



CITY OF MISSION, TEXAS
POLICE OFFICER AND FIREFIGHTER
LOCAL CIVIL SERVICE RULES

CHAPTER 1. PURPOSE AND APPLICABILITY

1.01 Purpose The purpose of the Civil Service Law is to secure an efficient Police and Fire Department, composed of capable personnel free from political influence and with permanent tenure as public employees. The Civil Service Commission shall administer the law in accordance with this purpose, using its authority fairly and impartially and in the best interest of both the employees and the City of Mission, Texas

No member of the Commission or employee of the City of Mission shall use his/her official authority or influence to coerce the political activity of any employee, nor in connection with employment, promotion or dismissal of any employee, because of his/her political opinions, religious affiliations, race, or because of his/her giving or refusing to give any contribution, money or thing of value to any party or person for any purpose.

1.02 Applicability These Rules shall apply only to Police Officers and Firefighters as defined in Section 143.003 of Texas Codes Annotated, Local Government Code Acts 1987, 70th Leg. Chapter 143 (this chapter), Municipal Civil Service, and to the Chief of the Police and Fire Department where applicable. Said employees shall be governed first by the State Law and these Rules, then by the CITY of Mission Personnel Policy and then by Department Rules and policies.

1.03 Definitions The following words and terms shall be defined as follows;

“Police Officer” shall mean employees who are in the Classified Service and who come under the definition of Police Officer as set out in Section 143.003 of the Local Government Code.

“Firefighter” shall mean employees who are in the Classified Service and who come under the definition of Firefighter as set out in Section 143.004 of the Local Government Code”

“Chapter” shall mean Local Government Code Chapter 143.

“Days” for purpose of procedural time periods shall be calculated as working days. Weekends and legal holidays shall not be counted. A legal holiday includes all days set Legislature designates as general holidays, days the Commissioner’s Court in Hidalgo County designates as a holiday, days the City of Mission recognizes as legal holidays,

CHAPTER 2. MISSION CIVIL SERVICE COMMISSION

2.01 Organization. The Civil Service Commission shall be composed of 3 members who meet the following requirements:

- 1) Be of good moral character;
- 2) Be a United States citizen;
- 3) Be a resident of the municipality who has resided in the municipality for more than three years;
- 4) Be over 25 years of age; and
- 5) Not have held public office within the preceding three years.

The Commission members shall be appointed by the Mayor, with the approval of the City Commission. Annually during the month of January, it shall elect a Chairman and Vice Chairman. Any Civil Service Commissioner shall automatically be suspended from office if charged by indictment or information with a felony, or a criminal offense involving moral turpitude, pending the disposition of the charge. If found not guilty, he/she may resume his/her office. The City Commission may appoint a substitute Commissioner to act during pending criminal proceedings.

2.02 Meetings Regular meetings of the Civil Service Commission shall be held at City Hall on a certain day each month, which is set by the Civil Service Commission from time to time. Special meetings may be called by the Director, at the request of the Chairman or any two Commissions. Meetings shall be open to the public and to representatives of the press. Members of the City Managers Office may attend as directed by the City Manager. Matters to be brought before the Commission shall be filed, in writing, with the Director at least 72 hours (3 days) prior to the meeting date and time. If a specific section of Chapter 143 or the Local Civil Service Rules is not cited, the item will not be listed as an agenda item. Two members of the Civil Service Commission shall constitute a quorum.

2.03 Roberts Rules of Order Robert's Rules of Order are to be used as a guide by the Commission in its regular business and proceedings. Appeal hearings shall proceed as hereafter set forth in Chapter Thirteen of these Rules and Regulations.

2.03 (A) The normal order of business at a non-appeal hearing shall generally be:

- 1) Call to order;
- 2) Approval of minutes of previous meetings;
- 3) Communications for consideration;
- 4) Consideration of reports;
- 5) Unfinished business;
- 6) New business; and
- 7) Adjourn.

2.03 (B) Public Comments

- 1) The opportunity for public comment may be placed on the agenda once every four months, on the regularly scheduled meetings for January, May, September, and November.

2.04 Executive Session

The Commission may meet in Executive Session, at which meeting no official action may be taken. Only duly appointed members of the Commission, the Director, and such other persons as the Commission may invite to be present may be invited to attend an Executive Session, as defined under State Law.

2.05 (a) Director of Civil Service The Office of Director shall be filled by appointment by the Commission. The person must meet the same requirements as provided for members of the Civil Service Commission, except the Director is not required to meet the three-year residency requirement. Said Director may either be a member of the Commission, an employee of the City, or some other person. The Mission City Manager, with the Approval of the City Council shall determine what salary, if any, shall be paid to such Director. Said Director shall, at all times, be subject to removal by the City Manager. The Director shall serve as secretary to the Commission, and shall perform work incidental to the Civil Service Commission as required by the Commission.

2.05(b) The Director of Civil Service who shall perform work incidental to the Civil Service System as required by the Commission. The Commission shall have the authority to remove and replace the Director at any time. The Director of Civil Service or his/her designated representative(s), will also act as Secretary of the Commission and/or as Chief Examiner of Tests and Test Appeals. The Director or his/her designee shall also:

- i) Be the general manager of Civil Service activities and be responsible for the direction of the staff and work product related to those activities;
- ii) Coordinate with the Department Heads regarding the administration of personnel program as required by Chapter 143, which may include but is not limited to:
 - 1) Serving as Secretary to the Commission;
 - 2) Serving as the Chief Test Examiner for the Commission and supervisor of all examinations, including the preparation, scheduling, scoring and security thereof,
 - 3) Recruitment and examination of applicants,
 - 4) Classification of positions,
 - 5) Salary recommendations,
 - 6) Benefit administration,

- 7) Employee information and counseling,
- 8) In-Service training,
- 9) Performance appraisal system,
- 10) Leaves of absence,
- 11) Maintenance and development of personnel standards and programs,
- 12) Procedures for the discipline and/or termination of employees,
- 13) Such other matters as may be deemed reasonably necessary in regard to the efficient and effective administration of the Civil Service System for the City of Mission.

iii) The Civil Service Director or his/her designee(s) shall maintain an official roster containing at least the names, job title or code, salary, time and attendance records, ethnicity, hire date, Department and other relevant matters of all employees in the Civil Service of the City of Mission as required pursuant to Chapter 143 of the Local Government Code. Such information shall be available upon request, through the City's Human Resources Department. The Civil Service Director shall maintain general Civil Service records pursuant to 143.089 (a to f) to include applicant records, recruitment, examination, appeals, correspondences to and from the Commission, historical information, physical and psychological appeals and any other records related to the business of the Commission. The Civil Service Director or his/her designees(s) shall also maintain the personnel files of all employees in the Civil Service of the City of Mission, as required by Section 143.089 (a to f) of Chapter 143. This record will include all personnel actions, personal employment data, benefit information, and education courses or seminars attended and other matters of an employee's employment history as deemed relevant by the Director, the Department Head and as permitted by State Law.

DUTIES AND POWERS OF THE COMMISSION

2.06 (a) Investigations & Inspections

The Commission or a Commission member designated by the Commission may investigate and report on all matters relating to the enforcement and effect of this chapter and any Rules adopted under this chapter and shall determine if the chapter and Rules are being obeyed.

2.06 (b) Reports

The Commission shall tour the facilities annually and may report and recommend to the City Council and City Manager concerning the administration of Police and Firefighting Services

2.06(c) Reports to the Civil Service Commission

Appointing authorities shall make prompt and complete reports to the Civil Service Commission of the following matters, after final determination by Administrative Officials, upon the forms prescribed by said Commission, or by letters where no form is prescribed:

- (1) Appointments, whether temporary, emergency or permanent.
- (2) Reinstatement appointments.
- (3) Refusal or neglect to accept appointments by a person whose name has been certified as an eligible.
- (4) Transfer of any officer, or employee to or from one administrative branch or from one division to another in such branch, or from one position to another.
- (5) Leave of absence.
- (6) Suspensions.
- (7) Removals from the Service, and the cause of such removal, whether resignation, discharge or reduction of force.
- (8) Change in compensation.
- (9) Creation or abolition of any office or place of employment.
- (10) Any material changes in the duties of an officer or employee, or in the organization of Departments.
- (11) All other information found needful by the Civil Service Commission in the performance of its duties and the completion of any of its various records.
- (12) Every report shall contain the name and address of the employee affected, together with the date upon which the action takes effect, and such other facts and information as will make it possible for the Civil Service Commission to maintain a complete and correct record.

2.06 (d) Retention of Records All original papers, examination papers and questions, certificates, and all other employment records kept pursuant to Tex. Local Gov't Code 143.089 (a to f) or offered in any Civil Service Hearing, are the property of the Civil Service Commission and must be filed in the office of the Civil Service Commission or other suitable secure place and kept not less than one year, excepting the application and examination papers of those failing to pass, which may be destroyed after six months.

2.06 (f) CHANGE OF RULES These Rules may be amended, repealed or supplemented by the Civil Service Commission at any time and new Rules may be adopted. Seven (7) days before action by the Commission to amend, repeal, or supplement any of these Rules or adopt new Rules, notice of such action shall be issued. The notice shall contain the proposed changes or the proposed new Rules and the date and the place at which the Commission will hold a public hearing on such proposals. Copies of the notice and of the proposed changes or new Rules shall be posted on the City public bulletin board in the office of the Civil Service Commission, and elsewhere as the Commission deems advisable. Copies of the notice and proposed changes or new Rules shall be available for inspection by the public and City employees. The Civil Service Commission after public hearing, shall take action on the proposed changes or new Rules and, if by majority vote such changes or new Rules are adopted, shall refer them to the City Council for approval. A minimum period of fifteen (15) days shall lapse between a recommended change by the Commission and action by the Council. All Rules and amendments thereto shall become effective upon the date of their approval by the City Council. Copies of approved Rules and amendments shall be distributed forthwith to all City Departments and shall be made available for inspection by the public and City employees

2.06 (g) COMMISSION RECORDS All Police and Fire records of the Civil Service Commission shall be deemed public information and shall be governed by the Texas Open Records Act, Article 6252-17a, V.A.C.S. Those portions of an employee's personnel file and employment record that are deemed not normally subject to public disclosure under the Open Records Act and the legal precedent interpreting same are specifically exempted from the provisions of this paragraph.

CHAPTER 3. CLASSIFICATION OF FIREFIGHTERS AND POLICE OFFICERS

3.01 AUTHORITY FOR CLASSIFICATION OF FIREFIGHTERS AND POLICE OFFICERS AND APPOINTMENT OF ASSISTANT CHIEF The Commission shall provide for classification of all Firefighters and Police Officers, such classification to be made effective through the budget ordinance adopted annually by the City Commission. The City of Mission shall allow the Police Chief to appoint to the classification immediately below that of department head one position plus one, serving in that classification on January 1, 1983. The Fire Chief may appoint from the ranks of the employees with officer (as defined in Section 3.02 of these Rules) rating to the classification immediately below that of Fire Chief one employee to such position.

3.02 DEFINITION OF CLASSIFIED POSITIONS Classified Positions shall include those coming under the definition of "Firefighter" and "Police Officer" in Section 143.003, Definitions, of the Municipal Civil Service Law. Except for the Department head and a person, the Department Head appoints to the position immediately below Department, (and in the case of the Police Department, the additional position as provided by these rules, all other Police Officer and Firefighter positions/classifications shall be filled from eligibility lists that result from competitive examinations. The Classified Positions shall be for the Police Department the positions of Police Officer, Corporal, Sergeant and Lieutenant. The Classified Positions for the Fire Department shall be Firefighter, Engineer, Lieutenant, Captain and Deputy Chief.

CHAPTER 4. APPLICANTS AND APPLICATIONS

4.01 PROCEDURES ON APPLICATIONS All applicants shall file a written application on forms supplied. In order for such applicant to be eligible to take any examination for an entrance position, his/her application shall have been on file with the Director no less than ten days prior to the date of the examination. The Director shall review such applications to ascertain that the applicant meets the minimum qualifications.

4.02 APPLICATIONS REPORT The Director shall report to the Commission the disposition of all applications received, and make all pertinent information available for the Commission's review.

4.03 MINIMUM QUALIFICATIONS Each applicant shall meet the following minimum qualifications:

EDUCATION:

- a) Police Officer Successful completion of 30 accredited college hours; or 2 years of military service with an honorable discharge; or have current certification from Texas Commission on Law Enforcement Officer Standards,
- b) Firefighter; A high school diploma or a GED with 12 hours of college.

AGE:

Police Department

At least 21 years of age, and not have reached his/her 45th birthday.

Fire Department

At least 18 years of age, and not have reached his/her 41st birthday.

An applicant may not be certified as eligible for a beginning position with the Police Department or Fire Department unless the applicant meets all legal requirements necessary to become eligible for future license by the Texas Commission on Law Enforcement Standards and Education or the Commission on Fire Protection Personnel Standards and Education. Each Police Officer or Firefighter affected by this chapter must be able to read and write English.

The Department Head will have discretion in accordance to Chapter 143 in selecting the qualified applicant to fulfill the department needs. Preference may be given to those who hold a certification as an EMT, AEMT, or Paramedic by the Texas Department of State Health Services.

Among those who successfully pass the examination, hiring preference will be given to candidates who are certified. The Civil Service Commission has found that a valid reason to pass over an applicant may include the fact that an applicant is not immediately available for duty as a certified police officer or firefighter because an applicant lacks a valid police officer or firefighter certification and/or has not graduated from the academy, provided that the department head has made a determination that in the best interest of public safety, the applicant should be available to immediately deploy as a police officer or firefighter.

An applicant who fails the written entrance examination two (2) times will no longer be eligible for employment as a Firefighter or Police Officer.

4.04 REASONS FOR REJECTION The Commission or Director may refuse to examine, or after examination, to certify as eligible, any applicant found to lack any of the established minimum qualifications for the position for which the applicants applies;

I) Who is without good moral character, as demonstrated by past conduct; .

2) For purposes of this provision, the Commission has determined that conduct is without good moral character if, among other things, the conduct in question would result in the indefinite suspension of a member of the Classified Service of the Department considering the applicant;

- a unfit mentally or physically for performance of the duties of the position to which the applicant seeks appointment;
- b addicted to or habitually uses barbiturates or narcotics;
- c uses intoxicating beverages to excess;
- d has been found guilty of a felony or misdemeanor involving moral turpitude or other conduct which, if engaged in by a member of the Classified Service, would be grounds for indefinite suspension;
- e has been dismissed from public Service for delinquency or misconduct;
- f has intentionally made a false statement or of Mission of any material fact in the application, or has practiced or attempted to practice any deception or fraud in the application, the examination, or in securing his/her eligibility for appointment;
- g whose character, in the opinion of the Commission, is temperamentally unsuited for the position sought; or
- h has been dismissed from any position for delinquency or misconduct, or has an otherwise undesirable employment record.

Rejection under this section two (2) times will permanently disqualify an applicant for future consideration to any entry level position in the Police and Fire Departments.

4.05 RECOMMENDATIONS, RESTRICTIONS ON RECOMMENDATIONS No recommendation for any eligible applicant, competitor, or employee relating to his/her political opinions or religious affiliations shall be received, filed or considered by the Director of the Commission. No discrimination shall be exercised, threatened or promised against or in favor of any eligible applicant or competitor because of his/her political opinions, affiliations, race or religious beliefs, unless such political opinions or affiliations promote the overthrow of the United States Government.

4.06 RETENTION AND DISPOSITION Applications shall remain on file in the office of the Director, and under no circumstances be returned to the applicant. Applications which are more than two (2) years old may be destroyed.

CHAPTER 5. FILLING ENTRANCE POSITIONS

5.01 EXAMINATION & ELIGIBILITY LISTS The Commission shall make provisions for open, competitive examinations for persons making proper applications and meeting the requirements herein prescribed. All eligibility lists for original positions shall be created only as a result of such examinations, and no appointment shall ever be made for any Classified position in the Police and Fire Department except as a result of such examination. An applicant for an entrance position in either the Fire or Police Department may be allowed to take the examination for both positions and be placed on either eligibility list for both Police Officer and Firefighter. Upon employment in either Department, his/her name shall automatically be removed from the eligibility list for the other Department.

5.02 NOTICE OF EXAMINATION Before the 10th date before the date an entrance examination is held, a notice of such examination shall be posted in the lobby of Mission City Hall. Said notice shall show position to be filled and the date, time and place of the examination and minimum qualifications for acceptance.

5.03 CHARACTER AND CONTENT OF EXAMINATIONS All entrance examinations shall be of such nature as to fairly and accurately test the relative competency and fitness of the persons examined to perform the duties of the particular position to which they seek appointment, and to show either familiarity with the knowledge needed, aptitude to take training to acquire the necessary knowledge, or both. The Director or his designee, as approved by the Commission, shall be responsible to the Commission for the preparation, administration and grading of all tests.

5.04 CONDUCT OF EXAMINATION The written examination shall be given to all applicants, in the presence of each other, who have qualified to take such examination. Admission to an examination shall not be allowed after commencement of the examination. An applicant, in any examination, who uses any unfair or deceitful means to pass such examination, shall be immediately disqualified.

5.05 GRADING OF EXAMINATIONS Examination papers shall be graded by the Director or his designee, as approved by the Commission, and the scores submitted to the Commission for review. The minimum passing grade on the examination shall be seventy percent (70%). Applicants who have served in the armed forces of the United States, have received a passing grade on the examination and have received an honorable discharge shall receive five points in addition to his/her minimum passing grade of seventy percent (70%). For the purpose of this section "Armed Forces of the United States shall mean the following:

- (a) Active Duty in the United States Regular Army, Navy, Air Force, Marines or Coast Guard
- (b) A member of the United States Armed Forces Reserve or State National Guard unit who was placed on active duty from which they received an Honorable Discharge.

5.06 CORRECTION OF ERROR On written appeal submitted by any applicant within five days after date of notice of his/her position on the eligibility list the Director may correct any manifest error

in grading appearing in such paper or in the record or in his position on the eligibility list, such correction in any case to be without prejudice to the status of any person previously appointed as a result of such examination. This provision shall not be held to prevent the Director from correcting an obvious clerical error at any time during the life of any eligibility list. The Commission shall have the power, whenever in its judgment the best interest of the Police and Fire Department require it, to order a re-examination of applicants; and shall have the power to correct, amend, or revoke any eligibility list, paper or record where it appears that an error has been made or an injustice done; or when any person whose name appears upon the eligibility list has for any reason to become ineligible for appointment to the public Service, to strike such name from said list.

The examination papers of an applicant shall be shown only to the applicant, his duly authorized representative, and the appropriate Department Head, City Manager or the Commission, except when prohibited by TCLEOSE Regulations.

5.07 NOTICE OF PLACEMENT ON OR REMOVAL FROM LIST Each applicant shall be notified in writing by the Director of his/her grade on the examination, whether he/she passed, and his/her position on the eligibility list.

5.08 ELIGIBILITY LIST The Director shall present to the Commission the list of written examination grades and the Commission shall approve the names of those candidates whose names are to be placed on the eligibility list. Names shall be placed on the list in order of the written examination grade, including armed forces preference points, if any. All eligibility lists shall remain in existence for twelve (12) months, unless exhausted or expired. At the end of twelve (12) months the list shall expire and a new examination given.

5.09. BACKGROUND INVESTIGATION Prior to the time that a vacancy may be filled from an eligibility list, the Department Head of the respective Department shall inquire into the backgrounds of the successful applicants. Such inquiry may include a background investigation, criminal record check and such other inquiries, including a personal interview if necessary, that the Head of the respective Department desires to make, prior to appointment.

5.10 PHYSICAL ABILITY TEST All applicants who successfully pass the written examination shall be notified by the Director to report for a Commission approved physical ability test with a person or persons to whom this duty is delegated by the Commission. Failure to successfully complete the physical ability test will result in removal from the eligibility list.

5.11 PHYSICAL REQUIREMENTS AND EXAMINATIONS Appropriate physical and mental examinations, set by the respective Departments and approved by the Commission, shall be required of all applicants for beginning positions prior to appointment. The examination shall be given only after a conditional offer of employment has been made to the applicant. Said offer shall be conditioned only on the successful passage of the physical and mental examinations. The examinations shall be given by a physician, psychiatrist or psychologist, as appropriate, appointed by the Commission and paid by the City. In the event an applicant fails to successfully complete the examination and be certified as physically and/or mentally fit for duty, then the applicant may call for further examination by a Commission of three (3) physicians, psychiatrists or psychologists as appropriate, appointed by the Commission. The entire expense for such additional examination shall be paid by the applicant. The Commission's findings shall determine the issue and be final.

5.12 REQUISITION AND CERTIFICATION OF EMPLOYEES When a vacancy is to be filled, the Chief of the Department shall make a written requisition to the Director for certification of eligible candidates on the form provided. The Director shall certify to the Department Head the list of all scores arranged from highest to lowest and the Department Head shall thereupon make an appointment from said list of names. The appointment shall be of the person with the highest grade, except there be a valid reason why such appointment should be given to the one making the next highest grade. Whenever such appointment is made of one not holding the highest grade, such reasons shall be reduced to writing and filed with the Commission; and there shall be set forth plainly and clearly good and sufficient reasons why said appointment was not made to the person holding the highest grade. In the event the person holding the highest grade is not certified for appointment, he/she shall be furnished with a copy of the reasons therefore, as filed with the Commission, and in the event the one having the third highest grade is appointed a copy of such reasons shall also be furnished to the one holding the second highest grade. The Civil Service Commission has found that a valid reason to pass over an applicant may include the fact that an applicant is not immediately available for duty as either a certified police officer or certified fire fighter because the applicant lacks a valid police or fire fighter certification and/or has not graduated from the academy, provided that the department head has made a determination that in the best interest of public safety, the applicant should be available to immediately deploy as a police officer or fire fighter.

5.13 TEMPORARY APPOINTMENTS Any persons 36 years of age or older who may be appointed to Police and Fire Departments under emergency conditions outlined in the Civil Service Law shall be subject to the conditions that they:

- a Be designated as Atemporary@ employees,
- b be ineligible for pension benefits,
- c be ineligible for appointment or promotion when one or more permanent applicants or employees are available,
- d be ineligible to become full-fledged Civil Service employees; and
- e be terminated before any permanent Civil Service employee is terminated, pursuant to provisions governing terminations in the event of reduction of force.

Temporary appointments of persons under the age of 36 may be made when a shortage of acceptable applicants delays the scheduling of entrance examinations and preparation of an eligibility list from which to employ permanent employees. Said temporary employees may be appointed with the prior approval of the City Manager, in every instance for tenure of less than six months; shall not be eligible for Civil Service benefits, nor subject to provisions of the Civil Service Law.

5.14 NOTICE OF EMPLOYMENT Notice of the certification of a person=s name for appointment shall be given such person, in writing, by the Civil Service Director at the applicant=s last known address.

5.15 FAILURE TO RESPOND TO OFFER OF EMPLOYMENT Failure of an eligible person to accept the offer of employment within ten calendar days after mailing of certified mail shall be considered cause for removal of his/her name from the eligibility list. The name of the applicant refusing appointment, failing to respond to the Department head=s offer of employment, or failing to give valid reason why his/her name should remain on the eligibility list in deferred status, shall be stricken from the eligibility list.

5.16 CERTIFICATION RECORD A record of each person certified and appointed shall be filed with the Department head. Such record shall show: the date notice of examination of position was posted, date on which person certified took examination, name of person conducting examination, relative position of person on eligibility list, date when person certified took physical examination, name of physician making examination with information as to whether or not applicant was accepted or rejected, date on which requisition for filling vacancy was made, date on which applicant was notified to report for duty and date on which pay is to start.

ENTRY LEVEL PROBATIONARY PERIOD

6.01 LENGTH OF AND APPLICABILITY

- a) All newly hired firefighters and police officers who, as a city employee, attends a service academy shall be required to serve a period of eighteen months on probation . A probationary police officer or firefighter is employed at the sole will of the City of Mission and acquires no employment rights, expectation of continued employment and may be terminated without cause at any time before completion of his or her probationary term.
- b) A Police Officer or Firefighter who is hired after graduation from a police or fire academy shall serve twelve (12) months of probation.
- c) Before the applicable 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 upon completion of the probationary term.

CHAPTER 7. PROMOTIONAL EXAMINATIONS

7.01 EXAMINATION REQUEST Notification of vacancies to be filled by promotion shall be given to the Director by the Department head. Following such notification, the Director shall schedule the examination for no later than 90 days after the vacancy occurs, if no eligibility list exists. Promotional examinations may also be held at a such time as the Commission may direct, in order that a list of eligible candidates for all positions be available for the filling of potential vacancies without unnecessary delay.

7.02 NOTICE OF EXAMINATION

- a) Notice of Civil Service Director

More than 30 days prior to the examination, the Director shall post notice of such examination on the bulletin board in City Hall, in the office of the Commission, and on the bulletin boards of the respective Departments. The notice shall show the position to be filled, with date, time, and place

thereof, and such other information as the Commission may consider necessary. Copies of such notice shall be furnished in quantities sufficient for posting in the various substations or sub-Departments in which the position is to be filled. Notice of the names of each source used for questions for such promotional examination shall be posted 90 days in advance. Each promotional examination shall be competitive. The Commission has determined that for an examination to be competitive, at least two (2) persons must actually take the examination and attempt to secure the promotion.

7.02(b) Notice by Applicant

At least 15 days prior to the testing date, any individual whom intends to test for any open position shall notify the civil service director in writing of his intent to test for the position. Notice is effective when received by the Civil Service Director. A failure by a firefighter or police officer to provide notice of intent to test shall render that firefighter or police officer ineligible to test for the examination.

7.03 QUALIFICATIONS FOR PROMOTIONAL EXAMINATION All promotional examinations shall be open to all Police Officers or Firefighters who have held a continuous position for two years or more in the classification immediately below in salary of that classification for which the examination is to be held.

Where there is not a sufficient number of members in the next lower position in salary with two years Service in the position to provide an adequate number of persons to take the examination, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held who have held a continuous position for two years or more in that classification. However, if a Police Officer or Firefighter who has previously terminated his/her employment with the Department and was subsequently re-employed by the same Department, the Police Officer or Firefighter must again meet the two- year Service requirement for eligibility to take a promotional examination. In determining if an applicant has met the two- year Service requirement, a Police and Fire Department may not consider service in another Police or Fire Department. This section may not be construed to prohibit lateral crossover between classes, provided, however, that the requirement of two (2) years service in the Department immediately preceding the day of promotional examination shall not be applicable to those persons recalled on active military duty for a period not to exceed twenty-four months. Such persons shall be entitled to have time spent on active military duty considered as duty in the Department. However, any person whose absence for active military duty exceeds twelve months, shall be required to serve ninety days upon returning to the Department before he/she shall become eligible to participate in a promotional examination, such period being considered essential for bringing him/her up to date on equipment and techniques.

7.04 EXAMINATION CONTENT Promotional examinations shall be entirely in writing, shall be prepared so as to test the knowledge of the applicants concerning information and facts, and shall be based upon the duties of the positions sought, upon any study courses given by Departmental schools of instruction and upon material which has been made available to all members of the Department involved. The examination questions must be taken from the sources posted as prescribed by Section 143.029(a). The Department Heads may, but are not required to suggest source materials for the

examinations.

7.05 CONDUCT AND GRADING OF EXAMINATION The Director is responsible for the preparation and security of each promotional examination. The fairness of the competitive promotional examination is the responsibility of the Commission, the Director, and each municipal employee involved in the preparation or administration of the examination. All applicants for the vacancy to be filled shall be given an identical examination in the presence of each other. Any person who is caught cheating on the examination shall be disqualified. When one of the applicants taking the examination has completed his/her answers the grading of such examination shall begin; and all of the examination papers shall be graded as they are completed at the place where the examination is given and in the presence of any applicants who wish to remain during the grading. Each applicant shall have the opportunity to examine his/her examination and his/her answers thereto together with the grading thereof, and if dissatisfied shall, within five business days, appeal the same to the Commission for review. A business day is defined as Monday through Friday, excluding holidays. If an applicant requests, the applicant is entitled to see his/her promotional examination, answers, and source material as provided by this subdivision, but may not remove the examination or copy a question used in the examination. Seniority points will be added to the raw score of police officers automatically, but for Fire Fighters, the applicant must make a score of 70 in order to add seniority points. Points will be added at the rate of one (1) point for each year of service up to a total of ten (10) points. Only those persons who score 70% or above shall be deemed to have passed the examination. The grade that must be placed on the eligibility list for each police officer or fire fighter shall be computed by adding the applicants points for seniority to the applicant's grade on a written examination, but for a fire fighter, only if the applicant scores a passing grade on the written examination. Seniority points shall be added the rate of one (1) point for each year of service, up to a total of ten (10) points

7.51 TIEBREAKERS

In the event that two or more persons make identical total final scores, the following procedures will be used to break the tie and to determine placement on the final eligibility list for promotion:

- a) Time in Civil Service
- b) Seniority in rank
- c) Highest Raw Score. The person who had the highest examination raw score prior to the addition of seniority points
- d) Time in military
- e) Best score on first thirty questions of the exam._

7.06 ELIGIBILITY LIST APPROVAL AND POSTING The Director shall present to the Commission a list of grades resulting from the examination and the Commission shall approve the eligibility list consisting of the names of those who have achieved at least a raw score of seventy percent (70%). The grade which shall be placed on the eligibility list for each successful candidate for promotion shall be computed by adding such applicant=s points for seniority, one point for each year of Service, up to a maximum of 10 points to the raw examination score.

7.07 REQUISITION & CERTIFICATION OF ELIGIBILITY LIST When a vacancy occurs in a non-entry position that is not appointed by the Department head, the vacancy shall be filled by the person having the highest grade, except as provided in Section 7.09. If an eligibility list for the position to be filled exists on the date the vacancy occurs, the Director, on request by the Department head, shall certify to the Department head the names of the three persons having the highest grades on that eligibility list. The Commission shall certify the names within 10 days after the date the Commission is notified of the vacancy. If fewer than three names remain on the eligibility list or if only one or two eligible promotional candidates passed the promotional examination, each name on the list must be submitted to the Department head. The Commission shall submit names from an existing eligibility list to the Department head until the vacancy is filled or the list is exhausted. If an eligibility list does not exist on the date a vacancy occurs or a new position is created, the Commission shall hold an examination to create a new eligibility list within 90 days after the date the vacancy occurs or a new position is created. If an eligibility list exists on the date a vacancy occurs, the Department head shall fill the vacancy by permanent appointment from the eligibility list furnished by the Commission within 60 days after the date the vacancy occurs. If an eligibility list does not exist, the Department Head shall fill the vacancy by permanent appointment from an eligibility list that the Commission shall provide within 90 days after the date the vacancy occurs.

7.08 QUALIFICATIONS FOR PROMOTION Qualifications for promotions shall be governed by provisions outlined in Section 3, Qualification for Examinations. The Department Head shall appoint the person having the highest grade, unless there be a valid reason for not appointing such highest name, and in such case he/she shall, before such appointment, file his/her reasons in writing for the rejection of the higher name or names with the Commission, and discuss such reasons with the applicant or applicants being bypassed, which reasons shall be valid and subject to review by the Commission upon the application of such rejected person.

7.09 PROMOTION BELOW THE TOP OF THE LIST Unless the Department Head has a valid reason for not appointing the eligible promotional candidate having the highest grade, the Department head shall personally discuss the reason with the person being bypassed before appointing another person. The Department Head shall also file the reason in writing with the Commission. On appeal of the bypassed eligible promotional candidate, the reason the Department Head did not appoint that person is subject to review by the Commission. If a person is bypassed, the person=s name is returned to its place on the eligibility list and shall be resubmitted to the Department Head if a vacancy occurs. If the Department Head refuses three times to appoint a person, files the reasons for the refusals in writing with the Commission, and the Commission does not set aside the refusals, the person=s name shall be removed from the eligibility list.

Chapter 8. Semi Annual Efficiency Reports and Mental and Physical Fitness

8.01 Forms Distribution

The Department Heads, with the assistance of the Director, shall design appropriate efficiency report forms, performance standards, and a grading system thereof which shall be approved by the Commission. Within 10 calendar days after the date a Firefighter or officer received the copy of the persons efficiency report, the person may make a statement in writing concerning the efficiency report. The statement shall be placed in the persons personnel file with the efficiency report.

8.02 Rating Procedures

Efficiency Reports shall be made on each Firefighter and Police Officer by his/her immediate supervisor and the Chief of the Department. After the efficiency report has been prepared by the immediate supervisor it shall be reviewed with the employee. After review, it shall be forwarded to the Police Chief or Fire Chief, through the chain of command, which shall make comments, or suggestions for improvement. The Police Chief or Fire Chief may change scoring of the Firefighters or Police Officers efficiency report if he/she deems it appropriate, but he/she shall state the reason for such change on the report within ten days and that such comments will become part of the Police Officers or Firefighters permanent personnel file. The Police Chief and Fire Chief shall deliver the efficiency report to the Director for grading. The graded rating and a tabulation of grades shall be presented by the Director to the Commission for review and approval.

8.03 Annual Physical examinations

The Police Department and Fire Department may require all classified personnel to take a yearly physical examination by a physician designated by the Department Head. The purpose of the examination shall be to insure the officer's fitness for his duties as a firefighter or police officer.

CHAPTER 9. CONDUCT OF EMPLOYEES

9.01 EFFICIENCY, TRAINING Employees shall take such training as is made available to them in the Department. Failure or refusal to take such training shall be grounds for disciplinary action. A poor showing on Departmental tests on such training shall be noted by grading officers on the employees' efficiency rating.

9.02 DEPARTMENTAL RULES The Department Head shall be responsible for the preparation of Departmental Rules, a copy of which shall be issued to every employee upon their employment. Infraction of such Rules by any member of the Department may be grounds for disciplinary action or termination.

9.03 CONDUCT OFF THE JOB During his/her off-duty hours an employee shall conduct himself so as not to reflect discredit on the City, his/her Department or fellow employees.

9.04 POLITICAL ACTIVITY The Commission or the municipality's governing body may not restrict a Police Officer or Firefighter's right to engage in any political activity, except as provided in section 143.086 of the Local Government Code.

CHAPTER 10.

10.01 (A) INJURY LEAVE Injury leave of absence for officers injured on the job shall be provided at full pay for periods of time commensurate with the nature of injuries received while in the line of duty, such leave to be provided for a period of not more than one year. At the expiration of the one-year period, the City Commission may extend such injury leave at full or reduced pay.

In the case of a Police Officer or Firefighter, if the injured employees salary should be reduced below sixty percent of his/her regular monthly salary, the employee may be retired on such pension as he/she is eligible for or until able to return to duty. Every injury shall be immediately reported by the employee to his/her supervisor, after which the Department head shall furnish a written report to the City Manager.

10.01 (B) SICK LEAVE Each employee shall be allowed fifteen (15) paid sick days annually. Sick leave shall be governed by Tex. Local Gov't Code § 143.113. The definition of sick days or what constitutes a day shall be as defined by the City of Mission Personnel Policy.

10.03 VACATION Each employee shall be allowed 15 calendar days paid vacation annually after completing thirty days of continuous employment in the Department. Vacation shall be earned at the rate of one and one fourth days for each full calendar month of Service. Vacation leave may not be accumulated from year to year in excess of 5 days, with a maximum of twenty-five days, and shall be taken annually in accordance to City Personnel policy. Should an employee, for any reason, leave the Classified Service, he/she shall be paid, upon termination, accrued vacation in accordance to City Personnel policy. A Police Officer or Firefighter who dies in the line of duty or who leaves the Classified Service because of disability will be entitled to a lump sum payment of all accrued vacation.

10.04 (a) MILITARY LEAVE: Training Period Any employee who is a member of the U.S. Military Reserve or the National Guard shall be allowed two weeks leave plus authorized travel time with pay to attend annual military training. No more than one such leave per year shall be granted. In order to be granted such leave, the employee shall inform the Department head no less than thirty days prior to the anticipated absence.

10.04(b) MILITARY LEAVE: Long Term On written application of an employee, the Civil Service Commission shall grant military leave without pay to such employee to enable him/her to enter military Service. Any such employee receiving military leave of absence hereunder shall be entitled to be returned to the position in the Department held by him/her at the time the leave was granted upon the termination of active military Service, provided he/she received an honorable discharge and remains physically and mentally fit to discharge the duties of that position, and further provided he/she makes application for reinstatement within the ninety days after his/her discharge. Upon being returned to said position, such employee shall receive full seniority credit for the time spent in the military Service. Prior to approval of reinstatement by the Civil Service Commission, the employee shall be given a physical examination by a physician selected by the Commission and qualify for reinstatement in the same manner as required for entrance into either Department. An employee granted military leave under this section shall be paid accrued vacation, if any. Accrued

sick leave shall be held to the employees' credit, for use upon return, or for termination pay in the event he/she is later separated from the Service.

10.05 REINSTATEMENT AFTER MILITARY LEAVE An employee who shall have been granted military leave in accordance with the provisions of the Civil Service Law and these Rules shall be entitled to be returned to the position in the Department held by him/her at the time the leave of absence was granted upon the termination of his/her active military Service, provided he/she receives an honorable discharge and remains physically and mentally fit to discharge. Upon being returned to said position, such member shall receive full seniority credit for the time spent in the military service.

10.051 MILITARY LEAVE TIME ACCOUNTS. (a) The City of Mission shall maintain military leave time accounts for the fire and police departments and shall maintain a separate military leave time account for each department.

(b) A military leave time account shall benefit a fire fighter or police officer who:

(1) is a member of the Texas National Guard or the armed forces reserves of the United States;

(2) was called to active federal military duty while serving as a fire fighter or police officer for the municipality;

(3) has served on active duty for a period of 12 continuous months or longer; and

(4) has exhausted the balance of the person's vacation, holiday, and compensatory leave time accumulations.

(c) A fire fighter or police officer may donate any amount of accumulated vacation, holiday, sick, or compensatory leave time to the military leave time account in that fire fighter's or police officer's department to help provide salary continuation for fire fighters or police officers who qualify as eligible beneficiaries of the account under Subsection (b). A fire fighter or police officer who wishes to donate time to an account under this section must authorize the donation in writing on a form provided by the fire or police department and approved by the municipality.

(d) A municipality shall equally distribute the leave time donated to a military leave time account among all fire fighters or police officers who are eligible beneficiaries of that account. The municipality shall credit and debit the applicable military leave time account on an hourly basis regardless of the cash value of the time donated or used.

10.053 REAPPOINTMENT OF POLICE OFFICERS WHO VOLUNTARILY RESIGN IN GOOD STANDING

The Chief of Police may, in his sole discretion, choose to reappoint or rehire any former police officer who was previously employed by the City of Mission, Texas. A police officer who is rehired under this provision (but not under § 10.05) is not required to take the City of Mission Civil Service Exam pursuant to Texas Local Government Code § 143.0251(e). However, in order for the officer to be eligible to be rehired as a patrolman, the police officer must meet the following criteria:

- a) The officer must, at the time of reappointment, satisfy the requirements of Mission Civil Service Rule 4.03.
- b) The officer must be rehired within 1 year of his last date of employment as a City of Mission police officer.
- c) The Officer must return to a twelve- month probationary status and shall not reacquire civil service protection until completing that twelve months of probation.
- d) The Officer will be treated as a new employee for all other purposes and shall have seniority, benefits or preference because of his prior status as a Mission police officer.
- e) The Officer must meet the two years of continuous service before being eligible for promotional exam.

CHAPTER 11. REDUCTIONS IN FORCE AND DEMOTIONS

11.01 REDUCTION IN FORCE – REINSTATEMENT LIST

In the event any position in the Fire or Police Department is vacated or abolished by ordinance of the governing body, the employee holding such position shall be demoted to the position immediately below the vacated or abolished position; provided that when any position(s) of equal rank may be abolished or vacated, the employee or employee, with the least seniority in the said rank or a volunteer shall be the one(s) who is demoted. In the event of such demotion, such employee or employees as are demoted without charges having been filed against them for violation of Civil Service Rules shall be placed on a position reinstatement list in order of their seniority. If any such position so vacated or abolished is filled or recreated within one year, the list must be exhausted before any employee not on such list is promoted to such position. Promotions from the position reinstatement list shall be in order of seniority. Employees promoted from such reinstatement list shall meet the same physical qualification requirements as required of other candidates for promotion whose names are on the current eligibility list, and shall be otherwise able to properly perform the duties of the position to which they are to be reinstated. The reinstatement list is superior to the eligibility list.

11.02 Layoffs/Reinstatement

In the event positions in the lowest classification are abolished or vacated, and it thereby

becomes necessary to dismiss employees from the Department, the employee with the least seniority shall be dismissed; but such employees as are involuntarily separated from the Department, shall be placed on the reinstatement list in order of their seniority, which list shall be exhausted before appointments are made from the eligibility list. When a person has been on a reinstatement list for three years, the person shall be dropped from the list but shall be restored to the list at the request of the Commission.

11.03 Demotions

Should a Department head desire to demote an employee under this jurisdiction, the Department head may recommend in writing to the Commission that such employee be demoted, giving his/her reasons thereof, and requesting that the Commission make such an order of demotion, furnishing a true copy of such recommendation immediately, in person, to the employee to be affected by such demotion, and discussing with the employee the reasons for such demotion. The Commission may refuse to grant said request for demotion; or if it feels that probable cause exists, it shall give the employee ten days advance written notice to appear before it at a time and place specified in said written notice to the employee to show cause why he/she should not be demoted. The Commission shall not demote any employee without such hearing. Should the employee fail to appear at such hearing, the Commission shall approve the demotion, and such decisions shall be final. If the employee appears at such hearing and desires to protest the decision of the Commission, he/she shall have the right to appeal to the District Court in accordance with provisions set out in the section of these Rules dealing with indefinite suspension.

11.04 Voluntary Demotions

When an employee voluntarily requests a demotion from the Department head, and such request is granted, the employee shall not thereafter be reinstated to the former rank or classification except in accordance with the Rules governing promotion. Approval of such voluntary demotion shall come under the authority of the Department head.

CHAPTER 12 DISCIPLINARY SUSPENSIONS

12.01 Procedure

Department heads may suspend an employee for violation of a Civil Service Rule for a reasonable period not to exceed 15 calendar days, or for an indefinite period. An indefinite suspension is equivalent to permanent dismissal from the Department. If offered by the Chief or head of the Department, the employee may agree in writing to voluntarily accept with no rights to appeal, a suspension of not less than sixteen (16) days or more than ninety (90) days, for violation of Civil Service Rules. The employee must accept the offer no later than the fifth (5th) working day after the offer is made. If the Chief or head of the Department suspends a person, the Chief or Department head, shall not later than the 120th hour after the hour of suspension, file a written statement with the Commission giving the reasons for suspension, and shall immediately furnish a copy of the statement to the suspended employee. The Chief or Department head shall deliver the copy in person to the suspended employee, or send a copy by certified mail. The order of suspension shall inform the employee that if he/she elects to appeal to a hearing examiner, the employee waives all rights of appeal to a district court except when the hearing examiner's award was without jurisdiction or in excess of its jurisdiction or procured by fraud, collusion, or other unlawful means. The order of suspension shall inform the employee that if he/she wishes to appeal, he/she must file a written appeal with the Commission no later than the tenth (10th) day after the date of which the employee receives a copy of the statement. If the employee refuses an offer of the suspension of not less than sixteen (16) days or more than ninety (90) calendar days and wishes to appeal to the Commission, the employee must file a written appeal with the Commission no later than the fifteenth (15th) day after the date the employee receives the statement, unless suspended employee and the Commission mutually agree to postpone the hearing and render a decision in writing no later than the thirtieth (30th) day after the date on which it receives the notice of appeal. The decision of the Commission shall state whether or not the suspended employee is permanently dismissed, or temporarily suspended from the Fire or Police Department, or restored to his/her former position or status in the Classified Service in the Department.

If the Commission finds that the period of disciplinary suspension should be reduced, it may order a reduction in the period of suspension. If the suspended employee is restored to the position or class of Service from which he/she was suspended, the employee shall receive full compensation at the rates of pay provided for the position or class of Service from which he/she was suspended for the actual time lost as a result of the suspension. All hearings of the Commission may deliberate the decision in closed sessions but may not consider evidence that was not presented at the hearing. The Commission shall vote in open session.

The written statement filed by the Department head with the Commission shall point out the Civil Service Rules alleged to have been violated by the employee and shall contain the alleged acts of the employee that the Department head contends are in violation of the Civil Service Rules. It is not sufficient for the Department head merely to refer to the provisions of the Rules alleged to have been violated. If the Department head does not specifically point out the act or acts complained of on the part of the employee, the Commission shall promptly reinstate the employee. In a Civil Service hearing conducted under this subsection, the Department head is restricted to his/her original written statement and charges which may not be amended. In the original written statement of charges and in any hearing conducted under this subsection, the Department head may not complain of an act or acts that occurred earlier than the 180th day immediately preceding the date on which the Department head suspends the employee.

An employee may not be suspended or dismissed by the Commission except for violation of the Civil Service Rules and after a finding by the Commission of the truth of specific charges against the officer or employee.

12.02 CAUSES FOR REMOVAL OR SUSPENSION

12.02.1 The tenure of every Civil Service employee shall only be during good behavior, and any such employee may be suspended or indefinitely suspended from the Civil Service for any actions of Mission involving one or more of the following grounds:

- 1) The conviction of the employee of a felony or other crime involving moral turpitude,
- 2) Violation of a provision of the Municipal Charter of the City of Mission, Texas,
- 3) Acts of incompetence,
- 4) Neglect of duty,
- 5) Discourtesy by an employee to the public or to a fellow employee while in the line of duty,
- 6) Acts showing a lack of good moral character,
- 7) Ingesting intoxicants while on duty or intoxication while on or off duty,
- 8) Conduct prejudicial to good order,
- 9) Refusal or neglect to pay just debts,
- 10) Absence without authorized leave,
- 11) Shirking duty, or cowardice, or
- 12) Violation of an applicable Police and Fire Department rule, directive, general or special order.

12.02.2 The term “cause” shall also be “employee misconduct” and shall necessarily include any act or omission that violates;

1. an applicable provision of Chapter 143, Local Government Code; or
2. an applicable rule or regulation duly adopted by the Civil Service Commission of Mission.

12.03 A Department Head may proceed with appropriate suspension arising from any particular factual event(s) or misconduct which would constitute "cause", only when the employee misconduct is related to those matters set forth in Section 143.051 of Chapter 143 and §12.002 above.

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

12.05 Prior to imposing any particular level of 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 if in the opinion of the Department Head the employee's misconduct warrants the disciplinary action imposed.

13.01 Disciplinary Appeal

a) Matters Not Subject to Appeal

1) Employee dissatisfaction resulting from a transfer or reassignment of duties, in and of itself, shall not constitute grounds for appeal procedures.

2) Employee dissatisfaction resulting from a discretionary policy decision or policy matters, in and of itself, shall not constitute grounds for disciplinary appeal procedures.

3) An employee who has voluntarily resigned or retired from the Civil Service thereby forfeits all rights to the disciplinary appeal processes, unless the appeal or request for hearing was timely filed prior to retirement or resignation.

4) An employee who has voluntarily accepted an agreement in writing which expressly evidences the intent to finally resolve the issue(s) of any form of disciplinary action imposed shall also include a statement to the effect that the employee waives all rights to further proceedings in the disciplinary appeal processes for such specific disciplinary action.

13.02 Matters Subject to Appeal

1) Suspensions;

2) Recommended Involuntary Demotions;

3) Promotional pass over's; or

4) Any other issues related to Chapter 143 requirements and on which the Commission has authority.

Chapter 14 HEARING EXAMINERS

14.01 In an appeal of an indefinite suspension, a suspension, a promotional pass over, or a recommended demotion, the appealing employee may elect to appeal to an independent third- party hearing examiner instead of the Commission. To exercise this choice, the appealing employee must submit a letter to the Director stating the decision to appeal to an independent third- party hearing examiner. The decision of the hearing examiner is final and binding on all parties. If the employee decides to appeal to an independent third-party hearing examiner, the employee automatically waives all rights to appeal to a district court. If the appealing employee chooses to appeal to a hearing examiner, the employee and the Chief or their designees shall first attempt to mutually agree on the selection of an impartial hearing examiner. If an agreement is not reached on the selection of the hearing examiner on or before the 10th day after the date the appeal is filed, the Director shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or Federal Mediation and Conciliation Service, or their successor in function. The filing of the case with AAA or the Federal Mediation or Conciliation Service shall fulfill this requirement. The employee and the Chief or their designees may mutually agree within five working days after receipt of the list, each party shall alternate striking a name from the list and the name remaining shall mutually agree on a date for the hearing.

The special hearing shall commence as soon as the hearing examiner selected can be scheduled. If the hearing examiner cannot commence the hearing within 45 calendar days after the date of selection, the employee may, within two days of learning of that fact, call for the selection of a new hearing examiner using the same procedure as provided in this section. In all hearings conducted under this section, the hearing examiner shall have the same duties, powers, and authority as the Commission, including the right to issue subpoenas. In a hearing held under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the conclusion of the hearing. In appeals not involving an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on an appeal within 30 days after the conclusion of the hearing. The inability of an examiner to meet the time requirement does not affect the validity of the disciplinary action or the hearing examiner's final decision or affect the jurisdiction of the hearing examiner.

All fees and expenses of the hearing examiner are shared equally by the appealing officer or employee and by the Department. The costs of witnesses for either side shall be paid by

the party who call the witnesses.

A state district court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. An appeal must be brought in the state district court, having jurisdiction in the municipality in which the Department head is located.

14.02 PROCEDURES AFTER CRIMINAL INDICTMENT

A) If Firefighter or Police Officer is indicted for a felony or officially charged with the Commission of a Class A or Class B Misdemeanor, the procedure prescribed by this section shall apply.

The head of the Department may temporarily suspend the Firefighter or Police Officer with or without pay. If the Department Head wishes to temporarily suspend the firefighter or police officer, the head of the Department shall notify the Firefighter or Police Officer in writing that he/she is being temporarily suspended with or without pay for a period not to exceed 30 days after the date of final disposition of the specified felony or misdemeanor complaint, and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

Conviction of a felony is cause for dismissal, and conviction of a Class A or B Misdemeanor may be cause for disciplinary action or indefinite suspension. Acquittal or dismissal of an indictment or a misdemeanor complaint does not mean that the Firefighter or Police Officer has not violated the Civil Service Rules or regulations and does not negate the charges that may have been or may be brought against him/her by the Department head.

If the action directly related to the felony indictment or misdemeanor complaint occurred or was discovered on or after the 180th day before the date of the indictment or complaint, the head of the Department may, not later than the 30th day after the date of the final disposition of the felony charge or misdemeanor complaint, bring a Civil Service charge against the Firefighter or Police Officer.

B) A Firefighter or Police Officer indicted for a felony or officially charged with the Commission of a Class A or B Misdemeanor who has also been charged by the Department head with a Civil Service violation directly related to the indictment or misdemeanor complaint may delay the Civil Service hearing for a period of not more than 30 days after final disposition of the indictment or complaint.

If the head of the Department temporarily suspends a Firefighter or Police Officer who has been indicted for a felony or officially charged with a Class A or B Misdemeanor, and the Firefighter or Police Officer is not found guilty of the indictment or complaint in the court of competent jurisdiction, the Firefighter or Police Officer may appeal for back pay. The Commission or hearing examiner may award all or part of the back pay or reject the

appeal.

C) The Department head may order an indefinite suspension based on an act or acts classified as a felony or Class A or B Misdemeanor after the 180-day time period after discovery of the act or acts by the Department if delay is considered necessary by the Department head to protect a criminal investigation of the employee's conduct. If the Department head intends to order an indefinite suspension after the 180-day time period, the Department head must file a statement describing the criminal investigation and its objectives with the attorney general not later than the 180th day after the day on which the act complained of occurred.

§14.03 PROCEDURE FOR NOTICE OF DISCIPLINARY ACTION

The Department head shall have the power to suspend indefinitely any employee under his/her jurisdiction for the violation of Civil Service Rules. In every such case the Department head making such order of suspension shall, within one hundred and twenty (120) hours thereafter, file a written statement with the Commission giving the reasons for such suspension, and immediately furnish a copy thereof to the employee affected by such act, said copy to be delivered in person to such suspended employee by said Department head. The employee shall sign said notice, showing acknowledgment of its receipt, the date and hour.

Notice shall be served as required under the provisions of Chapter 143 of the Local Government Code. 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.

14.04 CONTENT OF NOTICE OF DISCIPLINARY ACTION

Said order of suspension shall inform the employee that he/she has then (10) days after receipt of copy thereof within which to file a written appeal with the Commission. Said written statement shall not only point out the Civil Service rule alleged to have been violated by the suspended employee, but shall contain the alleged acts of the employee which the Department head contends are in violation of the Civil Service Rules. It shall not be sufficient for the Department head merely to refer to the provisions of the Rules alleged to have been violated, and in case the Department head does not specifically point out the acts or acts complained of on the part of such employee, it shall be the duty of the Commission promptly to reinstate him/her.

14.05 EMPLOYEES NOTICE OF APPEAL

The employee's notice of appeal must be filed in writing with the Directors office within ten (10) calendar days after receiving the disciplinary letter by the Department Head. An employee may also withdraw his/her request for an appeal may not consider appeals filed late after ten calendar days of the receipt of the disciplinary letter by the Department Head.

- 14.06 The employee's notice of appeal and request for hearing shall set forth the employee's basis for appeal in compliance with Section 143.010 of Chapter 143.

14.07 FAILURE TO TIMELY FILE AN APPEAL

Failure on the part of an employee to file an appeal of a suspension, recommended involuntary demotion, or bypass notice with the Office of the Director within the ten (10) day period shall result in a waiver of the rights of appeal and no appeal of the matter being considered.

14.08 TIME PERIOD AND METHODS FOR FILING DOCUMENTS WITH THE DIRECTORS OFFICE

Except as otherwise provided by Chapter 143, if a Police Officer or Firefighter wants to appeal to the Commission from an action which an appeal or a review is provided by Chapter 143, the Police Officer or Firefighter need only file a written appeal with the Commission within ten days after the date that the action occurred.

- 14.09 In computing the period of time allowed by Chapter 143 and these Rules, the day of the act or event for which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal City holiday, in which event the time period runs until 12:00 midnight of the next day which is not a Saturday, Sunday, or legal City of Mission holiday.
- 14.10 For purpose of filing matters with the Civil Service Commission, the Civil Service Director=s Office shall be deemed to be open for said purposes and documents may be timely filed up until 12:00 midnight of the last day of the time period.
- 14.11 Police Officers or Firefighters who are filing notices of appeal or other matters may do so by facsimile (FAX), by hand delivery or regular or certified mail to the Office of the Civil Service Director. In all cases, it shall be the employees' responsibility to maintain the appropriate form of proof of timely fax, Service or other delivery to and receipt by the Office of the Civil Service Director.

- 14.12 **OPTIONS FOR APPEAL HEARINGS** If an employee appeals a disciplinary suspension to the Commission, the Commission shall hold a hearing and render a decision in writing within thirty days after the date it receives notice of appeal. The employee and the Commission may agree to extend the thirty (30) day period and postpone the hearing or the deadline for the final ruling.
- 14.13 At any time after filing the original notice of appeal but before either party has incurred third party hearing examiner expenses, an employee may withdraw the original request for the independent third-party hearing examiner and submit the appeal to a hearing before the Commission. The election must be made in writing and filed with the Directors office. Commission decisions by Chapter 143.
- 14.14 At any time after filing of the notice of appeal, the parties may mutually agree to withdraw the appeal from an independent third-party hearing examiner and submit the appeal to a hearing before the Commission. The mutual agreement must be made in writing and filed with the Director's office.
- 14.15 **Expenses and Costs** If appealed to a Hearing Examiner, the Hearing Examiners fees and expenses are shared equally by the employee and the Department.
- 14.16 **Payment of Costs of Witnesses:**
- 1) All City employees who are subpoenaed by the City to appear at a disciplinary appeal hearing shall be compensated by the City for their time in accordance with the FLSA.
 - 2) On-duty employees shall be compensated at their regular rate of pay.
 - 3) Off-duty employees shall receive overtime for the actual time spent in the hearing.
 - 4) All on-duty and off-duty City employees subpoenaed by the appealing officer who are material witnesses to the relevant facts of the matter being appealed shall be compensated by the City as provided by these rules.
 - 5) All other City employees subpoenaed by the appealing officer as character witnesses, or "expert" witnesses, for purposes not directly related to the material facts, or who do not meet the requirements of 13.032 (a) or (b) should seek compensation from the appealing officer or the officers' representative.
 - 6) On-duty officers subpoenaed for these purposes shall be placed on vacation leave, holiday leave, personal leave, compensatory time off, or if necessary, leave without pay.
- 14.17 The appropriate amount as well as payment of all costs and expenses may be determined and collected by the Director of Civil Service. An employee may receive an estimate of anticipated costs upon request to the Director.

14.18 When applicable, the State law governing the doctrine of "mitigation of damages" will be applied in computing reimbursements or offset for an award of back pay.

14.19 **FAILURE TO ATTEND SCHEDULED HEARING** The failure of a party to attend a scheduled appeal hearing, or to timely file a request for a continuation of the hearing to a later date, shall not in itself prevent the hearing from proceeding as scheduled nor prevent the Commission from proceeding to take such action as may be appropriate.

14.20 **EMPLOYEE AND DEPARTMENT REPRESENTATIVES** The hearing process shall recognize the right of employees as well as the Department to be represented by one or more persons throughout the processing of an 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.

14.21 Employee and Department representatives shall use their best efforts to help resolve all proceedings smoothly, expediently, and as fairly as possible to all concerned.

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

14.23 All representatives or employees who represent themselves shall become familiar with and follow these Rules and regulations at all times during the appeal process. Any problems or concerns regarding the manner in which the opposing party or their representative is handling a particular appeal should be brought to the attention of Director of Civil Service. The difficulty will be expeditiously addressed.

15.0 CONDUCT OF HEARING BEFORE CIVIL SERVICE COMMISSION

15.01 The Commission shall hold a hearing and render a decision in writing within thirty (30) days after it receives the notice of appeal. The decision shall state whether or not the suspended employee shall be permanently or temporarily dismissed or be restored to his/her former position. In the event such suspended employee shall receive full compensation at the rate of pay provided for the position from which he/she was suspended for the time lost as a result of such suspension. All hearings of the Commission in case of such suspension shall be public. In any Civil Service hearing hereunder, the Department head is hereby restricted to his/her original written

statement and charges, which shall not be amended, and no act or acts may be complained of by said Department head which did not occur within the six (6) months immediately preceding the date of suspension. No employee shall be suspended or dismissed by the Commission except for violation of the Civil Service Rules, and except upon a finding by the Commission of the truth of the specific charges against such employee. In such hearing the employee shall have the right to be represented by counsel, and the witnesses may be placed under the rule. The Commission shall have the authority to issue subpoenas of witnesses.

15.02 At the scheduled time and place, the hearing shall be called to order.

(a) All parties shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process. All parties shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission at the hearing.

(b) All appeal proceedings shall be public hearings. A record of the proceedings, capable of clear and accurate reproduction or transcription, shall be made and maintained by the Director.

(c) 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 participants 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.

15.03 Both parties may be allowed to make brief opening statements.

15.04 Unless waived by the participants, the hearing shall then proceed with the reading into the record the statement of charges and specifications as well as factual summary of the operative events as filed with the Commission by the Department Head and which forms the basis of the disciplinary action imposed on the employee.

15.05 The hearing shall then proceed to develop the evidence and testimony as to those contested matters.

15.06 The party with the burden of proof shall go first in the presentation of evidence and testimony. Thereafter, the responding party shall have the opportunity to respond with its own evidence, witnesses or testimony. Thereafter, the party with the burden of proof may come forward with rebuttal evidence or testimony as may be necessary. Presentations by both parties shall be as brief and closely related to the issue(s) as much as is possible. Throughout the proceedings, Commission members may also ask their own questions as needed in order to aid their

consideration of the testimony or evidence. Witnesses may be sworn and their testimony taken under oath or affirmation. Witnesses are subject to reasonable and relevant cross-examination by the opposing party.

15.07 Upon request by either party, the hearing process may utilize what is commonly known as "the Rule" concerning oral testimony, meaning that all persons 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 they are actually testifying as a witness. "The Rule" may be used to ensure one witness's testimony is not influenced by another's testimony. While under "the Rule", potential witnesses shall not discuss any aspect of the appeal or hearing except with the attorneys or the representative involved. Invoking "the Rule" is not mandatory and may be waived in whole or in part by agreement.

Sections 15.08 to 15.20 reserved for future revisions

15.21 The hearing process shall exercise reasonable control over the questioning of witnesses and the presentation of evidence so as to:

- 1) Make an effective ascertainment of the truth;
- 2) keep such presentations relevant to the issues to be determined;
- 3) Avoid the needless consumption of time and expense; and
- 4) Protect the witnesses and employees from harassment or undue embarrassment.

15.22 The parties and their respective representatives shall cooperate in keeping all presentations as brief and to the point as possible. Long drawn-out sessions shall be discouraged.

15.23 All hearings must remain business-like and focus upon resolution of factual matters. Hearings shall not be a time for accusations, threats, speeches or arguments. The Commission shall have the discretion to adjourn any meeting where the purpose of the hearing is no longer reasonably possible. The Commission shall have the discretion to control the length of time of any particular session as well as the amount of time provided for recesses and breaks.

15.24 After the close of the presentation of evidence and testimony, both parties shall be given an opportunity to make closing summations.

15.25 Thereafter, the Commission may adjourn to closed session for deliberation, as prescribed in Section 143.053(d) of Chapter 143. Thereafter, the Commission shall reconvene in open session and shall, upon motion and second, make its decision. Thereafter, a written order

containing same shall be prepared and signed by the Commissions.

Chapter 16 Reserved

Chapter 17 Rules of Evidence during Civil Service Appeal Hearings

17.01 Neither the Texas or Federal Rules of evidence shall generally not apply nor control the conduct of any Civil Service hearing except as set forth below;

17.02 Matters protected by a privilege as set forth in the Texas Rules of Evidence, such as the attorney client privilege, the attorney work product privilege, or the attorney communication privilege shall not be admissible in any Civil Service proceeding.

17.03 Hearsay under Texas Rule of Evidence 801 or 802 may not be offered at any Civil Service hearing unless such evidence falls within an exception to the hearsay rule as defined by Texas Rule of Evidence 803 and 804.

17.04 All evidence offered at the hearing must be relevant to the charged conduct. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probably than it would be without evidence.

17.05 The scope of evidence to be considered at a disciplinary hearing shall be generally limited to matters relevant to the statement of charges as set forth in the Department's written statement, the employee's notice of appeal as well as the employee's previous employment record with the Department.

17.06 Either party may offer such relevant evidence as he/she may desire to aid in the determination of material disputed issues.

17.07 (a) It shall be the province of the Commission to ultimately determine:

1) the admissibility of any particular evidence or testimony;

2) the relevance of any particular evidence or testimony;

3) the credibility of any particular evidence or testimony; and

4) the materiality or "weight" to be given to any particular evidence or testimony.

17.08 Subject to limited exceptions for compelling reasons shown by a party, the Commission may refuse to hear or consider any testimony or item of evidence if:

- 1) a party has deliberately withheld previously-known and duly requested evidence from the other party until the hearing, and the said evidence should have been previously produced as per these Rules; or
- 2) the hearing has been closed.
- 3) the evidence is irrelevant, cumulative, unreliable, hearsay or not properly authenticated.

The Commission may receive and consider the evidence of witnesses by affidavit and assign it such weight as it deems proper after consideration of objections, if any, made to its admission.

17.09 On-site inspections shall be discouraged and may be conducted only if the evidence to be considered cannot be otherwise presented via stipulations, photographs, videotapes, maps, diagrams, etc.

17.10 All evidence and testimony shall be presented and received into the record while in open session.

18.00 ISSUES TO BE DETERMINED IN DISCIPLINARY APPEALS

Generally, the determinative issues to be considered and determined by the disciplinary action appeal process shall be:

- 1) Did "cause" exist to support the imposing of some form of disciplinary action as to the employee?;
- 2) Did the employee receive reasonable or appropriate "due process" in the Department's disciplinary process?;
- 3) Was the degree of disciplinary action imposed by the Department "reasonable" under the circumstances?; and
- 4) Has the hearing process developed matters which justify or compel modification of the Department Head=s disciplinary action?

18.01 A party is required to establish its factual assertions by a "preponderance of the evidence." A "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence admitted into the record.

18.02 Failure to Use Progressive Discipline

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 Heads' decision to proceed directly to the appropriate level of discipline if the employee's misconduct warrants such disciplinary action or termination. Progressive discipline need not always apply and the seriousness of a single offense may negate a previously unblemished record.

18.03 The hearing shall provide the employee every reasonable opportunity to produce objective evidence and testimony to develop:

- 1) that the employee did not commit the misconduct as alleged, i.e., "the facts are not true"; or
- 2) that even if the employee committed the acts as alleged, that "such activity does not constitute actionable misconduct"; or
- 3) that even if the employee committed actionable misconduct, that the degree of discipline imposed is too harsh or severe, i.e. the disciplinary action imposed was "unreasonable, arbitrary or capricious"; or
- 4) a combination of any of these matters which would justify or compel modification of the Department Head's action.

18.04 An employee's mere disagreement or difference in opinion in regard to the Department actions or reasoning therefore, without more, shall not constitute grounds to overturn nor modify the disciplinary action.

18.05 If the hearing establishes one valid charge of misconduct supported by evidence sufficient to establish its truth, that charge and total punishment imposed may be sustained even if other charges in the letter of disciplinary action are not supported by the evidence at the hearing.

19.00 APPEAL FROM COMMISSION DECISION

If an employee is dissatisfied with the decision of the Commission, he/she may, within ten (10) days after the rendering of such final decision, file a petition in the District Court, asking that the order of suspension or dismissal or demotion be set aside, and that he/she be reinstated to his/her former position, and such case shall be tried de novo.

19.01 REINSTATEMENT BY DEPARTMENT HEAD

In the event the Commission orders that such suspended employee be restored to his/her position, the Department head shall immediately reinstate him/her. In the event the Department head fails to do so, the employee shall be entitled to his/her salary just as though he/she had been regularly reinstated. If the Department head willfully refuses to obey the order of the reinstatement, and such refusal persists for a period of ten days, it shall be the duty of the City Manager to discharge such Department head.

CHAPTER 20 PENALTIES

20.00 STRIKING PROHIBITION & PENALTY

18.01 It shall be unlawful for any Firefighter or Police Officer to engage in any strike against the City. Any Firefighter or Police Officer who shall be convicted of the violation of this section shall thereby be automatically released and discharged from his Department, and shall thereafter be ineligible to receive any pay or compensation out of any public funds provided for the support of such Police or Fire Department.

CHAPTER 21 VALIDITY, ADOPTION & AMENDMENT

21.00 ADOPTION

Upon adoption of these Rules by the Civil Service Commission and their approval by the governing body, they shall become immediately effective, and all other previously adopted Civil Service Rules are hereby repealed.

CHAPTER 22 AMENDMENT TO RULES

22.00 AMENDMENTS TO RULES

These Rules may be amended by the Commission upon majority vote at a regular meeting, and as further provided by Chapter 143.

CHAPTER 23. SEVERABILITY

23.00 If any part, segment, section, word, 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 therein.

Approved this 22nd day of April 2022 by the Mission Civil Service Commission

PASSED AND ADOPTED THIS 9th DAY OF MAY 2022.

Armando O'cana, Mayor

Pursuant to Article 3 of the City Charter, the effective date of this ordinance is 9th day of May, 2022.

Anna Carrillo, City Secretary