

## ORDINANCE NO. 511

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CREATING A CIVIL SERVICE BOARD, PROVIDING FOR THE MANNER AND METHOD OF APPOINTMENT, PROVIDING FOR THE PLACING OF MEMBERS OF THE POLICE DEPARTMENT AND THE FIRE DEPARTMENT UNDER CIVIL SERVICE.

**SECTION 1. CREATION AND ESTABLISHMENT OF CIVIL SERVICE.** There is hereby created and established Civil Service for certain officers and members of the Fire Department and the Police Department of the City of Newport Beach. All full time, regular and permanent occupations or employment on the Police Department and Fire Department shall for the purpose of this ordinance be known as Classified Service.

**SECTION 2. CREATION OF A CIVIL SERVICE BOARD.** There is hereby created a Civil Service Board, consisting of three (3) members to be appointed by the City Council at its first regular meeting after the adoption of this ordinance. Each of the members shall be a person of good repute in his business, profession or occupation, and be known to be in sympathy with the merit system or Civil Service system in the public service, and with control of employment matters through a central personnel agency. No member shall hold any other city office, and must be a bona fide resident and elector in the City of Newport Beach. At the time of said appointment, the City Council shall designate one (1) of the citizens so appointed to serve a term which shall expire December 31, 1941; one (1) of the citizens so appointed to serve for a term which shall expire December 31, 1942, and one (1) of the citizens so appointed to serve for a term which shall expire December 31, 1943. At the expiration of each of the terms so provided for, a successor shall be appointed for a term of four (4) years. Any member of such commission may be removed from office for incompetency, incompatibility, or dereliction of duty, or malfeasance in office, or other good cause, by the appointing power. Any decision of such Council shall be final.

Vacancies of the Civil Service Board from whatever cause, shall be filled by the City Council for the ensuing or unexpired term.

The Civil Service Board shall keep a record of its proceedings and transactions and shall provide rules and regulations for the keeping of service records of the Police Department employees and the Fire Department employees and for the classification of such employees. Such rules and regulations shall have the force and effect of law.

**SECTION 3. ORGANIZATION OF THE CIVIL SERVICE BOARD.** Immediately after appointment, the Board shall organize and shall elect one of its members as chairman. The Board shall appoint a chief examiner, who shall also act as Secretary of the Board. The Board may appoint such other subordinates as the City Council may by ordinance prescribe. Such Board shall hold meetings upon call of the Chairman or any two members thereof, after at least three hours notice in writing served upon the members.

**SECTION 4. EXAMINATION FOR APPLICANTS.** The Chief of

each department shall, immediately upon such department coming under this ordinance, file with the Civil Service Board an official list of all members of such department with the respective rank or grade held by each member.

It shall be the duty of the Civil Service Board to hold examinations and to administer other suitable tests to those desiring positions or are applicants for appointment or promotion in the classified service of the Fire Department and the Police Department, for the purpose of determining their fitness for such positions or their qualifications for such promotions, and, from the result of such examinations and tests, the Board shall prepare a list of eligibles for all positions in the classified service of the Fire Department and the Police Department. The City Council may contract with the legislative body or governing board of any other municipality or County within this state or with any State Department, as provided in Section 3, Chapter 48, Statutes of 1935.

**SECTION 5. INSPECTION OF EXAMINATION PAPERS.** Examination papers of the candidates are not subject to inspection by the public. Upon request any candidate may inspect his own papers, including his application and the questions and his answers thereto, within six (6) days after the eligible list has been completed. Said six days for review shall mean six days exclusive of holidays.

If the candidate believes error has been made in his grading or in the credit given him, he may make application in writing to the Civil Service Board for a review of his answers; provided, however, that in such application he must state specifically and particularly wherein he believes error has been made.

The Civil Service Board shall immediately upon receipt of such application, proceed to examine the papers and grades. Any error or injustice that may appear shall be corrected, and any change in the order of standing of applicants as a result thereof shall be made by the Civil Service Board within fourteen (14) days, after application is made to them for such review. Their decision shall be final.

**SECTION 6. NOTICE OF EXAMINATIONS.** Notice of time, place and general scope of every examination shall be posted by the Civil Service Board in a conspicuous place, in its office, at the City Hall; at the office of the Chief of the Fire Department; and of the Police Department, not less than two weeks prior to such examination.

**SECTION 7. SELECTION AND PROMOTION.** The Civil Service Board shall formulate rules and regulations governing the selection and promotion of members of the Fire Department and Police Department. All officers and members of the Fire Department and Police Department shall belong to the Classified Service and shall be appointed and promoted from those who are fit for the position to be filled.

All authorized and needed officers or members shall be recommended to be chosen or promoted by the Chief of the Fire Department or the Police Department as the case may be, from the highest standing candidate on the eligible list furnished by the Civil Service Board.

The cost of conducting the examinations and other duties of the Civil Service and Trial Board shall be a charge against the general funds of the City. These costs

shall be certified by the Civil Service Board and when so certified shall be paid by the City Council in the same manner as other charges against the City.

**SECTION 8. CREATION AND ESTABLISHMENT OF A TRIAL BOARD.** There is hereby created, for the purpose of hearing and determining charges made against an officer or member of the Fire Department or Police Department, a board to be known as the Trial Board, which shall be composed of the members of the Civil Service Board. The verdict and judgment of the majority of the trial board shall be final. If the accused be found guilty, said board shall report their findings and recommendations to the City Council. The City Council may dismiss such officer or member from the service of the City or inflict such other punishment upon him as in the judgment of the City Council may be adequate; provided, however, that should an officer or member of the Fire Department or Police Department be found guilty of a charge of drunkenness on duty the City Council must dismiss him from the service of the City.

If an officer or member of the Fire Department or Police Department be convicted of a felony or malfeasance in office or be adjudged insane, or absent himself from the City for more than thirty (30) days without leave granted by the Chief of his Department, the City Council shall, upon the recommendation of the Chief of the Department, declare his position or office vacant and the vacancy shall be filled as heretofore provided.

**SECTION 9. POLITICAL OPINIONS OR RELIGIOUS BELIEF NOT TO BE CONSIDERED.** No person in the Classified Service seeking admission thereto shall be appointed, promoted, demoted or discharged or in any way favored or discriminated against because of political opinions or affiliations, or because of religious belief.

No person holding an office or place in any department placed under a merit system or civil service system, pursuant to the provisions of this ordinance or of Chapter 48 of the Statutes of 1935, of the State of California, shall seek or accept election, nomination or appointment as an officer of a political club or organization, or take an active part in any county or municipal political campaign, or serve as a member of a committee of such club or organization or circle, or seek signatures to any petition provided for by any law, or act as a worker at the polls, or distribute badges or pamphlets, dodgers, or handbills of any kind favoring or opposing any candidate for election, or for nomination to a public office, whether county or municipal; provided, however, that nothing in this ordinance shall be construed to prevent any such officer or employee from becoming or continuing to be a member of a political club or organization, or from attendance at a political meeting, or from enjoying entire freedom from all interference in casting his vote or from seeking or accepting election or appointment to public office.

Any willful violation hereof or violation through culpable negligence, shall be sufficient grounds to authorize the discharge of any officer or employee.

**SECTION 10. PROBATION PERIOD.** Appointments or promotions to employment or rank shall be deemed temporary until a period of probation not to exceed six (6) months has elapsed, and dur-

ing such time such member shall be considered as acting, or temporarily appointed or promoted. Successive temporary appointments shall not be allowed. In the event of promotion to higher rank and at any time within six months thereafter, the appointee may be reduced by the Chief of the Department to the same rank that he had prior to such temporary appointment, and in the event that said appointee shall not have held service in the classified service, he may be discharged by the Chief of the Department. Each Chief shall have power over his own department members.

**SECTION 11. RIGHT OF TRIAL.** The Chief of any department in Classified Service may file charges of misconduct, insubordination or inefficiency against any member of his respective department, with the Civil Service Board. Such charges shall be accompanied by his recommendation for discharge or disciplinary action. If recommended for discharge or reduction after expiration of the period of temporary employment in any position, the employee so recommended for discharge or reduction may demand a trial, whereupon he shall be tried as provided in Section 13 on Reduction, Suspension and Discharge.

**SECTION 12. LEAVE OF ABSENCE.** Any member who is called or volunteers to serve in any branch of the service of the United States shall, upon his return, and with an honorable discharge, maintain his priority rights within this ordinance, provided, however, that he shall make application for reinstatement within ninety (90) days after discharge from the service of the United States.

Leave of absence for any purpose may be taken by written consent of the Civil Service Board, and temporary appointments may be made to fill such vacancies in the manner herein provided for permanent appointments.

**SECTION 13. REDUCTION, SUSPENSION AND DISCHARGE.**

(a) No person in the Classified Civil Service shall be removed or discharged from his position or reduced in rank except for inefficiency, misconduct or insubordination. Whenever the Chief of any department under Civil Service shall determine that discharge, reduction in rank or disciplinary action should be taken against any member of his department, and if he determines that such member should be discharged, he may suspend such member from active duty, and shall, upon so determining or upon so suspending any member, immediately file charges with the Civil Service Board, setting forth in detail the grounds for such suspension, disciplinary action or reduction in rank or position, together with his recommendation thereon. Such charges shall be in writing and a copy thereof served upon the member so charged. Such member so charged shall have the right to file an answer to such charges within five (5) days from the date of service upon him of a copy thereof, which answer shall be filed with the Civil Service Board, and with the Chief who filed such charges. The Civil Service Board shall thereupon set said matter for hearing not less than five nor more than ten days after the filing of the answer to the charges. If the member who is charged by the Chief of his department fails to file an answer within five days to the charges filed by the Chief of the department, the charges shall be deemed to be admitted, and the recommen-

ation of the Chief accompanying such charges shall take effect, and the suspension of such member shall become a permanent discharge as of the date of the original suspension. If the member so charged files an answer within the five days, then the Civil Service Board shall convene as a "Trial Board" as provided in Section 8 hereof, and shall inquire into the charges made by the Chief of the department, and may make such inquiry in such a manner as it deems best by ex parte investigation by the Board or any committee thereof, but said Board shall hold a meeting as herein above provided, at which time such member so charged and the Chief of the department shall be permitted to make such showing as they may desire before said trial board.

The member so charged and the Chief of the Department may, at the hearing of such charges, be represented by Counsel and shall have the right to produce such witnesses as he may desire to testify in his behalf. The Chairman of the Board shall have the right to issue subpoenas and compel the attendance of witnesses.

After such hearing the trial board shall determine whether or not such charges or any part thereof are true, and if they determine that none of the charges are true, the said member shall be reinstated and restored to duty, and shall be entitled to receive compensation during the period of his suspension, and pending such hearing and reinstatement. If the Trial Board shall determine that such charges or any of them are true, they shall make their findings in accordance therewith, and shall recommend such disciplinary action as they may deem proper under the circumstances and findings. If such recommendations do not consist of a recommendation for discharge, the person charged and found guilty as herein provided, shall be privileged to accept such disciplinary action as recommended by the trial board, but if such recommendation shall be presented to the City Council of the City of Newport Beach, and the City Council shall take such action in the matter as in the judgment of such City Council shall be proper and adequate under the findings of the trial board.

If such recommendation of the trial board is for disciplinary action, and the person charged and found guilty does not acquiesce or consent thereto, then such recommendation shall be presented to the City Council for its action as provided in Section 8 hereof.

Verified written charges may be filed by any qualified elector of the city of Newport Beach with the Chief of any department, under such rules and regulations as may be prescribed by the Civil Service Board, and the truth of such charges shall be determined by the Chief of the department, and if he deems he may file charges with the Civil Service Board.

(b) No member shall be dismissed because of the discontinuance of the particular office or position held by him, but employees dismissed because of curtailment of expenditures, reduction in force, and for like causes, shall be the last employee or employees, including temporary appointees, that have been appointed to the Fire Department or Police Department, as the case may be, until such reductions necessary shall have been accomplished. Vacancies to be filled in the lowest rank, resulting from such removal, shall be filled from the last employee or

employees that have been appointed to the next higher rank, and their places likewise filled until proper distribution has been accomplished; provided, further, that in the event the said department shall again be increased in numbers, the said men dismissed, or reduced in rank, under the terms of this section, shall have the privilege of being reinstated before any new appointments to said department shall be made.

**SECTION 14. PRESENT INCUMBENTS TO BE QUALIFIED AND TO REMAIN ON PRESENT POSITIONS.**

To the end that there be no disruption in the present service of the Fire Department and the Police Department, and that no undue hardship may be worked upon any member of said departments who shall have attained at the time of adoption of this ordinance a certain grade or rank in said department, each present member of such departments shall be deemed to be in Classified Service and credited by the Civil Service Board with qualifications, both mental and physical, for entrance to the Classified Service of the Fire Department and/or Police Department, and the rank, grade or position held by such members at the time of the adoption of this ordinance.

**SECTION 15. ORGANIZATION OF A FIRE DEPARTMENT.**

There is hereby created a Fire Department which shall consist of a Chief of the Fire Department, Assistant Chief, Fire Marshal, Captains, Master-mechanics, Engineers, Auto-firemen, mechanics, firm alarm operators, Inspectors, Hosemen and Laddermen, and other employees as the City Council may from time to time prescribe, as provided under Section 2 of Chapter 48 of Statutes of 1935.

**SECTION 16. QUALIFICATIONS FOR THE FIRE DEPARTMENT.**

Every appointee of the fire department at the time of appointment shall not be less than twenty-one (21) years nor more than thirty-one (31) years of age, except that this qualification shall not affect the present members of the Paid-Call list who have been on the Paid-Call list of the Fire Department for more than five years prior to the date that this ordinance shall go into effect.

Every appointee, however, must possess the physical qualifications prescribed by the Civil Service Board (which shall not be inferior to those required for the recruits of the United States Army), and before his appointment must pass satisfactory examinations as may be prescribed by the Civil Service Board. Every appointee must be a bona fide resident and elector of the city of Newport Beach, for at least one year prior to the date of his appointment, and must have a high school education or its equivalent.

**SECTION 17. ELIGIBILITY AFFECTED BY RECEIPT OF PENSION.**

No person holding an office or place in any department, placed under a merit system or civil service system, pursuant to the provisions of this ordinance or of Chapter 48 of the Statutes of 1935, shall be permitted to hold office or be classified under the provisions hereof if he shall be in receipt of a pension from any source whatever, including army, navy, federal, state, county or municipal government, in excess of \$50.00 per month, and no person shall be eligible for appointment or promotion who shall be in receipt of a pension from any source whatever, including army, navy, federal,

state, county or municipal government, in excess of \$50.00 per month.

**SECTION 18. ELIGIBILITY AFFECTED BY BEING ENGAGED IN ANOTHER BUSINESS.** No person shall be classified under the terms hereof or be promoted or be eligible to hold office if he, at said time of classification, appointment or holding of office, shall be engaged in any business or businesses which shall take any substantial part of his time or attention.

**SECTION 19. HIRING OF EXTRA MEN.** The Chief of the Police Department or the Chief of the Fire Department, with the approval and sanction of the City Council, may during an emergency or during vacation periods, hire such extra men as may be needed to properly conduct said departments, at a compensation to be fixed by the City Council. These extra men may be selected from the eligible list at the option of the heads of said departments. However, no extra men shall be hired for a period in excess of one hundred fifty (150) days in any calendar year, and the hiring of extra men as herein provided for, shall not in any way mean, or be construed to mean, that said extra men or any of them, shall be under probation or that their employment shall be deemed temporary as defined by Section 10 hereof.

**SECTION 20. CHIEF OF THE FIRE DEPARTMENT.** The Chief of the Fire Department shall be appointed by the City Council from among the membership of the Newport Beach Fire Department, and after appointment shall be removed or reduced in rank at the pleasure of the City Council and without charges being filed and without hearing. The dismissal of the Chief of the Fire Department from office, except for cause, shall not accomplish his dismissal from the department, and, upon such dismissal he shall be restored to the rank and grade held by him prior to his appointment as Chief of the Fire Department, however, the present Chief shall be reduced to the next lower rank below that of Assistant Chief.

**SECTION 21. POWERS AND DUTIES OF THE CHIEF OF THE FIRE DEPARTMENT.** The Chief of the Fire Department shall, subject to the approval of the City Council, have control, management and direction of all members of the Fire Department and all buildings, apparatus and equipment of such department as may be necessary in the lawful exercise of the functions of his office. He shall have full power to detail any officer or member of the Fire Department to such public service as may be necessary. He shall recommend to the Civil Service Board, members of the Fire Department for demotion, or dismissal, in accordance with Section 13 hereof, and also recommend to the City Council, applicants for appointment or promotion from the list of eligibles furnished by the Civil Service Board in accordance with Section 7 hereof.

**SECTION 22. VACANCIES IN FIRE DEPARTMENT.** When a vacancy arises in the Fire Department above the grade of hoseman or ladderman, the Chief of the Fire Department may assign a member of the department from the next lower rank to fill the vacancy until such time as the absent member shall return to duty or the vacancy may be filled by appointment from the eligible list furnished by the Civil Service Board. The member so assigned shall, during his incumbency receive the salary attached to the grade or position thus temporarily filled.

#### **SECTION 23. ORGANIZATION OF A POLICE DEPARTMENT.**

There is hereby created a Police Department which shall consist of members holding rank in the following order, to-wit: Chief of the Police Department, Assistant Chief, Captains, Lieutenants, Lieutenants of detectives, detectives, Sergeants, Patrolmen, Motorcycle officers, Secretary, Matron, and other employees as the City Council may, from time to time prescribe, as provided under Section 2 of Chapter 48, Statutes of 1935.

**SECTION 24. QUALIFICATIONS OF THE POLICE DEPARTMENT.** Every appointee of the Police Department must have the same qualifications as set out in Section 16 of this Ordinance for appointees of the Fire Department, excepting the age limit, which shall be "ever appointee of the Police Department at the time of appointment shall not be less than twenty-one (21) years of age, nor more than thirty-six (36) years of age."

**SECTION 25. CHIEF OF THE POLICE DEPARTMENT.** The Chief of the Police Department shall be appointed by the City Council from among the membership of the Newport Beach Police Department and after appointment shall be removed or reduced in rank at the pleasure of the City Council without charges being filed and without hearing. The dismissal of the Chief of the Police Department from office, except for cause, shall not accomplish his dismissal from the department, and upon such dismissal he shall be restored to the rank and grade held by him prior to his appointment as Chief of the Police Department, however, the present Chief shall be reduced to the rank of patrolman.

**SECTION 26. POWERS AND DUTIES OF THE CHIEF OF THE POLICE DEPARTMENT.** The Chief of the Police Department shall, subject to the approval of the City Council, have control, management and direction of all members of the Police Department, and all buildings, apparatus, and equipment of such department, as may be necessary in the lawful exercise of the functions of his office. He shall have full power to detail any officer or member of the Police Department to such public service as may be necessary. He shall recommend to the Civil Service Board, members of the Police Department for demotion or dismissal, in accordance with Section 13 hereof, and also recommend to the City Council applicants for appointment or promotion from the list of eligibles furnished by the Civil Service Board in accordance with Section 7 hereof.

#### **SECTION 27. VACANCIES IN THE POLICE DEPARTMENT**

Whenever a vacancy in the Police Department, above the grade of patrolman and motorcycle officer, occurs, the Chief of the Police Department may assign a member of the Department from the next lower rank to fill the vacancy until such time as the absent member shall return to duty, or the vacancy may be filled by appointment from the eligible list furnished by the Civil Service Board. The member so assigned shall, during his incumbency, receive the salary attached to the grade or position thus temporarily filled.

#### **SECTION 28. EXTRA SERVICE.**

No officer or member of the Fire Department or Police Department shall, without the consent of their respective Chief or the City Council, accept any money, gratuity or compensation for any service he may render in line of duty as a member of that department.

#### **SECTION 29. CONSTITUTIONALITY.**

If any section, subsection, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining sections of this ordinance.

#### **SECTION 30. PRIOR ORDINANCES.**

Any provisions or clauses of the several ordinances of the city of Newport Beach in conflict herewith are hereby expressly repealed.

#### **SECTION 31. GENDER.**

Whenever in this ordinance the masculine gender is used it shall be deemed to include the feminine gender.

#### **SECTION 32. FALSE MARKING, GRADING, ETC., PROHIBITED.**

No person shall, by himself or in cooperation with one or more persons, cheat, deceive, or obstruct any person in respect of his right of examination or registration according to the rules and regulations of this ordinance, or falsely mark, grade, estimate or report upon the examination of proper standing of any person examined, registered or certified pursuant to the provisions of this ordinance, or aid in so doing, or make any false representations concerning the same, or concerning the person examined.

**SECTION 33. AMENDMENTS OF THIS ORDINANCE.** The City Council may from time to time, by ordinance, add additional department, appointive officers or employees of the city to the list originally designated in this ordinance creating a system of Civil Service. The City Council, however, shall not have the authority or power to withdraw any department or departments, appointive officers or employees from the operation of the system created by this ordinance, unless and until the withdrawal thereof shall have been submitted to the qualified electors of the city of Newport Beach at a special or regular municipal election held in said city, and shall have been approved by not less than a two-thirds vote of the electors voting on such proposition.

#### **SECTION 34. VIOLATION.**

Any person who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) or more than Three Hundred Dollars (\$300.00) or by imprisonment in the City Jail of the city of Newport Beach or the County Jail of the County of Orange, for not longer than three (3) months, or by both such fine and imprisonment.

#### **SECTION 35. PUBLISHING.**

This ordinance shall be published once in the NEWPORT-BALBOA PRESS, a newspaper printed, published and circulated in the city of Newport Beach, and shall take effect and be in force thirty (30) days after its passage.

The foregoing Ordinance was submitted to a vote of the voters of the City of Newport Beach at a regular municipal election of said city held on the 14th day of April, 1942; that a majority of the voters voting on said ordinance voted in its favor and said ordinance thereupon became a valid and binding ordinance of the city of Newport Beach; that on Tuesday the 21st day of April, 1942, the vote on said ordinance was duly declared by the canvassing board of the City of Newport Beach, to-wit, the City Council thereof, and said ordinance thereupon was adopted and was so declared to have been adopted by the voters of the City of Newport Beach.

ATTEST:

FRANK L. RINEHART,  
City Clerk.

Published April 23, 1942