



CITY OF EAGLE PASS

FIRE FIGHTERS' AND POLICE OFFICERS'

CIVIL SERVICE COMMISSION

RULES AND REGULATIONS

ADOPTED OCTOBER 21, 2015

EFFECTIVE OCTOBER 30, 2015

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CITY OF EAGLE PASS CIVIL SERVICE RULES AND REGULATIONS INTRODUCTION

- (1) The purpose of Chapter 143 of the Local Government Code is to secure efficient Fire and Police Departments composed of capable personnel, free from political influence.
- (2) These Rules are promulgated in compliance with Chapter 143 of the Local Government Code, which is incorporated herein for all purposes. It is intended that these Rules shall complement Chapter 143 not conflict with it in any manner. No set of rules can be so precise as to provide for every employment situation; therefore, it is intended that the Civil Service Commission administer these Rules in the best interests of the Fire and Police Departments.
- (3) The Rules hereinafter set forth represent a revision of the City of Eagle Pass Firefighters' and Police Officers' Civil Service Commission Rules and Regulations. These rules completely repeal and replace all prior rules and regulations as have been adopted by the Civil Service Commission. These rules are made in accordance with Chapter 143 of the Texas Local Government Code, hereinafter referred to as "Chapter 143," and specifically pursuant to Section 143.008 of Chapter 143 and legal precedent interpreting the provisions of Chapter 143.
- (4) If any part, segment, section, work, phrase, subchapter or other portion of these Rules shall be declared to be unenforceable, vague, unconstitutional or contrary to public policy, then the remainder of these Rules shall be continued in full force and effect as if the offending portions of these Rules were never included herein.

SUBCHAPTER A. GENERAL PROVISIONS SECTION 143.001—PURPOSE

There is hereby established the City of Eagle Pass Fire Fighters' and Police Officers' Civil Service with the adoption of these Rules and Regulations, in compliance with Chapter 143, as amended, of the Texas Local Government Code. The captions used in these local Rules are not intended to convey any legal meaning or benefit but are included solely to aid in the organization of the Rules.

The scope and construction of the Rules hereinafter set forth shall be interpreted and applied within the spirit and intent of Chapter 143. It is intent of these Rules to cover situations not mentioned in Chapter 143 or which are ambiguous in Chapter 143. All situations that are not expressly covered by Chapter 143 or these Rules shall be resolved in accordance with the City Charter and ordinances, City of Eagle Pass Personnel Policies or the residual discretionary authority vested in a department head. These Rules shall apply to all of the classified, non-probationary employees covered under Chapter 143.

The Commission, acting in compliance with Chapter 143, has the authority to adopt, publish and enforce rules relating to:

- (1) The proper conduct of Commission business meetings;
- (2) The proper conduct of examinations for entry level and promotional eligibility;
- (3) The proper conduct of appeals of testing and examination scoring;
- (4) The prescribed cause or causes for the removal or suspension of a civil service employee;

- (5) The procedures for the hearing of disciplinary appeals concerning suspensions without pay, indefinite suspensions, promotional pass over; recommended demotions; or written promotional examinations; and
- (6) Such other matters reasonably related to the selection, promotion and discipline of civil service employees, not otherwise vested in the discretion or managerial authority of the City Council, City Manager, Director of Civil Service, or Department Heads.

SECTION 143.002—MUNICIPALITIES COVERED BY CHAPTER

See Section 143.002 of Chapter 143

SECTION 143.003—DEFINITIONS

See Section 143.003, Chapter 143

[Subject to additions, deletions or modifications as additional rules are adopted.]

The words and phrases used in these Rules and Regulations shall have the meaning assigned to such words as may be used by reasonable people in the conduct of their own affairs, except as provided hereinafter.

Any word or phrase that is defined in Chapter 143 shall be defined in the same manner for the purpose of interpreting these Rules and Regulations.

Whenever a dispute arises about the meaning of a word, group of words or a phrase, the construction given to such word or phrase shall be determined by reference to the latest available edition of Webster's Dictionary, unless the Courts of the State of Texas shall have determined the meaning of the disputed word, group of words or phrase, in which event such construction of the word, group of words or phrase shall control.

- (1) **APPOINTMENT** - The designation of a person by the City Manager to become an employee in a classified civil service position.
- (2) **BUSINESS DAY** - Any day City Hall is customarily open for normal business. "Business Day" does not refer to the employee's workday or holidays observed by the City.
- (3) **CHIEF EXECUTIVE** - The City Manager of the City of Eagle Pass.
- (4) **CHAPTER 143** - The portion of the Texas Local Government Code containing the civil service provisions.
- (5) **CLASSIFICATION** - A position or group of positions that involve similar duties and responsibilities and require similar qualifications.
- (6) **COMMISSION** – The Eagle Pass Civil Service Commission.
- (7) **CONVICTION OR CONVICTED** - A person is convicted if he/she has pled guilty, no contest (nolo contendere), or been found guilty in a trial, regardless of whether:
 - The sentence is subsequently probated and the person is discharged from probation;
 - The defendant has received an unadjudicated or deferred adjudication probation, or similar deferred disposition, for a criminal offense;
 - The case has been made the subject of a expunction order; or
 - The person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.
- (8) **DAY** - Calendar day, unless otherwise specified.
- (9) **DEPARTMENT HEAD** - The Fire or Police Chief of the City of Eagle Pass.

- (10) **DEMOTION** - The transfer of an employee from a position in one classification to a position in another classification for which the maximum rate of pay is lower.
 - (11) **DIRECTOR** - The Director of Civil Service as designated by the City of Eagle Pass Civil Service Commission to act in the capacity of Secretary to the Commission and Director of Civil Service, and includes his/her designee.
 - (12) **ELIGIBILITY LIST** - A list of applicants for a classified civil service position who have taken the examination and passed and are ranked on the eligibility list in order of the score received, including tiebreakers. Applicant shall successfully pass additional steps in the selection process conducted by the respective Department prior to any offer of employment being extended.
 - (13) **MILITARY SERVICE CREDIT** - The points added to the passing score of an entrance examination taken by a qualified veteran.
 - (14) **RAW SCORE** - The numerical grade based upon the questions correctly answered on an examination.
 - (15) **SENIORITY** – Years of service as a full-time peace officer or fire fighter within the Department, whether interrupted or uninterrupted. Seniority points shall be awarded only for whole years of service.
 - (16) **VETERAN** - A person who has served a minimum of 180 days of active duty in the armed forces of the United States of America and who has received a DD-214 that reflects an honorable discharge. A person who receives a discharge other than honorable is not a veteran for the purpose of this section.
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SECTION 143.004 ELECTION TO ADOPT OR REPEAL CHAPTER

See Section 143.004, Chapter 143

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SECTION 143.005—STATUS OF EMPLOYEES IF CHAPTER ADOPTED

See Section 143.005, Chapter 143

SECTION 143.006 IMPLEMENTATION: COMMISSION

See Section 143.006, Chapter 143

- (1) **MEETINGS** - The Commission shall conduct its meeting in such place as designated in the "Notice of Meeting." The Commission shall conduct all meetings in compliance with the provisions of Section 551.001 et seq. of the Government Code (Open Meetings Act).

A meeting shall be called by the Director at the request of the Chairperson, or at the written request of any two (2) Commissioners. Notice of meeting of the Commission shall be given by the Director to the members of the Commission at least seventy-two (72) hours preceding the day of the meeting, except in case of emergency or urgent public necessity, in which case two (2) hours' notice shall be given in accordance with the provisions of the Government Code.

In all matters of procedure not controlled by the provisions of the Local Government Code, the order of business and conduct of meetings shall be in conformity with Robert's Rules of Order. The Commission may, by majority vote, make rules of procedure for the administration of Chapter 143 of the Local Government Code.

- (2) **RULES OF THE COMMISSION** -The rules of the Commission currently in effect are only those contained herein. These Rules have been approved by the Commission and shall remain in effect until officially amended, revised or repealed by the Commission.

Amendment to these Rules may be made at any meeting of the Commission and such amendment shall become effective on the date of compliance with the posting and notice requirements of Chapter 143 and of these Rules. All rules and amendments shall be printed and made reasonably available for access by all civil service employees.

- (3) **APPOINTMENT, VACANCY AND TERM OF COMMISSIONER** - The City Manager shall appoint and the City Council shall confirm the appointment of the three members of the Commission who meet the required statutory qualifications. The members shall elect one member to serve as Chairperson and one to serve as Vice-Chairperson.

When a vacancy on the Commission occurs, the replacement of Chairperson and Vice-Chairperson shall be handled as follows: 1) in the event of a vacancy in the Chairperson position, the Vice- Chairperson shall assume the role of Chairperson and an interim election shall be held to elect a new Vice-Chairperson; and 2) in the event of vacancy in the Vice- Chairperson position, an interim election shall be held to fill that office.

During the first regularly scheduled meeting in January of each year, the Commission shall select from among its members a Chairperson and Vice-Chairperson. In the event that a vacancy occurs in the position of Chairperson, the Vice-Chairperson will assume the duties of Chairperson, and an interim election will be held to fill the position of Vice-Chairperson. Should the position of Vice-Chairperson become vacant, an interim election will be held to fill that office. Any member

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of the Commission elected in an interim election to fill a vacant position shall hold such office until the next regularly scheduled election under these Rules.

Each member of the Commission holds office for a staggered three-year term and thereafter until a successor is appointed and confirmed. An interim vacancy on the Commission shall be filled by appointment of the City Manager and confirmed by the City Council for the unexpired term of the member whose position has been vacated.

SECTION 143.007 REMOVAL OF COMMISSION MEMBER

See Section 143.007, Chapter 143

A member of the Commission may tender his/her resignation in writing at any time to the City Manager. A Commission member may be removed from office by the City Council for misconduct in office or otherwise in accordance with Chapter 143 of the Texas Local Government Code.

If a Commission member is absent three (3) meetings during a twelve (12) month period without good and reasonable cause, the absent member may be automatically deemed to have submitted a resignation, and if accepted by the City Manager, the position shall be deemed vacant without further action. Upon the occurrence of any of these events, a request shall be made by the Director to the City Manager for a replacement of such member.

SECTION 143.008 ADOPTION AND PUBLICATION OF RULES

See Section 143.008, Chapter 143

All Fire Fighters and Police Officers will be provided a copy of these Rules and Regulations free of charge. Copies of these Rules will be kept available for distribution to members of the public.

Where there is a conflict between these Rules and other rules pertaining to civil service employees of the City, then these Rules shall take precedence. If any section, subsection, paragraph, sentence, clause, phrase or word contained in these Rules shall be held by the courts to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portion of these Rules.

These Rules and Regulations are subject to revision, amendment, supplementation, and repeal as deemed necessary and appropriate by the Commission. Any change made to such Rules shall be made only after consideration of such change during an open public meeting, followed by a vote of the Commission.

These Rules are enacted by the Commission pursuant to the statutorily delegated authority of Chapter 143. These Rules were not acted upon in any official manner by the City Council. Therefore, these Rules do not constitute any form of “policy” nor any other official act of the City Council.

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SECTION 143.009 COMMISSION INVESTIGATIONS

See Section 143.009, Chapter 143.

The Commission will not allow its investigative authority to be utilized for the purpose of resolving routine employee grievances that should be resolved by the Department.

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SECTION 143.010 COMMISSION APPEAL PROCEDURE

See Section 143.010, Chapter 143

- (1) **ORIGINAL NOTICE OF APPEAL**—The employee's notice of appeal shall be filed in writing with the Director within 240 hours after receiving the Notice of disciplinary action from the Department Head. An employee may withdraw his/her request for an appeal at any time, and thereby terminate the appeals process.

The employee's notice of appeal and request for hearing shall set forth the employee's basis for appeal in compliance with Chapter 143.

- (2) **FAILURE TO TIMELY FILE AN APPEAL OR SET FORTH BASIS FOR APPEAL**— There shall be no right to an appeal hearing in a situation where an employee either (i) fails to file a notice of appeal of a disciplinary action with the Director within the 240 hour period allowed in Chapter 143 or (ii) fails to properly state the basis of appeal. This shall result in an appeal in the matter not being established. If the appeal is untimely or does not properly state the basis for appeal, the Director shall notify the employee that the appeal shall not be considered.

- (3) **SUBPOENA**-Before requesting a subpoena duces tecum for the production of documents, a party shall first make a request for the documents directly to the other party and allow a reasonable time for a response. If the request is refused or otherwise not produced, then a request may be filed with the Director requesting the Commission to issue a subpoena duces tecum. This request shall be filed with the Director at least ten (10) days prior to the hearing date, and the party requesting the documents shall also serve the opposing party with a copy of the subpoena duces tecum at least ten (10) days prior to the hearing date. If the opposing party wishes to object to the request for the issuance of a subpoena duces tecum, the opposing party shall file its written objections with the Director at least six (6) days prior to the hearing. If the Commission receives written objections to the issuance of a subpoena duces tecum from the opposing party, the Commission shall meet no later than the third day before the hearing to determine whether to issue, quash or modify the requested subpoena. This meeting may be convened by conference call, at the discretion of the Chairman. The Director shall then notify the parties verbally and in writing of the Commission's decision. Because of the short time frame permitted in this process, all written materials may be served by facsimile or email with confirmation required by the parties to each other and to the Director.

A request for subpoena to compel the attendance of a witness shall be coordinated through the Director. A request for a subpoena shall be submitted at least ten (10) days prior to the scheduled hearing date in order to be processed in a timely manner. The Director shall issue a subpoena on behalf of the Commission.

- (4) In appeals to the Commission, the "rules of evidence" shall not be observed.

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- (5) The Commission shall base its decisions on "substantial evidence."

“Substantial evidence” is evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

Under the substantial evidence rule, as applied in administrative proceedings, evidence is competent and may be considered, regardless of its source and nature, if it is the kind of evidence that "a reasonable mind might accept as adequate to support a conclusion." Proof beyond a reasonable doubt is never required to sustain a charge appealed to the Commission or any hearing examiner.

SECTION 143.011 DECISIONS AND RECORDS

See Section 143.011, Chapter 143

Each commission meeting shall be duly recorded. All hearings and controversies shall be preserved by verbatim records that are available for subsequent review. All Commission decisions, orders and findings shall be in writing and signed by all concurring Commissioners. Such decisions, orders and findings shall be retained by the Commission. All records of the Commission are public and are available to the public for inspection or purchase at actual cost, during normal business hours, or at a time set by the Commission or the Director.

SECTION 143.012—DIRECTOR

See Section 143.012, Chapter 143

The Director shall perform work incidental to the Civil Service System as required by the Commission. All communications or requests to the Commission shall be made in writing to the Director. The Director shall also act as Secretary to the Commission. The Director's duties include, but are not limited to:

- (1) Supervising all entry level and promotional examinations, including the preparation, scheduling, administration scoring and security of test materials, and maintenance of all eligibility lists; the Director is authorized to purchase a commercially marketed examination, if such examination meets the criteria established by the Commission.
 - (2) Coordinating the recruitment and examination of applicants;
 - (3) Assisting in the classification of Fire and Police Department positions;
 - (4) Assisting the Chairperson in setting the agenda for the Commission meetings;
 - (5) Acting as liaison and providing staff support to the Commission and to other City officials;
 - (6) Determining whether any matter is appropriately brought before the Commission in a reasonable and timely fashion;
 - (7) Calling, scheduling, posting, rescheduling, and canceling meetings of the Commission; attending all Commission meetings;
 - (8) Receiving all documents and filings to the Commission and acting as records custodian as provided by Chapter 143 with retention as specified by State laws and regulations;
 - (9) Acting on behalf of the Commission for actions and issues not specifically addressed in Chapter 143 or these Rules;
 - (10) Establishing and monitoring procedures for the discipline and termination of civil service employees;
 - (11) When a specific Rule does not address a particular question or issue, interpreting the Rules based on circumstances, facts and issues, and taking appropriate action;
 - (12) Coordinating of Commission inspections and investigations;
 - (13) Performing such other functions as may be deemed reasonably necessary in regard to the efficient and effective administration of the civil service system of the City; and
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- (14) The Director is to take all necessary actions to ensure that the administration of examinations under these Rules complies with all relevant portions of the American with Disabilities Act.

SECTION 143.013 APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD

See Section 143.013, Chapter 143

**SECTION 143.014—APPOINTMENT AND REMOVAL OF PERSON CLASSIFIED
IMMEDIATELY BELOW DEPARTMENT HEAD**

See Section 143.014, Chapter 143

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SECTION 143.015 APPEAL OF COMMISSION DECISION TO DISTRICT COURT

See Section 143.015, Chapter 143

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SECTION 143.017 COMMISSION PROCEDURES

See Section 143.017, Chapter 143

- (1) **RULE OF CONDUCT**—In the discharge of their duties, members of the Commission act as a body and not as individuals. An individual Commission member shall not speak for the Commission unless specially authorized in advance to do so by action of the Commission.
- (2) **AGENDA**—The Director shall assist the Chairperson in preparing an agenda for a Commission meeting. If a Commission member wants an item placed on an agenda, he/she shall submit a written request to the Director for consideration by the Chairperson.
- (3) **QUORUM**—Two members of the Commission constitute a quorum sufficient to conduct business meetings and hearings.
- (4) **CONDUCT OF REGULAR BUSINESS MEETINGS**—The Commission shall set reasonable rules and procedures for proper and efficient conduct of business. The Chairperson shall conduct meetings in an orderly and timely fashion.

The normal order of business at non-disciplinary or non-appeal hearings shall be generally:

- (a) Call to Order
- (b) Approval of Minutes
- (c) Action Items
- (d) Miscellaneous Matters from the Director
- (e) New Business - Commission members may suggest items for future agendas (f) Adjourn

The Chairperson may alter the order of business at his/her discretion.

- (4) **MINUTES**—The Secretary of the Commission shall prepare the minutes of each meeting. The minutes of a meeting shall be presented for approval at a subsequent meeting of the Commission. The minutes, other than matters discussed in executive session, upon approval by the Commission, shall be kept open for public inspection as governed by applicable State law. A Commission member may record in the minutes an approval of, or objection to, any act of the Commission together with the Commissioner’s reasons. A copy of the minutes and records may be obtained from the Director for the standard fee charged by the City for similar official record duplication. The minutes of the Commission shall be signed by the Chairperson, or in the Chairperson’s absence, the Vice-Chairperson.

(Sections 143.018 - 143.020 reserved for expansion)

**SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT SECTION 143.021—
CLASSIFICATION; EXAMINATION REQUIREMENT**

See Section 143.021, Chapter 143

The civil service positions in the Fire and Police Departments are classified on the basis of similarity in duties and responsibilities. The Eagle Pass City Council shall prescribe by ordinance the number of authorized positions and the salary rate for each classification.

SECTION 143.022 PHYSICAL REQUIREMENTS AND EXAMINATION

See Section 143.022, Chapter 143

- (1) **GENERAL REQUIREMENTS**—Each applicant for entry-level positions shall be required to submit to such physical and mental tests as determined by the respective Department Heads to be reasonably necessary and proper to determine the physical and mental ability of the applicant to perform the essential functions required for the position sought. An applicant who is not capable of performing the essential job functions with or without reasonable accommodation shall not be appointed.
 - (2) **ENTRY LEVEL APPEALS**—If an applicant is not appointed due to failure to successfully pass the medical or psychological examination, the applicant may appeal to the Commission.
 - (3) **PROMOTIONAL REQUIREMENTS**— Any candidate for promotion shall successfully complete an appropriate medical examination. An official Department examination taken within six (6) months of promotion test date may be used for this requirement.
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SECTION 143.023—ELIGIBILITY FOR BEGINNING POSITION

See Section 143.023, Chapter 143

- (1) EMPLOYMENT STANDARDS**—To the extent that employment standards for an entry-level fire fighter and police officer as provided in the Civil Service Classification Plan exceed the requirements of Chapter 143 and other applicable State laws, any of such entry-level employment requirements not prescribed by State laws may be waived by the Fire Chief or Police Chief with the concurrence of the Director and consent of the City Manager, when such waiver would be in the best interests of the Fire Department or Police Department and provided further that such waiver of requirements shall not substantially lower the high standards sought by the City. Any changes under this Section shall be based on each hiring process.
- (2) MINIMUM QUALIFICATIONS FOR A CIVIL SERVICE ENTRY LEVEL FIREFIGHTER ARE ESTABLISHED AS FOLLOWS:**

 - a) Be at least 18 years of age and less than 36 years of age at time of hire. Any applicant appointed to an entry level position with the Fire Department shall have attained the age necessary to obtain licensure or certification by the appropriate State agency charged with the responsibility of licensing or certifying Fire Fighters.
 - b) Must be a citizen of the United States by birth or naturalization;
 - c) Must have a High School Diploma or GED.
 - d) Must be able to read, write and speak English language and have a basic understanding of the Spanish language.
 - e) Must have or be able to obtain: a) a Basic Firefighter Certification with the Texas Commission on Fire Protection and b) at least an EMT-B Certification from the Texas Department of State Health Services.
 - f) Must be able to successfully complete other required certifications.
 - g) Must correctly complete the Application Process for Employment.
 - h) Must be able to validate identity and provide picture ID when requested.
 - i) Must pass a thorough criminal background investigation and credit check. The applicant must not have been, either in a civilian or military court: **1)** convicted of, pleaded guilty to or nolo contendere, or be currently under indictment for a felony offense; **2)** convicted of, pleaded guilty to or nolo contendere, or be currently charged by complaint or information

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with a misdemeanor of a Class A or any misdemeanor involving moral turpitude or crimes of violence; **3)** convicted of, pleaded guilty to or nolo contendere, or

be currently charged by complaint or information with a misdemeanor of Class B, within the last 10 years.

- j) Must successfully complete a Written Entrance Examination with a minimum score of seventy (70) percent.
- k) Must successfully complete Oral Interview Process.
- l) Must successfully complete a Physical Ability Evaluation.
- m) Must successfully complete medical examination and a Drug and Alcohol Screening.
- n) Must agree to, sign, and comply with the City of Eagle Pass Training Reimbursement Agreement.
- o) Must possess at least, a valid Texas Class C and be able to obtain a Texas Class B exempt driver's license.
- p) Must not have been discharged from any military service under less than honorable conditions including, specifically: **a)** Under other than honorable conditions, **b)** bad conduct, **c)** dishonorable; and **d)** any other characterization of service indicating bad character; **e)** must be able to provide continued good service documentation, if currently in military service.
- q) Must be of good moral character.

(3) MINIMUM ELIGIBILITY REQUIREMENTS FOR POLICE OFFICERS

An applicant for police officer shall meet the following criteria in order to be considered for an entry-level position:

- (a) Achieve a minimum passing score of seventy (70) percent on the written examination;
- (b) Pass a criminal and related background investigation;
- (c) Successfully complete the physical fitness and/or physical ability test.
- (d) Pass oral interviews;
- (e) Successfully complete a post-job offer psychological examination and medical examination that includes passing a visual acuity test, and physician certification that the applicant is not dependent on and does not use illegal drugs;
- (f) Any applicant appointed to an entry level position with the Police Department shall have attained the age necessary to obtain licensure or certification and be at least twenty-one (21) years of age and not more than forty-four (44) years of age at the time of hire; or
- (g) TCOLE: 21 years of age, or 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university or has

received an honorable discharge from the armed forces of the United States after at least two years of active service

- (h) Be a graduate of an accredited high school or have an equivalency certificate;
- (i) Have a valid Texas driver's license at the date of hire;
- (j) Be a citizen of the United States by birth or naturalization;
- (k) Be able to read, write, and speak the English language, and at least understand basic Spanish.
- (l) Be of good moral character;
- (m) Shall not be prohibited from carrying a firearm or possessing ammunition by court order or law; and
- (n) For Police Officer applicants: Meet all requirements to attain a peace officer license as a peace officer as established by the Texas Commission on Law Enforcement at time of examination.

The Commission has determined that preference in entry level hiring will be given to persons on the eligibility list who are certified by the Texas Commission on Law Enforcement (TCOLE) at the basic level or have passed the basic peace officer (TCOLE) licensing examination. Applicant shall provide evidence of license on or before date of entrance examination.

(4) CAUSE FOR REJECTION FOR FIRE FIGHTERS AND POLICE OFFICERS

- (a) Prior to the time that a vacancy may be filled from an eligibility list, the Department Heads of the respective Departments shall be entitled to inquire into the backgrounds of the successful applicants. Such inquiry may include a background investigation, criminal record check' and such other inquiries that the Head of the respective Departments desires to make prior to appointment.
- (b) Applicant fails to pass any part of the entrance examinations.
- (c) Applicant fails to make application in the manner prescribed in the notice of examination, and/or fails to file the application with the Director within the time limits prescribed in the notice of examination.
- (d) Applicant fails to meet Minimum Standards for Initial Licensure as set forth by Texas Commission on Law Enforcement for peace officer candidates or fails to meet any of the minimum requirements expressed in the rules of the Texas Commission on Fire Protection and the Texas Department of Health for fire fighter candidates.
- (e) Applicant is not a citizen of the United States of America by birth or naturalization. The applicant shall be considered disqualified until citizenship is obtained in compliance with federal laws.

- (f) Applicant fails to demonstrate his/her ability to read, write, and fluently speak the English language. The applicant shall be disqualified until the deficiency is corrected.
- (g) Applicant is unable to perform the essential functions of the position to which he/she seeks appointment, with or without reasonable accommodation.
- (h) Applicant has been convicted of or admitted to conduct that constitutes a Class A or Class B Misdemeanor under the Penal Code or equivalent under federal law, to include the Uniform Code of Military Justice (UCMJ), within the past ten (10) years. Conviction of or admission to conduct that constitutes a Class A or Class B Misdemeanor shall result in a temporary rejection. Crimes involving moral turpitude may result in permanent disqualification and shall be considered on a case-by-case basis with appropriate consideration of circumstances and recency.

Applicant has been convicted of or admitted to conduct which constitutes a felony under state or federal law, to include the UCMJ. Conviction of or admission to conduct that constitutes a felony shall result in permanent disqualification.

An applicant shall not be considered for employment while charges are pending for any criminal offense or while he/she is currently on probation for any offense.

- (i) Applicant has made any false statement in any material fact; withheld information, practiced or attempted to practice any deception or fraud in his/her application, examination or appointment. Depending on the variables involved, rejection may be either permanent or temporary.
- (j) Applicant fails to complete or satisfactorily meet the employment process requirement of the respective Department, including missed appointments, failure to return necessary paperwork, failure to notify Department of changes in address or telephone numbers, failure to properly complete any or all application materials, or who otherwise fails to complete application process.
- (k) Applicant fails to satisfactorily complete the oral interview process. An applicant shall be disqualified for failure to verbally communicate effectively and appropriately; failure to demonstrate an understanding of the roles and responsibilities of a fire fighter or police officer; failure to present the maturity expected of a fire fighter or police officer; or failure to accurately and precisely respond to the questions of the interviewers.
- (l) Applicant has used illicit substances as indicated by the following guidelines:

An applicant may be temporarily or permanently disqualified if it has been determined by the City that, or he/she has admitted to conduct which constitutes excessive and/or recent use of illicit substance(s) or excessive use of intoxicants. Conduct involving excessive and/or recent use of illicit substance or excessive use of intoxicants shall be considered on a case-by-case basis with consideration given to circumstances and recency.

An applicant may be temporarily or permanently disqualified if it has been determined by the City that, or he/she has admitted to, conduct which constitutes abuse of legally obtained prescription medication(s), or illegal use of the prescription medication(s) of

another person. Conduct involving the abuse and/or misuse of prescription medication(s) shall be considered on a case-by-case basis with consideration given to circumstances and recency.

An applicant shall be permanently disqualified if it has been determined by the City that, or he/she has admitted to, conduct which constitutes illegal use of felony grade substances as defined in the Texas Penal Code.

- (m) Applicant's entire driving record will be examined on a case by case basis, but these facts will result in automatic disqualification: 3 or more citations within the last 12 months, 5 moving violations within in the past 3 years, 2 or more at fault accidents within the past 3 years, a driver's license that is currently suspended, revoked, or expired, hit and run (leaving the scene of an accident) within the last 10 years, a suspension of the driver's license for any reason within the last five (5) years, a conviction for failing to maintain financial responsibility within the last 12 months (disqualifies applicant for 3 years from the date of conviction), currently on probation for any traffic offense.

Lesser, but more severe, violations which tend to indicate driving habits that are not compatible with the operation of emergency vehicles and present potential liabilities to the City shall be temporary disqualifications. Reapplication shall be permitted when the applicant can meet the above standards.

- (n) Applicant has been dismissed or resigned in lieu of dismissal from any employment for inefficiency, delinquency, or misconduct. Said dismissal or termination shall be considered on a case-by-case basis. Rejection under this provision shall be considered permanent.
- (o) Applicant has demonstrated a failure to pay just debts. Due to the variables involved, each situation shall be considered on a case-by-case basis. Factors which shall be considered include, but are not limited to: type and number of debts, reasons for the bad credit, extenuating circumstances, and the potential for the credit-related problems impacting the applicant's judgment and integrity. Resolution of bad credit may result in requalification
- (p) Applicant has exercised poor judgment skills within the past five (5) years. The applicant has demonstrated either immaturity or poor judgment in the applicant's decision-making process. Examples of such conduct would include, but is not limited to: attendance at a party or social function at which controlled substances or dangerous drugs are consumed, and such activity is known or should have been known by the applicant; silent acceptance of known illegal conduct by others in his/her presence; workplace behavior/decisions that adversely affect the business or associates, with little or no objectively justifiable need for such behavior. Rejection for this cause shall be temporary until the applicant can demonstrate that his/her judgment skills have developed.
- (q) Applicant has a history of unstable work, i.e., including short terms of employment over his/her employment history; or has a history of employment in an illegal occupation. Rejection under this provision shall be temporary in nature and an applicant shall be eligible for reapplication after a five (5) year period. Due to the variables involved, each

situation shall be considered on a case-by-case basis. Rejection for employment in an illegal occupation shall be permanent in nature.

- (r) Applicant has failed to meet all legal requirements necessary for future licensing and certification as required by the Texas Commission on Law Enforcement or the Texas Commission on Fire Protection. Rejection for this cause shall be temporary until applicant can meet those standards.
 - (s) Applicant has been discharged from any military service under less than honorable conditions, including specifically:
 - i. Under other than honorable conditions;
 - ii. Bad conduct; iii. Dishonorable; or iv. Any other characterization of service indicating bad character.
 - (t) Applicant fails to return a completed Personal History Statement at a time designated by the Department Head.
 - (u) Applicant fails post-offer physical and/or psychological examinations.
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SECTION 143.024—ENTRANCE EXAMINATION NOTICE

See Section 143.024, Chapter 143

An applicant shall complete a City of Eagle Pass Application for Employment and other forms as prescribed by the Director in order to take an entrance examination. Failure to pre-register in the manner and within the time limit prescribed in the “Notice of Entrance Examination,” and/or failure to file the application or other supporting documents with the Director by the specified deadline, shall render an applicant ineligible to take the examination as determined solely by the Director. An applicant shall make the application in his/her own handwriting or in typed form and shall certify the correctness of the facts.

The Commission intends that the notice of such examination receive the widest and most diverse distribution as possible. The Director shall take all necessary steps to ensure notices of examination have very widespread distribution to all portions of the population of the City and the surrounding areas.

Applicants may obtain an application from the Director at any time prior to the examination closing date and after the notice has been posted. The Commission, acting through the Director, may retain applications on file even though an entrance examination has not been or is not currently scheduled. Such persons shall be notified by the Director when an entrance examination is scheduled and be permitted to take such examination if all the requirements have been met and the information previously provided remains current and valid.

The Director shall screen all applications to determine that all the requirements of this Chapter have been met by the applicant. The willful failure of an applicant to comply with this Chapter will result in the termination of the process as to that applicant. No applicant may be considered for appointment to a beginning position if any part of the requirements of this Chapter has not been met by said applicant.

The Director may, because of the small number of candidates, or because of any other good and sufficient reasons, such as death in the immediate family, public emergency, unavailability of test site, etc., postpone an examination to a later date.

SECTION 143.025—ENTRANCE EXAMINATIONS

See Section 143.025, Chapter 143

Application for employment shall be made to the Director on the appropriate application forms.

- (1) **EXAMINATIONS**—The scheduling and conducting of every examination shall be under the direction of the Director who shall be responsible to the Commission. The Director shall have

the authority to designate a Test Administrator, who shall be responsible for administering the examination. The Director may also select one or more persons as Test Monitor to assist in the administering, proctoring and grading of an entrance examination. An examination shall be conducted on an “as needed” basis.

No person shall deceive or obstruct any person in respect of his/her right of examination under the provision of these rules and the Local Government Code; or falsely mark, grade or report the examination or standing of any person examined hereunder; or aid or furnish any special information for the purpose of either improving or injuring the rating of any such person for appointment or promotion. No applicant may deceive the Commission for the purpose of improving his/her chance for appointment or promotion.

An applicant for an entry-level position shall achieve a passing score on the written examination as established by the Commission, in order to be placed on the Eligibility List.

(2) ENTRANCE EXAMINATION ADMINISTRATION PROCEDURES

- (a) Check In – An applicant shall be checked in and provide proof of identity with a valid Driver's License, military identification or other official form(s) of photographic identification. No applicant shall be admitted once test instructions start.
- (b) Military Service Credit – An applicant who desires to have military service credit of five (5) points added to a passing test score of 70% or better, shall provide a DD-214 showing a minimum of 180 total days of active military service at the time of application and by the specified application deadline. Any discharge other than honorable discharge is not creditable for the purpose of this section.
- (c) Failure to Appear - The application of an applicant who fails to appear for the entrance examination shall be voided and shall be disposed of by the Director.
- (d) Cancellation or postponement of entrance examination - The Commission or Director may cancel or postpone a scheduled entrance examination for sufficient cause.
- (e) Dishonesty- An examinee taking an entrance examination who uses or attempts to use any dishonest means to answer a question on such an examination shall have his/her examination confiscated and voided by the Test Administrator. The examinee will be removed from the testing site. The Test Administrator shall report the action to the Director.
- (f) Upon request, accommodations shall be provided to an applicant in accordance with the Americans with Disabilities Act. An applicant who needs special arrangements shall submit a request in writing to the Director at a time to be determined by the Director.

(3) TIE-BREAKERS—Whenever two (2) or more competitors for an entry-level position attain the same grade, the tie shall be broken in the order listed below prior to the posting of the Eligibility List:

- (a) applicants with basic certification as a peace officer or firefighter, and for firefighters, EMT certification, as described shall be ranked first among ties;
 - (b) the applicant, upon entering the testing location, shall draw a number;
 - (c) after applying the tie-breaker of certification described in (a) above, if there is still a tie , the individual who drew the lowest number shall be placed on the eligibility list above any other person with the same numerical score; and
 - (d) such method shall be used until all ties have been broken.
- (4) **ELIGIBILITY LIST**—An Eligibility List shall be in effect for one (1) year from the date of examination unless exhausted before one year.

Each person on an Eligibility List shall notify the Director of any change in address. A notice sent to a person's last known address shall be considered sufficient notification.

(5) **ELIGIBILITY OF CHILD OF FALLEN FIREFIGHTER**

Each applicant who is either a natural born or adopted child of a firefighter who previously suffered a line of duty death while serving as a civil service employee covered by Chapter 143 of the Local Government Code shall be ranked at the top of any eligibility list in which said applicant receives a minimum passing grade on that respective eligibility exam. The deceased firefighter's applicant child must otherwise satisfy all of the requirements for eligibility for a beginning position in the Fire Department as contained in Chapter 143, these Rules, or in the Rules and Regulations of the Fire Department. The Director shall include appropriate questions on the City's entry level application for firefighters to ascertain whether or not an applicant is eligible for the preferred ranking as specified herein.

SECTION 143.0251—REAPPOINTMENT OF POLICE OFFICERS

See Section 143.0251, Chapter 143

A classified employee who has voluntarily resigned in good standing from the City of Eagle Pass Police Department may be reappointed as a Police Officer with the Department without taking another entrance examination or being placed on an Eligibility List. Reappointment of a classified employee is totally at the discretion of the Police Chief.

- (1) The former officer shall submit a written request to be reappointed, within twelve (12) months from the date of separation, to the Police Chief, who makes the final recommendation to the City Manager for reappointment. A candidate for reappointment shall not be considered unless recommended by the Police Chief. A candidate for reappointment may not appeal his/her rejection by the Police Chief.
- (2) Prior to recommending reappointment of a former classified employee to the department, the Police Chief may review past performance records of the officer, conduct a background investigation, require appropriate alcohol and drug tests and require any other portion of the employment process he/she deems appropriate.
- (3) Successfully complete the physical fitness and/ physical ability test.
- (4) Upon receiving an offer of reappointment, the Police Officer shall pass a physical and psychological examination prescribed by the City.
- (5) A candidate for reappointment shall fully meet the requirements of the Texas Commission On Law Enforcement.
- (6) A candidate for reappointment may be appointed regardless of the availability of a list of eligible applicants. A candidate for reappointment has priority over candidates on a list of eligible applicants.
- (7) In addition to the reasons for rejection listed in Section 143.023, a candidate for reappointment may be rejected for reasons related to previous work performance as an Eagle Pass Police Officer.
- (8) Any candidate reappointed to the Police Department shall serve a one (1) year probationary period and prior service shall not count toward service for promotional eligibility.
- (9) The candidate's years of prior service may be counted to determine placement in the salary step system.
- (10) The candidate's years of prior service shall not count for determining vacation eligibility and rate.
- (11) Age limitations, as provided under Section 143.023(c), do not apply to reappointments.

- (12) Reappointment candidates years of prior service shall not count for determining eligibility to take a promotional exam

Adopted 10/21/2015

SECTION 143.026—PROCEDURE FOR FILLING BEGINNING POSITIONS

See Section 143.026, Chapter 143

Except as otherwise described, the person with the highest grade shall be appointed to the position, unless a valid reason exists to appoint the persons with lower grades. The Commission has specifically approved that “a valid reason” for passing over an applicant on the eligibility list includes the possession of valid Police or Fire certifications.

Whenever a vacancy occurs in the entry level positions of the Fire or Police Departments, the Head of that Department shall make a written request to the Commission for a list of eligible persons from the existing eligibility list. The Director shall submit a list of the names of the top three persons on the existing eligibility list to the City Manager of the City. The Director shall submit a list of the names of the top three persons on the existing eligibility list to the City Manager of the City. The City Manager may make appointment from the three names submitted, or may ask for additional names from the eligibility list until all applicants who are certified or certifiable have been considered, and the eligibility list contains no more certified applicants. Prior to such appointment, the City Manager may consult with the appropriate members of the Departments with regard to the names submitted.

When a person is chosen to be appointed to an entry level position, the person will be notified in writing. The offer of employment shall include all necessary information to inform the applicant of the terms and conditions of the offer of employment including, but not limited to, the information necessary to advise the applicant with regard to the required physical examination. Each person receiving such written communication will have 48 hours to accept the offer of employment. The failure of the applicant to accept or reject the offer within 48 hours shall have the effect of a declination of the offer. The Commission may extend the 48 hour period for good cause. The 48 hours shall include all days and times, but shall never expire on a Saturday, Sunday or legal holiday. A person who does not accept an offer of employment will not be offered another position during the life of the eligibility list. A person who does not successfully complete the medical examination shall not be employed.

SECTION 143.027 PROBATIONARY PERIOD

See Section 143.027, Chapter 143

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- (1) A person appointed to an entry level position in the Fire or Police Department who is not previously certified by the Texas Commission on Fire Protection or the Texas Commission on Law Enforcement and is required to attend a basic academy for such certification shall serve an eighteen (18) month probationary period as provided by Chapter 143. Otherwise, persons appointed to an entry level position in the Fire or Police Department shall serve a one (1) year probationary period, also as provided by Chapter 143. A person does not achieve Civil Service status until satisfactorily completing probation.
 - (2) All persons employed in entry level positions shall be required to attend and successfully complete an approved in-service training school relating to work in the Fire Department or Police Department, as appropriate, prior to completing their probationary period.
 - (3) During and upon completion of said school, entry level applicants shall be evaluated through use of a Field Training Program. In order to be certified for permanent status, all persons must receive a passing evaluation in the FTO program.
 - (4) The results of such evaluation shall be furnished to the Head of the Fire or Police Department and maintained in the department (g) file. The Department Heads will use such result to evaluate the experience and training of the Fire Fighter or Police Officer participating in the field training program.
 - (5) All aspects of the person's performance during probation shall be considered by the Department Head when determining whether or not to permit the employee to pass probation. It shall also be the duty of the head of the Fire Department or Police Department to carefully inspect and monitor the work of each probationer in the Department and remove from the payroll any Firefighter or Police Officer who does not demonstrate proper qualifications and fitness for the position to which he or she has been appointed. Before the probationary period has concluded, the Department Head shall make a determination as to whether or not the person should be retained as an employee. If no adverse determination is made, the person automatically achieves civil service status.
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SECTION 143.028 ELIGIBILITY FOR PROMOTION

See Section 143.028, Chapter 143

SECTION 143.029 PROMOTIONAL EXAMINATION NOTICE

See Section 143.029, Chapter 143

- (1) Notice of all promotional examinations shall be posted not later than 35 days prior to date selected for the examination. Persons desiring to take such examination shall give notice to the Director of their intent to take such examination no later than the 30th day after the notice of said examination has been posted.
 - (2) The notice shall state the date, time and place for the examination. The notice shall state the deadline for an eligible promotional candidate to apply. The notice shall also contain such other information as may be deemed appropriate by the Commission or that is required by the provisions of Chapter 143.
 - (3) Source materials shall be selected by the Commission or the Director as determined by the Commission. The Commission or the Director may enlist the aid of such experts and other experienced persons and entities as they may deem necessary and appropriate. The Director may use the resources of the Fire and Police Departments to establish the lists of source materials created under the authority of this section.
 - (4) Lists of source materials will be maintained and posted by the Director.
 - (5) The source materials shall be subject to review by the Heads of the Fire and Police Departments. Such materials will be of reasonably current publication and be reasonably available to all members of the Fire and Police Department.
 - (6) The Director will ensure the same promotional examination is not administered consecutively.
 - (7) **NOTICE OF INTENT TO TEST**—An employee shall complete a Notice of Intent to Test, as prescribed by the Director, in order to take a promotional examination. Failure to make application in the manner prescribed in the "Notice of Promotional Examination" and failure to
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file the application with the Director within the time limits prescribed in the "Notice of Promotional Examination" shall render the employee ineligible to take the examination.

SECTION 143.030—ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL EXAMINATION

See Section 143.030, Chapter 143

- (1) The length of service for determining the eligibility for taking a promotional examination shall include the probationary period in the Fire Department.
- (2) A fire fighter's prior service with the City does not count toward meeting the two (2) year requirement established in 143.030(b) and (e). A fire fighter rehired is not given credit for prior service to determine eligibility to take a promotional examination.
- (3) For purposes of determining years of service as they relate to eligibility for promotion and seniority, only complete years worked in the appropriate Department by a member of the Fire Department for the City shall be considered in computing eligibility and seniority.
- (4) All employees promoted in the Fire Department must either (1) meet the educational requirements stated in the Job Description at the time of promotion or (2) complete the educational requirements within a period of two (2) calendar years from the date of promotion. Any Fire Department employee not meeting the educational requirements within two years of promotion shall be deemed automatically demoted, without the right of appeal to the Eagle Pass Civil Service Commission or a hearing examiner, due to the employee's failure to meet the essential job requirements as stated in the Job Description. All promoted employees who do not meet the educational requirements for their position at the time of promotion shall sign an "Acknowledgement of Understanding and Agreement" regarding the consequences of not timely completing the applicable education requirements.

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SECTION 143.031—ELIGIBILITY FOR POLICE DEPARTMENT PROMOTIONAL EXAMINATION

See Section 143.031, Chapter 143

For purposes of determining years of service as they relate to eligibility for promotion and seniority, only complete years worked in the appropriate Department by a member of the Police Department for the City shall be considered in computing eligibility and seniority. A police officer's prior service with the City does not count toward meeting the two (2) year requirement established in 143.030(b) and (c). A police officer rehired is not given credit for prior service to determine eligibility to take a promotional examination.

SECTION 143.032—PROMOTIONAL EXAMINATION PROCEDURE

See Section 143.032, Chapter 143

- (1) EXAMINATIONS**— All promotional examinations administered under the provisions of these rules shall be conducted in a manner that is consistent with the provisions of Chapter 143. An examination shall be of such nature that it will test the relative capacity and fitness of the person examined to discharge the duties of the particular position to which he/she seeks appointment.

The actual conduct of every examination shall be under the direction of the Director who shall be responsible to the Commission. The Director shall have the authority to designate a Test Administrator, who shall be responsible for administering the examination. The Director may also select one or more persons as Test Monitor to assist in the administering, proctoring and grading of an entrance examination. An examination shall be conducted on an “as needed” basis.

The Commission or Director may, because of the small number of eligible promotional candidates for any position, or because of any other good and sufficient reasons, such as death in the immediate family, public emergency, unavailability of test site, etc., postpone an examination to a later date.

To provide for a competitive promotional examination so as to better serve the public, each promotional examination shall be competitive. The Commission has determined that for an examination to be competitive, at least one (1) person more than the number of vacancies must actually take the examination and attempt to secure the promotion. If there are not the required number of candidates in the next lower position, the Commission shall follow the procedures relating to eligibility for promotional examinations outlined in Section 143.030(d) and 143.031(c) until at least the required number of qualified candidates sit for the examination. When more than one vacancy exists at the time an examination is to be given, the Director shall determine whether the number of examinees who have filed Notices of Intent to Test is competitive. In all promotional examinations, if necessary, the Director is authorized to open the examination to additional employees, as outlined in Section 143.030(d) and 143.031(c) Chapter 143.030(d) and 143.031(c).

No person shall deceive or obstruct any person in respect of his/her right of examination under the provision of these rules and the Civil Service Act; or falsely mark, grade or report the examination or standing of any person examined hereunder; or aid or furnish any special information for the purpose of either improving or injuring the rating of any such person for appointment or promotion. No promotional candidate shall deceive the Commission for the purpose of improving his/her chance for appointment or promotion.

(2) PROMOTIONAL EXAMINATION ADMINISTRATION PROCEDURES

- (a) Check In – An examinee shall be checked in and provide proof of identity with a valid Driver's License. No examinee shall be admitted once test instructions start.

- (b) Cancellation or postponement of promotional examination - The Commission or Director may cancel or postpone a scheduled promotional examination for sufficient cause.
- (c) Dishonesty- An examinee taking a promotional examination who uses or attempts to use any dishonest means to answer a question on such an examination shall have his/her examination confiscated and voided by the Test Administrator. The examinee will be removed from the testing site. The Test Administrator shall report the action to the Director.
- (d) Upon request, accommodations shall be provided to an applicant in accordance with the Americans with Disabilities Act. An examinee who needs special arrangements shall submit a request in writing to the Director at a time to be determined by the Director.

(3) TESTING OF CANDIDATES ON ACTIVE MILITARY DUTY

An eligible promotional candidate who is serving on active military duty outside of Texas or at a location in Texas greater than 100 miles from the City of Eagle Pass is entitled to take the examination outside of the presence of and at a different time than the other candidates and may be allowed to take an examination that is not identical to the examination administered to the other candidates. In the instance of such military personnel, the Director shall make arrangements for proctoring of the examination with the employee's commanding officer or other designated appropriate military personnel. The examination may be administered by said proctor in written form and returned to the City as the Director shall require, or the examination may be taken by a remote internet connection or other means, provided the examination is still proctored by responsible military personnel.

In the event military personnel are participating in said promotional examination, the posted scores shall indicate the final ranking of the examinees based on their scores, but ranking on the promotional list shall be subject to the result of the scores of candidates currently serving on active military duty who are taking the examination at or about the approximate time as the regular examination.

SECTION 143.033 PROMOTIONAL EXAMINATION GRADES

See Section 143.033, Chapter 143

(1) SENIORITY POINTS—

(a) Fire fighters--Up to ten (10) seniority points shall be added to the score of an examinee who receives a grade of at least 70 percent on the written examination.

(b) Police officers—Up to ten (10) seniority points shall be added to the score of an examinee, regardless of the grade on the written examination.

(c) Fire fighters and Police Officers--Each full year of service equals one point. Seniority points shall be awarded only for whole years of service as a certified fire fighter or police officer.

(2) TIE-BREAKERS—Whenever two (2) or more competitors for promotion attain the same grade, including seniority points, the tie shall be broken in the order listed below:

(a) The raw score of each tied applicant, disregarding any seniority points.

(b) In the event that a tie remains, the tie shall be broken by the selecting of the applicant with the longest time in the rank immediately below the rank being tested.

SECTION 143.034 REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION

See Section 143.034, Chapter 143

Beginning on the first business day following the examination, a promotional candidate may review the examination booklet for purposes of appealing the exam; his/her answer sheet, the answer key, and the source material for the examination in the presence of a monitor(s) designated by the Director. At such time that a promotional candidate submits a written appeal to the Director, to include the appealed question number(s) and reason for appeal, and as prescribed by the Director, a copy of the appealed question(s) along with the respective answer(s) from the answer key and the title and page number from the reference materials shall be given to the appellant.

The period of review of test materials begins the first business day after promotional examination grades are posted and is limited to five business days during which an appeal may be filed. While reviewing the examination the promotional candidate shall relinquish all communication and recording devices, including cellular telephone. If the promotional candidate is on shift, authorization to review the examination must be prearranged with department heads of Fire and Police departments.

The Commission shall receive a copy of each appeal submitted, the appealed question(s), and the appropriate source reference sheet(s). The appeal information shall not reveal the name of the appellant, prior to the regularly scheduled Commission meeting.

A promotional examination question appealed to the Commission shall be sustained, overruled, or eliminated by a Ruling issued by the Commission.

- (a) **Sustain the answer key** (test scores shall remain as reported)

A Ruling which rejects the appeal presented to the Commission shall require the Director to accept the answer as given on the answer key, while grading the promotional examinations of all eligible candidates.

- (b) **Overrule the answer key** (the Commission shall designate another answer(s) to be accepted)

A Ruling which sustains the appeal of a promotional examination question shall require the Director to accept two or more answers, as directed in the Ruling, while grading the promotional examination of all eligible candidates.

- (c) **Eliminate the test question** (the test question shall not be included)

A Ruling which rejects the test question related to the appeal of a promotional examination question shall require the Director to disregard the question and its answer while grading the promotional examination of all eligible candidates.

Formula for calculating scores after appeals:

The formula for calculating the promotional test scores shall be as follows:

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(100) / (total number of test questions used) = point value of each question (# of total test questions) - (# of wrong questions) = # of correct questions (# of correct questions) x

SECTION 143.034 REVIEW AND APPEAL OF PROMOTIONAL

EXAMINATION

See Section 143.034, Chapter 143
(value of each question) = score

SECTION 143.035 ALTERNATE PROMOTIONAL SYSTEM IN POLICE DEPT.

See Section 143.035, Chapter 143

The Commission has not adopted an alternate promotional system under this provision.

SECTION 143.036—PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS

See Section 143.036, Chapter 143

- (1) When the term “Commission” is used in Section 143.036 of the Local Government Code, the Director may perform the duties specified.
 - (2) All persons who are selected for promotion and who accept promotional advancement shall be required to take an appropriate physical and mental examination and drug screening prior to appointment, to be given by a physician, psychiatrist or psychologist appointed by the Commission and paid by the City of Eagle Pass.
 - (3) Valid reasons for pass over shall include, but not be limited to:
 - a) inability to perform duties as a result of physical, emotional, psychological or other conditions;
 - b) prior job experience which uniquely qualifies another person to be appointed ahead of the person passed over;
 - c) educational training that uniquely qualifies another person to be appointed ahead of the person passed over;
 - d) a recent history of corrective/disciplinary action;
 - e) past criminal conviction or pending criminal charges;
 - f) pending disciplinary action;
 - g) disruptive actions by the person proposed to be passed over that are detrimental to the effective operations of the Department; and,
 - h) such other reasons as may be asserted by the Department Heads of the Fire and Police Departments that are accepted by the Commission.
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SECTION 143.037—RECORD OF CERTIFICATION AND APPOINTMENT

See Section 143.037, Chapter 143

The Director shall serve as Secretary to the Commission and shall perform all such work as may be incidental to the Civil Service program and as may be required by the Commission, including, but not limited to preparation and filing of all certifications.

SECTION 143.038—TEMPORARY DUTIES IN HIGHER CLASSIFICATION

See Section 143.038, Chapter 143

The Department Head may prescribe methods for selecting and making a temporary appointment to a higher classification when there is a vacancy. “Vacancy” does not mean temporary absence.

Such designation is effective only if it is made in writing and signed by the Department Head. Such designation shall detail the following information:

- a) effective date;
 - b) duration;
 - c) limitation of authority, if any; and,
 - d) ending date.
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SECTION 143.039-143.040

(Sections 143.039-143.040 reserved for expansion)



SUBCHAPTER C.—COMPENSATION SECTION 143.041—SALARY

See Section 143.041, Chapter 143

The Commission shall have no authority to set the rate of compensation of any employee of the Fire or Police Department.

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SECTION 143.042 ASSIGNMENT PAY

See Section 143.042, Chapter 143

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SECTION 143.043 FIELD TRAINING OFFICER ASSIGNMENT PAY

See Section 143.043, Chapter 143

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SECTION 143.044 CERTIFICATION AND EDUCATIONAL INCENTIVE PAY

See Section 143.044, Chapter 143

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SECTION 143.045 ACCUMULATION AND PAYMENT OF SICK LEAVE

See Section 143.045, Chapter, 143

An employee who is temporarily suspended or indefinitely suspended shall exhaust all appeal rights before the City is obligated to pay any accumulated civil service sick leave as prescribed under Chapter 143.

SECTION 143.046—VACATIONS

See Section 143.046, Chapter 143

An employee who is temporarily suspended or indefinitely suspended shall exhaust all appeal rights before the City is obligated to pay any accumulated vacation pay as prescribed under Chapter 143.

SECTION 143.047—SHIFT DIFFERENTIAL PAY

See Section 143.047, Chapter 143

(Sections 143.048-143.050 reserved for expansion)

SUBCHAPTER D. DISCIPLINARY ACTIONS SECTION 143.051—CAUSE FOR REMOVAL OR SUSPENSION

See Section 143.051, Chapter 143

The following are declared to be grounds for dismissal or suspension of any employee from the classified service in the City of Eagle Pass:

- (1) Indictment, deferred adjudication or other deferred disposition, or conviction of a felony, including a state jail felony, State Class A or B misdemeanor, federal misdemeanor, or other crime involving moral turpitude;
- (2) Violation of the provisions of the Charter of the City of Eagle Pass;
- (3) Acts of incompetency;
- (4) Neglect of duty;
- (5) Discourtesy by said employee to the public or to fellow employees;
- (6) Acts of said employee showing a lack of good moral character, as defined in Departmental Rules;
- (7) Drinking of intoxicants while on duty or intoxication while off duty;
- (8) Conduct prejudicial to good order;
- (9) Refusal or neglect to pay just debts;
- (10) Absence without leave;
- (11) Shirking duties;
- (12) Cowardice; or
- (13) Violation of any of the Rules and Regulations of the Fire Department or the Police Department; or of special orders as applicable; or of these Rules and Regulations; or of any of the City Personnel Policies; or of any other City Ordinance or Policy applicable to Police and Fire Department employees.

All Fire Fighters and Police Officers are required to sign for receipt of electronic copy of the Rules and Regulations of their Department. The Department Heads shall maintain all electronically and/or printed format receipts.

Ignorance of the Rules and Regulations or special orders of the Fire Department or the Police Department shall not be an excuse for their violation.

SECTION 143.052—DISCIPLINARY SUSPENSIONS

See Section 143.052, Chapter 143

- (1) An employee may be suspended for violation of:
 - (a) An applicable provision of Chapter 143, Texas Local Government Code;
 - (b) An applicable rule or regulation duly adopted by the Commission;
 - (c) Eagle Pass Fire Department Standard Operation Guidelines or Eagle Pass Police Policy Manual;
 - (d) The City Personnel Policies; or
 - (e) Or any other City Ordinance or Policy applicable to Police or Fire Department employees.

For a suspension, a determination of what constitutes “cause” is generally made by comparison to what a reasonable person, who is mindful of the habits and customs of his/her Department, who is also mindful of the responsibilities and needs of his/her Department and who is also mindful of the standards of justice and fair dealing prevalent in the City, should have done (or should not have done) under similar circumstances.

Prior to imposing a suspension, the Department Head may use lesser forms of disciplinary or corrective action. However, nothing herein shall prohibit the Department Head from proceeding directly to the appropriate level of discipline without using progressive discipline, if in the opinion of the Department Head, the employee’s misconduct warrants more severe disciplinary action.

- (2)
 - (a) Notice shall be served as required under the provisions of Chapter 143. A copy of the notice of indefinite suspension shall be served upon the employee under the authority of the Department Head. The notice served upon the employee may not be amended, but with the consent of the Commission, typographical and non-substantive clerical errors may be corrected.
 - (b) All proceedings under these Rules shall be conducted in accordance with these Rules. Any notice of appeal to the Commission or a hearing examiner shall comply strictly with the provisions of Chapter 143, relating with the timeliness and contents of such notice. The notice of appeal must contain all the issues to be raised at the hearing. The notice of appeal must be delivered to the Director or his or his~ designee. Issues not contained in the notice of appeal may not be heard by the Commission.

- (3) **WORKING OFF SUSPENDED TIME –**

- (a) A classified employee in the Police or Fire Department who is suspended less than 40 hours in the Police Department or less than 60 hours in the Fire Department may, upon the employee's request and at the respective Department Head's discretion, forfeit vacation designated by the Department Head for a period equal to the time of the suspension. The employee shall be required to work on the forfeited vacation days. The provisions of this Section shall apply solely to a suspension which is agreed to by the employee and no appeal to the Commission or to a Hearing Examiner may be instituted on a suspension where the employee has agreed to the suspended time.

 - (b) The employee shall have his/her vacation leave accumulated balance deducted in an amount equal to the suspension to qualify for this provision. In order to request Working Off Suspended Time, the suspended employee shall make a written request to the respective Department Head within 240 hours after receiving the Notice of Suspension. Failure to make a written request to the Department Head within the allotted time shall result in an employee not being eligible for the provisions of this Section.
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SECTION 143.053—APPEAL OF DISCIPLINARY SUSPENSION

See Section 143.053, Chapter 143

(1) SCOPE OF MATTERS SUBJECT TO APPEAL—The following disciplinary matters are subject to appeal:

- (a) Indefinite suspension;
- (b) Temporary suspension; (c) Demotion; and/or
- (d) Promotional pass over.

The Commission intends that as many such disputes as can be should be resolved by the utilization of the internal procedures of the Fire and Police Departments. The Commission will not hear any matter that has not arisen as a result of adverse action taken against an employee

Employee dissatisfaction because of transfer, reassignment, discretionary policy decisions or policy matters is not and shall not constitute a basis for appeal to the Commission.

Letters of reprimand shall not be subject to appeal to the Commission.

If an action is subject to appeal, the employee may file an appeal. In the event of an appeal, the employee shall give written notice to the Director as provided under Section 143.010. If the appeal is timely and valid, the Director shall arrange to have an appeal hearing placed on the Commission's agenda, or obtain a panel of Independent Third Party Hearing Examiners, as provided under Section 143.057. The Commission does not have jurisdiction to hear any disciplinary matter unless the aggrieved employee appeals in a timely manner.

An employee who has voluntarily resigned or retired from his/her position forfeits all rights to utilize the disciplinary appeal processes.

An employee may voluntarily enter a written agreement with the Fire Chief or Police Chief that expressly evidences his/her intent finally to resolve the issue(s) of any type of disciplinary action imposed. The agreement shall also include a statement that the employee waives all rights to appeal.

(2) OPTIONS FOR DISCIPLINARY HEARINGS—At any time after filing the original notice of appeal but before either party has incurred Hearing Examiner expenses, an employee may withdraw the original request for the Hearing Examiner and either completely waive his/her right to appeal or submit the appeal to a hearing before the Commission. The election shall be made in writing and filed with the Director. If the employee elects to submit the appeal to a hearing before the Commission, the Commission must hold the appeal hearing within thirty (30) days of the withdrawal of the request for a Hearing Examiner.

At any time after filing of the notice of appeal, the employee and the Fire Chief or Police Chief may mutually agree to withdraw the appeal from a Hearing Examiner and submit the appeal to a

hearing before the Commission. The mutual agreement shall be made in writing and filed with the Director.

- (3) **DIRECTOR TO COORDINATE ALL MATTERS**—The location and accommodations for a hearing or appeal shall be arranged by the Director.

All subsequent matters raised by the appealing employee or the Department (“the parties”) regarding attendance, scheduling, requests for subpoenas, request for continuance, etc., and shall be coordinated through the Director. All such information shall be provided to the Director who shall then provide copies of same to the opposing party or representative and also coordinate the appropriate response or action to be taken. In a hearing coordinated by an outside agency, that agency shall also provide coordination services between the parties and the Hearing Examiner in conjunction with the Director.

The Chairperson of the Civil Service Commission is authorized to act on behalf of the Commission in issuing subpoenas for appeals.

The Commission or any hearing examiner may receive a request for a continuance of a matter pending before the tribunal. The Commission or any hearing examiner may or may not grant such request. The Commission or any hearing examiner is not required to grant any request for continuance; however, the granting of such a request shall never operate to divest the tribunal of jurisdiction because of the passage of time.

- (4) **EXPENSE AND COSTS**—The appropriate amount, as well as payment of all costs and expenses, may be determined and collected by the Director. An employee may receive an estimate of anticipated costs upon written request to the Director. All costs charged by the court reporter shall be split equally between the parties.

When applicable, the State law governing the doctrine of “mitigation of damages” shall be applied in computing reimbursements or an offset from an award of back pay.

- (5) **FAILURE TO ATTEND SCHEDULED HEARING**—The Commission or Hearing Examiner shall treat the appealing employee’s failure to attend a scheduled appeal hearing or to file a timely request for a continuance as a request to withdraw the appeal. Any request for a continuance must be filed with the Director or the Hearing Examiner at least three (3) business days before the date of the hearing. The failure of a party to appear and timely attend a scheduled appeal hearing shall not prevent the Commission from proceeding to convene the hearing, receive evidence and conclude the hearing by resolving the issues on appeal.

- (6) **EMPLOYEE AND DEPARTMENT REPRESENTATIVES**—The hearing process shall recognize the right of the employee, as well as the Department, to be represented throughout the appeal. However, only one representative shall be allowed to speak or otherwise present evidence on behalf of either party throughout the questioning of a particular witness.

An employee or Department representative shall use his/her best efforts to conclude all proceedings smoothly, expeditiously, and as fairly as possible to all concerned.

The function of the representative shall be to articulate the best interests of the employee or the Department represented and to make his/her presentations pertinent to the issue(s) being considered. Dissatisfaction with a representative shall not constitute grounds for modification of the final ruling.

A representative or an employee who represents him/herself shall become familiar with and follow these Rules and Regulations at all times during the disciplinary appeal process.

A problem or concern regarding the manner in which the opposing party or his/her representative is handling a particular disciplinary appeal should be brought to the attention of the Director. The difficulty shall be expeditiously addressed.

- (7) **LIMITED DISCOVERY**--The Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, and all other Rules of Procedure, whether civil or criminal, regarding what is commonly known as “discovery” shall not apply to any civil service proceedings. Mediation and arbitration rules and processes do not apply to any civil service hearings.

Items from Departmental policies, rules and regulations manuals may be photocopied. Items such as Accident Review Board recommendations, time and attendance records, duty status forms and other such documents may also be provided so long as they are relevant to the employee and the disciplinary action under appeal.

An employee and his/her representative may obtain copies of documents contained in the employee’s own personnel files after the employee has signed the appropriate release form(s).

- (8) (a) In accordance with Chapter 143, all hearings held under the provisions of these Rules shall be conducted in accordance with the Rules of Procedure adopted by the Commission. Such Rules of Procedure shall control as to all matters before the Commission. If the Rules of Procedure do not address an issue, then the Commission shall rely upon the provisions of Chapter 143. If the issue remains unresolved, the Commission may adopt such procedures as deemed necessary, in the sole discretion of the Commission, to resolve the disputed matter. These Rules shall also apply in the event a hearing examiner is selected to hear the appeal provided that in no event may a hearing examiner adopt any rule or procedure without the express written concurrence of the Commission.
- (b) The parties shall promptly provide all information intended to be used by each party and witness lists within 3 calendar days prior to the hearing to each other. The failure to provide such information may operate to bar the party proffering from using the evidence or the witness, unless good cause for failure to comply with this Rule is presented. The Commission shall determine whether good cause exists. Exhibit and witness lists shall be exchanged through the Director 3 calendar days prior to the hearing. Failure to exchange such lists may result in the Commission disallowing such witnesses or exhibits.

- (9) **FORMAT OF APPEAL HEARINGS**—The format for an appeals hearing before the Commission shall be as follows:

- (a) City’s opening statement
- (b) Employee’s opening statement

- (c) The City's (Department's) case:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (d) Employee's response:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (e) Rebuttal by the City, if any:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (f) City's closing argument
- (g) Employee's closing argument
- (h) City's rebuttal
- (i) Deliberation by the Commission in Executive Session
- (j) Decision

(10) HEARING PROCEDURES

Any appeal to the Commission, or to any hearing examiner, shall be governed by the Rules of Procedure adopted by the Commission.

- (a) At the scheduled time and place, the hearing shall be called to order. The Chairman of the Commission shall preside over all hearings.
- (b) Each party shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process. Each party shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission at the hearing.
- (c) A record of the public proceedings, capable of clear and accurate reproduction or transcription, shall be made and maintained by the Director.
- (d) After being called to order, but prior to the beginning of testimony or evidence, consideration shall be made as to any pre-hearing motions, requests or jurisdictional matters as submitted by either party. The parties shall also seek to obtain as many

stipulations as possible as to non- contested or non-material matters. The Commission may “carry” such pre-hearing motions until the hearing is completed and all factual evidence has been presented before making its final ruling thereto.

- (e) Upon request by either party, the hearing process shall utilize what is commonly known as “the Rule” concerning oral testimony, meaning that a person who shall be expected to testify at the hearing, other than the parties and their representatives, shall not be allowed to observe or listen to any of the proceedings except when he/she is actually testifying as a witness. “The Rule” may be used to ensure one witness’ testimony is not influenced by another’s testimony. While under “the Rule,” a potential witness shall not discuss any aspect of the appeal or hearing except with the attorneys or the representatives involved. Invoking “the Rule” is not mandatory and may be waived in whole or in part by agreement between the parties.
- (f) The hearing shall then proceed to develop the evidence and testimony as to those contested matters.
- (g) The City shall make the first presentation of evidence and testimony. Thereafter, the employee shall have the opportunity to respond with his/her own evidence, witnesses or testimony. Thereafter, the City may come forward with rebuttal evidence or testimony as may be necessary. Presentations by both parties shall be as brief and as closely related to the issue(s) as possible. Throughout the proceedings, a Commission member may also ask questions as needed in order to aid his/her consideration of the testimony or evidence.
- (h) A witness may be sworn and his/her testimony taken under oath or affirmation. A witness is subject to reasonable and relevant cross-examination by the opposing party.
- (i) The Chairperson shall exercise reasonable control over the questioning of a witness and the presentation of evidence so as to:
 - (i) effectively ascertain the truth;
 - (ii) keep such presentations relevant to the issues to be determined; and (iii) avoid the needless consumption of time and expense.
- (j) A party and his/her representative shall cooperate in keeping all presentations as brief and to the point as possible. Long drawn-out sessions shall be discouraged. The Commission may establish equal time limits for presentation of each side of the case.
- (k) The Commission shall exercise control over the proceedings to be sure that an effective assessment of the truth is made of only the issues before the Commission in as brief a manner as possible and without the harassment or undue embarrassment of any witness. Only evidence relevant to the issues before the Commission shall be heard. The Commission shall control the length of time expended during the hearing, when such hearing shall commence, recess and adjourn.
- (l) A hearing shall remain business-like and focus upon resolution of factual matters. A hearing shall not be a time for accusations, threats, speeches or arguments. The Commission shall have the discretion to adjourn any meeting that deteriorates into a “shouting match” or where fruitful dialogue ceases.

- (m) Before adjourning, the Commission may adjourn to Executive Session to deliberate.

Thereafter, the Commission shall reconvene in open session and shall, upon motion and second, vote upon its decision. Thereafter, a written Order containing the Decision shall be prepared and signed by the Commissioners prior to adjourning the hearing.

(11) RULES OF EVIDENCE

- (a) Technical rules of evidence shall not apply nor control the conduct of any hearing. The Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, and all other Rules of Procedure, whether civil or criminal, shall not apply nor govern any aspect of any civil service proceeding.
- (b) The scope of evidence to be considered at a disciplinary hearing shall be generally limited to matters material and probative to the statement of charges as set forth in the Department's written statement, the employee's notice of appeal and the employee's previous employment record with the Department.
- (c) Either party may offer such material and probative evidence as he/she may desire to aid in the determination of disputed issues.
- (d) It shall be the province of the Commission to determine:
 - (i) The admissibility of any particular evidence or testimony;
 - (ii) The materiality or probative value, of any evidence or testimony; and (iii) The weight to be given to any particular evidence or testimony.
- (e) Subject to limited exceptions for compelling reasons shown by a party, the Commission shall refuse to hear or consider any testimony or item of evidence after the hearing has been closed.
- (f) The Commission may receive and consider the evidence of a witness by affidavit and assign same such weight as it deems proper after consideration of objections, if any, made to its admission.
- (g) On-site inspections are discouraged and shall be conducted only if the evidence to be considered cannot be otherwise presented via stipulations, photographs, videotapes, maps, diagrams, etc.
- (h) All evidence and testimony shall be presented and received into the record while in open session.

(12) ISSUES TO BE DETERMINED IN DISCIPLINARY APPEALS

- (a) Generally, the determinative issues to be considered and determined by the disciplinary action appeal process shall be:
 - (i) Did cause exist to support the imposing of some form of disciplinary action as to the employee?
 - (ii) Was the degree of disciplinary action imposed by the Department reasonable under the circumstances? and
 - (iii) Has the hearing process developed matters that justify or compel modification of the Department Head's disciplinary action?
- (b) The Department Head shall establish the violation(s) by a preponderance of evidence standard.
- (c) It shall be recognized that prior to imposing any form of discipline, the Department Head may use lesser forms of disciplinary or corrective action. However, the failure to utilize progressive discipline shall not in itself be grounds to overturn or otherwise modify a Department Head's decision to proceed directly to the appropriate level of discipline if the employee's misconduct warrants such disciplinary action, including indefinite suspension. Progressive discipline need not always apply and the seriousness of a single offense may negate a previously unblemished record. The past practices of the Department shall not be controlling as to any future actions. Such pattern by the Department may be considered, if at all, only as mitigation or justification.
- (d) The hearing shall provide the employee a reasonable opportunity to produce objective evidence and/or testimony to demonstrate:
 - (i) That the employee did not commit the misconduct as alleged, i.e., "the allegations are not true"; or
 - (ii) That even if the employee committed the acts as alleged, that such activity does not constitute actionable misconduct; or
 - (iii) That even if the employee committed actionable misconduct, the degree of discipline imposed is too harsh or severe, i.e. the disciplinary action imposed was "unreasonable, arbitrary or capricious"; or
 - (iv) A combination of any of these matters would justify or compel modification of the Department Head's action.
- (e) An employee's mere disagreement or difference in opinion in regard to the Department Head's actions or reasoning shall not constitute grounds to overturn nor modify the disciplinary action.
- (f) If the Commission determines one valid charge of misconduct is supported by evidence sufficient to establish its truth, the Commission shall sustain that charge even if the evidence at the hearing does not support other charges in the letter of disciplinary action.
- (g) The Commission will consider only evidence that is directly relevant to the disputed items. This evaluation of the evidence shall be the sole province of the Commission (or hearing examiner).The Commission shall base its decision solely on evidence presented at the hearing.

(13) FINDINGS AND ORDERS OF THE COMMISSION

- (a) On the basis of the evidence and testimony presented at the hearing, the Commission shall vote in open session and issue a decision on the matter via a written Order finding the truth of the specific charge(s) against the employee, or a written Order finding that the specific charge(s) against the employee is not true.
 - (b) The Commission's decision may be made by the majority vote of two of the three Commissioners present. If only two Commissioners are present, the final decision shall be made unanimously.
 - (c) In the event that the charge(s) of misconduct against the employee is found to be "not true," then the final written Order shall be promptly to restore the employee to the employee's proper position or status.
 - (d) In the event that the charge(s) of misconduct against the employee is found to be "true," then the written final Order shall clearly state whether the employee is:
 - (i) Permanently dismissed from the Fire or Police Department;
 - (ii) Temporarily suspended from the respective Department and shall then set forth the definite time period and conditions of suspension which shall be imposed;
 - (iii) Demoted (See Section 143.054);
 - (iv) Bypassed for promotion; (See Section 143.036(f); or (v) Restored to the former position or status.
 - (e) The final Order on a disciplinary appeal shall also include such other matters as to resolve the issues under consideration, particularly:
 - (i) The employee's resulting employment status; (ii) Back pay and other employment benefits; and/or (iii) Mitigation of damages.
- A copy of the Order will be served on both parties and filed with the Director. The Order will indicate any reason for modification of the Department Head's action.
- (f) If modifying the disciplinary action of the Department, the Order shall clearly explain in writing the factors and rationale for doing so. If affirming the disciplinary action of the Department, it shall be presumed to be for the same reasons and facts as presented by the Department unless otherwise indicated.
 - (g) The Commission may consider evidence of facts or events during the disciplinary appeal process that are outside the scope of the Department's statement of charges or the employee's notice of appeal to the extent permitted by law.
 - (h) A copy of the Department's disciplinary action, a copy of the employee's request for appeal, the record of the proceedings, a copy of the exhibits submitted together with a copy of the final Order shall be filed in the Commission record. The Commission may cite these records as reference material in subsequent determinations.

SECTION 143.054—DEMOTIONS

See Section 143.054, Chapter 143

- (1) The Commission's consideration of whether there is probable cause to support the Department Head's recommendation for demotion does not require an evidentiary hearing. If the Commission determines that probable cause exists for a recommended demotion, the Commission's letter to the employee shall include the Hearing Examiner option under Chapter 143.
- (2) After the Commission has determined that probable cause exists for a requested demotion and has provided the employee with a written Notice as per Chapter 143, the action for appeal of the demotion may be conducted according to the same hearing procedures as set forth herein for all other disciplinary actions or as expressly provided otherwise in Chapter 143.
- (3) A Fire Department employee who is promoted without meeting the required educational requirements in the Job Description shall be demoted to the rank he last held if he fails to meet those educational requirements within two calendar years from the date of his promotion. An employee demoted for failing to meet the educational requirements within the allotted time period shall not be entitled to an appeal hearing, as the employee will be automatically deemed not to meet the essential requirements of the position. Any such demotion for failure to meet essential educational requirements shall not be deemed disciplinary in nature, but shall be considered voluntary due to the employee's prior acknowledgement of his understanding of the terms of his promotion and subsequent non-disciplinary demotion, in the event he fails to meet the educational requirements.

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SECTION 143.055 UNCOMPENSATED DUTY OF POLICE OFFICERS

See Section 143.055, Chapter 143

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SECTION 143.056 PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT

See Section 143.056, Chapter 143

A member of the Fire or Police Department who is charged with a criminal offense shall be subject to discipline by the Department Head. The provisions of Section 143.056 shall be employed, if the need arises, to delay the proceedings under these Rules.

Conviction or deferred adjudication of a felony shall result in the employee being terminated from his/her position. No hearing before the Commission or a Hearing Examiner shall be provided.

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SECTION 143.057 HEARING EXAMINERS

See Section 143.057, Chapter 143

- (1) Only a disciplinary action concerning an indefinite suspension, a suspension, a promotional pass over because of disciplinary history or a recommended demotion is appealable to a Hearing Examiner.
- (2) The Director shall coordinate with the parties and the agency sponsoring the Hearing Examiner as to all matters regarding scheduling, place of hearing, accommodations, etc.
- (3) The rule-making power and authority of the Commission is in no way conferred upon and/or delegated to any Hearing Examiner, either by implication or otherwise.
- (4) In a disciplinary appeal conducted under Chapter 143, the Hearing Examiner shall have the “same duties and powers” as would the Commission, including the right to issue subpoenas to compel the attendance of a witness.
- (5) A disciplinary proceeding conducted by a Hearing Examiner instead of the Commission shall not be conducted or resolved via arbitration or arbitration processes. An employee’s election of appeal to a Hearing Examiner shall not constitute a right or an agreement to submit the appeal to arbitration or arbitration processes.
- (6) The Hearing Examiner is to conduct a hearing fairly, objectively and impartially under the provisions of Chapter 143 and these Rules and Regulations. The Hearing Examiner is to render a fair and just decision based solely on the evidence presented in the hearing. The scope of evidence to be considered at the hearing shall be generally limited to matters closely relevant to the charges of misconduct as set forth in the Department’s written statement and the employee’s notice of appeal as filed with the Commission as well as the employee’s previous work record with the Department.
- (7) A hearing conducted by a Hearing Examiner shall also be recorded so as to be capable of clear and accurate reproduction or transcription.
- (8) If a situation arises pertaining to the administration process of selecting a Hearing Examiner, or meeting notices, or request for rescheduling, refusal, conflict or interest, etc., and the situation is not provided for Chapter 143 or in these Rules and Regulations, then the parties and the Director shall attempt to mutually resolve the situation by agreement. If the matter is not one capable of being reasonably resolved by agreement, the Director may refer the matter to the administrative processes of the entity sponsoring the Hearing Examiner to resolve the situation within its own processes.
- (9) If a Hearing Examiner has been initially selected but is thereafter objected to or is asked to be excused by a party, both parties may mutually agree to excuse the Hearing Examiner and

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thereafter request a new list of qualified and neutral Hearing Examiners and start the selection process over again. If no such agreement can be reached, then both parties shall prepare a written statement including their requests and reasoning therefore which shall be submitted to the Director. The Director shall then transmit it to the entity sponsoring the Hearing Examiner, which shall then resolve the dispute according to its own administrative processes. The response shall either excuse the Hearing Examiner and thereafter provide a new list, or it shall

provide a written statement of reasons why the Hearing Examiner was not excused.

(Sections 143.058-143.070 reserved for expansion)

SUBCHAPTER E.—LEAVES SECTION 143.071—LEAVES OF ABSENCE; RESTRICTION PROHIBITED

See Section 143.071, Chapter 143

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SECTION 143.072 MILITARY LEAVE OF ABSENCE

See Section 143.072, Chapter 143

SECTION 143.073—LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE

See Section 143.073, Chapter 143

“Temporary leave” under this section shall not exceed one (1) year.

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SECTION 143.074 REAPPOINTMENT AFTER RECOVERY FROM DISABILITY

See Section 143.074, Chapter 143

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SECTION 143.075 MILITARY LEAVE TIME ACCOUNTS

See Section 143.075, Chapter 143

(Sections 143.076 - 143.080 reserved for expansion)

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SUBCHAPTER F. MISCELLANEOUS PROVISIONS SECTION 143.081—
DETERMINATION OF PHYSICAL OR MENTAL FITNESS

See Section 143.081, Chapter 143

- (1) Each employee shall continually remain in such physical and mental condition as to be capable of rendering safe and efficient service to the City and performance of the duties and essential functions assigned to the employee.
 - (2) In keeping with the City's policy of being a drug free work place, the Commission finds that the physical and mental fitness of all classified employees is of significant importance to the City and the Commission.
 - (3) Each employee shall be required to submit to a psychological or physical examination where there exists some reasonable basis to believe that the employee's mental or physical fitness for duty is an issue. Determination of the employee's mental and/or physical fitness for duty shall not be subject to Commission or Hearing Examiner's review. The findings of the medical panel as outlined in Chapter 143 shall be determinative and final.
 - (4) A member who has not been certified as fit for duty shall be subject to removal from the classified service. Such removal may be voluntary or involuntary.
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SECTION 143.082 EFFICIENCY REPORTS

See Section 143.082, Chapter 143

The Heads of the Fire Department and Police Department shall annually evaluate the performance and efficiency of each classified employee of the Fire and Police Departments. The efficiency reports shall reflect the actual performance of classified employees.

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**SECTION 143.083 EMERGENCY APPOINTMENT OF TEMPORARY FIREFIGHTERS
AND POLICE OFFICERS**

See Section 143.083, Chapter 143

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**SECTION 143.084 CIVIL SERVICE STATUS AND PENSION BENEFITS FOR CERTAIN
FIRE FIGHTERS AND POLICE OFFICERS**

See Section 143.084, Chapter 143

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SECTION 143.085 FORCE REDUCTION AND REINSTATEMENT LIST

See Section 143.085, Chapter 143

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SECTION 143.086 POLITICAL ACTIVITIES

See Section 143.086, Chapter 143

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SECTION 143.087 STRIKE PROHIBITION

See Section 143.087, Chapter 143

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SECTION 143.088 UNLAWFUL RESIGNATION OR RETIREMENT

See Section 143.088, Chapter 143

SECTION 143.089 PERMANENT PERSONNEL FILE

See Section 143.089, Chapter 143

Access to records of employees in the classified service, employment applications, background investigation records and reports, examinations and answer sheets shall be governed by Chapter 143 of the Texas Local Government Code and the Texas Government Code and appropriate federal statutes.

SECTION 143.090 – RELEASE OF PHOTOGRAPHS OF POLICE OFFICERS.

(See Section 143.090, Chapter 143)

(Sections 143.091-100 reserved for expansion).



