligible list.

114.4.2 Expiration of Temporary Appointment

1) Upon expiration of the maximum allowable time period or upon expiration of the appointee's temporary position, temporary appointees shall be separated as provided below.

2) Temporary appointees so separated shall be returned to the eligible list from which appointed if such list has not expired.

3) Temporary appointees returned to the eligible list or to the holdover roster shall be immediately available for certification to temporary positions:

- under another appointing officer; or
- to the same appointing officer to another position with the express approval of the Human Resources Director.

In the case of represented classes, the Human Resources Director shall provide prior notification to the appropriate bargaining representative of intention to authorize such immediate certification and shall, upon request, meet and confer concerning the proposed certification.

4) For employees represented by the Transport Workers Union, Locals 200 and 250A temporary appointees, except those appointed from a "near list", whose list has expired shall be ranked on the holdover roster for the class.

114.4.3 Layoff due to lack of work or lack of funds or termination shall be as provided elsewhere in these Rules.

Sec. 114.5 **Provisional Appointment**

- 114.5.1** Provisional appointment shall be an appointment to a permanent or temporary position when there is no available eligible.
- 1) Except with the express approval of the Human Resources Director, when an eligible list is adopted, all provisional appointments in the affected class shall expire.
- 2) Except with the express approval of the Human Resources Director, when an eligible list is adopted, all provisional appointments in the affected class shall expire.
- 114.5.2** Provisional appointments may be extended with the approval of the Human Resources Director for additional periods of time not to exceed, for each extension, the time limitations specified above.
- 114.5.3** Provisional appointees serve at the discretion of the appointing officer.
- 114.5.4** Provisional appointees shall be separated as provided below at the expiration of the maximum allowable time or upon expiration of the appointee's temporary position.
- 114.5.5** The Human Resources Director shall promulgate policies and procedures for making provisional appointments which shall include provisions that appointments shall be made on the basis of a combination of merit factors, equal employment opportunity and, if promotive, consideration of performance appraisal ratings and seniority.
- 114.5.6** Layoff of provisional appointees due to lack of work, lack of funds or termination shall be as provided elsewhere in these Rules.
- 114.5.7** A civil service appointee who is laid off, terminated or who resigns from a provisional appointment shall return to the appointee's permanent position.
- 114.5.8** A provisional appointee resigning from employment shall complete the prescribed resignation form.
- 114.5.9** Provisional appointees shall acquire, by virtue of serving under provisional appointment, no right or preference for permanent appointment.

Sec. 114.5 **Provisional Appointment (cont.)****114.5.10** **Restrictions on Provisional Appointment**

As provided in Charter Sections 10.105 and 18.110:

- 1) Provisional appointments for civil service positions for which no eligible list exists shall not exceed three (3) years.
- 2) Provisional appointments may only be renewed beyond three (3) years with the approval of the Board of Supervisors and upon certification by the Human Resources Director that for reasons beyond his or her control the Department of Human Resources has been unable to conduct examinations for these positions.
- 3) Unless provisional appointments are renewed as provided in this section or are transitioned to regular civil service appointment through either the competitive examination process or as provided in Charter Section 18.110, provisional employees appointed before July 1, 1996 shall be laid off by June 30, 1999.

114.5.11 **Provisional Appointees**

Provisional appointees shall acquire, by virtue of serving under provisional appointment, no right or preference for permanent appointment.

Sec. 114.6 **Advancement from Part-Time or School-Term Position to Full-Time**

After one (1) year of continuous permanent satisfactory service in a part-time or school-term only position, the senior appointee in a class in the department may be advanced by the appointing officer to a full-time position. Such advancement from a school-term only position shall not require that a new probationary period be served. Advancement from a part-time position shall require a new probationary period.

Sec. 114.7 **Separation of Temporary and Provisional Appointees Upon Expiration of Term of Employment**

114.7.1 No temporary or provisional appointment shall exceed the maximum allowable duration provided in these Rules, and upon expiration of that period of time, the appointee shall be separated from the position.

114.7.2 The appointee's separation shall be based upon the expiration of the maximum allowable duration or upon expiration of the appointee's temporary position. Such separation shall be without reference to the layoff or termination provisions of these Rules. The appointee shall be notified in writing:

- 1) at the time of appointment as to the duration of such appointment; and
- 2) at least ten (10) working days in advance of the final date.

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Article II: Appointment by Reinstatement

Applicability: Article IV, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Sec. 114.8 **Reinstatement**

- 114.8.1** A permanent employee who accepts permanent appointment to a position in another class shall be permanently separated from any former position, with the following exception: the employee may be reinstated to a vacant position in any former class in which the probationary period had been completed upon the employee's written request on the prescribed form and with the approval of the appointing officers in both the present department and the former department or the department(s) to which reinstatement is requested. A copy of the approved form(s) must be filed with the Department of Human Resources.
- 114.8.2** An employee serving a promotive probationary period shall be reinstated to a vacant position in any former class in which the probationary period had been completed upon the employee's written request on the prescribed form and with the approval of the Human Resources Director.
- 1) A request for reinstatement under this section shall not extend the probationary period or infringe upon an appointing officer's authority to terminate an employee.
 - 2) An approved request for reinstatement shall remain in effect until the employee is either reinstated, separated, refuses an offer of reinstatement, or such a request is canceled by the Human Resources Director.
 - 3) Separation of the employee shall nullify all requests for reinstatement approved under this section.
 - 4) The employee shall receive one (1) offer of reinstatement. Failure to accept a reinstatement offer shall forfeit all rights to reinstatement under this section.
 - 5) A reinstatement under this section shall be under the Rule of One procedures as adopted by the Civil Service Commission.
 - 6) If more than one (1) request for reinstatement under this section is on file, the person with the greater seniority in the class to which reinstatement is requested shall be reinstated first.

Sec. 114.8 **Reinstatement (cont.)**

114.8.3 Reinstatement to a position in a former class and department shall be with former civil service seniority standing in that department and no probationary period shall be required.

114.8.4 Reinstatement to a position in a former class in another department shall require a new civil service seniority date in that department from the date of such reinstatement and shall require a new probationary period.

Sec. 114.9 **Reinstatement Following Transfer**

An appointment by transfer shall cancel all rights to the position from which transferred except that, prior to the completion of the probationary period, a transferee may request reinstatement to a vacancy in a position in the same class and department from which transferred in accordance with the procedures established in this Rule.

Sec. 114.10 **Restrictions on Reinstatement**

Appointments by reinstatement are subject to the appointment provisions found elsewhere in this Rule.

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Article III: Reappointment

Applicability: Article V, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Sec. 114.11 Reappointment after Resignation

- 114.11.1** A permanent appointee who has completed the probationary period who resigns and whose services have been certified as satisfactory by the appointing officer, or except as otherwise ordered by the Commission in the case of services certified as unsatisfactory, shall be permanently separated from such appointment except as follows:
- 114.11.2** Upon request on the prescribed form within a four (4) year period after the effective date of the resignation, the resignee with the approval of an appointing officer may be appointed ahead of eligibles to a vacancy in a permanent position in the class from which resigned in any department.
- 114.11.3** A separate request must be filed with each department to which reappointment is desired. An approved copy of the reappointment form(s) must be filed with the Department of Human Resources.
- 114.11.4** If a vacancy does not exist in the class from which resigned from City and County service, or, if otherwise approved by the Human Resources Director, subject to appeal to the Civil Service Commission, a resignee may re-enter the service to a vacancy in any former class in which the probationary period had been completed in any department with the approval of the appointing officer.
- 114.11.5** When reappointed, the resignee shall enter the service as a new appointee with no rights based on prior service except such as may be specifically provided elsewhere in these Rules, in the Vacation, Sick Leave and any other Ordinances as appropriate, and in the examination procedures with respect to credit for prior City and County service.

Sec. 114.12 Restrictions on Reappointment

Reappointments are subject to the appointment provisions found elsewhere in this Rule.

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Article IV: Appointment by Transfer

Applicability: Article VI, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Sec. 114.13 **Transfer - General**

- 114.13.1** A transfer of a permanent appointee who has completed the probationary period to a position in the same class under another appointing officer shall be requested on the form prescribed by the Human Resources Director.
- 114.13.2** A properly completed transfer form approved by the appointing officer or designee of the department to which transfer is requested shall be filed in the requested department. A copy of the approved form shall be filed with the Department of Human Resources and in the employee's current department within two (2) business days of approval.
- 114.13.3** Appointees accepting a new appointment by transfer shall give a minimum period of notice prior to separation from their current department of fifteen (15) working days, unless the current department approves a shorter period of notice.
- 114.13.4** Appointments by transfer are subject to the appointment and probationary provisions of these Rules.
- 114.13.5** Appointment by transfer will cancel all other transfer requests which have been filed.

Sec. 114.14 **Transfer from Position Not Full-Time**

A permanent appointee to a part-time position or a position not full time on an annual basis and who serves under such appointment continuously for one (1) year, may request transfer to a regular full-time position in accordance with the provisions of this Rule.

Sec. 114.15 Transfers Occasioned by Reduction of Force Due to Technological Advances, Automation, or the Installation of New Equipment

Permanent civil service employees who have completed their probationary period and who are subject to layoff because of technological advances, automation, the installation of new equipment, or the transfer of functions to another jurisdiction may submit a request to the Human Resources Director for transfer to a position within their capacities to perform, whether or not within the class for which they qualified for appointment. Such request for transfer shall be subject to the following:

- 114.15.1** Request for transfer shall be submitted on the form prescribed by the Human Resources Director and shall be approved by the appointing officer or designee of the department to which transfer is requested.
- 114.15.2** The position to which transfer is requested shall not be to a class with more than a five percent (5%) increase in compensation.
- 114.15.3** The Human Resources Director may administer any examinations which, in the judgment of the Human Resources Director, are deemed advisable to test the capacity of the employee to perform the duties in the position to which transfer is requested, unless the transfer is to a position in the same class or a closely related class.
- 114.15.4** Employees so transferred, who are not suited to the position, may be given an opportunity for further transfer to other positions within their capacities to perform.
- 114.15.5** In the event of layoff of an appointee who occupies a position through transfer under the provisions of this section, such layoff shall be in accordance with the applicable provisions of the Layoff Rule. Seniority shall be calculated from the date of citywide seniority as defined in these Rules in the class from which transferred.
- 114.15.6** Employees transferred under the provisions of this section may request reinstatement to the former class in accordance with the Reinstatement Rule.
- 114.15.7** In the event that more than one (1) approved transfer to the same class is on file in the Department of Human Resources, preference shall be given to the appointee who has the longest service under civil service permanent appointment in the class from which layoff is to be made.
- 114.15.8** An appointee transferred under the provisions of this section shall serve a probationary period in the new class.

Sec. 114.16 Transfers Occasioned by the Transfer of Functions from One Department to Another

- 114.16.1** When, in accordance with Charter provisions, part of the functions and duties of any department are transferred to another department, the employees performing such functions and duties shall be transferred therewith.
- 114.16.2** Such employees shall retain in their new department the same salary and civil service seniority status as they had in the department from which transferred.
- 114.16.3** Employees transferred in accordance with this Rule shall not be required to serve a new probationary period.

Sec. 114.17 Limited-Term Transfer**114.17.1 Definition**

The transfer of a permanent appointee to a vacant position in the same class under another appointing officer for a specified duration of time may be approved by the appointing officers of both departments and the Human Resources Director and shall be known as a "limited-term transfer."

114.17.2 Purpose

The purpose of a limited-term transfer is to more efficiently utilize and exchange human resources among the departments of the City and County; to allow employees exposure and training in other departments; and to provide a mechanism for reducing staffing levels during slow periods or periods of fiscal emergency and to temporarily increase staffing during peak work periods.

114.17.3 Types of Limited-Term Transfers

1) Voluntary: A limited-term transfer may be initiated on the written request of an employee on the form prescribed by the Human Resources Director. Upon receipt of a written request from an employee and no less than fifteen (15) working days prior to implementation, the designated union of the employee shall be provided written notice. The union shall have five (5) working days from the date of the notice to request a meeting with the appointing officer/designee. Within five (5) working days from the date of the union request, a meeting shall be held. If the union is unavailable to meet within the five (5) working days following the request to meet, the unavailability of the union shall constitute a waiver of the right to meet. Unavailability of the appointing officer/designee shall constitute an extension of the timelines. The timelines may also be extended through mutual written agreement.

Sec. 114.17 Limited-Term Transfer (cont.)

2) **Mandatory:** A permanent or probationary employee may be transferred by the employee's appointing officer for a specified period up to a maximum of six (6) months in any calendar year to a position in the same class under another appointing officer. Such transfers shall be made by class in reverse order of seniority in the class in the department after all permanent and probationary employees in the class have been canvassed and all more senior employees have been notified and have waived the right to request a voluntary limited-term transfer. The employee shall receive at least five (5) working days written notice in advance of the effective date of the transfer and shall be given an opportunity, if requested, to meet and confer with the appointing officer/designee and the designated union representative. No permanent employee shall be placed on mandatory limited-term transfer if there are temporary or provisional employees in the same class in the department from which the transfer originates.

114.17.4 Expiration and Extension

- 1) Limited-term transfers will remain in force for the period specified unless abridgment is approved by both appointing officers.
- 2) Voluntary limited-term transfers may be extended for additional periods of time with the approval of the employee, the appointing officer and the Human Resources Director.
- 3) Upon expiration of the period of the transfer, the transferee shall be automatically reinstated to a permanent position in the class and department from which transferred.

114.17.5 Probationary Period

- 1) A limited-term transferee shall not serve a new probationary period; however, notwithstanding any other provision of these Rules, with the approval of the appointing officer in the department to which transferred, the time served during a limited-term transfer, or a portion thereof, may be counted toward the completion of the probationary period if the transferee requests and is granted a permanent transfer and commences a probationary period in the new department.
- 2) An appointee who is transferred under the provisions of this Rule while serving a probationary period in the department from which transferred shall complete the probationary period upon reinstatement to the original department; however, an appointing officer may, notwithstanding any other provision of these Rules, credit the time served during a limited-term transfer or a portion thereof toward the completion of the probationary period in the original department.

Sec. 114.17 Limited-Term Transfer (cont.)**114.17.6 Disciplinary Action**

A limited-term transferee is an appointee in the department to which transferred during the period of the transfer for the purpose of disciplinary action.

114.17.7 Temporary Positions

Limited-term transfers which are not made to permanent positions may be made to positions which are funded on a temporary basis with the certification of the Controller that funds for the payment of mandatory fringe benefits are available in the department to which transferred. Appointees so transferred retain all the rights and benefits of permanent appointees.

114.17.8 Seniority

Appointees returning to their original departments following a limited-term transfer are reinstated with full seniority. No deduction from seniority in the original department shall be made for any period of limited-term transfer.

114.17.9 Layoff

An appointee who is laid off while on a limited-term transfer shall be automatically reinstated to a permanent position in the class in the department from which transferred.

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Article V: Employment in Class 8304/8504 Deputy Sheriff and Class 8302 Deputy Sheriff I

Applicability: Article VII, Rule 114, shall apply only to employees in Class 8304/8504 Deputy Sheriff and Class 8302 Deputy Sheriff I.

Sec. 114.18 Preemption of Certain Civil Service Commission Rules

Notwithstanding any other provisions of these Rules, employment in Class 8302 Deputy Sheriff I and Class 8304/8504 Deputy Sheriff shall be administered as provided in this Rule.

Sec. 114.19 Probationary Period for Deputy Sheriff I (Job Code 8302)

- 114.19.1** Appointees in Deputy Sheriff I (Job Code 8302) shall serve a probationary period, consistent with any valid Memorandum of Understanding and as provided elsewhere in these Rules.
- 114.19.2** Consistent with any valid Memorandum of Understanding covering this class, appointees in Class 8302 Deputy Sheriff I may be released by the Sheriff at any time during the probationary period. The decision of the Sheriff shall be final.
- 114.19.3** The probationary period for an appointee in Class 8302 Deputy Sheriff I shall be extended only for unpaid authorized or unauthorized absences from work, absences due to disciplinary reasons, sick leave or disability leaves.

Sec. 114.20 Advancement from Class 8302 Deputy Sheriff I to Class 8304/8504 Deputy Sheriff

- 114.20.1** Subject to the successful completion of the probationary period and such other terms and conditions as required by the Sheriff and approved by the Human Resources Director, the Sheriff shall have the authority to advance appointees in Class 8302 Deputy Sheriff I to a permanent entrance appointment in Class 8304/8504 Deputy Sheriff.
- 114.20.2** Advancement as provided in this Rule shall not require a new probationary period.

Sec. 114.20 **Advancement from Class 8302 Deputy Sheriff I to Class 8304/8504 Deputy Sheriff (cont.)**

114.20.3 With the approval of the Human Resources Director, an appointee in class 8302 Deputy Sheriff I who has, in the sole discretion of the Sheriff, successfully performed each and every requirement necessary for successful completion of the probationary period, but through no fault of the appointee, completes the probationary period prior to successful completion of all state certification requirements prescribed by the Commission on Peace Officer Standards and Training (POST), may be advanced to 8304/8504 Deputy Sheriff subject to a probationary period which shall extend from the date of appointment to the 8304/8504 Deputy Sheriff class to the date upon which POST certifies that the appointee has successfully completed all state-mandated requirements.

114.20.4 For purposes of the Human Resources Director's approval of advancement under this section, a finding of "no fault of the appointee" shall include but not be limited to administrative delay by the Sheriff's department, lack of available training funds, or such other circumstances beyond the control of the appointee, but not related in any way to the appointee's performance.

114.20.5 Except as set forth above, appointees in class 8302 Deputy Sheriff I who fail to successfully complete each and every POST certification requirement and such other terms and conditions as required by the Sheriff and approved by the Human Resources Director during the probationary period, shall be deemed to have failed to have and maintain all necessary qualifications for the position and shall be subject to immediate removal.

Sec. 114.21 **Seniority of Appointees in Class 8304/8504 Deputy Sheriff Upon Advancement**

Seniority in Class 8304/8504 Deputy Sheriff shall be determined by the date of appointment following certification from an 8304/8504 eligible list to a permanent position in the respective class. Ties shall be broken based on rank on the eligible list for Class 8302 Deputy Sheriff I and as otherwise specified in these rules.

Sec. 114.22 **Layoff in Class 8302 Deputy Sheriff I and Class 8304/8305 Deputy Sheriff**

Layoffs in Class 8302 Deputy Sheriff I and Class 8304/8504 Deputy Sheriff shall be as provided elsewhere in these Rules, except that, all appointees in Class 8302 Deputy Sheriff I shall be laid off before the layoff of any appointees in Class 8304/8504 Deputy Sheriff shall occur.

Sec. 114.23 No Reversion Rights

Except through new examination or except as provided elsewhere in this Article, appointees separated or advanced from Class 8302 Deputy Sheriff I shall not be eligible to reinstate to or reoccupy positions in Class 8302 Deputy Sheriff I, for any reason.

Sec. 114.24 Reappointment of Separated Employee

- 114.24.1** Subject to the approval of the Sheriff, a former employee under permanent civil service appointment in Class 8302 Deputy Sheriff I who separated during the probationary period because of failure to successfully complete the required peace officer training and who subsequently completes this training at their own expense may, upon written request and within 18 months from the separation date, be reappointed to a vacant position in Class 8302 Deputy Sheriff I.
- 114.24.2** When reappointed, the employee shall enter the service as a new appointee with no rights based on prior service except that which may specifically be provided in these Rules or by ordinance.
- 114.24.3** When reappointed, the employee shall complete a new probationary period unless the Sheriff allows full or partial credit for prior service.
- 114.24.4** The decision of the Sheriff in all matters delegated under this section shall be final and shall not be subject to appeal to the Civil Service Commission or review through any other dispute resolution procedure.
- 114.24.5** The Human Resources Director shall provide procedures for implementing this section.

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Article VI: Exempt Appointment

Applicability: Article VIII, Rule 114, shall apply to employees in all classes; except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Sec. 114.25 Exclusions from Civil Service Appointment

All permanent employees of the City and County shall be appointed through the civil service process by competitive examination unless exempted from the civil service examination and selection process in accordance with Charter provisions. Appointments excluded by Charter from the competitive civil service examination and selection process shall be known as exempt appointments. Any person occupying a position under exempt appointment shall not be subject to civil service selection, appointment, and removal procedures and shall serve at the pleasure of the appointing officer.

Sec. 114.26 Charter Limit on Certain Categories of Exempt Appointments

- 114.26.1** The proportion of full-time employees in the exempt categories included under Charter Sections 10.104-1 through 10.104-12 to the total number of civil service employees of the City and County shall not be greater than the proportion existing on July 1, 1994, except as authorized in this Article. As certified by the Civil Service Commission at its meeting of November 18, 1996, the ratio on July 1, 1994 of full-time exempt employees to the total full-time City and County work force was two percent (2%).
- 114.26.2** In accordance with Charter Section 10.104, the Civil Service Commission may, by express approval, authorize that full-time positions conforming to the criteria established in this Section in the categories defined in Charter Sections 10.104-1 through 10.104-12 in excess of the Charter limitation be excluded from civil service selection and removal procedures and be filled through exempt appointment.
- 114.26.3** Requests for exemption under this section must conform to the following:
- 1)** The position to be exempted must be in one of the categories defined in Charter Sections 10.104-1 through 10.104-12.

Sec. 114.26 Charter Limit on Certain Categories of Exempt Appointments (cont.)

114.26.3 Requests for exemption under this section must conform to the following:

- 2) The action of exempting a particular position shall not directly affect the civil service rights of an incumbent regularly occupying such position on a permanent civil service basis.
- 3) The Human Resources Director recommends the exemption and certifies that the exemption action shall not directly affect an incumbent civil service appointee to the position.
- 4) The request for exemption is made and approved by an appointing officer or an elected official; a request from a department under the City Administrator must be approved by the City Administrator.
- 5) The official making the request provides written justification as to the reasons the position should be exempted.

114.26.4 An appointing officer or an elected official may submit a request to exempt a position under this section to the Civil Service Commission through the Human Resources Director. If the Director recommends approval, the request shall be transmitted to the Civil Service Commission for review and action; if the Director denies a request, the appointing officer shall be notified in writing of the denial and the reasons for such action.

114.26.5 The decision of the Human Resources Director is appealable to the Civil Service Commission within thirty (30) calendar days of the date of the notice of denial. The Commission decision on the appeal shall be final.

114.26.6 This section as adopted by the Civil Service Commission at its meeting of November 18, 1996 was approved by the Board of Supervisors on January 3, 1997 (Resolution Number 222-96-4).

114.26.7 Charter Limit on Categories 16, 17 and 18

- 1) Temporary and Seasonal Exemptions under Charter Section 10.104-16
 - a. Temporary and seasonal appointments shall be TEX, with full-time, part-time, or as-needed schedules.
 - b. No person, regardless of work schedule, shall exceed 1040 hours of work in any fiscal year.

Sec. 114.26 Charter Limit on Certain Categories of Exempt Appointments (cont.)**114.26.7 Charter Limit on Categories 16, 17 and 18**

- 2) Temporary Substitute/Backfill Exemption under Charter Section 10.104-17
 - a. An appointment proposed for exemption under Charter Section 10.104-17 shall be for a temporary substitute or back-fill for a civil service employee on an authorized leave of absence (*e.g., an employee on pregnancy or other medical leave, etc.)
 - b. The Human Resources Director may approve an appointment in increments of up to 1040 hours (six months); however, the appointment shall not exceed a maximum duration of 4160 hours (not to exceed two years by Charter requirement, or a total of four six-month increments).
- 3) Special Project Exemption under Charter Section 10.104-18
 - a. An appointment authorized for exemption under Charter Section 10.104-18 must be to a position created for or dedicated to a special project, or for professional services, not to exceed three years by Charter requirement.
 - b. Funding for appointments to perform professional services as authorized under Charter Section 10.104-18 shall be for a limited term (e.g., a grant or a “one-time only” appropriation for a specific or special purpose). Departmental requests for such appointments must certify that the funding is limited, identify the funding source and anticipate duration of such funding source, and adequately describe the professional services to be performed.
 - c. Departmental requests for appointments to a special project as authorized under Charter Section 10.104-18 must adequately define the special project or professional service to be provided (including but not limited to a description of the project objective, scope of work, and the specific anticipated duration of the project).

Rule 114

Appointments

Article VII: Director of Elections

Applicability: Article IX, Rule 114, shall apply to the Director of Elections as provided for in Charter Section 13.104.

Sec. 114.27 Purpose

The purpose of Article IX, Rule 114, shall be to reflect the authority of the Civil Service Commission and the Elections Commission as well as the employment rights of the Director of Elections as set forth in Section 13.104 and Article X of the Charter of the City and County of San Francisco. A Rule on the position of Director of Elections is in order because of the unique nature of the position under the Charter.

Sec. 114.28 Requirement for a Personnel Requisition and Job Announcement

114.28.1 Whenever the position of Director of Elections is to be filled, the Elections Commission shall issue a personnel requisition in the prescribed format noting that appointment to the position shall be in accordance with Charter Section 13.104 and Civil Service Commission Rule 114, Article IX.

114.28.2 The Department of Human Resources shall issue a job announcement which shall be posted for a minimum of ten (10) days and shall include a position description, qualifications, dates applications will be accepted, relevant provisions in Charter Section 13.104 and other relevant job- related information.

Sec. 114.29 List of Qualified Applicants

114.29.1 The names of the candidates who meet the requirements of the job announcement shall be placed on the list of qualified applicants in the order of their scores. There must be a minimum of three (3) qualified applicants available for selection. Approval of the Civil Service Commission shall be required to proceed should there be fewer than three (3) qualified applicants.

114.29.2 Should the Director of Elections position become vacant within twenty-four (24) months of appointment, the Elections Commission may elect to appoint a successor from the current list of qualified applicants provided a minimum of three (3) persons remain available on the list, except that approval to appoint from this list may be obtained from the Civil Service Commission should there be fewer than three (3) persons available.

Sec. 114.30 Selection of the Director of Elections

- 114.30.1** In accordance with Charter Section 13.104, no less than thirty (30) days before the expiration of the Director's term, the Elections Commission shall select a Director for the next term. The appointment shall be effective in accordance with Rule 114.51- Appointment Date.
- 114.30.2** Selection of the Director of Elections from the list of qualified applicants shall be based on merit and fitness without regard to relationship, race, religion, sex, national origin, ethnicity, age, disability, gender identity, political affiliation, sexual orientation, ancestry, marital status, color, medical condition or other non-merit factors or otherwise prohibited nepotism or favoritism.
- 114.30.3** The Elections Commission shall establish a non-discriminatory selection process which may include scheduling each interested person from the list of qualified applicants for interview, conducting interviews by a diverse panel, asking job-related questions, and maintaining documentation of selection criteria.
- 114.30.4** The Elections Commission shall utilize appropriate job-related, non-discriminatory screening devices which may include but not be limited to resumes, updated applications, skills checklists, writing exercises, work samples, and performance reviews.
- 114.30.5** The Elections Commission shall notify the persons on the list of qualified applicants of the available position and selection process. The Notice shall include a minimum response period of five (5) business days and ten (10) business days in the event supplemental information is required.

Sec. 114.31 Appointment of the Director of Elections

- 114.31.1** Appointment to the position of Director of Elections shall be made pursuant exclusively to the provisions of Charter Section 13.104 and Civil Service Commission Rule 114, Article IX. Civil Service Commission Rules covering a civil service employee in another position in the same or different class, including but not limited to those Rules on Status and Layoff, shall not apply to appointment to the position of Director of Elections. Thus, by way of example but not limitation, a permanent civil service employee with greater seniority shall not have the right or preference for appointment to a vacant Director of Elections position nor the right to displace the incumbent Director of Elections with less seniority.

Sec. 114.31 Appointment of the Director of Elections (cont.)

- 114.31.2** The Director of Elections shall be appointed permanent civil service by the Elections Commission from a list of qualified applicants for a term of five (5) years. The term shall commence upon the appointment date of the person selected.
- 114.31.3** The record of appointment shall be on the prescribed form noting that the appointment has been made in accordance with Charter Section 13.104 and Civil Service Commission Rule 114, Article IX.
- 114.31.4** Pending the appointment of the Director of Elections, the Elections Commission may make a temporary out-of-class assignment or a provisional appointment. Temporary out-of-class assignment or provisional appointment shall not be made to bypass the established selection procedures provided in this Rule. Temporary out-of-class assignment or provisional appointment may be approved while an appointment through the regularly established procedures is pending and shall be limited to ninety (90) days. Any extension beyond the ninety (90) days must be approved by the Civil Service Commission in increments of no more than sixty (60) days apiece. The selection procedures provided in this Rule shall be effectuated expeditiously.

Sec. 114.32 Appointment Date

- 114.32.1** In accordance with Charter Section 13.104, no less than thirty (30) days before the expiration of the Director of Election's five (5)-year term, the Elections Commission shall appoint a Director of Elections for the next term. In this circumstance, the appointment date shall be the date on which the person starts work in a permanent civil service capacity as Director of Elections, which date may be no sooner than the first day following the last day of the term that is coming to an end.
- 114.32.2** Except as stated in Rule 114.51.4, if an appointment of the Director of Elections is made in some circumstance other than the impending completion of a Director of Election's five (5)-year term, the appointment date shall be the date on which the person starts work in a permanent civil service capacity as Director of Elections.
- 114.32.3** The Elections Commission and the Department of Human Resources shall expedite the appointment processing necessary to effectuate the appointment of the Director of Elections.
- 114.32.4** For the Director of Elections who is in office as of November 3, 2003, the appointment date shall be the date on which the Elections Commission.

Sec. 114.32 Appointment Date (cont.)**114.32.4 (cont.)**

acted to select the person to be Director of Elections in a permanent civil service capacity.

Sec. 114.33 Probationary Period

114.33.1 The final phase of the selection process shall include a probationary period that conforms to the requirements of Rule 117 – Probationary Period, except that Rules on the Voluntary Resumption of the Probationary Period (Rule 117.8) shall not apply. The Elections Commission may release the Director of Elections at any time during the probationary period. The decision of the Elections Commission to release the Director of Elections during the probationary period shall be final.

114.33.2 In accordance with Rule 114.53.4, appointment of the incumbent to a new term shall not require a new probationary period.

Sec. 114.34 Renewal of Term

114.34.1 In accordance with Charter Section 13.104, no less than thirty (30) days before the expiration of the Director's term, the Elections Commission shall select a Director for the next term. The Elections Commission may appoint the incumbent Director of Elections for an additional five (5)-year term.

114.34.2 The Elections Commission may in its discretion renew the incumbent's term, without engaging in the competitive selection process specified in this Rule.

114.34.3 In the alternative, the Elections Commission may in its discretion again engage in the competitive selection process specified in this Rule, and renew the incumbent's term in the event the incumbent successfully competes in the process.

114.34.4 In accordance with Rule 114.52.2, renewal of the incumbent's term shall not require a new probationary period.

Sec. 114.35 Employment Rights

114.35.1 Notwithstanding the designation of the Director of Elections as a permanent civil service appointment, and notwithstanding the rights that normally accompany such a designation, upon the end of the Director's term as defined in Rule 114.58.1, there shall be no accrued right to return.

Sec. 114.35 **Employment Rights (cont.)****114.35.1** **(cont.)**

to the position or receive special consideration for or claim to the position. Thus, a former Director has no special claim to return to the position or right to receive special consideration for the position. This provision shall not preclude a former Director from applying for the position or preclude consideration of experience as Director in evaluating candidates for the position.

114.35.2 Except as stated herein, this Rule 114, Article IX is not intended to interfere with the ongoing relationship between the Elections Commission and the Director of Elections or undermine the independence of the Elections Commission as established by the City Charter. Except as stated herein, if the application of a Civil Service Commission Rule to the Director would seriously undermine the authority of the Elections Commission over the Director, that Rule shall not apply. By way of example but not limitation, notwithstanding the designation of the Director of Elections as a permanent civil service appointment, for purposes of Rule 120 (Leaves of Absence), the Director shall have only those leave rights customarily afforded department heads.

114.35.3 The Director of Elections is both an officer and employee and shall be subject to those provisions in Rule 118 (Conflict of Interest) governing officers or employees. Further, the Director shall be subject to the provisions of Rule 118.2 governing part-time employment. However, in the case of the Director, the powers vested in the Human Resources Director under Rule 118.2 shall be vested exclusively in the Elections Commission, with no power of appeal to the Human Resources Director or the Civil Service Commission.

114.35.4 This Rule 114, Article IX shall not abrogate those employment rights customarily afforded by federal, state, and local law to department heads.

Sec. 114.36 **Release from Term Appointment**

Should the Elections Commission decide not to renew the incumbent's term, the Director of Elections shall be released. The decision of the Elections Commission to renew or not renew the term appointment shall be final.

Sec. 114.37 Removal for Cause

- 114.37.1** In accordance with Charter Section 13.104, following the successful completion of the probationary period and during the term appointment, the Elections Commission may remove the Director of Elections for cause upon written charges and following a hearing. The Elections Commission shall present the written charges to the Director of Elections no less than thirty (30) days before the scheduled hearing. The hearing shall be held not less than thirty (30) days after notice of charges, unless the Director of Elections requests an earlier hearing date and the Elections Commission agrees to the request.
- 114.37.2** The hearing shall be held no later than forty-five (45) days after notice of charges unless the Director of Elections and the Elections Commission agree to an extension, or in the absence of mutual agreement, either party seeks and obtains the approval of the Civil Service Commission for an extension. The Elections Commission shall render its decision no later than ten (10) days following the conclusion of the hearing.
- 114.37.3** Pending a hearing and decision of the Elections Commission to remove the Director of Elections for conduct involving misappropriation of public funds or property, misuse or destruction of public property, drug addiction or habitual intemperance, mistreatment of persons, immorality, acts which would constitute a felony or misdemeanor involving moral turpitude, or acts which present an immediate danger to the public health and safety, the Elections Commission may place the Director of Elections on unpaid administrative leave. Pending the hearing and decision of the Elections Commission on the removal of the Director of Elections, the Elections Commission may make a temporary out-of-class assignment or provisional appointment.
- 114.37.4** For removal on charges other than those listed in Section 114.56.3, the incumbent shall continue to occupy the position of Director of Elections until the completion of the hearing and decision by the Elections Commission.

Sec. 114.38 Appeal to the Civil Service Commission following Removal for Cause

- 114.38.1** In the event of removal for cause as set forth in this Rule and Charter Section 13.104, the Director of Elections shall have the right of appeal to the Civil Service Commission.
- 114.38.2** A notice of termination from the Elections Commission to the Director of Elections detailing the specific reason(s) for the termination, shall serve as official notice of such termination.

Sec. 114.38 Appeal to the Civil Service Commission following Removal for Cause (cont.)

- 114.38.3** The notice of termination must include the following information:
- 1) The Director of Elections has the right to a hearing before the Civil Service Commission provided that a request for hearing is made in writing and is received by the Executive Officer within twenty (20) calendar days from the date of removal from the term appointment or from the date of mailing of the Notice of Termination whichever is later. In the event the 20th day falls on a non-business day, the deadline shall be extended to the close of business on the first (1st) business day following the 20th day.
 - 2) The stated reason(s) for the termination must be enumerated. Records of warnings, reprimands and previous suspensions, if applicable, must be attached.
 - 3) Recommendation by the Elections Commission on future employment restrictions.
- 114.38.4** Upon receipt of an appeal in the Civil Service Commission office, the Executive Officer shall place the matter on the next Regular or Special meeting agenda consistent with applicable public meeting laws to determine time frames for hearing the appeal.
- 114.38.5** The hearing of the appeal must be scheduled no later than sixty (60) days from the date of receipt of the appeal. Extension beyond sixty (60) days shall be at the discretion of the Civil Service Commission, based on such factors as whether the appellant and the Elections Commission have agreed to the extension; whether an extension is consistent with the purposes underlying Charter Section 13.104 and related Charter provisions; and whether an extension would serve the interests of justice.
- 114.38.6** Unless the appeal clearly and expressly states otherwise, it shall be treated by the Civil Service Commission as an appeal of both the decision of the Elections Commission to remove the Director of Elections and the recommendation of the Elections Commission on future employment restrictions.
- If the appeal is clearly and expressly limited to only the recommendation of the Elections Commission as to future employment restrictions, the Civil Service Commission shall take one or more of the following actions:
- 1) Cancel any current examination and eligibility status;

Sec. 114.39 Appeal to the Civil Service Commission following Removal for Cause (cont.)

114.38.6 (cont.)

- 2) Restrict future employment as it deems appropriate;
- 3) Return the person to the permanent civil service classification immediately held prior to acceptance of the position of Director of Elections. If necessary, layoff in the affected classes shall follow.

114.38.7 In accordance with Charter Section 13.104, on appeal of the decision of the Elections Commission to remove the Director of Elections, the Civil Service Commission shall be limited to consideration of the record before the Elections Commission; however, the Civil Service Commission may independently evaluate and weigh evidence and may in its discretion consider evidence proffered to the Elections Commission that the Elections Commission excluded and may in its discretion exclude evidence that the Elections Commission considered. In its discretion, and depending on the facts of a particular case, the Civil Service Commission may consider the presence or absence of contemporaneous documentation by the Elections Commission of facts supporting the removal for cause, and/or the presence or absence of documentation of such facts in a regular performance appraisal of the Director, as probative of the validity of the removal for cause.

114.38.8 With respect to the decision of the Elections Commission to remove the Director of Elections, the Civil Service Commission shall either:

- 1) Grant the appeal, vacate the decision of the Elections Commission, and order immediate reinstatement of the person to the position of Director of Elections. In reinstating the person, the Civil Service Commission may order payment of salary to the person for the period of the removal; or.
- 2) Deny the appeal, uphold the decision of the Elections Commission, and declare the person dismissed from the position of Director of Elections. In denying the appeal, the Civil Service Commission may return the person to the permanent civil service classification immediately held prior to acceptance of the position of Director of Elections. If necessary, layoff in the affected classes shall follow.
 - a) If the Civil Service Commission upholds the decision of the Elections Commission to remove the Director of Elections, the appellant may elect to withdraw the appeal on future employment restrictions.

Sec. 114.38 Appeal to the Civil Service Commission following Removal for Cause (cont.)

114.38.8 (cont.)

b) Should the appellant not withdraw the appeal on future employment restrictions the Civil Service Commission may adopt the recommendations of the Elections Commission on future employment restrictions, cancel any current examination and eligibility status, or restrict future employment as it deems appropriate.

114.38.9 The decision of the Civil Service Commission on the appeal shall be final

Sec. 114.39 End of Term

114.39.1 The term of the Director of Elections shall end upon release during the probationary period, removal for cause, death, appointment to another position in the City service, including a position in the classified service at the San Francisco Community College District or the San Francisco Unified School District, resignation or completion of the five (5)-year term without renewal of the appointment for another term. In the case of removal for cause, the term shall end:

1) If no appeal on the decision of the Elections Commission to remove the Director of Elections is filed, upon completion of the time period for filing an appeal with the Civil Service Commission as specified in this Rule; or,

2) If an appeal on the decision of the Elections Commission to remove the Director of Elections is filed within the time period for filing an appeal, upon the hearing and decision of the appeal by the Civil Service Commission, if the Civil Service Commission upholds the removal for cause.

114.39.2 In the interim, between removal for cause by the Elections Commission and the conclusion of the appeal process on the decision to remove the Director of Elections, the Elections Commission may make a temporary out-of-class assignment or provisional appointment while the appeal process is underway.