CITY OF AUSTIN

FIRE FIGHTERS', POLICE OFFICERS' AND EMERGENCY MEDICAL SERVICES PERSONNEL'S CIVIL SERVICE COMMISSION

RULES AND REGULATIONS

Effective May 7, **2018**

ADOPTED by the City of Austin Firefighters', Police Officers' and Emergency Medical Services Personnel's Civil Service Commission and signed on the 7th day of May, 2018.

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PREAMBLE

The Civil Service System for the City of Austin has been established pursuant to Chapter 143 of the Texas Local Government Code for the purpose of developing and enforcing rules regarding the initial selection of employees as well as their advancement and conditions of employment.

These rules completely repeal and replace all prior rules and regulations as have been adopted by the Civil Service Commission. These rules are made in accordance with Chapter 143 of the Texas Local Government Code, hereinafter referred to as "Chapter 143," and specifically pursuant to Section 143.008, and Section 143.403(c) of Chapter 143 and legal precedent interpreting the provisions of Chapter 143.

The scope and construction of the rules hereinafter set forth shall be interpreted and applied within the spirit and intent of Chapter 143. The rules hereinafter set forth are necessary and essential to administer said law. All situations not expressly covered by Chapter 143, Austin City Ordinances, these rules and regulations, the Fire, Police and EMS Departments' rules, standard operating procedures, general orders or a Meet and Confer or Collective Bargaining Agreement shall be resolved in accordance with the City of Austin Personnel Policies (Chapter B) or the residual discretionary authority vested in a Department Head. These Rules and Regulations shall apply to all of the employees of the Fire, Police and EMS Departments covered under Chapter 143.

RULE 1 - DEFINITIONS

All terms, words and phrases contained in these rules shall be interpreted in accordance with Chapter 143 and other applicable law. The following specific definitions shall also apply:

1.01 *"Active Duty"* means the time during which an employee is actually on assigned duty.

1.02 *"Appointment within the Classified Service"* means the designation of a person by the City Manager to an original position in the department concerned and promotions by the Department Head.

1.03 *"Certify"* means the act of the Director in supplying the City Manager or Department Head with names of applicants who are eligible for appointment to the class and positions for which certification is requested.

1.04 "*Chapter 143"* means Chapter 143 (Municipal Civil Service for Fire Fighters and Police Officers) of the Texas Local Government Code.

1.041 *"Chapter 174"* means Chapter 174 (Fire and Police Employee Relations Act) of the Texas Local Government Code.

1.05 *"Classified Service"* means the members of the Austin Fire Department (AFD), the Austin Police Department (APD), and/or the Austin Emergency Medical Services Department (EMS) as defined under "Fire Fighter," "Police Officer" and Emergency Medical Services Personnel.

1.06 *"Collective Bargaining Agreement"* means an employment agreement adopted pursuant to Subchapter D of Chapter 174 of the Texas Local Government Code between the City of Austin and the Association recognized as the exclusive bargaining agent for a majority of Fire Fighters, Police Officers or EMS Personnel employed by the City of Austin Fire, Police and EMS Departments.

1.07 "*Commission*" means the Fire Fighters', Police Officers', and Emergency Medical Services Personnel's Civil Service Commission.

1.08 *"Date of Commission"* means the date a person takes the oath of office for Fire Fighters, Police Officers or EMS Personnel.

1.09 *"Day"* means a calendar day.

1.091 *"Business Day"* means a day on which the City conducts normal business. A Saturday, Sunday, or City holiday is not considered a business day.

1.10 *"Demotion"* means the transfer of an employee from a position in one classification to a position in another classification, as reflected in the Classification Ordinance adopted by

the City Council, for which the maximum rate of pay is lower, unless such reduction is part of a general plan to reduce salaries for that classification.

1.11 "*Department Head*" means the chief or head of a fire, police, or EMS department or that person's equivalent, regardless of the name or title used.

1.12 "*Director*" means the director of Fire Fighters', Police Officers', and Emergency Medical Services Personnel's civil service.

1.13 *"Eligibility List"* means one of the following, depending upon the status of the applicant:

A. "Promotion Eligibility List" means the list of applicants for promotion who have taken and passed the written examination, and who are ranked on the list in order of the total score, including seniority points, and the breaking of ties when necessary.

B. "Entry Eligibility List" means the rank order of applicants who have passed the written examination. Scores shall include five veteran's points, when applicable, and ties shall be broken in accordance with these rules.

1.14 *"Eligible"* means the status given to a person listed on an active eligibility list who has rights under these rules to be certified.

1.15 *"Emergency Medical Services (EMS) Personnel"* shall be defined as set out in Section 143.401 of Chapter 143.

1.16 *"Employee"* as used in these rules means a Fire Fighter, Police Officer or EMS Personnel as defined in Chapter 143.

1.17 *"Fire Fighter", and "Police Officer",* shall be defined as set out in Section 143.003 of Chapter 143.

1.18 *"Meet and Confer Agreement"* means an employment agreement adopted pursuant to Subchapter I of Chapter 143 between the City of Austin and the Association recognized as the sole and exclusive bargaining agent for a majority of Fire Fighters, Police Officers or EMS Personnel employed by the City of Austin Fire, Police or EMS Departments.

1.19 *"Military Reinstatement List"* means a list of persons, broken down by civil service classification, and arranged in the order provided by these rules, who have been demoted to the next lowest position in grade or compensation due to the reinstatement of an employee from a military leave of absence.

1.20 *"Position"* means a job created by ordinance consisting of current duties and responsibilities, assigned or delegated by competent authority, requiring the services of an employee. Either "entry position" or "beginning position" means a job as a trainee in the Fire, Police or EMS Department.

1.21 *"Promotion"* means a change from one classification to a higher classification, as reflected in the Classification Ordinance adopted by the City Council. Promotion shall always mean an increase in responsibilities and pay.

1.22 *"Public Hearing"* means an opportunity given after public notice in compliance with the Texas Open Meetings Act for any Fire Fighter, Police Officer or EMS Personnel interested in appealing and being heard at reasonable length on the matter involved.

1.23 *"Reinstatement List"* means a list of persons, broken down by civil service classification and arranged in the order provided by these rules, who have previously occupied positions in the classified service and have been laid off from active service due to reduction of force or who have been demoted to a lower classification and who may be certified for re-appointment or promotion, when vacancies occur. No person shall occupy a position on this list, however, which has been laid off for any reason other than as given under Chapter 143.085.

1.24 *"Seniority"* for the purposes of these Rules means:

A. time in grade in the Civil Service classification when addressing temporary assignments, military reinstatement, and force reductions.

B. time in classified service with the department when applying credit on promotional exams.

1.25 *"Vacancy"* means an approved budgeted position, which is not occupied.

1.26 *"Veteran"* means a person who has served at least 180 days of continuous active military service and has received an honorable discharge from same. A general discharge under honorable conditions is not considered an honorable discharge.

1.27 *"Year"* means *365* calendar days.

END OF RULE 1

RULE 2 - PREEMPTION

An Agreement under Subchapter I of Chapter 143 (Meet and Confer) or Subchapter D of Texas Local Government Code Chapter 174 (Collective Bargaining) preempts any contrary Rule adopted by the Civil Service Commission. The Commission does not have the authority or jurisdiction to hear disputes, claims, or complaints involving the interpretation, application or alleged violation of these Agreements, except to the extent necessary to perform its duties as granted by Chapter 143.

END OF RULE 2

RULE 3 - ORGANIZATION AND GENERAL PROVISION OF COMMISSION

3.01 *Creation*. By virtue of City Ordinance No. 471204, adopted on December 4, 1947, and by the voters of the City of Austin on April 27, 1948, and by the voters of the City of Austin on November 6, 2012, and in accordance with Chapter 143, there is established in the City of Austin a Fire Fighters', Police Officers' and Emergency Medical Services Personnel's Civil Service Commission.

3.02 *Composition and Appointment*. The Commission shall consist of three members, appointed and serving pursuant to Chapter 143.

3.03 *Election of Officers*. The Commission shall, at its first meeting in January of each year, elect a Chair and Vice-Chair. The Vice-Chair shall serve as Chair in the absence or incapacity of the Chair. Two (2) members of the Commission shall constitute a quorum to do business.

3.04 *Compensation*. Members of the Commission shall serve without compensation.

3.05 *Powers of the Commission*. The Commission's powers and duties shall be those specified by Chapter 143 and other applicable law.

3.06 *Director of Civil Service*. The Commission shall appoint a Director of Fire Fighters', Police Officers' and Emergency Medical Services Personnel's Civil Service pursuant to Chapter 143, who shall perform work necessary to the Commission's role in administering Chapter 143. The Director, or his or her designated representative(s), shall serve as Secretary to the Commission. The Director also acts on behalf of the Commission in matters that do not require formal action by the Commission. The Director shall be the general manager of the Civil Service Office activities and be responsible for the general direction of the staff and work products related to those activities. The Director shall maintain general civil service records related to the business of the Commission.

END OF RULE 3

RULE 4 - COMMISSION MEETINGS

4.01 *Regular Meetings*. Regular meetings of the Civil Service Commission will be scheduled as needed to conduct the business of the Commission.

4.02 *Special Meetings*. Special meetings of the Commission may be held whenever called by the Chair, or in his absence, by the Vice-Chair, at his or her discretion.

4.03 *Record of Proceedings*. The Director of Civil Service, or his or her appointed designee, shall keep a record of all proceedings of the Commission except as otherwise provided in these rules.

4.04 *Proceedings at Meetings*. The order of proceedings at all regular meetings of the Commission shall be as follows:

A. The Chair, or in his or her absence, the Vice-Chair, shall preside at all regular meetings.

B. The regular order of business shall be as follows:
   1. Approval of minutes
   2. Agenda items
   3. Report from the Civil Service Office
   4. Citizen Communications

4.05 *Meetings to be Public*. Both the regular and special meetings of the Commission shall be open to the public and to representatives of the press except where executive sessions are allowed by the Texas Open Meetings Act.

4.06 *Notice of Meetings*. The Director shall notify the members of the Commission of all meetings of the Commission at least five (5) calendar days in advance of the time and place established for such meetings. Reasonable notice of cancellation of meetings shall be given to all parties usually in attendance. Emergency meetings shall follow guidelines established by the Texas Open Meetings Act.

4.07 *Rules of Order*. In all matters of procedure not controlled by the provisions of the Civil Service Law and these rules, the order of business and conduct of meetings shall be held in conformity with Roberts Rules of Order.

4.08 *Communications or Requests to Commission*. All communication or requests to the Civil Service Commission are to be made in writing through the Director who shall thereafter proceed to present appropriate items to the Commission for consideration. A summary of any such request, and the action of the Commission regarding same, will be made in the official minutes of the Commission.

4.09 *Commission Decisions*. Commission action on agenda items requires the approval of a majority of the Commission members present and voting.

END OF RULE 4

RULE 5 - CLASSIFICATION AND APPOINTMENT

5.01 *Waiving of Civil Service Rights.* Neither a public officer nor any administrative employee acting for a public officer shall be permitted to require a candidate for employment to sign any document whereby such candidate for employment waives any right or rights accruing to him or her under the Civil Service Law or these rules.

5.02 *Classification of Fire Fighters, Police Officers and EMS Personnel.* Except for the Department Head and a person appointed to the classification immediately below the Department Head, each Fire Fighter, Police Officer, and EMS Personnel is classified as prescribed by Subchapter B of Chapter 143. The classification titles and the number of positions in each classification shall be those established by ordinance.

5.03 *Applications.* The Commission shall make arrangements for the posting of an official notice, inviting the filing of applications for the position(s) to be filled, at least ten (10) days prior to the date of the examination. The applicant shall be required to make written application, and shall certify to the correctness of the facts stated thereon.

5.04 *Age Requirements.*

A. Fire Department.

1. A person may not take an entrance examination for a beginning position in the Fire Department unless the person is at least 18 years of age.

2. A person may not be certified as eligible for a beginning position in the Fire Department if the person is 36 years of age or older.

B. Police Department.

1. A person may not take an entrance examination for a beginning position in the Police Department unless the person is at least 18 years of age.

2. A person who is 45 years of age or older may not be certified for a beginning position in the Police Department.

C. EMS Department.

1. A person may not take an entrance examination for a beginning position in the EMS Department unless the person is at least 18 years of age.

5.05 *Physical and Mental Requirements.*

A. *Physical Standards.* Physical standards for appointment to a beginning position shall be those in effect at the department at the time of application.

B. *Mental Examination.* The Fire, Police and EMS Departments are authorized to require applicants for a beginning position to take a mental examination.

C. *Appeal for Hiring.* If an applicant is disqualified based on the physical or mental examination; the applicant may submit an appeal requesting an examination by a board of three physicians, psychiatrists or psychologists, as appropriate, appointed by the commission.

1. An applicant wishing to appeal a disqualification must submit an appeal to the Civil Service Office within ten (10) calendar days requesting an examination by a board of three physicians, psychiatrists or psychologists, as appropriate, appointed by the commission.

2. Upon notification of applicant appeal, the department shall furnish the Civil Service Office with the job description, essential functions checklists, and any pertinent information related to applicant disqualification, within seven (7) days from the day the appeal was filed. This seven day requirement does not include the report provided by the department referenced in subparagraph 4.

3. The Civil Service Office shall furnish a list of potential board members to serve on a panel to the commission. The commission will appoint the board. The board evaluation shall occur following the board's appointment and within 60 days from the day the board receives a report from the department.

4. The Civil Service Office shall furnish the board with job descriptions, essential function checklists, department's report and any pertinent information related to applicant disqualification. At a minimum, the panel shall review the report provided by the department. The board may, but is not required to, review any additional information or conduct its own physical/mental evaluation of the applicant as it sees fit.

5. Within 30 days from the day of evaluation the appointed board shall submit a report to the commission definitively stating whether the applicant is fit or not fit. The board is not required to come to a unanimous decision. Should there be a split-decision, the majority vote would be the board's decision and the report would be written as one single recommendation.

   Should the board require more than the allotted 30 days for their decision, the board shall notify the Civil Service Office requesting an extension. The board and the commission may agree to an extension for a definite period.

6. In accordance with Chapter 143.022 (c), the board's decision is final.

5.06 *Certification and Licensing.*

A. Fire Department.

1. An applicant may not be certified as eligible for a beginning position with the Fire Department unless the applicant meets all legal requirements necessary to become eligible for future certification by the Commission on Fire Protection personnel Standards and Education.

B. Police Department.

1. An applicant may not be certified as eligible for a beginning position with the Police Department unless the applicant meets all legal requirements necessary to become eligible for future licensing by the Commission on Law Enforcement Officer Standards and Education.

C. EMS Department.

1. An applicant may not be certified as eligible for a beginning position within the Field Division of the EMS Department unless the applicant has a current Texas Department of State Health Services certification as an Emergency Medical Technician – Basic (EMT-B) or higher; or is eligible for Texas Department of State Health Services at one of the four listed certification/license levels, at time of application.

2. An applicant may not be certified as eligible for a beginning position within the Communications Division of the EMS Department unless the applicant has a current Texas Department of State Health Services certification as an Emergency Medical Technician – Basic (EMT-B) or higher; or is eligible for Texas Department of State Health Services certification at one of the four listed certification/license levels, at time of application.

3. In addition to meeting the certification and licensing requirements prescribed by this section, an applicant may not be certified for a beginning position within the EMS Department unless the applicant meets all requirements necessary for credentialing by the Office of the Medical Director.

5.07 *Disqualification of Applicants*. Applicants for entry positions in the Fire, Police and EMS Departments shall be disqualified if they do not meet written minimum qualifications. Persons on the entry eligibility lists for the Fire, Police and EMS Departments shall be removed from the eligibility list if, before appointment, it is found they no longer meet minimum qualifications. Applicants must comply with the City of Austin Fire, Police or EMS Department requirements in effect at the time application is made.

5.08 *Entrance Examinations*. Entry examinations may be given prior to the expiration of an existing list. No eligibility list shall be effective, however, until the expiration or exhaustion of any existing list. The Commission shall give new examinations at times the Commission considers necessary to provide required scheduled Fire, Police or EMS training academies.

5.09 *Content of Entrance Examination*. The examinations must be based on an individual's general knowledge and aptitude and must inquire into an applicant's general education and mental ability.

5.10 *Conduct of Examination*. The actual conduct of every entrance examination shall be under the direction of the Commission, or an authorized representative of the Commission, free from the presence, participation or influence of any person other than persons authorized by the Commission to attend the examination.

5.11 *Military Service Credit*. In accordance with Chapter 143 Section 143.025(e), an additional five (5) points shall be added to the examination grade of an applicant who served in the United States Armed Forces, received an honorable discharge and made a passing grade of 70 percent on the written examination.

5.12 *Entry Eligibility List*. The Director shall prepare a list of the names of all candidates who have successfully passed the written entrance examination with a score of at least 70 percent. The grades shall be ranked in order from the highest to the lowest and will include military service credit points, if applicable. In case of a tie, the following criteria shall be used to determine placement on the eligibility list, in the following order:

A. Written Grade, excluding military service credit points
B. Computer Generated Random Selection

5.13 *Appointments*. All appointments to entry positions shall be made from the eligibility list until its expiration.

5.14 *Life of Eligibility List*. The entry eligibility list shall remain in existence for a period of not less than 6 months or more than 12 months as noted on the exam notification. The effective period of the list will begin when the list is finalized by the Civil Service Director.

5.15 *Letters of Recommendation*. No letters of recommendation or endorsement, other than those required by these rules, shall be considered in the rating of any applicant unless called for in the written notice of the examination.

5.16 *Change of Address*. Each person on an eligibility list shall file, with the Department Head, written notice of any change of address. Notices sent to a person's last known address shall be considered sufficient notification.

5.17 *Reappointment of Police Officers*. As authorized by Section 143.0251 a Police Officer who voluntarily resigned from the Austin Police Department may be reappointed to the Department without taking another departmental entrance examination, in accordance with the following rules:

A. The officer may apply for reappointment within two (2) years after the effective date of the resignation from the Austin Police Department.

B. If the officer has been employed as a law enforcement officer for a minimum of one (1) year since the effective date of the resignation, the officer may apply for reappointment within three (3) years after the effective date of the resignation from the Austin Police Department.

C. The officer must meet all requirements prescribed by Chapter 143 other than the entrance examination required by Section 143.025.

D. The officer must be licensed or eligible for licensing as a peace officer by the Texas Commission on Law Enforcement Officers Standards and Education.

E. The officer must not have been discharged from any commissioned or recruit position within any law enforcement agency for disciplinary reasons, resigned to avoid suspension or discharge, or have resigned during a disciplinary investigation without a final judgment being rendered.

F. The officer must meet any additional screening requirements approved by the Department Head and fulfill any training requirements required by the Department Head.

G. The Department Head must provide to the City's chief executive a written recommendation for reappointment of the officer.

H. Any officer who is reappointed under this Rule shall be appointed to the position of Police Officer and shall serve a probationary period of six (6) months following the date of his/her reappointment. A reappointed officer who serves the full probationary period automatically becomes a full-fledged Civil Service employee and has full Civil Service protection.

I. The reappointed officer is eligible to take the promotional examination to the next rank after serving continuously for at least two (2) years following the date of reappointment.

5.18 *Reappointment of Medics*. As authorized by Section 143.0251 a medic who voluntarily resigned from the EMS Department may be reappointed to the Department without taking another departmental entrance examination, in accordance with the following rules:

A. The medic must have served with the EMS Department as a sworn employee for at least one (1) year of continuous service immediately prior to the date of their resignation."

B. The medic may not have voluntarily resigned to avoid suspension or discharge, or have resigned during a disciplinary investigation without a final judgment being rendered.

C. The medic may not have voluntarily resigned as a result of revocation of

credentials to practice by the medical director, or have resigned during a clinical review of the medic's credentials without a final disposition being rendered.

D. The medic may apply for reappointment within two (2) years after the effective date of the resignation from the EMS Department.

E. The medic must meet all requirements prescribed by Chapter 143 other than the entrance examination required by Section 143.025.

F. The medic must be certified or licensed by the Texas Department of State Health Services as an Emergency Medical Technician, Emergency Medical Technician–Intermediate, Emergency Medical Technician-Paramedic or Licensed Paramedic.

G. The medic must not have had an emergency medical services certification or license, nurse's license, or any other medical related certification or license placed on probation, denied by final order, revoked, or suspended, or have voluntarily surrendered such certification or license.

H. The medic must meet all requirements necessary for credentialing by the Medical Director at the entry level position in the Division.

I. The medic must not have been discharged from any EMS position or EMS recruiting position within any EMS agency for disciplinary reasons, resigned to avoid suspension or discharge, or have resigned during a disciplinary investigation without a final judgment being rendered.

J. The medic must meet fulfill any training requirements required by the Department Head.

K. The medic must meet any credentialing requirements of the medical director and fulfill any training requirements required by the medical director.

L. The reappointment of the medic is at the discretion of the Department Head and City's chief executive.

M. The Department Head must provide to the City's chief executive a written recommendation for reappointment of the medic.

N. Any medic who is reappointed under this Rule shall be appointed to the position of Medic I in their previous division and shall serve a probationary period of six (6) months following the date of his/her reappointment. A reappointed medic who serves the full probationary period automatically becomes a Civil Service employee.

O. The reappointed medic is eligible to take the promotional examination to the next rank after serving continuously for at least two (2) years following the date of reappointment.

END OF RULE 5

RULE 6 - PROBATION

6.01 *Probationary Period.* A person appointed to a beginning position in the Fire, Police, or EMS Department must serve a probationary period of one (1) year beginning on that person's date of employment as a fire fighter, police officer, EMS personnel, or academy trainee, and no appointment shall be deemed finally made until the appointee has satisfactorily served the probationary period.

6.02 *Dismissal for Cause.* All probationary employees are "at-will" employees, which means they may be terminated at any time during their probationary period, with or without cause. A probationary employee has no right to appeal his/her termination. This section does not limit any rights to which the employee would otherwise be entitled under applicable state or federal law.

6.03 *Vesting of Civil Service Rights.* Upon successful completion of the probationary period, an employee shall have full Civil Service rights.

END OF RULE 6

RULE 7 - CLASSIFIED SERVICE PROMOTIONS

7.01 *Examinations*. The Commission shall provide for examinations of such members in the classified service for the creation of promotion eligibility lists for promotion to the next higher grade or rank in the departments at such time as may become necessary and requested by the Department Head.

7.02 *Scheduling of Examinations*. A promotional examination may not be administered prior to the expiration of an existing eligibility list. All promotions must be made from lists in existence, if any, at the time a vacancy occurs. Using the current promotion eligibility lists' expiration dates, the Commission will determine the dates of the next promotional examinations and inform the Department Heads.

7.03 *Life of Eligibility Lists*. All promotion eligibility lists shall be effective for one (1) year unless exhausted, and at the end of the one (1) year they shall expire. The one year period shall begin on the day after the written examinations have been given and ends at midnight on the 365th day. For example, if the written examination was given on December 1, 2004, the list becomes effective on December 2, 2004, and expires at midnight on December 1, 2005. In the event of any occurrence which results in a change in the eligibility list, the changed list shall be effective on the day the original list was to be effective.

7.04 *Procedure for Examinations*. The Department Head shall notify the Director of any vacancy in the department to be filled by promotion and thereupon after consultation with the Director and Department Head, the Commission shall call for a competitive promotional examination of those entitled to take the examination under the provisions of these rules, and shall ensure that notice of examination is given in accordance with the Civil Service Law.

7.05 *Notice of Examination*. Before the 90th day before the date a promotional examination is held, the Commission shall post and publish a listing of the study source material. Before the 30th day before the date a promotional examination is held, the Commission shall post and publish the examination title, date, time, and location.

7.06 *Registration for Examination*. Any candidate who intends to take a promotional examination will register his or her name and the title of the exam for which he or she is eligible with the Director at least seven (7) calendar days prior to the exam in order that an exam will be printed for him or her. Examinations will be administered according to Chapter 143.

7.07 *Content of Examinations*.

A. For any promotional examination, the candidates shall be examined in writing in such matters as will fairly test their knowledge of the actual duties, responsibilities and requirements of the rank to be filled.

B. Examination questions will be taken only from those source materials specified in the examination notice as required by Chapter 143, Section 143.029(a). No questions will be taken from material in the source that is assigned a label, e.g. figure, table, exhibit, box, Scan, etc., unless such material is specifically identified in the examination notice.

7.08 *Conduct of Examinations*. The actual conduct of every examination shall be under the direction of the Commission, or an authorized representative of the Commission, free from the presence, participation or influence of any person other than persons authorized by the Commission to attend the examination. Except as provided in subsections A and B below, no examination shall ever be given except in the presence of all applicants taking the examination:

A. An eligible promotional candidate who is serving on active military duty outside of Texas or in a location that is not within reasonable geographical proximity to the location where the examination is being administered is entitled to take the examination outside of the presence and at a different time than the other candidates and may be allowed to take an examination that is not identical to the examination administered to the other candidates. The Director will coordinate with the eligible promotional candidate that is serving on active duty regarding a reasonable location, date and time of the examination and any other matters that may arise specific to coordination of the examination.

B. An applicant who files a written request with the Commission no less than ten (10) days before the scheduled date of the written examination seeking a reasonable accommodation under the Americans with Disabilities Act may be permitted to take the examination outside the presence of other candidates. The Director may grant or deny the request without seeking Commission approval.

7.09 *Eligibility for Promotion*. Eligibility for promotion within the classified service shall be in accordance with Chapter 143 and these rules.

A. Fire Department

Each promotional examination is open to each fire fighter who at any time has continuously held for at least two (2) years a position in the classification that is immediately below, in salary, the classification for which the examination is to be held. If a fire fighter had previously terminated the fire fighter's employment with the department and is subsequently reemployed by the department, the fire fighter must again meet the two-year service requirement for eligibility to take a promotional examination. In determining if a fire fighter has met the two-year service requirement, the fire department may not consider service in another fire department.

B. Police Department

Each promotional examination is open to each police officer who for at least two (2) years immediately before the examination date has continuously held a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

C. EMS Department

EMS personnel are divided into three (3) divisions within the EMS Department known as the Field Division, Communications Division and Operations Division. Eligibility for promotion within each Division shall be as follows:

1. Field Division

(a) Medic II – Field
Each promotional examination for the classification of Medic II – Field is open to each EMS personnel who:
(1) for at least two (2) years immediately before the examination date have continuously held a position in the classification of Medic I – Field, and
(2) at the time of the promotional examination have a current Texas Department of State Health Services certification as an Emergency Medical Technician-Paramedic or Licensed Paramedic.

(b) Captain – Field
Each promotional examination for the classification of Captain – Field is open to each EMS personnel who for at least two (2) years immediately before the examination date have continuously held a position in the classification of Medic II – Field.

(c) Commander – Field
Each promotional examination for the classification of Commander – Field is open to each EMS personnel who for at least two (2) years immediately before the examination date have continuously held a position in the classification of Captain – Field.

(d) Lateral Crossover between Divisions
EMS personnel in the Field Division are not eligible for promotion to a position within the Communications Division, and lateral crossover by promotion is prohibited. EMS personnel in the Field Division may voluntarily change to a position within the Communications Division only by qualifying for and entering the Communications Division at the lowest entry level for that Division.

2. Communications Division

(a) Medic II – Communication
Each promotional examination for the classification of Medic II – Communications is open to each EMS personnel who for at least two (2) years immediately before the examination date have continuously held a position in the classification of Medic I – Communications.

(b) Captain – Communication
Each promotional examination for the classification of Captain – Communications is open to each EMS personnel who for at least two (2) years immediately before the examination date have continuously held a position in the classification of Medic II – Communications.

(c) Commander - Communications
Each promotional examination for the classification of Commander - Communications is open to each EMS personnel who for at least two (2) years immediately before the examination date have continuously held a position in the classification of Captain – Communications.

(d) Lateral Crossover between Divisions
EMS personnel in the Communications Division are not eligible for promotion to a position within the Field Division, and lateral crossover by promotion is prohibited. EMS personnel in the Communications Division may voluntarily change to a position within the Field Division only by qualifying for and entering the Field Division at the lowest entry level for that Division.

3. Operations Division

(a) Division Chief
Each promotional examination for the classification of Division Chief is open to each EMS personnel who:
(1) for at least two (2) years immediately before the examination date have continuously held a position in the classification of Commander – Field or Commander – Communications, <u>and</u>
(2) at the time of the promotional examination have a current Texas Department of State Health Services certification as an Emergency Medical Technician- Basic (EMT-B) or higher.

D. If there are not enough fire fighters, police officers, or EMS personnel in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the Commission may open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the Commission may open the examination to

persons with at least two years' experience in the second lower position, in salary, to the position for which the examination is to be held.

7.10 *Examination Guidelines*. The questions to be given on the written examination shall be kept secret. If the Commission, the Director, or Department Head determines that any candidate has procured a copy of the questions prior to administration of the examination, such candidate shall not be permitted to take the examination. If it is ascertained after the examination is given that one of the members taking the examination has procured a copy of the questions prior to taking the examination, the Commission shall order his or her name stricken from the list. Other examination guidelines are as follows:

A. Following the administration of a promotional examination, the Department Head will appoint a committee to develop a list of source materials and subject areas to be used by the Director in developing the examination for the next time it is administered. The list will show the percentages of the examination to be devoted to each source document or specific subject area.

1. Upon approval by the Department Head this list will be immediately posted in conspicuous locations so that all candidates can review it. The list will be posted more than 90 days before the scheduled date of the promotional examination for which it was developed.

2. Time permitting, the committee may recommend one amendment to the Department Head after the initial list is posted, but no amendments may be made within 91 days of the scheduled examination date.

B. Prior to the development of any examination questions, the test developer may seek technical assistance from the Fire, Police and/or EMS Department. However, under no circumstances will the actual questions used on the examination be revealed to any member of the Fire, Police or EMS Department, except the Department Head and/or Assistant Chiefs or designated subject matter expert(s) (SME). The right to review promotional examinations is reserved for the Department Head and/or the Assistant Chiefs of each department. If requested, such review will take place in the office of the Director.

C. At all times, examinations and/or examination materials shall remain confidential and shall be kept secure by the Director. If in the event that the confidentiality or security of any promotional examination is compromised, a special Civil Service hearing will be called. If this discovery is made prior to the administration of the scheduled examination, such examination will be postponed until the special hearing is held to determine the disposition of the examination.

7.11 *Minimum Candidates Required*. No promotional examination shall be given unless there is a minimum of three (3) candidates taking the examination.

7.12 *Unfair Practices*. A candidate who in any examination uses or attempts to use any unfair

or deceitful means to pass such examination shall be informed by the proctor witnessing the act that the candidate's actions will be reported to the Commission with a recommendation that he or she be excluded from further consideration. The proctor shall later make the report to the Commission for its determination.

7.13 *Written Examination Grade*. Grades on such written examinations shall be based upon a maximum grade of one hundred (100) points and shall be determined entirely by the correctness of each candidate's answer to such questions. The minimum passing score for the written examination is seventy (70) points.

7.14 *Credit for Seniority*. Credit for seniority on promotions shall be based on one (1) point for each year of seniority in the examinee's department, but shall never exceed ten (10) points. Such points shall be carried to three (3) decimal points based upon 365 days per year. Seniority points shall only be added to the candidate's written examination grade if the candidate has achieved the minimum passing score.

7.15 *Identical Grades*.

A. Fire Department. Whenever two (2) or more candidates attain the same grade on the examination, the following criteria will be used for breaking ties, in the following order:

A. Written grade
B. Total time in present rank
C. Total time as Civil Service employee with the department
D. Date of previous ranks from highest to lowest
E. Computer Generated Random Selection

B. Police Department. Whenever two (2) or more candidates attain the same grade on the examination, the following criteria will be used for breaking ties, in the following order:

A. Written grade
B. Total time in present rank
C. Total time as Civil Service employee with the department
D. Date of previous ranks from highest to lowest
E. Average grade of major examinations in cadet class
F. Computer Generated Random Selection

C. EMS Department. Whenever two (2) or more candidates attain the same grade on the examination, the following criteria will be used for breaking ties, in the following order:

A. Written grade
B. Total time in present rank
C. Total time as Civil Service employee with the department

D. Date of previous ranks from highest to lowest
E. Computer Generated Random Selection

7.16 *Review of Promotional Examinations.*

A. Administration. Review of Civil Service promotional examinations will be administered pursuant to Chapter 143.034 and this rule and when applicable, an Agreement entered into pursuant to Subchapter I of Chapter 143 or Subchapter D of Chapter 174.

B. Candidates. For the purposes of this rule, a candidate is a classified employee who is eligible to take a promotional examination.

C. Review Materials. Candidates will review a copy of their answer sheet. Candidates will not be allowed to take the copy of their answer sheet or any of the review materials out of the examination review room. Each candidate may review a copy of his or her answer sheet, computer printout of answers, an examination answer key and source material pages from which the question was formulated.

D. Review Period. Candidates may review the examination material only during the scheduled review period. The location of the review facility, the duration of the review period and the registration procedure will be posted prior to the day of the examination.

E. Copying of Examination Materials. Candidates may copy ONLY the name of the source material, the number of the page(s) from which the question was taken and the corresponding numbers of the questions. Examination questions may not be copied or removed from the examination review area.

7.17 *Appeals of Promotional Examination Questions.* Appeals may be filed as granted by Chapter 143 and by Agreement entered into pursuant to Subchapter I, or Subchapter D of Chapter 174, if applicable.

7.18 *Commission Hearing on Examination Appeals.*

A. Addressing the Commission. The purpose of addressing the Commission at the appeals hearing is to provide additional information to that which was offered in the written appeal. Candidates' should address the Commission based on the reason for appeal stated in the written appeal and should address the Commission only when prepared to offer information not already supplied in the written appeal or by previous speakers.

B. Director's Recommendation. The Civil Service Representative will inform the Commission of the Director's recommendation for the Commission's decision. The Director's recommendation may include a recommendation by the

promotional testing vendor.

C. Candidate Presentations. Each candidate who has appealed a particular question to be considered by the Commission will be given three minutes per question to provide additional information based on their written appeal. Candidates who do not file written appeals may address the Commission and will be given a one-minute period per question to present information which is in response to the comments in the written appeal and is information which has not been offered by other candidates. In addition, at their discretion, Commission members may ask any candidates to answer questions.

D. Commission Decision. After hearing all parties, the Commission members will vote and announce the Commission's decision on the appeal. If a question is determined to be inappropriate on appeal, all eligible candidates that took the exam will be entitled to full credit for the question.

E. Revised Promotion Eligibility List. Once the Commission has ruled on all appeals, the Civil Service Staff, if necessary, will reissue the promotion eligibility list based on the rescoring of exams. The revised list shall be effective on the day the original list was to be effective.

7.19 *Promotion Eligibility List.* Candidates who qualify as a result of their written examination grades shall have their examination grades combined with any other applicable points and the combination shall determine the final scores. The Director shall prepare a list of the names of all candidates who have successfully passed the examination, ranked in order from the highest score to the lowest score. This list shall then become the promotion eligibility list for the classification for which the examination was given and all appointments to said classification shall be made from this promotion eligibility list until it expires or is exhausted. Whenever a promotion eligibility list is cancelled or terminated, notification of cancellation or termination shall be posted in the affected departments. All vacancies in the classified service, other than the Assistant Chief, shall be filled by permanent appointment from promotion eligibility lists furnished by the Commission within 60 days after the vacancy occurs. If before the expiration of the current promotion eligibility list a vacancy occurs in the classified service, the Commission shall submit names from the list to the Department Head as required by 143.036, until the vacancy is filled or the list is exhausted. If no list is in existence, the vacancy shall be filled from a list which the Commission shall provide within 90 days after the vacancy occurs.

7.20 *Cancellation/Postponement of Examination.* Any examination may be cancelled by the Commission should the examination become unnecessary because of a change in the personnel requirements of the classified service. The Commission may, because of an insufficient number of candidates, or because of any other good and sufficient reason, postpone an examination to a later date on its own motion or recommendation from the Department Head or City Manager.

7.21 *Waiver of Position on Promotional Eligibility List*. Refusal of a classified employee to accept a promotion shall be a waiver of his right to have his name on the current promotional eligibility list. When such refusal occurs, the Department Head shall send written notice to the Commission stating the circumstances, and the Director shall strike the employee's name from the promotional eligibility list.

7.22 *Filing of Answer Sheets*. All examination answer sheets must be kept on file in the Civil Service Office of the City of Austin for one (1) year.

7.23 *Temporary Appointments*. The Department Head may designate some person from the next lower classification to fill a position in a higher classification temporarily, but any person designated by the head of the department shall be paid the base salary of the higher position plus his own longevity or seniority pay, educational incentive pay and certification pay during the time he performs the duties. The temporary performance of the duties of a higher position by a person who has not been promoted as prescribed by Chapter 143.038 may not be construed as a promotion of the person.

END OF RULE 7

RULE 8 - DEMOTIONS

8.01 *Involuntary Demotion.* Whenever a Department Head desires the demotion of an employee under his/her supervision or jurisdiction, except an appointed Assistant Chief, such Department Head may recommend in writing to the Commission that the Commission demotes the employee, giving his or her reasons and requesting the Commission make such order of demotion. The Department Head, or his or her designee, must furnish a true copy of the recommendation in person to the employee to be affected by the demotion.

8.02 *Powers of Commission.* The Commission shall have the authority to refuse to grant the request for demotion. If, however, the Commission feels that probable cause for the demotion exists, it shall give the employee ten (10) days advance written notice to appear before the Commission at a time and place specified in the notice to the employee. The employee shall have the right to a full and complete public hearing upon the proposed demotion. The Commission shall not demote any employee without the hearing.

8.03 *Voluntary Demotion.* A voluntary demotion in which the employee has accepted the terms of the demotion in writing is not subject to this rule; however, the department must notify the Commission of this action.

8.04 *Requested Demotion.* If an employee requests to be demoted to the Department Head, the Department Head may grant the request and must notify the Commission of this demotion. If the Department Head denies the requested demotion, he or she shall submit a written memorandum to the Commission informing it of the demotion request and the reason(s) for the denial. The Commission may approve or deny the requested demotion.

END OF RULE 8

RULE 9 - MILITARY LEAVES OF ABSENCE

9.01 *Written Application - Military Service Entry.* On written application of the employee, the Commission shall grant him or her a military leave of absence without pay to enable the employee to enter a branch of the United States military service. The leave of absence may not exceed the period of compulsory military service or the basic minimum enlistment period for the branch of service the employee enters.

9.02 *Military Reserves/National Guard Service.* The Commission shall grant to an employee a leave of absence for initial training or annual duty in the military reserves or the National Guard.

9.03 *Military Leave and Vacancy.* While an employee, who received a military leave of absence, serves in the military, a vacancy shall exist, and the Commission shall fill his or her position in the department in accordance with the process set forth in Rule 7.

9.04 *Reinstatement upon Return.* On termination of active military service, an employee who received a military leave of absence under this Rule is entitled to be reinstated by the Commission to the position that he or she held in the department at the time the leave of absence was granted if the employee:

A. Receives an honorable discharge;

B. Remains physically and mentally fit to discharge the duties of the position; and

C. Makes an application for reinstatement within 90 days after the date the person is discharged from military service.

9.05 *Reinstatement and Seniority Credit.* Upon reinstatement, the employee shall receive full seniority credit for the time spent in the military service.

9.06. *Military Reinstatement List.*

A. If the reinstatement of an employee who received a military leave of absence causes a surplus in the rank to which the employee was reinstated, the employee who has the least seniority in the position shall be returned to the position immediately below the position to which the returning employee was reinstated.

B. If an employee is returned to a lower position in grade or compensation under this Rule without charges being filed against the employee for violation of civil service rules, the employee shall be placed on a position reinstatement list in order of seniority.

C. Appointment from the reinstatement list shall be made in order of seniority on the list.

If more than one employee is placed on the list on the same day, the tie breaking criteria cited in Local Rule 7.15 shall be utilized to determine the final ranking on the list.

D. An employee who is not on the reinstatement list may not be appointed to a position to which the list applies until the list is exhausted. A military reinstatement list has no expiration date.

END OF RULE 9

RULE 10 - DISCIPLINARY SUSPENSIONS

10.01 *Disciplinary Suspension*. The Department Head may suspend an employee under his/her supervision or jurisdiction for the 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.

10.02 *Agreed Suspensions*. If offered by the Department Head, the employee may agree in writing to voluntarily accept, with no right of appeal, a suspension of not less than 16 or more than 90 calendar days for a violation of Civil Service rules. The employee must accept the offer not later than the fifth business day after the offer is made.

10.03 *Grounds for Disciplinary Suspensions*. No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

A. Conviction of a felony or other crime involving moral turpitude
B. Violations of the provisions of the Charter of the City of Austin
C. Acts of incompetency
D. Neglect of Duty
E. Discourtesy to the public or to a fellow employee while in the line of duty
F. Acts showing a lack of good moral character
G. Drinking of intoxicants while on duty, or intoxication while off duty
H. Conduct prejudicial to good order
I. Refusal or neglect to pay just debts
J. Absence without leave
K. Shirking duty, or cowardice at fires
L. Violation of any of the rules and regulations of the Fire, Police or EMS Departments, or of special orders, as applicable

10.04 *Notice to Commission*. If the Department Head suspends an employee, the Department Head, or his or her designee, shall, not later than 120 hours after the suspension, file a written statement with the Commission giving the reasons for the suspension, and shall immediately furnish, in person, a true copy of the statement to the suspended employee. The order of suspension shall inform the employee that if he or she wishes to appeal, he or she must file a written appeal with the Commission not later than the 10th day after the date on which the employee received a copy of the statement. Notice of appeal from the employee will be accepted by the Civil Service Office in person, by common carrier (e.g. United States Postal Service), or by electronic means including but not limited to facsimile or electronic mail.

10.05 *Content of Written Statement*. The written statement filed by the Department Head with the Commission shall point out the Civil Service rule alleged to have been violated by the suspended 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 or her original written statement and charges which may not be amended.

10.06 *Power of Commission*. A suspended employee shall have a right of appeal to the Civil Service Commission pursuant to Chapter 143.010. Upon appeal, the Commission shall hold a public hearing. The Commission shall then determine whether cause exists for the suspension.

10.07 *Limitations*. In the original written statement and charges and in any hearing conducted under this rule, the Department Head may not complain of any act that occurred earlier than the 180th day proceeding 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 employee. If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the employee is subject to a criminal penalty, the Department Head may not complain of an act that is discovered earlier than the 180th day preceding the date the Department Head suspends the employee. The Department Head must allege that the act complained of is related to criminal activity.

10.08 *Conduct of Hearing*. All hearings of the Commission in case of a suspension are public. The Commission may deliberate the decision in closed session but may not consider evidence that was not presented at the hearing. The commission shall vote in open session.

10.09 *Status of Employee While Suspended*. An employee may not earn or accrue any wage, salary, or benefit arising from length of service while the employee is suspended. A period of suspension may not be considered or otherwise taken into account in determining hours of labor, vacations and holidays or overtime. A disciplinary suspension does not constitute a break in a continuous position or service in the department for the purpose of determining eligibility for a promotional examination. Except as provided by this rule, an employee under suspension retains all other rights and privileges of his or her position in the Department and of his or her employment by the City.

10.10 *Recording and Broadcast of Hearing*. All hearing of the Commission involving disciplinary appeals may be recorded and broadcast, except that the Commission shall identify those circumstances when broadcast of information or images is inappropriate. In those circumstances, the Commission shall have the authority to prohibit filming or to limit the information broadcast to the general public. When making decisions regarding limitations on broadcasts, the Commission shall consider fairness to the parties and

witnesses along with the public's interest in proceedings affecting its civil servants. The Commission shall allow broadcast to the extent that it is not inconsistent with another compelling and legitimate need. Examples of limitations on the broadcast include privacy interests (*e.g.*, medical status, sexual assault victim, juvenile), law enforcement interests (*e.g.*, officers working undercover assignments, on-going criminal investigations), extremely graphic, profane or pornographic material and credible threats of retaliation against a witness.

END OF RULE 10

RULE 11- HEARING EXAMINERS

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 to the Commission. To exercise this choice, the employee must follow the procedures outlined in Chapter 143.010 and 143.057. All provisions of these rules prescribing procedures for disciplinary appeals before the Commission shall apply to and govern all disciplinary appeals before hearing examiners appointed under Chapter 143.057.

END OF RULE 11

RULE 12 - HEARINGS ON APPEALS

12.01 *Filing of Appeals from Suspension or other Actions.* If an employee of the classified service wants to appeal to the Commission from an order of suspension or action for which an appeal or review is provided for by Chapter 143, he or she shall file an appeal within 10 days from the day of the notice of action by filing the appeal with the Director who shall endorse thereon the date and hour of receiving same. The appeal shall include a statement denying the truth of the charge as made, a statement alleging that the recommended action does not fit the offense or alleged offense, or any combination of the statements, and in addition, a request for a hearing by the Commission or third party hearing examiner.

12.02 *Action of Director.* Upon receipt of the appeal the Director, or designee, will:

A. Notify, by telephone or e-mail, the Assistant City Attorney for the employee's department of the appeal.

B. Contact by telephone or e-mail, the Commission members, the Assistant City attorney for the Commission (if a Commission hearing has been requested), the Assistant City Attorney for the employee's department and the employee's attorney/representative to determine possible hearing dates within thirty (30) days of receipt of the appeal.

C. Notify all parties of the hearing date and location.

D. When the employee has requested a hearing before a third party hearing examiner, the Director will inform the Commission of the appeal, at the next regular meeting of the Commission.

12.03 *Postponement of Hearings.* At the hearing, or Commission meeting, held within thirty (30) days after the date the appeal is received, the employee and Commission may agree to postpone the hearing for a definite period.

12.04 *Right to Request Subpoena.* As provided in these rules and Chapter 143.010, the Assistant City Attorney for the employee's department and the employee or his/her attorney or representative may apply for a subpoena or subpoenas for one or more witnesses to appear at the hearing by filing the request(s) with the Director. The request(s) shall contain the name(s) of the witness (es) with their address (es) and shall certify that the requestor has reason to believe that such witness (es) knows facts pertinent to the case. All parties shall have the right to request subpoenas for any document(s) pertinent to the case. Any request for a subpoena must be made before the tenth day before the hearing. In other words, the subpoena request must be received by the Commission no later than the close of business on the 11th day before the scheduled hearing date. Subpoena requests received after that time will not be considered timely, and will be rejected.

If the Commission does not issue the requested subpoena(s), the Commission shall before the third day before the date of the hearing, give a written statement to the employee stating the reason(s) it will not issue the subpoena(s). This statement will be read into the public record of the Commission meeting.

12.05 *Method of Issuing*. Unless the Commission denies the request pursuant to this Rule, upon filing of the subpoena request, the Director shall immediately issue a subpoena for each witness named, or document listed, in the request in the name of and by authority of the Commission.

If a witness lives within the corporate limits of the City of Austin, the Director shall deliver the subpoena(s) to the Police Department's Legal Liaison who is responsible for serving the subpoena(s). If the witness lives outside the City limits of the City of Austin, the Director shall deliver the subpoena(s) to the party applying for the subpoena, who is responsible for ensuring that the subpoena(s) is/are served by a sheriff, deputy sheriff, constable, or deputy constable.

12.06 *Witness Unable to Attend*. A witness who is unable to attend a hearing but is able to testify may be questioned by all parties via a speaker telephone at the hearing.

12.07 *Proceedings on Hearings*. The following shall be the order of proceedings at appeal hearings:

A. The reasons for the suspension or the action taken shall be presented.

B. The employee's attorney or representative shall present a responding opening statement.

C. If the statement of the appeal or the answer takes exception to the legal sufficiency of the charges as made, then:

1. The employee or his or her attorney or representative may present his or her evidence in support of the exception.

2. The Assistant City Attorney for the Department Head concerned shall present evidence in opposition to the exception.

3. Arguments presented by the parties are not evidence.

4. The party making the exception shall make the rebuttal.

5. The Commission shall then make its decision on the exception. The Commission may consider only the evidence submitted at the hearing.

6. If the exception is sustained, the hearing shall be concluded. In case of indefinite suspension, the employee shall be ordered restored to duty in the position from which he was suspended. In case of charges made, the charges shall be dismissed.

D. If the exception is overruled or if no exception is filed, the Commission shall proceed with the evidence in the following order:

The suspending Department Head shall be deemed the plaintiff and the employee against whom the charges have been made shall be deemed the defendant. The order of procedure for introducing evidence and presenting arguments shall be the same as is provided by law for the trial of civil cases in the District and County Courts of the State of Texas, provided however, that the members of the Commission may interrogate the witnesses after the parties have concluded their examinations of each witness and they may recall witnesses for further examination.

E. Upon conclusion of the arguments, the Commission may deliberate in a closed hearing and upon reaching a decision, announce its decision in open meeting. A written order of its decision shall be produced and signed by all Commission members present at the hearing. A copy of the order shall be presented to the defendant or his or her representative.

12.08 *Rules of Procedure*. Appeal hearings are informal administrative hearings and are not subject to discovery or evidentiary processes unless set forth in these Rules, Chapter 143, Meet and Confer or Collective Bargaining Agreements. As such, neither the Texas Rules of Evidence nor the Texas Rules of Civil Procedure apply to such hearings.

END OF RULE 12

RULE 13 - FORCED REDUCTION AND REINSTATEMENT LIST

13.01 *Demotion*. If the governing body adopts an ordinance that vacates or abolishes a fire, police or EMS department position, the employee who holds that position shall be demoted to the position immediately below the vacated or abolished position. If one or more positions of equal rank are vacated or abolished, the employees who have the least seniority in a position shall be demoted to the position immediately below the vacated or abolished position. The demoted employee(s) is (are) placed on a reinstatement list per Rule 13.03

13.02 *Forced Reduction*. In the event positions of the lowest classifications are abolished or vacated and it thereby becomes necessary to dismiss employees from the department, the employee with the least seniority shall be dismissed. Those employees who are involuntarily separated from the classified service without charges having been filed against them for violations of Civil Service Rules shall be placed on the reinstatement list in order of their seniority. The reinstatement list shall be exhausted before appointments are made from the eligibility list, and appointment from the reinstatement list shall be in order of seniority.

13.03 *Duration of Lists*.

A. An employee who is demoted under Rule 13.01 shall be placed on a position reinstatement list in order of seniority. If the vacated or abolished position is filled or re-created within one year after the date it was vacated or abolished, the position must be filled from the reinstatement list. Appointments from the reinstatement list shall be made in order of seniority. A person who is not on the list may not be appointed to the position during the one-year period until the reinstatement list is exhausted. This list is valid for one year.

B. An employee in the lowest classification of the Department who is dismissed under Rule 13.02 shall be placed on a reinstatement list in order of seniority. Appointments from the reinstatement list shall be made in order of seniority. Until the reinstatement list is exhausted, a person may not be appointed from an 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.

END OF RULE 13

RULE 14 - PROCEDURE AFTER CRIMINAL INDICTMENT

14.01 *Procedure*. If an employee is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the procedures prescribed by this section apply.

14.02 *Temporary Suspension*. The Department Head may temporarily suspend the Fire Fighter, Police Officer or EMS Personnel with or without pay. The Department Head shall notify the employee in writing that he or 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.

14.03 *Discovery after 180 Days*. 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 Department Head may, not later than the 30th day after the date of final disposition of the felony charge or misdemeanor complaint, bring a Civil Service charge against the employee.

14.04 *Conviction of Felony*. 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.

14.05 *Acquittal or Dismissal*. Acquittal or dismissal of an indictment or a misdemeanor complaint does not preclude a finding that an employee has violated Civil Service rules or regulations and does not negate the charges that may have been or may be brought against him or her by the Department Head.

14.06 *Felony Indictment*. An employee 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 Civil Service violations 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.

14.07 *Indicted, not found Guilty*. If the Department Head temporarily suspends an employee who has been indicted for a felony or officially charged with a Class A or B misdemeanor, and the employee is not found guilty of the indictment or complaint in the court of competent jurisdiction, the employee may appeal to the Commission or to a hearing examiner for recovery of back pay. The Commission or hearing examiner may award all or part of the back pay or reject the appeal.

14.08 *Indefinite Suspension After 180 Days*. The Department Head may order an indefinite suspension based on an act or acts classified as a felony or a Class A or B misdemeanor after the 180-day 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 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 date on which the act complained of occurred.

END OF RULE 14

RULE 15 - SICK LEAVE, INJURY LEAVE AND FITNESS FOR DUTY

15.01 *Sick Leave*. Employees in the classified service shall be allowed accrual of sick leave with full pay in accordance with Chapter 143.045.

15.02 *Injury Leave; Line of Duty Illness Leave of Absence*. All employees in the classified service shall be entitled to injury leave of absence or line of duty illness leave of absence with full pay for periods of time commensurate with the nature of injuries received while in the performance of their duties. If necessary, the leave shall continue for at least one (1) year. Such leave shall be in accordance with rules and regulations of the department and Chapter 143.073.

15.03 *Record to be Maintained*. All sick and other leaves of absence with or without pay shall be fully and carefully recorded on an appropriate record which shall be open to the inspection of the Commission or designated representatives. A clerk or other responsible employee of each department shall be charged with maintaining an attendance record on which tardiness shall also be noted.

15.04 *Fitness for Duty*. If a question arises as to whether an employee is sufficiently physically or mentally fit to continue his or her duties, the process set forth in Chapter 143.081 shall apply. In accordance with 143.081(c), if the commission, the department head, or the fire fighter, police officer or the emergency medical service personnel questions the report they shall notify the Civil Service Director no later than 30 days after receipt of written notice that the report has been received by the Civil Service Director. The commission shall appoint a physician, psychiatrist or psychologist, as appropriate to examine the fire fighter, police officer or emergency medical services personnel and submit a report to the commission, the department head and the person definitively stating whether the person is fit or not fit. If the report is not questioned within 30 days from notification, the process will be concluded with no further action by the Commission.

END OF RULE 15

RULE 16 - RECORDS AND REPORTS

16.01 *Confidentiality of Records*. All procedures of the Commission, the classification plan, and the rosters of employees in the classified service and all eligible to appointment in such service shall be public records, and, subject to reasonable regulation, shall be open to public inspection. Applications, examinations, recommendations from former employers, reports from Department Heads concerning employees, and other such letters and papers as in the opinion of the Commission should be confidential shall be kept on file for the use of the Commission but shall not be open for public inspection.

16.02 *Reports for Commission*. Department Heads shall make available to the Commission reports of changes in the status of their departmental personnel. Such reports shall include appointments, reinstatements, promotions, removals from service whether dismissals, layoffs, suspensions, resignations or leaves of absence and changes in departmental organizations such as creation, abolishment or combining of offices or positions.

16.03 *Efficiency Reports*

A. The Fire, Police, and EMS Departments may conduct semiannual efficiency reports and grades for all employees in the classified service.

B. The Department shall provide each employee a copy of the efficiency report. Within 10 calendar days after the date an employee receives the copy of the report, the person may make a statement in writing concerning the efficiency report. The statement shall be placed in the person's personnel file with the efficiency report.

END OF RULE 16

RULE 17 - DEPARTMENT HEAD AND PERSON APPOINTED TO CLASSIFICATION IMMEDIATELY BELOW DEPARTMENT HEAD

17.01 *Department Head*

A. Fire Department. A person appointed as head of the Fire Department must be eligible for certification by the Commission on Fire Protection Personnel Standards and Education at the intermediate level or its equivalent as determined by that commission and must have served as a fully paid fire fighter for at least five years. Prior service in a civil service department is not required.

B. Police Department. A person appointed as head of the Police Department must be eligible for certification by the Commission on Law Enforcement Officer Standards and Education at the intermediate level or its equivalent as determined by that commission and must have served as a bona fide law enforcement officer for at least five years. Prior service in a civil service department is not required.

C. EMS Department. A person appointed as head of the EMS Department must be eligible for certification by the Texas Department of State Health Services at the Emergency Medical Technician - Basic (EMT-B) level or higher as determined by that department and must have served as a bona fide EMS personnel for at least five years. Prior service in a civil service department is not required.

17.02 *Person Classified Immediately Below Department Head*

A. Fire Department. A person appointed to a position in the classification immediately below that of the head of the Fire Department must:

1. Be employed by the Fire Department;

2. Have a permanent classification in at least an officer level; and

3. Meet the requirements for appointment as head of a fire department prescribed by Chapter 143.013(b) and this Rule.

B. Police Department. A person appointed to a position in the classification immediately below that of the head of the Police Department must:

1. Be employed by the Police Department as a sworn police officer;

2. Have at least two years' continuous service in the Department as a sworn police officer; and

3. Meet the requirements for appointment as head of a police department prescribed by Chapter 143.013(b) and this Rule.

C. EMS Department. A person appointed to a position in the classification immediately below that of the head of the EMS Department must:

1. Be employed by the EMS Department;

2. Have a permanent classification in at least a Captain level; and

2. Meet the requirements for appointment as head of an EMS department prescribed by this Rule.

RULE 18 - SAVING CLAUSE

18.01 *General Provision*. The provisions of these rules are declared to be severable and if any rule, section, sentence, clause, phrase, or word of these rules shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining rules, section, sentences, clauses, phrases and words of these rules. Instead they shall remain in effect, it being the legislative intent of this Commission that these rules shall stand notwithstanding the invalidity of any part.

END OF RULE 18