



CITY OF NEWBURGH  
EMERGENCY COUNCIL MEETING  
AGENDA  
SESION GENERAL DEL CONSEJAL  
October 14, 2016  
6:00 p.m.

Mayor: /Alcaldesa

City Clerk: / Secretaria de la ciudad:

1. Roll Call/ *Lista de asistencia*

Executive Session:

2. Executive Session to discuss matters pertaining to the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation

*Sesión Ejecutiva para discutir temas en relación al historial médico, financiero, crédito o empleo de una persona en particular o corporación, o temas llevando al nombramiento, empleo, promoción, baja, disciplina, suspensión, despido o extracción de una persona en particular o corporación.*

City Manager Report/ Reporte Del Gerente de la Ciudad:

A Resolution Amending the 2016 Personnel Analysis Book to add a full-time Deputy Police Chief in the Police Department.

*Una Resolución Enmendando el Libro de Análisis del Personal del 2016 para agregar un Subjefe de Policía a tiempo complete en el Departamento de Policía.*

Adjournment: / Aplazamiento:

RESOLUTION NO.: \_\_\_\_\_-2016

OF

OCTOBER 14, 2016

**A RESOLUTION AMENDING THE 2016 PERSONNEL ANALYSIS BOOK  
TO ADD A FULL-TIME DEPUTY POLICE CHIEF IN THE POLICE DEPARTMENT**

**WHEREAS**, it has become necessary to restore the position of full-time Deputy Police Chief in the Police Department; and

**WHEREAS**, the City Council has determined that restoring a full-time Deputy Police Chief position in the Police Department will promote continuity in leadership and efficiency within the Department; the same being in the best interests of the City of Newburgh; and

**WHEREAS**, restoring a full-time Deputy Police Chief position in the Police Department requires the amendment of the City of Newburgh Adopted Personnel Analysis Book;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for 2016 be and is hereby amended to add a full-time Deputy Police Chief position in the Police Department.



# CITY OF NEWBURGH

Office of the City Manager  
83 Broadway, Newburgh, New York 12550  
(845) 569-7301/Fax (845) 569-7370  
[www.cityofnewburgh-ny.gov](http://www.cityofnewburgh-ny.gov)

Michael G. Ciaravino, City Manager

August 17, 2016

**VIA EMAIL AND  
VIA HAND DELIVERY VIA CORPORATION COUNSEL MICHELLE KELSON**

Mr. Thomas Murphy  
Ms. Vera Best  
Mr. John Powell  
Civil Service Commissioners  
83 Broadway  
Newburgh, New York 12550

Dear Civil Service Commissioners:

As a follow-up to my letter dated July 27, 2016, please be advised that I am in receipt of Chairman Murphy's July 28, 2016 letter to Steven Gross (Orange County Commissioner of Human Resources), as well as an August 10, 2016 letter from Maria P. Kenneally of the N.Y.S. Department of Civil Service, and the August 11, 2016 letter from Mr. Gross to Chairman Murphy.

In 2014 Chief Michael Ferrara notified the city that he was going to retire in January of 2015. The city requested outside resumes of people interested in becoming the next Chief of Police for the City of Newburgh. That process was endorsed by the City Council. As a result of that process I appointed Lieutenant Daniel Cameron as acting police chief on January 9, 2015.

On March 5, 2016, the City of Newburgh Civil Service Commission offered only an open competitive exam for police chief. After the results of the examination, I was informed by the commission that the option I had was to hire someone off the list and if the list became non-mandatory, I could make a provisional appointment, except I could not appoint Daniel Cameron, since he did not take the open examination. Four candidates passed the test and were canvassed. All four candidates declined the position. There are no members of the police department, other than Daniel Cameron, who meets the civil service qualifications for police chief.

I was aware of additional options, so I outlined them in a letter to you dated July 27, 2016. One option I requested was to utilize the Orange County Police Chief exam, and the other option was to make an appointment under New York State Civil Service Law Section 4.2b, which clearly articulates a path forward when an open examination does not provide a candidate. During the commission's last meeting, section 4.2b was not addressed and the only option discussed was utilizing the county list. Therefore, in absence of any promotional list, open competitive list, county list and the fact that Daniel Cameron satisfies this commission's qualifications for police chief, I hereby nominate Daniel Cameron

for permanent Police Chief under New York State Civil Service Law Section 4.2b. For your convenience, I have cited the law below:

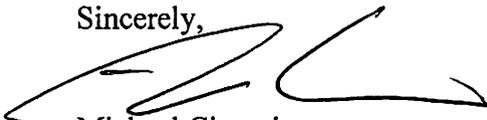
*Whenever a vacancy exists in a competitive class position and an open competitive examination does not result in an eligible list containing the names of at least three persons willing to accept appointment, the Civil Service Department may permit the appointing authority to nominate a person for noncompetitive examination for such position and, if such nominee shall be certified by the Civil Service Department as qualified, he may be appointed to fill such vacancy; or the Civil Service Department may designate the eligible list, if there be one, as a continuing eligible list in accordance with section 57 of the Civil Service Law, and insert therein the names of additional eligible as they are found qualified by examination held at such intervals as may be prescribed.*

Civil Service Law also articulates that no examination may be required in such a case if the nominee has already passed an appropriate examination. As the New York State Civil Service evaluated the Orange County Police Chief exam they concluded that although the “list” should not be used, the “test” utilized the same test plan and the difference in the test is that the threshold for passing is lower for county applicants. Daniel Cameron successfully passed the exam with a 92, which is way above the passing threshold for both the City of Newburgh and Orange County. I respectfully request that the commission consider the Orange County test so no further examination be required.

I believe my request is not only in the best interest of the City of Newburgh, but also consistent with past practices of the City of Newburgh Civil Service Commission and within Civil Service Law. On December 1, 2010 the City of Newburgh Civil Service reviewed and accepted City Manager Richard Herbek’s appointment of Chief Michael Ferrara without further examination. The appointment was based on the fact that there were less than three members of the department that met the eligibility requirements for promotion and that the city did not hold an open competitive examination. The commission utilized New York State Civil Service Law section 52.7 which mirrors section 4.2b as it pertains to giving open competitive examinations as the city has done this year.

It is of my belief as the appointing authority that Daniel Cameron has proven through his position of acting chief that he is transforming the police department into a progressive, community oriented service that has captured the attention of not only the community but the state and the federal government. A provisional appointment from within the police department cannot be made as there are no other members that satisfy the civil service qualification requirements. Under law and in the interest of public safety we must have a police chief and our acting police chief is highly regarded for the work he has done in the interim.

Sincerely,



Michael Ciaravino  
City Manager  
Newburgh, New York



# CITY OF NEWBURGH

MUNICIPAL CIVIL SERVICE COMMISSION  
CITY HALL - 83 BROADWAY  
NEWBURGH, N.Y. 12550  
Tel. 569-7340

September 20, 2016

Maria Kenneally  
Principal Municipal Personnel Consultant  
New York State Department of Civil Service  
Empire State Plaza, Agency Building 1  
Albany, NY 12239

Re: Conference Call of September 16, 2016  
Police Chief Options

Dear Ms. Kenneally:

The Newburgh Civil Service Commission would like to extend their appreciation to you and your department for providing objective expert assistance and guidance with the controversial issues related to filling the vacancy of Police Chief in the City of Newburgh.

We are once again seeking your assistance with this issue by requesting written confirmation of the questions and options discussed during the conference call of September 16, 2016.

To reiterate the summary of facts provided at the beginning of the conference call, Daniel Cameron was appointed provisional Police Chief by City Manager Michael Ciaravino on January 10, 2015. Mr. Cameron qualified for the position by meeting the open-competitive minimum qualifications for appointment. An open-competitive exam was requested, scheduled and held on March 5, 2016 which Mr. Cameron refused to take. Mr. Cameron did take the exam for this title offered by Orange County on the same date. Mr. Ciaravino and Mr. Cameron filed an Article 78 Proceeding against the Newburgh CSC in Orange County Supreme Court on March 3, 2016 to halt the exam and did not prevail.

The resulting eligible list for the March 5, 2016 Police Chief exam yielded four qualified candidates. A canvass of the eligible list by Mr. Ciaravino resulted in four declinations rendering the eligible list non-mandatory.

Mr. Ciaravino requested that the Commission, in the absence of a mandatory list of our own, obtain a comparability analysis from Orange County to allow for the appointment of Daniel Cameron from the eligible list for Police Chief. The Orange County Department of Personnel sought your assistance and it was determined that the eligible list for the position of Police Chief from Orange County was not comparable to the City and therefore could not be used to fill the position of Police Chief with the City of Newburgh.

By letter dated August 17, 2016 which was hand delivered by Mr. Ciaravino's office immediately prior to a CSC meeting of the same date, copy attached hereto, Mr. Ciaravino requests that the Commission appoint Mr. Cameron to the position of Police Chief with the City of Newburgh pursuant to 4 NYCRR Section 4.2b.

The item was tabled by the Commission pending further clarification by your department regarding the applicability to this situation.

The following questions were raised during the conference call by members of the Commission as follows:

1. Please provide a clarification on whether 4 NYCRR Section 4.2 can be applied by a municipal civil service commission.
2. If the eligible list for Police Chief was established on June 15, 2016, what is the last date Mr. Cameron can remain in the position by law?
3. Would Mr. Cameron's provisional appointment be considered terminated on that date?
4. Can the date of the termination of the provisional appointment be extended under the Civil Service Law? If so, under what circumstances and for how long?
5. What is the obligation of the City of Newburgh Civil Service Commission if Mr. Cameron is not removed from the position as required by Civil Service Law?
6. What other options are available to fill the vacancy for the position of Police Chief?
7. What steps must the City of Newburgh Civil Service Commission take to implement other options to fill the vacancy in the position of Police Chief?
8. Would other options include re-canvassing the City of Newburgh's June 15, 2016 eligible list for the position of Police Chief? What procedures do you recommend the City of Newburgh Civil Service Commission follow in undertaking such a re-canvas?
9. If the City of Newburgh Civil Service Commission's re-canvass of the June 15, 2016 eligible list for the position of Police Chief results in a non-mandatory list, what options are available to the appointing authority?

10. If the City of Newburgh were to restore funding to the position of Deputy Police Chief, could Mr. Cameron be appointed to Deputy Police Chief and if so under what conditions?
11. Is the City of Newburgh's June 15, 2016 eligible list for the position of Police Chief appropriate for the position of Deputy Police Chief and if so should the eligible list for Police Chief be canvassed for the Deputy Chief position?

If there are any questions that were discussed during our conference call that you do not see listed above, or any other pertinent information related to this issue that would be beneficial to the Commission, please feel free to include it with your response as well.

Again, thank you for your expert objective assistance with this matter.

Sincerely,



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Thomas J. Murphy, Chairman



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Vera M. Best, Commissioner



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John C. Powell, Commissioner

Cc: Michelle Kelson, Corporation Counsel



## Department of Civil Service

ANDREW M. CUOMO  
Governor

October 7, 2016

Mr. Thomas J. Murphy  
Chairman  
Newburgh Civil Service Commission  
City Hall, 83 Broadway  
Newburgh, NY 12550

Dear Mr. Murphy,

This is in response to your letter of September 20, 2016 requesting technical advice and assistance regarding the options available for filling the vacancy of Police Chief in the City of Newburgh. This follows a conference call held between the Newburgh Civil Service Commission and staff from our Department on the same subject. We offer the following recommendations:

In **Question 1**, you asked whether 4 NYCRR, Section 4.2 can be applied by the municipal civil service commission. This rule applies only to positions in New York State government. The civil service rules that apply to positions in the City of Newburgh are the Newburgh Civil Service Rules.

**Questions 2 through 4** relate to the current provisional appointment of Mr. Cameron to the position of Police Chief. You indicated that the Police Chief list was established on June 15, 2016 and asked when the provisional appointment should end. Section 65.3 of the Civil Service Law provides that provisional appointments must terminate within two months of the date the eligible is established. It also provides that if the termination of a provisional appointment within two months would *"disrupt or impair essential public services, evidence thereof may be presented to... the municipal commission having jurisdiction which, after due inquiry, and upon finding that it is in the best interest of the public service, may waive the provisions of this subdivision requiring the termination of the employment of provisional appointees within two months following the establishment of an appropriate eligible list and authorize the termination of the employment of various numbers of such provisional appointees at stated intervals prescribed by such commission; provided, however, that in no case shall the employment of any such provisional appointee be continued longer than four months following the establishment of such eligible list."* Consequently, the provisional appointment should end no later than October 15, 2016 which is four months from the date the list was established.

**Question 5** asks about the obligation of the Newburgh Civil Service Commission to remove the provisional employee from the position. We refer you to sections 100-102 of the Civil Service Law. The chief mechanism for ensuring that appointments under the jurisdiction of the Newburgh Civil Service Commission are in compliance with the Civil Service Law and Rules is the payroll certification process. This procedure assures the appointing authority and the disbursing officer that an individual's employment is in accordance with law and rules, and that payment of wages and/or salaries are legally authorized. A civil service agency can and should withhold certification of an employee named in the payroll when the appointment is not consistent with law or rule, and by doing so creates a record indicating that it is improper for the fiscal officer to pay or authorize the payment of the employee's salary as provided for in the payroll. Payments authorized by a fiscal officer without certification by the civil service agency, may be recovered from the fiscal officer by court action. Section 101 of the Civil Service Law indicates that willfull payment of salary by the disbursing officer after due notice is provided by the civil service agency that certification has been withheld, is a misdemeanor.

**Questions 6 through 9** relate to other options available to the City of Newburgh to fill the vacancy in the position of Police Chief. As we discussed during the conference call, there are several options available to the City of Newburgh and the Newburgh Civil Service Commission.

- Once the provisional appointment terminates on October 15, 2016, the provisional employee should be returned to the "hold" item of Police Lieutenant. This hold is provided pursuant to the Newburgh Civil Service Rule XVI – Effect of Non-Permanent Service on Status of Employees. Subsection 2a provides that *"When a permanent employee is given a provisional, temporary or contingent permanent appointment to a competitive class position in the same department or agency, the position thus vacated by him/her shall only be filled on a temporary or contingent permanent basis until the position is unencumbered by the permanent incumbent."* This transaction will unencumber the position of Police Chief and make it available for appointment.
- If the City of Newburgh is interested in making a permanent appointment to the position, the recommended course of action is to re-canvass the eligible list for the position to determine if any eligibles are interested in appointment at the current time. Declinations and letters of interest should be obtained in writing by the Newburgh Civil Service Commission. It is recommended that the Newburgh Commission conduct the canvass.
- If the results of canvassing render the list mandatory, that is three or more individuals interested in appointment, the names can be certified to the appointing authority and interviews can be conducted.
- If the results of canvassing render the list non-mandatory, that is two or fewer interested individuals, there are two options that can be used to make a permanent appointment:

- The first is that a permanent appointment can be made from the non-mandatory list. However, if the appointing authority is not interested in any of the individuals on the non-mandatory list, they do not have to use the list.
  - The second is to make a permanent appointment to the position of Police Chief is by the transfer or reinstatement of an individual who possesses prior competitive class status in a similar position and that meets the criteria in section 70.1 of the Civil Service Law and the Newburgh Civil Service Rules for transfer or reinstatement. Potential candidates could include retired Police Chiefs from Type C Police Departments. Our office is available to assist in determining eligibility of any individuals being considered for permanent appointment by transfer or reinstatement.
- If a permanent appointment cannot be made, the City of Newburgh could also consider a provisional appointment of an individual other than Mr. Cameron who meets the promotional qualifications of the position or the open-competitive qualifications of the position. As we have previously discussed, Mr. Cameron is ineligible for another provisional appointment to the position of Police Chief due to his refusal to participate in the examination for such position and as specified in the Newburgh Civil Service Rule governing successive provisional appointments (Rule XVI, 3a) This rule provides that "*No provisional employee who has refused to take an examination held for permanent appointment shall be given another provisional appointment in a position with the same title.*" Another individual considered for provisional appointment would need to meet the qualifications, participate in an examination, pass and be reachable from the eligible list in order to be eligible for permanent appointment. Provisional candidates for open-competitive appointment could be recruited from the New York City Police Department or the New York State Police as well as municipal police agencies as provided for in section 58(1-b) of the Civil Service Law.

In **Questions 10 and 11**, you ask about the creation and appointment to the position of Deputy Police Chief. If funding is restored to this position, and since there is no eligible list in existence, the City of Newburgh and the Newburgh Commission have several options.

- One option is to evaluate the examination for Police Chief to determine if it is the most appropriate eligible list to fill the position of Deputy Police Chief as required by section 61 of the Civil Service Law and the Newburgh Civil Service Rules. If yes, the Newburgh Commission can canvass the list for Police Chief to determine if any interested candidates respond and to confirm if the list is mandatory or non-mandatory. If you require assistance with this determination, we would need to review the two job specifications (Police Chief and Deputy Police Chief) as well as the two examination announcements.

Mr. Thomas J. Murphy

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October 7, 2016

- If the list is determined to be non-mandatory, any individual meeting the minimum qualifications on a promotional or open-competitive basis could be considered for provisional appointment. If a provisional appointment is authorized, an examination must be requested within 30 days.

I trust the above information is responsive to your inquiry. If you have additional questions or require additional assistance, please do not hesitate to contact us.

Sincerely,



Maria P. Kenneally  
Principal Municipal Personnel Consultant  
Office of Commission Operations  
& Municipal Assistance

MPK:blm

Cc: Michelle Kelson, Corporation Counsel



# CITY OF NEWBURGH

MUNICIPAL CIVIL SERVICE COMMISSION  
CITY HALL - 83 BROADWAY  
NEWBURGH, N.Y. 12550  
Tel. 569-7340

October 13, 2016

Michael Ciaravino  
City Manager  
City Hall 83 Broadway  
Newburgh, NY 12550

Re: Your Letter of August 17, 2016

Dear Mr. Ciaravino:

Attached hereto is a letter dated September 20, 2016 to Maria Kenneally of the New York State Department of Civil Service. The Newburgh Civil Service Commission requested technical assistance and advice related to filling the vacancy of the position of Police Chief with the City of Newburgh. This letter was sent as a follow up to a conference call of September 16, 2016 held between the Commission, and Maria Kenneally, Thomas Falcon, Frank Bellville and Jeff Troude, (Counsel) New York State Civil Service Commission.

Initially the conference call was made at your request to appoint Daniel Cameron to the Police Chief utilizing Section 4.2b of the New York State Civil Service Law.

Also attached you will find the written response from Maria Kenneally dated October 7, 2016, to our Sept. 20th letter, which addresses your Section 4.2b inquiry. Ms. Kenneally goes further by offering the Commission several options for filling the vacancy of Police Chief.

Please be advised that while the Newburgh Civil Service Commission acknowledges and appreciates your determination to permanently appoint Daniel Cameron to the position of Police Chief with the City of Newburgh, it is the Commission's duly appointed responsibility to ensure that all appointments under its' jurisdiction are in compliance with New York State Civil Service Law.

To that end and after exhausting all known options, Daniel Cameron must be removed from the position of provisional Police Chief on October 15, 2016.

In addition and pursuant to Section 100 of the New York State Civil Service Law, the Commission hereby requests that you provide a complete copy of the City of Newburgh payroll period ending November 10, 2016.

Sincerely,



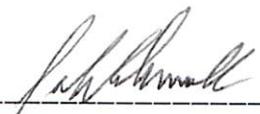
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Thomas J. Murphy, Chairman



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Vera M. Best, Commissioner



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John C. Powell, Commissioner

Cc: Newburgh City Council  
Michelle Kelson, Corporation Counsel  
Kathryn Mack, City Comptroller

TJM/VMB/JCP:mmm  
Attachments: 3