



# CITY OF SEABROOK CIVIL SERVICE RULES AND REGULATIONS

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# A. GENERAL PROVISIONS

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## § 143.001. PURPOSE

The purpose of these Rules is to secure an efficient police department composed of capable personnel who are free from political influence and who have an expectation of permanent employment tenure as public servants. The members of the Commission shall administer these Rules in accordance with this purpose. Because Seabrook is a municipality of more than 10,000 persons with a paid Police Department and by virtue of a municipal election held on May 7, 2011, there was established in the City of Seabrook, Texas, Civil Service for Police Officers, in compliance with Chapter 143 of the Texas Local Government Code, the Municipal Civil Service Act (hereafter, "Chapter 143").

The scope and construction of the Rules hereinafter set forth shall be interpreted and applied in a manner to complement Chapter 143. It is the intent of these Rules to cover situations not mentioned in Chapter 143 or which are ambiguous in Chapter 143. All situations that are not expressly covered by Chapter 143 or these Rules shall be resolved in accordance with the City Charter and ordinances, Seabrook Police Department Policies and Procedures, City of Seabrook Personnel Policies or the residual discretionary authority vested in the City Manager, the Chief of Police or the Director of Civil Service. The Rules shall apply to all of the classified, non-probationary employees covered under Chapter 143.

\*\* These Rules follow relevant provisions of Chapter 143. Where sequential numbers are missing, the Commission has deemed them irrelevant or noninstrusive at this time, completed or inapplicable to Seabrook operations now or in the future.

## § 143.003. DEFINITIONS

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

- (1) APPOINTMENT - The designation of a person by the City Manager to become an employee in a classified civil service position.
- (2) BUSINESS DAY - Any day the City is customarily open for usual business in non 24/7 departments. "Business Day" does not refer to the employee's scheduled workday. In Seabrook, usual business days are Monday through Friday excluding City holidays and weekends. The term is synonymous with working days.
- (3) CHAPTER 143 - The section of the Texas Local Government Code containing the civil service provisions.
- (4) CHIEF EXECUTIVE - The City Manager of the City of Seabrook.
- (5) CHIEF OF POLICE (Chief) – The title for the department head of the Seabrook Police Department.
- (6) CLASSIFICATION - A position or group of positions that involve similar duties and responsibilities and require similar qualifications.

- (7) CIVIL SERVICE ANNIVERSARY DATE - The date a person was most recently appointed to a classified civil service position in this city.
- (8) COMMISSION - The City of Seabrook's Police Officers' Civil Service Commission.
- (9) DAY - Calendar day, unless otherwise specified.
- (10) DEMOTION - The transfer of an employee from a position in one classification to a position in another lower classification in the chain of progression for which the maximum rate of pay is lower.
- (11) DEPARTMENT – The City of Seabrook Police Department.
- (12) DIRECTOR - The Director of Civil Service as designated by the Commission. The Director acts in the capacity of Secretary to the Commission and is responsible for the administration of civil service rules and procedures. The term includes his or her designee.
- (13) ELIGIBILITY LIST- A list of applicants/candidates for a classified civil service position who have taken and passed a designated examination and are ranked on a list in order of the score received, including tiebreakers.
- (14) MILITARY SERVICE CREDIT - The points added to the passing score of an examination taken by a veteran applicant/candidate subject to verification by the Commission.
- (15) POLICE OFFICER or “Employee” – A member of the Seabrook Police Department who was appointed in substantial compliance with Chapter 143 or who was actively employed by the Department for at least 6 months on the date (May 7, 2011) civil service was adopted in Seabrook.
- (16) PROMOTION – The upgrade and appointment of an eligible candidate from a position in one class to a position in a higher class for which the pay rate is greater. A promotional examination may be required.
- (17) PROBATIONARY EMPLOYEE - An employee appointed to an entry level position in the Police Department that is serving a one year probationary period. Employees serving during this time period are considered “at will” and shall be subject to discharge at the discretion of the Chief, which discharge shall be final and unappealable to the Commission. A probationary employee has no civil service status or rights during probation.
- (18) RAW SCORE - A preliminary numerical grade based upon the correct answers to examination questions on entrance or promotional examinations that are subject to verification and approval by the Commission.
- (19) SENIORITY – The total years of service within the Department uninterrupted.
- (20) VETERAN - A person who has served a minimum of 180 days of active duty in the armed

forces of the United States of America and who has received a DD-214 that reflects an honorable discharge. A person who receives a discharge other than honorable is not eligible for consideration of the application of military points provided for herein.

**§ 143.005. STATUS OF EMPLOYEES IF CHAPTER ADOPTED**

A Police Officer who has been in the service of the Department for at least six months as of May 7, 2011 who has acquired the status of a civil service employee upon adoption of civil service by the City without the requirement to pass a competitive examination to remain in the position the person occupied at the time of the adoption.

**§ 143.006. IMPLEMENTATION: COMMISSION**

(1) **APPOINTMENT, VACANCY AND TERM OF COMMISSIONERS**

There is hereby established the Commission which shall consist of three (3) members to be initially appointed by the City Manager and such appointment shall be confirmed by the City Council before any such appointments shall be effective. The initial Commission shall consist of three (3) Commissioners. One Commissioner shall be appointed for a one (1) year term, one Commissioner for a two (2) year term, and one Commissioner for a three (3) year term. Thereafter, the term of each Commissioner shall be for three (3) years, or until a successor is appointed, confirmed and qualified. Any vacancies in said Commission caused by death, resignation, or otherwise, or by failure of any appointee to qualify within ten (10) days after appointment, shall be filled in the manner hereinabove specified and such appointment shall be for the remainder of the unexpired term in the same manner as the original appointment.

(2) **QUALIFICATIONS FOR COMMISSIONERS**

A person appointed to the Commission must:

- a) Be of good moral character;
- b) Be a United States citizen;
- c) Be a resident of the municipality who has resided in the municipality for more than three years;
- d) Be over 25 years of age; and
- e) Not have held a public office within the preceding three years (other than prior service on the Commission).

(3) **CHAIR AND VICE-CHAIR**

The Commissioners shall, within ten (10) days after the qualification of the membership and annually thereafter during the month of January, elect a Chair and a Vice-Chair. When vacancies of members of the Commission occur, the replacement of Chair and Vice-Chair will be handled as follows: 1) in the event of a vacancy in the Chair position, the Vice-Chair will assume the role of Chair and an interim election will be held to elect a new Vice-Chair; 2) in the event of vacancy of the Vice-Chair position, an interim election will be held to fill that office.

(3) **RESPONSIBILITIES**

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

- a) The proper conduct of Commission business meetings;
- b) The proper conduct of examinations for entry level and promotional eligibility;

- c) The proper conduct of appeals of testing and examination scoring;
- d) The prescribed cause or causes for the removal or suspension of a civil service employee;
- e) The procedures for the hearing of disciplinary appeals concerning suspensions without pay, indefinite suspensions, promotional bypass; or recommended demotions; or administrative review of written promotional examination questions; and
- f) Such other matters reasonably related to the selection, promotion and discipline of civil service employees, not otherwise vested in the discretionary or managerial authority of the City Council, City Manager, Chief of Police, or Director.

(4) **QUORUM**

Two members for the Commission constitute a quorum sufficient to conduct meetings and hearings or reviews. In the absence of the third member, no action shall be approved, adopted or affirmed unless both Commissioners agree. A split vote of two Commissioners will not approve, adopt or affirm an agenda item for any appellant who has the burden of proof.

(5) **MEETINGS**

Meetings of the Commission will be scheduled as needed to conduct the business of the Commission. The Commission shall conduct its meeting in such place as designated by the posted Notice of Meeting. The Commission shall conduct all meetings in compliance with the provisions of Section 551.001 et seq. of the Government Code (Open Meetings Act).

A meeting shall be called by the Director at the request of the Chair, or at the written request of any two (2) Commissioners. Notice of Meeting of the Commission shall be given by the Director to the Commissioners at least seventy-two (72) hours preceding the day of the meeting, except in case of emergency or urgent public necessity, in which case two (2) hours notice shall be given in accordance with the provisions of the Government Code. The Director shall also give the same notice to the Chief of Police and shall see that the Notice of Meeting is posted.

In all matters of procedure not controlled by the provision of the Local Government Code, the order of business and conduct of meeting shall be in conformity with Robert's Rules of Order. The Commission may, by majority vote, make Rules of procedure for the administration of Chapter 143 of the Local Government Code. The Chair may alter the order of business at his/her discretion.

The Director shall assist the Chair in preparing the agenda for a Commission meeting. Any Commissioner may place an item on the agenda with a written notice to the Director prior to the time of posting.

**§ 143.007. REMOVAL OF COMMISSIONER**

- (1) A Commissioner may tender his or her resignation in writing at any time to the City Manager. A Commissioner may be removed from office by the City Council for misconduct in office or otherwise in accordance with Chapter 143.

- (2) If a Commissioner is absent for three (3) meetings during a twelve (12) month period without being excused by the Commission by first notifying the Director of the absence, emergency absence notwithstanding, , the absent Commissioner may be automatically deemed to have submitted a resignation and if accepted by the City Manager, the position shall be deemed vacant without further action.
- (3) Upon the occurrence of any of these events, a request shall thereafter be made by the Director to the City Manager for a replacement appointment of such vacant Commissioner.

**§ 143.008. ADOPTION AND PUBLICATION OF RULES**

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

In addition, it is the intent of the Civil Service Commission to exercise and preserve its authority to adopt Local Rules to the fullest extent allowed by law; provided, however, that if a Local Rule is determined to be in conflict or inconsistent with an existing provision of an applicable civil service statutes, a state or federal law, or a judicial interpretation of such law, then the Local Rule shall be interpreted and applied in deference to the prevailing law or legal precedent.

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

- (1) The Commission shall make such Rules necessary to properly conduct Commission business provided that no rule adopted by the Commission shall ever permit the appointment or employment of a person who is:
  - a) Without good moral character;
  - b) Physically or mentally unfit; or
  - c) Incompetent to discharge the duties of such appointment or employment.
- (2) Rules adopted by the Commission that prescribe cause for removal or suspension of a Police Officer are specified in Section 143.051.
- (3) Whenever the Commission shall have adopted Rules by a majority vote and shall have caused same to be reduced to writing, typewriting, or printing, such Rules shall thereupon be deemed to be sufficiently published and promulgated within the meaning of Chapter 143 and shall be valid and binding upon the Commission doing or causing to be done the following:
  - a) By mailing a copy of such Rules to the Chief of Police; and
  - b) By posting all such Rules at a conspicuous place for a period of seven (7) days in the Police Department.
- (4) The Director shall keep on hand hard copies of said Rules for free distribution to members of the Police Department requesting same, and said Rules shall be kept available for inspection by

any interested citizen.

- (5) No additional publication by way of publication in a newspaper is required and no action need be taken by the City Council with reference to said Rules, and such Rules are hereby validated from the beginning regardless of whether same have been published in a newspaper, or by posting, or taken with reference thereto by the City Council.

#### **§ 143.009. COMMISSION INVESTIGATIONS AND INSPECTIONS**

The Commission may make investigations concerning, and report upon all matters relating to the enforcement and effect of the provisions of Chapter 143, and the Rules prescribed hereunder; and shall ascertain whether these Rules and all such rules and regulations adopted are being obeyed. Such investigations may be made by the Commission or by any Commissioner designated by the Commission for that purpose.

- (1) During an investigation, the Commission or designated Commissioner may:
  - a) Administer oaths;
  - b) Issue subpoenas to require the attendance of witnesses and the production of books, papers, documents and accounts pertaining to the investigation; and
  - c) Cause the deposition of witnesses residing inside or outside the state.
- (2) A deposition taken in connection with an investigation under this section must be taken in the manner prescribed by the law for taking a similar deposition in a civil action in federal district court.
- (3) An oath administered or a subpoena issued under this section has the same force and effect as an oath administered by a magistrate in the magistrate's judicial capacity.
- (4) The failure upon the part of any person so subpoenaed to comply with the provisions of Chapter 143, Section 143.016 of these Rules and regulations, shall be deemed in violation of these Rules, and punishable as such.

#### **§ 143.010. COMMISSION APPEAL PROCEDURE**

- (1) DEFINITION OF TERMS:
  - a) Appeal – The process of an employee notifying the Commission of his or her request for a hearing, as applicable.
  - b) Administrative Review – A meeting in which the Commission considers an appeal by an employee regarding a challenge to an examination question. It is generally less formal than a hearing with no testimony taken.
  - c) Hearing – A meeting in which the Commission or, in certain cases, a Third Party Hearing Examiner considers an appeal by an employee regarding an applicable rule or procedure. It is generally more formal than an administrative review with testimony and evidence presented by each party.
- (2) APPEALS HAVING JURISDICTION BEFORE THE COMMISSION FOR WHICH A HEARING MAY BE GRANTED:
  - a) Disciplinary suspensions of one to 15 days
  - b) Indefinite suspensions;

- c) Recommended Demotions; and
- d) Promotional bypass.

**APPEALS HAVING JURISDICTION BEFORE THE COMMISSION FOR WHICH AN ADMINISTRATIVE REVIEW MAY BE GRANTED:**

- a) Challenge to examination question
- b) Challenge to irregularities in examination process
- c) Challenge to irregularities in examination raw or final scoring
- d) Challenge to placement or ranking on eligibility list

**NO APPEAL BEFORE THE COMMISSION FOR:**

- a) Employee dissatisfaction resulting from a transfer or reassignment of duties and/or shift;
- b) Employee dissatisfaction resulting from a discretionary policy decision and/or policy application;
- c) Grievances against other employees or supervisors;
- d) Voluntary resignations and retirements;
- e) Voluntary acceptance of discipline in which a written document evidences intent to finally resolve the issue and which includes a statement that the employee has waived all right to appeal the disciplinary action;
- f) Disciplinary action taken for failure to meet stated requirements of position (e.g. loss of license or certification, or required drivers license);
- g) Verbal or written counselings, or written reprimands;
- h) Approval or denial of off duty employment requests;
- i) Dissatisfaction with semiannual efficiency reports;
- j) Denial or training or seminar attendance;
- k) Denial of reinstatement following resignation.

**(3) ORIGINAL NOTICE OF APPEAL**

- a) The employee's notice of appeal must be filed in writing in the Director's office within ten (10) days after receiving the written notice of disciplinary action from the Chief of Police. An appeal for which the deadline falls on a weekend or holiday, may be filed before the close of business on the next business day of the Commission. An employee may withdraw his/her request for an appeal at any time thereafter, terminating the appeal process.
- b) The employee's notice of appeal and request for a hearing shall set forth the officer's basis for appeal in compliance with Chapter 143 including the following:
  1. A statement denying the truth of the charge(s) as made; or
  2. A statement taking exception to the legal sufficiency of such charge(s); or
  3. A statement alleging that the recommended action does not fit the offense(s) or alleged offense(s); or
  4. Any appropriate combination of the above statements.

- (4) In each appeal with a request for a hearing in which the Commission performs an adjudicatory function, the affected Police Officer is entitled to be represented by counsel or

a person the Police Officer chooses, but not both. Each Commission proceeding shall be held in a public venue with the public allowed access.

(5) **SUBPOENA**

Before requesting a subpoena duces tecum for the production of documents, a party shall first make a request for the documents directly to the other party and allow a reasonable time for a response. If the request is refused or otherwise not produced, then a request may be filed with the Director requesting the Commission to issue a subpoena duces tecum. This request shall be filed with the Director at least ten (10) calendar days prior to the hearing date, and the party requesting the documents shall also serve the opposing party with a copy of the request for issuance of a subpoena duces tecum at least ten (10) calendar days prior to the hearing date.

If the opposing party wishes to object to the request for the issuance of a subpoena duces tecum, the opposing party shall file its written objections with the Director at least six (6) days prior to the hearing. If the Commission receives written objections to the issuance of a subpoena duces tecum from the opposing party, the Commission shall meet no later than three (3) calendar days before the hearing to determine whether to issue, quash or modify the requested subpoena. The Director shall then notify the parties verbally and in writing of the Commission's decision. Because of the short time frame permitted in this process, all written materials may be served by facsimile or email confirm read receipt by the parties to each other and to the Director.

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

- (6) Witnesses may be placed under the rule at the Commission hearing.
- (7) The Commission shall conduct the hearing fairly and impartially as prescribed by these Rules and shall render a just and fair decision. The Commission may consider only the evidence submitted at the hearing.
- (8) The Commission shall maintain a public record of each proceeding with copies available at cost.
- (5) Hearing procedures have been adopted by the Commission and are shown in Appendix A attached to these Rules.

**§ 143.011. DECISIONS AND RECORDS**

The Commission shall keep records of all agendas and all appeals with documentation of all hearings and administrative reviews that come before it. Commission decisions shall be signed by the concurring Commissioners. All rules, opinions, directives, decisions and orders issued by the Commission shall be written and are public records that shall be retained on file by the Commission and all relief not granted are specifically denied. Retention of all records shall be governed by applicable state law. Such records shall be made available in the office of the Director during normal office hours at nominal cost to the public and no cost to the employee.

### **§ 143.012. DIRECTOR**

- (1) There is hereby created the office of Director of Civil Service (“Director”), which shall be filled by appointment by the Commission. The person appointed as Director by the Commission must meet the same requirements as provided in Section 143.006 for Commissioners, except that the Director is not required to meet the three-year local residency requirement. The Director may be either a Commissioner, an employee of the City of Seabrook or some other person. The City Council shall determine what salary, if any, will be paid to the Director. Said Director shall, at all times, be subject to removal by the Commission.
- (2) The Director or designee shall also act as Secretary to the Commission, and shall perform all such work incidental to civil service as may be required by the Commission.

The Director’s duties include but are not limited to:

- a) Serves as Secretary to the Commission;
- b) Serves as the chief test examiner for the Commission and supervisor of all examinations, including the preparation, scheduling, scoring and security thereof;
- c) Directs recruitment and examination of applicants;
- d) Determines classification of positions;
- e) Sets and posts agenda for Commission meetings;
- f) Acts as liaison and provides staff support to Commission;
- g) Determines whether any matter is appropriately brought before Commission in a reasonable and timely fashion;
- h) Calls, schedules, reschedules, recesses and cancels meetings of the Commission;
- i) Acts as records custodian as provided by Chapter 143;
- j) Acts on behalf of Commission for actions and issues not specifically addressed in Chapter 143 or these Rules;
- k) Recodifies Commission Rules as necessary in a professional and timely fashion;
- l) Performs such other functions as may be deemed reasonably necessary in regard to the efficient and effective administration of City’s civil service system.

### **§ 143.013. APPOINTMENT AND REMOVAL OF CHIEF OF POLICE**

- (1) A person that has promoted through the ranks of the Department to Chief of Police prior to the adoption of Chapter 143 continues to serve in that position at the pleasure of the City Manager. If the Chief of Police is removed, he or she is entitled to be placed in the rank or classification occupied prior to his or her appointment as Chief of Police.
- (2) No person may be eligible for appointment as Chief of Police or head of the Police Department who is not 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 who has not served as a bona fide law enforcement officer for at least five (5) years.
- (3) When the services of the Chief of Police are terminated as such and the person is removed as Chief of Police, the person shall be reinstated in the Department and placed in a position no lower than the rank held at the time of appointment, and shall retain all rights of seniority in the Department; provided, that should such Chief of Police be charged with an

offense in violation of civil service Rules and be dismissed from the public service, or be discharged from his or her position as Chief of Police, the person shall have the same rights and privileges of a hearing before the Commission, and in the same manner and under the same conditions as classified employees, and if the Commission should find such charges to be untrue or unfounded, said person shall thereupon immediately be restored to the Department in the same classification that the person held before appointment as Chief of Police, and said employee has all the rights and privileges hereunder according to seniority, and shall be paid full salary for the time of suspension.

**§ 143.015. APPEAL OF COMMISSION DECISION TO DISTRICT COURT**

In the event any Police Officer is dissatisfied with any decision of the Commission, the person may within ten (10) days after the rendition of such final decision is sent to the person by certified mail or is personally received by the Police Officer or by the person's designee, file a petition in the district court, asking that the decision be set aside and such case shall be tried de novo.

**§ 143.016. PENALTY FOR VIOLATION OF CHAPTER**

A Police Officer as defined herein commits an offense if the person violates Chapter 143. An offense under Section 143.006 or Section 143.009 of Chapter 143 is a misdemeanor punishable by a fine of not less than \$10 or more than \$100, confinement in the county jail for not more than thirty (30) days, or both fine and confinement.

## B. CLASSIFICATION AND APPOINTMENT

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### § 143.021. CLASSIFICATION; EXAMINATION REQUIREMENT

- (1) The Commission shall provide for the classification of all Police Officers. The City Council shall establish the classifications by ordinance. The City Council by ordinance shall prescribe the number of positions in each classification.
- (2) Police Officers shall be classified as provided herein and shall be under civil service protection except for the Chief of Police (see appeal process for Chief of Police, Section 143.013). The failure of the City Council to establish a position by ordinance does not result in the loss of civil service benefits by a person entitled to civil service protection or appointed to the position in substantial compliance with these Rules.
- (3) Except as provided by Section 143.013 and 143.0251, an existing position or classification or a position or classification in the future either by name or by increase in salary may be filled only from an eligibility list that results from an examination held in accordance with these Rules.

### § 143.022. PHYSICAL REQUIREMENTS AND EXAMINATIONS

#### (1) GENERAL REQUIREMENTS

Each applicant for entry-level and promotional positions shall be required to submit to such physical and mental tests as determined by the Chief of Police to be reasonably necessary and proper to determine the physical and mental ability of the applicant to perform the essential functions required for the position sought.

Prior to appointment and after receiving a conditional employment offer, each applicant for a beginning position shall pass:

- a) A required medical examination by a physician designated by the Commission;  
and
- b) A required mental examination by a mental health professional designated by the Commission.
- c) The city shall pay for all required examinations.

Prior to appointment and after receiving a conditional appointment of promotion, each candidate for a promotional appointment shall pass a required medical examination by the physician designated by the Commission and paid by the City.

#### (2) ENTRY LEVEL APPEALS

If rejected, within five (5) calendar days from the date the applicant is notified, an applicant for a beginning position must file a written request to the Director that the Commission appoint a board of three (3) physicians, psychiatrists, or psychologists, as appropriate, to perform a fitness examination of him or her. The applicant must pay for all costs associated with the board's examination. The board's determination is final.

### § 143.023. ELIGIBILITY FOR BEGINNING POSITION

- Be between the ages of 18 and 44 at the time of hire;

- Be a graduate of an accredited high school or have an equivalency certificate;
- Be able to read, write, and speak the English language;
- Be of good moral character;
- Be certified as a peace officer, or certifiable at time of appointment, as established by the Texas Commission on Law Enforcement Officer Standards and Education; and
- Be able to meet all other minimum qualifications or knowledge levels set forth in the posted notice.
- Be able to perform all of the essential functions of the job of Police Officer
- Be legally eligible to work in the United States and able to meet I9 requirements
- Successfully pass a background check to meet minimal department standards
- Complete an application and history screening process with polygraph exam verification
- Be drug and alcohol free; pass drug and alcohol screen

**§ 143.024. ENTRANCE EXAMINATION NOTICE**

- (1) More than ten (10) calendar days in advance of any entrance examination, the Commission shall cause to be posted in plain view on a bulletin board located outside the front entrance of the City Hall a Notice of Exam for Beginning Position as Police Officer. The Notice shall show the number of position(s) to be filled for which the examination is to be held, with date, time, and place of the examination.
- (2) The Notice shall also state the period during which the eligibility list created as a result of the examination will remain in effect.
- (3) Applicants shall complete an Interest and other forms prescribed by the Director in order to qualify for eligibility to take the entrance examination in the manner specified in these Rules. An application that is rejected by the Director or an applicant who otherwise does not qualify for eligibility to take the entrance exam shall not be allowed to take the examination.
- (4) The Director may cancel, postpone or reschedule an examination at any time with or without advance notice.

**§ 143.025. ENTRANCE EXAMINATIONS**

- (1) The Commission shall make provisions for open, competitive and free examinations for persons who make proper application and meet the requirements as prescribed by these Rules.
  - a) A person who timely completes an Interest form with all documentation requested and passes an initial screening of qualifications shall be eligible to take the Exam For A Beginning Position as Police Officer.
  - b) Applicants who do not meet minimal requirements are not eligible and may be barred by the Commission for cause under the provisions of Chapter 143.
  - c) Applicants will be required to comply with the laws and ordinances in any way affecting employment in the positions for which they apply.
- (2) Eligibility List for an entry level position in the Department shall be created only as a result of such examinations and no appointment shall ever be made for any position in such

Department except as a result of such examination.

- (3) Failure to attain a passing score shall disqualify the applicant. Each applicant's grade on the written examination is based on a maximum grade of 100 percent and is determined entirely by the correctness of the applicant's answers to the questions. The minimum passing grade on the examination is 70 percent. An Applicant must pass the examination to be placed on an Eligibility List .
- (4) An applicant who has served in the armed services of the United States, who received an honorable discharge, and receives a minimum passing grade on the examination of 70 percent shall receive five (5) points in addition to the applicant's final competitive grade. Applicants requesting "Veteran's preference" shall furnish proof of eligibility to the Director by submitting an undeleted copy of his/her DD form 214 which shows:
  - a) Active military service in the armed forces of the United States; and
  - b) An honorable discharge.
- (5) An applicant may not be given a written examination for the entry level position of Police Officer unless at least one (1) other applicant being tested is present.
- (6) Each person taking an entrance examination shall be notified in writing by the Director whether he or she passed or failed the examination, the person's complete score, and their position on the Eligibility List provided the person made a passing score.

An applicant's position on the eligibility list is determined by the applicant's total score. Applicants who have been duly qualified in accordance with these Rules shall be listed on the Eligibility List in order from the highest score to the lowest score.

- (7) If two or more eligibles make identical final scores, including the test score plus additional veteran points that results in two or more applicants being tied for the same place on the eligibility list, the order of their respective standing on the eligibility list shall be determined in the following manner:
  - a) Highest Test Score—If a tie exists, the persons shall be ranked in the order according to which person had the highest examination raw score prior to the addition of veteran points.
  - b) Higher Certification— If a tie still exists, the persons shall be ranked in the order according to which person has the higher certification level as a peace officer through TCLEOSE.
  - c) Date and Time Stamp –If a tie still exists, the person's date and time of application or submittal of other supporting documents shall be used.
- (8) All applicants who have successfully completed all prior testing will be interviewed by an oral interview board. The oral interview shall be conducted and evaluated in accordance with guidelines established by the Department. Applicants must successfully pass the oral interview or his or her name shall be removed from the eligibility list .
- (9) Eligibility list for entry level positions in the Department will remain in effect for twelve (12) months unless all names have been referred to the Department. A new examination

may be given, depending on the needs of the Department, at the end of the twelve (12) month period or sooner, if applicable, in accordance with these Rules. The Director shall include this information on the eligibility list and Notice of Exam For Entry Position as Police Officer.

- (10) Deceptive conduct or false statements by an applicant, in any application or examination, shall be deemed cause for the exclusion of such applicant from any examination, for removal of the person's name from the list of eligibles, or for discharge from employment after certification.
- (11) The failure of an eligible person given a conditional offer of employment to report for a physical or psychological examination or agility test after notification by the Director shall be sufficient cause for removal of the person's name from the list of eligibles.

#### **§ 143.0251. REAPPOINTMENT AFTER RESIGNATIONS**

- (1) A classified employee who voluntarily resigns from the Department may be reappointed as a Police Officer with the Department, if there is an available vacancy, without taking another entrance examination or being placed on an Eligibility List. Reappointment of a classified employee is totally at the discretion of the Chief of Police and will not reestablish rank. If other bridging benefits apply for the reappointment, such eligibility would be specified in the City of Seabrook Personnel Policies.
- (2) The former officer shall submit a written request to be reappointed within twelve (12) months from the date of separation, to the Chief of Police who makes the final recommendation to the City Manager for reappointment. A candidate for reappointment shall not be considered unless recommended by the Chief of Police. A candidate for reappointment may not appeal his/her rejection by the Chief of Police or the City Manager.

#### **§ 143.026. PROCEDURE FOR FILLING BEGINNING POSITIONS**

- (1) When a vacancy occurs in an entry level position in the Department, the Chief of Police shall request in writing from the Commission, upon the form prescribed by the Commission, the names of suitable persons from the eligibility list and the Director shall certify to the City Manager the names of three (3) persons on the eligibility list.
- (2) The Chief of Police shall consider the applicants in the rank order by grade certified by the Commission for the eligibility list. In the absence of a disqualification, the person with the highest grade shall be selected.
- (3) The Director and the City Manager may delegate to the Chief of Police the task of determining suitability of an applicant by utilizing criteria established by these Rules and the Department Unsuitable applicants may be disqualified by the Chief of Police.
- (4) If the Chief, with the consent of the City Manager, determines that there exists a valid reason to disqualify an applicant, then the Chief will file a letter with the Commission setting forth the good and sufficient reason why the applicant with the highest grade was not selected. A copy of this letter shall also be provided to the applicant; provided, however, that there shall be no appeal to the Commission from a decision of the Chief of Police to disqualify an applicant.

(5) Causes for disqualifying the applicant:

1. cannot meet the licensing or certification requirements for the position sought.
2. has failed to demonstrate the ability to read, write, and fluently speak the English language. The candidate will be disqualified until the deficiency is corrected.
3. is found to lack any of the minimum qualifications set forth in the published notice of examination and established as minimum qualifications in the classification plan. The candidate will be disqualified only until qualifications are met.
4. is unable to perform the essential functions of the position to which he/she seeks appointment, with or without reasonable accommodation.
5. has demonstrated a failure to pay just debts. Candidates will be considered on a case by case basis due to the number of variables involved. Factors which will be considered include type and number of debts, reasons for the bad credit, extenuating circumstances, and the potential for the credit-related problems impacting the applicant's judgment and integrity. Resolution of bad credit may result in re-qualification.
6. has a conviction of or admission to conduct that constitutes a Class A or Class B Misdemeanor under the Penal Code or equivalent under federal law to include the Uniform Code of Military Justice (UCMJ) within five (5) years will result in a temporary rejection. Crimes involving moral turpitude may result in permanent disqualification and will be considered on a case by case basis with appropriate consideration of circumstances and recency.

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

A candidate will not be considered for employment while charges are pending for any criminal offense.

7. has made any false statements in any material fact; withheld information, practiced or attempted to practice any deception or fraud in his/her application, examination, or appointment. Depending on the variable involved, rejection may be either permanent or temporary.
8. has failed to complete or satisfactorily meet the employment process requirement of the respective department, including missed appointments, failure to return necessary paperwork, failure to notify department of changes in address or telephone numbers, or who otherwise failed to complete application process.
9. has failed to satisfactorily complete the oral interview process. Candidates will be disqualified for failure to verbally communicate effectively and appropriately; failure to demonstrate an understanding of the roles and responsibilities of a firefighter or police officer; failure to present the maturity expected of a firefighter or police officer; or failure to accurately and precisely respond to the questions of the interviews.
10. will be temporarily disqualified for a period of two years who admit or are found to have operated a motor vehicle under the influence of alcoholic beverages to the point of legal intoxication with the last two years.
11. has used illicit substances as indicated by the following guidelines:
  - a) Candidates will be temporarily disqualified when they have admitted to

- conduct which constitutes illegal use of marijuana during the last five (5) years.
- b) Candidates who admit to conduct which constitutes abuse of legally obtained prescription medication(s), or illegal use of the prescription medication(s) of another person may be temporarily or permanently disqualified. Conduct involving the abuse and/or misuse of prescription medication(s) will be considered on a case by case basis with consideration given to circumstances and recency.
  - c) Candidates will be permanently disqualified when they have admitted to conduct which constitutes illegal use of felony grade substances as defined in the Texas Penal Code.
12. will be temporarily disqualified who have violations exceeding three (3) events (moving violations or preventable accidents) in the preceding thirty-six (36) months, or any DWI, DUID, or reckless driving conviction in the preceding sixty (60) months.  
Lesser, but more severe, violations which tend to indicate driving habits that are not compatible with the operation of emergency vehicles and present potential liabilities to the City of Seabrook will be temporary disqualifications. Reapplications will be permitted when the candidate can meet the above standards.
13. has been dismissed or resigned in lieu of dismissal from any employment for inefficiency, delinquency, or misconduct. Said dismissal or termination will be considered on a case by case basis. Rejections under this provision will be considered permanent.
14. is of bad character. Rejection may be either permanent or temporary based on the nature of the information received.
15. has a history of unstable work, i.e., including short terms of employment over the candidates employment history; has a history of employment in an illegal occupation. Rejection under this provision will be temporary in nature and candidates will be eligible for reapplication after a two (2) year period. Due to the variable involved, each situation will be considered on a case by case basis. Rejection for employment in an illegal occupation will be permanent in nature.
16. has failed to meet all legal requirements necessary for future licensing and certification as required by the Texas Commission on Law Enforcement Officer standards and Education or the Texas Commission on Fire Protection. Rejection for this cause will be temporary until candidate can meet the above standards.
17. exercised poor judgment skills. The applicant has demonstrated either immaturity or poor discretion in the applicant's decision making process. Examples of such conduct would include, but is not limited to: attendance at parties or social functions at which controlled substances or dangerous drugs are consumed, and such activity is known or should have been known by the applicant; silent acceptance of known illegal conduct by others in his presence; workplace behavior/decision that adversely affect the business or associates, with little or no objectively justifiable need for such behavior. Rejection for this cause will be temporary until the applicant can demonstrate that the applicant's judgment skills have developed.

**§ 143.027. PROBATIONARY PERIOD**

- (1) A person appointed to an entry level position in the Department shall serve a probationary period of one (1) year from the date of hire.
- (2) During the probationary period, Police Officers are not Chapter 143 civil service status employees, but rather are employed “at will” and shall be subject to discharge at the discretion of the Chief of Police, which discharge shall be final and unappealable to the Commission. Probationary employees shall not be entitled to have specific charges filed against them, to a hearing before the Commission or Third Party Hearing Examiner nor to appeal to district court in accordance with rights afforded to civil service employees pursuant to Chapter 143.
- (3) An employee who is on probation may not be prohibited from joining or required to join an employee organization. Joining or not joining an employee organization is not a ground for retaining or discharging an employee who is serving the probationary period.

**§ 143.028. ELIGIBILITY FOR PROMOTION**

- (1) No Police Officer shall be eligible for promotion unless he or she has served in the Department at least two (2) years immediately preceding the date of the promotional examination in the next lower position. A Police Officer is not eligible for promotion to the rank of Captain or its equivalent unless the person has a least four (4) years actual service the Department.
- (2) However, if a Police Officer is called to active military duty for not more than sixty (60) months as defined by USERRA, the two (2) year service requirements prescribed above do not apply and the person is 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 (12) months, shall be required to work ninety (90) days upon returning to the Department before the individual shall become eligible to participate in a promotional examination, such period of time considered essential for bringing the person up to date on equipment and techniques.

**§ 143.029. PROMOTIONAL EXAMINATION NOTICE**

- (1) All promotional examination questions must be taken from sources that are listed in a Promotional Exam Notice that is posted by the Commission at least ninety (90) days before the date of the examination. Police Officers may suggest source materials for promotional examinations. Such request should be in writing through the Chief of Police to the Director.
- (2) At least 30 days in advance of any examination for promotion, the Commission shall cause to be posted on a bulletin board located in the main lobby of the City Hall and in plain view, a notice of such examination and said notice shall show the position(s) to be filled or for which the examination is to be held, with date, time and place thereof, and copies of such notices shall be furnished in quantities sufficient for posting in the Department.

**§ 143.031. ELIGIBILITY FOR PROMOTIONAL EXAMINATION**

- (1) All promotional examinations shall be open to all Police Officers who have held a

continuous position for two (2) years or more immediately prior to the examination in the classification immediately below, in salary, of that classification for which the examination is to be held.

- (2) Any employee who has been demoted to a lower rank shall not be eligible to take the promotional examination to the position from which he or she was demoted until two (2) years have passed.
- (3) If there is not a minimum of two (2) Police Officers in the next lower position with two (2) years of service in that position to provide a minimum of two (2) persons to take the examination when the test date is being established, the Commission shall open the examination to members in that position with less than two (2) years service. If there is still an insufficient number to provide a minimum of two (2) persons to take the examination, the Commission shall extend the examination to the members in the second lower position in salary to that for which the examination is to be held.
- (4) Minimum qualifications and certifications that are required for each position are listed in the applicable job description as well as the Seabrook Policy and Procedures.

#### **§ 143.032. PROMOTIONAL EXAMINATION PROCEDURE**

The Commission shall adopt rules governing promotional examinations to provide an eligibility list for each classification in the Department.

- (1) Each eligible promotional candidate shall be given an identical examination in the presence of the other eligible promotional candidates.
- (2) The examination questions shall be entirely in writing and no part of which shall be by oral interview.
- (3) The examination questions must test the knowledge of the eligible promotional candidates about information and facts and must be based on:
  - a) The duties of the position for which the examination is held;
  - b) Material that is of reasonably current publication and that has been made reasonably available to each member of the Department involved in the examination; and
  - c) Any study course given by or approved by the Department.
- (4) The examination questions must be taken from the sources posted as prescribed by Section 143.029
- (5) The examination questions asked therein shall be prepared and composed in such a manner that the grading of the examination can be promptly completed immediately after the holding of the examination.
- (6) The Director is responsible for the preparation and security of all promotional examinations. The fairness of the competitive promotional examination is the responsibility of the Commission, the Director, and any municipal employee or agent

involved in the preparation or administration of the examination.

- (7) A person commits an offense if the person knowingly or intentionally:
  - a) Reveals a part of a promotional examination to an unauthorized person; or
  - b) Receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage.
- (8) An offense under the above subsection (7) is a misdemeanor punishable by a fine of not less than \$1,000, confinement in the county jail for not more than one year, or both the fine and the confinement.
- (9) The actual conduct of every examination shall be under the direction of the Director, who shall be responsible to the Commission. The Director shall have the authority to designate a designee to administer tests and/or examinations.
- (10) Employees shall complete an official Notice of Intent to Test form for each promotional examination, as prescribed by the Director, in order for his/her eligibility to be considered to take a promotional examination. Failure to submit a completed form in the manner prescribed in the Promotional Exam Notice, and failure to file the form with the Director within the time limits prescribed, will render the employee ineligible to take the examination. In addition, employee must meet all the statutory qualifications to be considered eligible to take the exam.
- (11) To provide for a competitive promotional examination, at least two (2) qualified candidates in the next lower position with at least two (2) years of service shall sit for an examination. If there are not two (2) candidates in the next lower position, the Commission shall follow the procedures relating to eligibility for promotional examinations outlined in Section 143.031 until at least two (2) qualified candidates sit for the examination. When more than one (1) vacancy exists at the time an examination is to be given, the Director shall determine whether the number of examinees who have filed Notices of Intent to Test is competitive. If necessary, the Director shall make a recommendation to the Commission to open the examination to additional employees, as outlined in Section 143.031.
- (12) **PROMOTIONAL EXAMINATION ADMINISTRATION PROCEDURES**
  - a) Smoking shall be prohibited at all times in the testing area.
  - b) Check In - No candidate shall be admitted once test instructions starts.
  - c) Failure to Appear - The applications of persons who fail to appear for the examination shall be voided and shall be disposed of by the Director.
  - d) Cancellation of Examination- The Director may cancel a scheduled examination for sufficient cause.
  - e) Cheating - Any candidate taking an examination that uses or attempts to use any unfair or deceitful means to answer questions on such examination shall be escorted out of the testing facility by the test administrator and the test administrator shall void that person's exam. The examiner shall report the action to the Director or designee. Any person acting in this manner will be disqualified from further consideration for the position sought, and the Chief of Police may take disciplinary action.
  - f) Test Monitors - The Director or designee may select a reasonable number of

persons employed by the City of Seabrook, any of its agents or an agency of the State of Texas to assist in the administration, proctoring and grading of an examination.

(13) **PROMOTIONAL EXAMINATION PROCEDURES FOR PERSONNEL ON ACTIVE MILITARY DUTY**

- a) Police promotional candidates who are serving on active military duty, outside the State of Texas or more than 200 miles from Seabrook City Hall are eligible to take a separate promotional examination. An examination, that is or is not identical to the examination administered to other eligible candidates, may be administered outside the presence of other candidates.
- b) The Director is authorized to coordinate all testing under this subsection and may exercise discretion necessary to ensure the secrecy of the examination and to assure secure administrative procedures are followed.
- c) At no time will the administration of a promotional examination being given to a promotional candidate serving on active military duty unnecessarily interfere with ongoing military efforts.
- d) If the candidate serving on military duty takes and passes a promotional examination, the candidate's name shall be included on the promotional eligibility list created nearest in time to the time at which the candidate on active military duty took the examination.
- e) Promotional candidates must notify the Director at least twenty-five (25) days in advance of the examination of their desire to have the examination administered off-site. Promotional candidates may postpone their examination and wait till they return from active military duty to take the promotional exam with at least 90 days notice of such exam.
- f) All employees covered by Chapter 143, who are called to active military duty, must notify the Director of their mailing address and/or their e-mail addresses. The Director shall use his or her best efforts to inform the employees serving active military duty of upcoming promotional examinations. No active military personnel will be deprived of an opportunity to take a promotional examination for which they qualify because of their active military service or any failure to respond or request a timely promotional exam while on active duty.

**§ 143.033. PROMOTIONAL EXAMINATION GRADES**

- (1) When one of the eligible promotional candidates taking an examination for promotion has completed his or 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 candidate who wishes to remain during the grading.
- (2) Each Police Officer shall be given one (1) additional point for each year of seniority as a classified Police Officer in the Department but never to exceed ten (10) points to be added

to scores of 70 or more. Seniority points may be used to obtain a minimum passing score on the examination.

(3) The grading of the examinations shall be as follows:

- a) The grade, which shall be placed on the preliminary eligibility list for each Police Officer, shall be computed by adding the candidate's points for seniority to the candidate's grade on the written examination with a minimum of 70 points. Each candidate's grade on the written examination is based on a maximum grade of 100 points and is determined entirely by the correctness of the candidate's answers to the questions. All candidates who receive a grade of at least 70 points before seniority points are added shall be determined to have passed the examination.
- b) It is provided that when two or more eligible promotional examination participants shall make identical final scores, to include the written examination score plus additional credit for seniority points that results in two or more candidates being tied for the same place on the eligibility list, the order of their respective scores on the eligibility list shall be determined in the following manner:
  - i. Highest Test Score – If two (2) or more candidates tie on total final scores, the persons shall be ranked in the order according to which person had the highest examination raw score prior to the addition of seniority points and after the Commission's determination of appeals, if any.
  - ii. Seniority Rank – If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most seniority (in the position immediately below the position for which the examination was given).
  - iii. Seniority in Department - If a tie still exists, the candidate shall be ranked in the order according to which candidate has the most uninterrupted seniority with the Department in a classified position.
  - iv. Total Years as a Certified Police Officer - If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most years of experience as an active, fulltime, paid peace officer for a position in the Seabrook Police Department and/or any other police department.
  - v. Total City Service - If a tie still exists, the candidates shall be ranked in order according to which candidate has the most total service time with the City, including time in a non-classified, permanent position, if any.
  - vi. Earliest Notice of Intent –If there is still a tie for the same place on the eligibility list after the above considerations, then the earliest time when the Notice of Intent form was received in the Director's office shall determine the candidate's respective standing on the eligibility list .
- c) Within twenty-four (24) hours after a promotional examination is held, the individual raw test scores and added seniority scores will be posted on a bulletin board located in the main bulletin board of the City Hall. These scores are not final scores.

#### **§ 143.034. REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION**

(1) Upon request, each eligible promotional candidate for a promotional position shall have the

opportunity to examine the source materials, his or her examination and answers, together with the grading of the examination. If dissatisfied, the candidate may make a written appeal within five (5) business days after the exam date to the Commission for administrative review in accordance with the provisions of these Rules. Eligible promotional candidates are to contact the Director or designee to schedule a time to review the examination during the times specified. Examinations may not be reviewed after the five (5) business days have passed nor may an employee appeal any test question after this time period..

- (2) The eligible promotional candidate may not remove the examination or copy a question used in the examination.
- (3) The Commission shall have the power to correct, amend or revoke any eligibility list in which an error has been made. The reason for such actions shall be recorded in full in the minutes of the Commission meeting.
- (4) Promotional examination questions appealed to the Commission will be sustained, overruled, or eliminated by a ruling issued by the Commission.
  - a) Sustain the answer key (test scores will remain as reported)  
A ruling which rejects the appeal presented to the Commission will require the Director or designee to accept the answer as given on the answer key, while grading the promotional examinations of all eligible candidates.
  - b) Overrule the answer key (the Commission will designate another answer(s) to be accepted) A ruling which sustains the appeal of a promotional examination question will require the Director or designee to accept two or more answers, as directed in the ruling, while grading the promotional examination of all eligible candidates.
  - c) Eliminate the test question (the test question will not be included)  
A ruling, which rejects the test question, related to the appeal of a promotional examination question will require the Director or designee to disregard the question and its answer and rescore the exam on the basis of the total correct answers only while grading the promotional examination of all eligible candidates.

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

$(100) / (\text{total number of test questions qualified}) = \text{point value of each question}$

$(\# \text{ of total test questions qualified}) - (\# \text{ of wrong answers}) - (\# \text{ of unanswered questions}) = \# \text{ of correct answers}$

$(\# \text{ of correct answers}) \times (\text{point value of each question}) = \text{raw score}$

**Seniority points (1 -10) added to each raw score for Total Final Score**

- (5) **PROMOTIONAL EXAMINATION APPEAL PROCEDURES FOR PERSONNEL ON ACTIVE MILITARY DUTY**  
Candidates serving on military duty, who take the promotional examination outside of Seabrook, shall be eligible to file an appeal of the examination as provided in Chapter

143.034. The Director shall coordinate all matters related to the review of the examination and the filing of the appeal, and may extend the time limit for appeal upon a showing of exigent circumstances.

**§ 143.035. ALTERNATE PROMOTIONAL SYSTEM IN POLICE DEPARTMENT**

The Alternate Promotional System shall apply only to those ranks who have adopted the Alternate Promotional system and shall consist of a promotional process involving two phases for each classification: a Written Exam (100pts) and an Assessment Center (100pts).

Promotional Examination Procedure:

Section 143.032 of the City of Seabrook’s Civil Service Rules and Regulations, remains in effect, unless otherwise addressed herein.

(1) **ELIGIBILITY FOR PROMOTION**

a) **PROMOTIONAL ELIGIBILITY FOR SERGEANT POSITION**

Promotion to Sergeant requires that the Police Officer must have a total of at least four (4) years of service as a full time, licensed Police Officer with a minimum of two (2) full years immediately before the examination date, continuously held in the classification of Police Officer in the Seabrook Police Department any part of which may be met by active military service duty. Two (2) or more years of prior service as a Police Officer in another comparable law enforcement agency may substitute for two of the four years minimally required for eligibility, but may not substitute for any or all of the two years of Seabrook Police Department experience required. Examples of law enforcement agencies comparable in duties include municipal police departments, departments of public safety and sheriff departments. Candidate must also have an Intermediate TCLEOSE certification

b) **PROMOTIONAL ELIGIBILITY FOR LIEUTENANT POSITION**  
See Section 143.028

c) **PROMOTIONAL ELIGIBILITY FOR CAPTAIN POSITION**

Promotion to Captain requires that the Police Officer must currently be in the position of Lieutenant in the Seabrook Police Department, and have served for at least two (2) years as a Lieutenant in the Seabrook Police Department.

(2) **PROMOTIONAL EXAMINATION PROCEDURE**

a) **WRITTEN EXAM**

Each Police Officer shall be given an identical examination in the presence of the other eligible promotional candidates. Promotional candidates who successfully pass the written examination with a raw score of 70 or better will proceed to participate in an assessment process. Only the written examination questions may be appealed to the Civil Service Commission. Reviews and appeals of the written examination questions will be conducted in accordance with Section 143.034 of the City of Seabrook’s Civil Service Rules and Regulations.

b) **SOURCE LIST AND EXAMINATION NOTICE**

Promotional examination notices and source lists will be posted in accordance with Section 143.029 of the City of Seabrook Civil Service Rules and Regulations.

c) **NOTICE OF INTENT TO TEST**

Employees shall complete an official Notice of Intent to Test form for each promotional examination, as prescribed by the Director, in order for his/her eligibility to be considered to take a promotional examination. Failure to submit a completed form in the manner prescribed in the Promotional Exam Notice, and failure to file the form with the Director within the time limits prescribed, will render the employee ineligible to take the examination.

d) **TEST SCORES**

When one of the eligible promotional candidates taking an examination for promotion has completed his or 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 candidate who wishes to remain during the grading.

A raw score list based exclusively on the written exam scores will be posted in accordance with Section 143.033 of the City of Seabrook's Civil Service Rules and Regulations in the city hall bulletin board and within the common area of the Police Department.

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

$(100) / (\text{total number of test questions qualified}) = \text{point value of each question}$

$(\# \text{ of total test questions qualified}) - (\# \text{ of wrong answers}) - (\# \text{ of unanswered questions}) = \# \text{ of correct answers}$

$(\# \text{ of correct answers}) \times (\text{point value of each question}) = \text{raw score}$

The raw score, defined as the original datum that has not been transformed or adjusted, will be the exam score factored out to one (1) decimal point place only (e.g. 70.0). Exam scores will not be rounded up or down nor averaged.

In order to be considered to have passed the exam, a raw score of 70.0 or better is required. Those with scores of 69.9 or below will be ineligible for further processing through the assessment portion of the promotional procedures.

e) **ASSESSMENT PROCESS**

The assessment process shall proceed within 60 business days from the date of the posting of the final raw score list. The Director and the Chief of Police shall mutually agree upon an independent contractor to develop, facilitate and conduct a turnkey assessment process from start to finish. The contractor shall be independent of the Seabrook Police Department and the City of Seabrook. The contractor shall be an individual or company with the proven expertise in conducting such assessments.

An assessment center is generally required as a part of the promotional process. However, when an exam is administered with only one person passing the exam, an assessment center is not needed to continue the promotional process and should be waived in such circumstance only. Accordingly, an assessment center will only be required when two or more candidates have passed the promotional exam and will require continued promotional processing.

f) ASSESSMENT CENTER DESIGN

i. The contractor will develop an assessment instrument for the classification sought and shall consist of a minimum of four or more performance exercises that test and allow for the objective evaluation of the candidates possession of the following attributes including but not limited to:

- Leadership
- Decisiveness
- Self Initiative
- Adaptability
- Interpersonal Skills
- Written Communication Skills
- Problem Analysis
- Problem Solving
- Critical Thinking
- Judgment
- Planning and Organizing
- Risk Management
- Technical Proficiency
- Tactical Proficiency

ii. The performance exercises shall be appropriate for the classification being tested for and may include but not limited to:

- Oral Presentations
- Leaderless Group Exercises
- Prioritization Exercises
- Structured Interviews
- Written Exercises (Analysis, Proposal, etc)
- Role Play Exercises
- Tactical Exercise

iii. Neither the Chief of Police nor the Director will be directly involved in the design of the assessment instrument other than the prerequisite interaction and dialogue with the contractor necessary to facilitate an effective and efficient assessment and in order to meet the contractor's informational needs for design.

g) ASSESSOR SELECTION

The contractor will select as many assessors as necessary to facilitate the assessment within the following parameters:

- i. The contractor will adequately train the assessors in their roles and responsibilities as assessors.
- ii. Assessors selected by the contractor must be approved by both the Chief of Police and the Director and must have the appropriate experience and educational background to evaluate the classification for which they are assessing.
- iii. There must be two (2) commissioned law enforcement officer assessors for every one (1) civilian assessor appointed by the contractor.
- iv. At least one (1) commissioned law enforcement member shall be the same rank as the classification being assessed.
- v. All other assessors shall be the same rank or higher than the classification being assessed.
- vi. Each assessor will certify by a written, sworn, and notarized affidavit that he or she has not and will not talk to or correspond with ANY other PERSON about any candidate's abilities, personality, or qualifications for promotion, prior to and during participation in the assessment center process. The assessor must further stipulate that he or she has no direct relationship with any candidate, other than professional, that would interfere with the assessor's objectivity in providing a fair, balanced, and impartial evaluation of the candidate.
- vii. Each candidate will certify by a written, sworn, and notarized affidavit that he or she has not and will not talk to or correspond with ANY other PERSON about any candidate's abilities, personality, or qualifications for promotion, prior to and during participation in the assessment center process except the assessors.
- viii. Assessors will not exceed a ten (10) hour work day (including lunch).
- ix. No observers other than the contractor and/or designee, the Chief of Police, and Director and/or designee shall be allowed in the assessment venue during the assessment processing.
- x. Upon completion, the contractor shall provide each candidate a written performance evaluation. The evaluation shall at minimum highlight the candidate's strengths and weaknesses as observed throughout the process. Each candidate may further review his or her process scores, but may not appeal them to the assessor/contractor or the Civil Service Commission.

h) **APPLICATION OF ALTERNATE PROMOTIONAL SYSTEM TO PERSONNEL ON ACTIVE MILITARY DUTY**

If feasible, eligible promotional candidates serving on active duty during the time in which the written examination of a promotional process is administered will be facilitated in accordance with Section 143.032 of the City of Seabrook's Civil Service Rules and Regulations. If not feasible and at the request of the member, the written examination may be postponed until the member returns from active military duty. Written examinations will be administered and facilitated at the discretion of the Civil Service Director.

Should an active duty candidate pass the written examination with a raw score of 70 or better and be eligible to continue to the assessment process, he/she may resume the assessment processing once the active duty candidate returns to employment with the SPD. The Director shall, within 60 days, facilitate and supervise the administration of the assessment process, which may or may not be identical to the processes administered to the other candidates. As indicated in Section (1)(a) above, military active duty service shall be substituted for all or part of the SPD service requirement in the two years immediately preceding the written examination.

After the returning active duty member completes the written examination and assessment process and all appeals processes outlined herein, the Civil Service Director shall establish a new revised eligibility list, if necessary and feasible.

i) SCORING METHODOLOGY

The exam score used will be the raw score defined as the original datum that has not been transformed or adjusted. The promotional raw score will be carried out to one (1) decimal point (e.g. 70.0). Exam scores will not be rounded up or down nor averaged.

Each candidate's final score shall be the sum of scores from the written examination and assessment process. The final combined score after the total promotional system determines placement of candidates on the eligibility list, as follows:

Written Examination (raw score list)	Possible:	100 points
Assessment Process **	Possible:	100 points
Total Maximum Score:		200 points

\*\*For candidates who score at least 70.0 on the written test.  
\*\*In the event that only one person passes the exam and the assessment center is waived, the total maximum score will be 100 points.

If two or more promotional examination participants make an identical Total Score, the placement of their names on the eligibility list shall be determined in the following manner:

1. Seniority in Rank – The candidate shall be ranked in the order according to which candidate has the most uninterrupted seniority (in the position with the Seabrook Police Department immediately below the position for which the examination was given).
2. Seniority in Department – If a tie still exists, the candidate shall be ranked in the order according to which candidate has the most uninterrupted seniority with the Seabrook Police Department in any classified position.

In the event that none of the candidates sitting for a promotional exam pass the exam, the

Director shall establish a second exam to be held within 42 days of the original exam and consist of a restructuring of the original test including the substitution of at least 10 new exam questions. The Director shall post notice of the second exam at least 10 days prior to the date of the exam. Only those examinees who participated in the first exam may elect to retake the second exam by submitting a Notice of Intent To Retest by the posted deadline to the Director.

If no candidate passes the second exam, that posting for the exam shall be cancelled. The Director shall post a denovo notice of a subsequent entirely new exam and promotional reading list in accordance with Section 143.029 of the Rules. All eligible participants (including those who took the original exam) may participate by submitting a new Notice of Intent to Test form by the posted deadline to the Director.

- (4) The Commission may, on the recommendation of the Chief of Police and a majority vote of the Police Officers, adopt an alternate promotional system to select persons to fill non-entry level positions. An alternate promotional system adopted by the Commission shall comply with the following requirements:
  - a) The Commission shall order the Director to conduct an election and submit the revised promotional system by secret ballot to all Police Officers in the Department.
  - b) The Director must hold the election on or after the 30th day after the date Notice of Election is posted in the Department. The date the election is to be held is to be established by the Commission and recorded in the official minutes of the Commission calling for the election. The election shall be conducted throughout each regular work shift at an accessible location within the Department during a 24-hour period.
  - c) The ballot shall contain the specific amendment to the promotional procedure. Each Police Officer shall be given the opportunity to vote by secret ballot "for" or "against" the amendment.
  - d) The revised promotional system must be approved by a majority vote of the Police Officers voting. A promotional system amendment that is defeated must not be placed on a ballot for vote before the Police Officers for at least 12 months after the date on which the prior election was held, except that this subdivision does not apply if the Chief of Police recommends a different proposal to the Commission.
  - e) The Commission shall canvass the votes not later than the 30th day after the date on which the election was held.
  - f) Appeals alleging election irregularity must be filed with the Commission not later than the fifth business day after the date on which the election closes. The appeal must be in writing and shall include a statement specifying the alleged election irregularity.
  - g) The alternate promotional system becomes effective after all election disputes have been ruled on and the election votes have been canvassed by the Commission.
- (5) At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, the Chief of Police may petition the Commission to terminate the alternate system and the Commission shall terminate the alternate system.

- a) At any time after an alternate promotional system has been adopted under this subdivision and has been in effect for at least 180 days, a petition signed by at least thirty-five (35) percent of the Police Officers of the Police Department may be submitted to the Commission asking that the alternate promotional system be reconsidered. If a petition is submitted, the Commission shall, not later than the 60th day after the date on which the petition was filed, hold an election as prescribed by Section 143.035 of these Rules. If a majority of those voting vote to terminate, the Commission shall terminate the alternate promotional system.
- b) If the alternate system is terminated, an additional eligibility list may not be created under the alternate system.
- c) A promotional eligibility list may not be created if an election under this section is pending. An existing eligibility list, whether created under the system prescribed by these Rules or created under an alternate system adopted under Section 143.035 may not be terminated before or extended beyond its expiration date. A person promoted under an alternate system has the same rights and the same status as a person promoted under this chapter even if the alternate system is later terminated.

**§ 143.036. PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS**

- (1) When a vacancy occurs in a non-entry level position, the vacancy shall be filled as prescribed by this section. A vacancy occurs on the date an official act occurs which removes an incumbent from an existing position, such as resignation, retirement, death, promotion or issuance of an indefinite suspension in accordance with Section 143.052.
- (2) If an eligibility list for the position to be filled exists on the date the vacancy occurs, the Commission, through the Director, on request of the Chief, shall certify to the Chief within ten (10) days after notification of the vacancy, the names of the three persons having the highest grades on the eligibility list. If fewer than three (3) names remain on the eligibility list, or if only one (1) or two (2) eligible promotional candidates passed the written promotional examination, each name must be submitted to the Chief of Police.
- (3) The Commission shall submit names from an existing eligibility List to the Chief of Police until the vacancy is filled or the list is exhausted.
- (4) 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 ninety (90) days after the date the vacancy occurs or a new position is created.
- (5) If an eligibility list exists on the date a vacancy occurs, the Chief of Police shall fill the vacancy by permanent appointment from the eligibility list furnished by the Commission within sixty (60) days after the date the vacancy occurs. If an eligibility list does not exist, the Chief of Police 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.
- (6) Unless the Chief of Police has a valid reason for not appointing the person, the Chief of Police shall appoint the eligible promotional candidate having the highest grade on the eligibility list. If the Chief of Police has a valid reason for not appointing the person having the highest grade, the Chief shall personally discuss the reasons with the person being bypassed before appointing another person. The Chief of Police shall also file the reasons,

in writing, for the rejection of the highest name or names, with the Commission and a copy shall be given to the employee. Within ten (10) days of receiving the notice, the person being bypassed may appeal the decision to the Commission or to a Third Party Hearing Examiner.

- (7) If a person is bypassed for promotion, the person's name is returned to its place on the eligibility list and shall be resubmitted to the Chief of Police if another vacancy occurs before the list expires. If the Chief of Police bypasses the same person three times and each time 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.
- (8) Each promotional eligibility list remains in existence for one year from the date the written examination is given unless exhausted. Without exhaustion, at the expiration of the one-year period the eligibility list expires and a new examination may be given.
- (9) No person whose name is upon an eligibility list may waive the right to certification or appointment without being stricken from the eligibility list, except for temporary inability, physical or other causes beyond the person's control, to accept the position offered, the proof of which shall be acceptable to the Commission. The Commission shall enter into its minutes the reasons for its action in each case, and the waiver shall not continue in effect for a longer period than ninety (90) days without special action of the Commission.
- (10) The name of the person declining appointment shall be stricken from the eligibility list.

**§ 143.037. RECORD OF CERTIFICATION AND APPOINTMENT**

- (1) Whenever a person is certified and appointed in the Department, the Director shall forward a record of the person so certified and appointed to the Chief of Police, forward a similar copy to the City Manager, and retain a copy in the civil service files.
- (2) The record of certification and appointment shall show:
  - a) the date notice of examination for the position was posted;
  - b) the date on which the appointed person took the examination;
  - c) the name of each person who conducted the examination;
  - d) the relative position of the appointed person on the eligibility list;
  - e) the date the appointed person took the physical examination, the name of the examining physician, and whether the person was accepted or rejected;
  - f) the date the request to fill the vacancy was made;
  - g) the date the appointed person was notified to report for duty; and
  - h) the date the appointed person's pay is to start.
- (3) If the Director intentionally fails to comply with any provisions of this section, it shall be the duty of the Commission to remove the Director from office.
- (4) The failure, however, of the Director to comply with any of the provisions of this section shall in no way impair the civil service standing of an employee.

**§ 143.038. TEMPORARY DUTIES IN HIGHER CLASSIFICATION**

The Chief of Police may prescribe methods for selecting and making assignments to temporarily fill a position in the next higher classification.

## C. COMPENSATION

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### § 143.041. SALARY

- (1) The Chief of Police directs and publishes the pay plan for the Public Safety Departments in the City's budget that is adopted annually by budget ordinance by the City Council. All officers in the same classification are entitled to the same base salary.
- (2) In addition to the base salary, each police officer when eligible is entitled to each of the following types of pay, if approved, by budget ordinance:
  - a) Longevity pay;
  - b) Seniority pay (Step Pay Plan);
  - c) Certification Pay; and
  - d) Educational Incentive pay (College Degree Pay)

### § 143.044. CERTIFICATION AND EDUCATIONAL INCENTIVE PAY

- (1) The Chief of Police directs and publishes the pay plan for the Public Safety Departments in the City's budget that is adopted annually by budget ordinance by the City Council, Officers receiving this special pay may only be paid after completion with verification that all requirements have been met.

### § 143.045. ACCUMULATION AND PAYMENT OF SICK LEAVE

- (1) Police Officers shall be allowed sick leave with full pay accumulated at the rate of one and one-fourth (1 1/4) full working days for each full month employed in a calendar year so as to total 15 working days to an employee's credit each 12 months.
- (2) Sick leave may be accumulated without limit and may be used while an employee is unable to work because of any bona fide illness or injury. In the event the Police Officer exhausts the sick leave and can conclusively prove that the illness was incurred while in the performance of official duties, an extension of paid sick leave shall be granted.
- (3) In the event a Police Officer for any reason leaves the classified service, the person shall receive, in a lump sum payment, the full amount of his or her then current salary for the period of accumulated sick leave, provided to a maximum of 90 working days (720 hours) of accumulated sick leave.
- (4) An employee who is indefinitely suspended must exhaust all appeal rights before the City is obligated to pay any accumulated sick leave as prescribed under Chapter 143.
- (5) In order to facilitate the settlement of the accounts of deceased Police Officers, all unpaid compensation, including all accumulated sick leave (old or new or both) as specified in subsection 143.045 due such employee at the time of death, shall be paid to the person or persons surviving an active Police Officer who died as a result of a line-of-duty injury or illness, in the following order of precedence:
  - a) To the beneficiary or beneficiaries designated by the employee in writing to receive such compensation and filed with the Commission prior to the person's

death;

- b) If there be no such beneficiary so designated, to the Police Officer's surviving widow or widower;
- c) If there be no such beneficiary or surviving spouse, to the child or children of the Police Officer and descendants of deceased children, by representation;
- d) If none of the above, to the parents of the Police Officer or the survivor of them;
- e) If there be none of the above, to the duly appointed legal representative of the estate of the deceased Police Officer or if there be none, to the person or persons determined to be entitled thereto under the laws of descent and distribution of the State of Texas.
- f) Payment of compensation to a person in accordance with the above subsection (6) is a bar to recovery by any other person.

**§ 143.046. VACATIONS**

- (1) All Police Officers in the classified service shall earn a minimum of fifteen (15) working days (120 hours) vacation leave with pay each year and up to twenty-five (25) days (200 hours) depending upon years of continuous service as is established by resolution in the Seabrook Personnel Policies. Police Officers may take accrued vacation after completing one year's service.

<i>Years of Continuous Service</i>	<i>Vacation Per Year</i>
Hire Date* through the completion of the 10th Year (120 months)  (*For those hired after October 30, 2011)	120 hours / year  4.62 hours / pay period
From the employee's 11 <sup>th</sup> Year (121 months) through the completion of the 20 <sup>th</sup> Year (240 months)	160 hours / year  6.16 hours / pay period
From the employee's 21 <sup>st</sup> Year (241 months) and over	200 hours / year  7.70 hours /pay period

- (2) Maximum accumulation of days and payment of vacation time upon termination of 240 hours shall be the same as granted to other city employees as established by resolution in the Seabrook Personnel Policies. Vacation balances are rolled over from calendar year to calendar year up to a maximum of 240 hours.
- (3) Police Officers shall be allowed the same number of holidays, or days in lieu thereof, as are

granted to other city employees as established by resolution in the Seabrook Personnel Policies.

# D. DISCIPLINARY ACTIONS

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## **§ 143.051. CAUSE FOR REMOVAL OR SUSPENSION**

Cause for removal or suspension of a Police Officer is not valid unless it involves one or more of the following grounds:

- (1) Conviction of a felony or other crime involving moral turpitude;
- (2) Violations of a municipal charter provision;
- (3) Acts of incompetency;
- (4) Neglect of duty;
- (5) Discourtesy to the public or to a fellow employee while the Police Officer is in the line of duty;
- (6) Acts showing lack of good moral character;
- (7) Drinking intoxicants while on duty or intoxication while off duty;
- (8) Conduct prejudicial to good order;
- (9) Refusal or neglect to pay just debts;
- (10) Absence without leave; or
- (11) Violation of an applicable Seabrook Police Department Policy and Procedures in effect or special order.
- (12) Violation of an applicable Seabrook Personnel Policy or Procedure

## **§ 143.052. DISCIPLINARY SUSPENSIONS**

- (1) The Chief of Police may suspend a Police Officer under the Chief of Police supervision or jurisdiction of the Chief of Police for the violation of a civil service rule. The suspension may be for a reasonable period not to exceed 15 calendar days or for an indefinite period. An indefinite suspension is equivalent to dismissal from the Department.
- (2) If the Chief of Police suspends a Police Officer, the Chief of Police shall, within 120 hours after the hour of suspension, file a written statement with the Commission giving the reasons for the suspension. The Chief of Police shall immediately deliver a copy of the statement in person to the suspended Police Officer.
- (3) The copy of the written statement must inform the suspended Police Officer that if the person wants to appeal to the Commission or third party, the person must file a written appeal with the Commission within ten (10) calendar days after the date the person receives the copy of the statement.
- (4) The written statement filed by the Chief of Police with the Commission must point out each civil service rule alleged to have been violated by the suspended Police Officer and must describe the alleged acts of the person that the Chief of Police contends are in violation of these Rules. It is not sufficient for the Chief of Police merely to refer to the provisions of the Rules alleged to have been violated.
- (5) If the Chief of Police does not specifically point out in the written statement the act or acts of the Police Officer that allegedly violated these Rules, the Commission shall promptly

reinstate the person.

- (6) If offered by the Chief of Police, the Police Officer may agree in writing to voluntarily accept, with no right of appeal, a suspension of sixteen (16) to ninety (90) calendar days for the violation of a civil service rule. The Police Officer must accept the offer within five (5) business days after the date the offer is made. If the person refuses the offer and wants to appeal to the Commission, the person must file a written appeal with the Commission within fifteen (15) calendar days after the date the person receives the copy of the written statement of suspension.
- (7) In the original written statement and charges and in any hearing conducted under this Chapter, the Chief of Police may not complain of an act that occurred earlier than the 180th day preceding the date the Chief of Police suspends the Police Officer. If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the Police Officer is subject to a criminal penalty, the Chief of Police may not complain of an act that is discovered earlier than the 180th day preceding the date the Chief of Police suspends the Police Officer. The Chief of Police must allege that the act complained of is related to criminal activity.

#### **§ 143.053. APPEAL OF DISCIPLINARY SUSPENSION**

- (1) If a suspended Police Officer appeals the suspension to the Commission, the Commission shall hold a hearing and render a decision in writing within thirty (30) days after the date it receives notice of the appeal. The suspended person and the commission may agree to postpone the hearing for a definite period.
- (2) In a hearing conducted under this section, the Chief of Police is restricted to their original written statement and charges, which may not be amended.
- (3) 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.
- (4) In its decision, the Commission shall state whether the suspended police officer is:
  - a) Permanently dismissed from the police Department;
  - b) Temporarily suspended from the Department; or
  - c) Restored to the person's former position or status in the Department's classified service.
- (5) If the Commission finds that the period of disciplinary suspension should be reduced, the Commission may order a reduction in the period of suspension. If the suspended Police Officer is restored to the position or class of service from which the person was suspended, the Police Officer is entitled to full compensation for the actual time lost as a result of the suspension at the rate of pay provided for the position or class of service from which the person was suspended.
- (6) The Commission may suspend or dismiss a Police Officer only for violation of these Rules and only after a finding by the Commission of the truth of specific charges against the

Police Officer.

- (7) The Hearing procedures adopted by the Commission are shown in *Appendix A*, attached to these Rules and Regulations.

#### **§ 143.054. DEMOTIONS**

- (1) If the Chief of Police wants a Police Officer under his or her supervision or jurisdiction to be involuntarily demoted, the Chief of Police may recommend in writing to the Commission that the Commission demote the Police Officer.
- (2) The Chief of Police must include in the recommendation for demotion the reasons the Chief of Police recommends the demotion and a request that the Commission orders the demotion. The Chief of Police must immediately furnish a copy of the recommendation in person to the affected Police Officer.
- (3) The Commission may refuse to grant the request for demotion. If the Commission believes that probable cause exists for ordering the demotion, the Commission shall give the Police Officer written notice to appear before the Commission for a public hearing at a time and place specified in the notice. The Commission shall give the notice before the 10th day before the date the hearing will be held, the action for appeal of the demotion may be conducted according to the same hearing procedures as set forth herein for all other disciplinary actions.
- (4) The Police Officer is entitled to a full and complete public hearing, and the Commission may not demote a Police Officer without that public hearing.
- (5) A voluntary demotion in which the Police Officer has accepted the terms of the demotion in writing is not subject to this section.

#### **§ 143.056. PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT**

- (1) If a Police Officer is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the Chief of Police may temporarily suspend the person with or without pay for a period not to exceed thirty (30) days after the date of final disposition of the specified felony indictment or misdemeanor complaint.
- (2) The Chief of Police shall notify the Police Officer in writing that he or she is temporarily suspended. Such written notification to the employee must state if the suspension is with or without pay for a period not to exceed thirty (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.
- (3) 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 Chief of Police may, not later than the 30th day after the date of final disposition of the felony charge or misdemeanor complaint, bring a charge against the Police Officer for a violation of these Rules.

- (4) A 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 Chief of Police 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.
- (5) If the Chief of Police temporarily suspends a Police Officer who has been indicted for a felony or officially charged with a Class A or B misdemeanor, and the Police Officer is not found guilty of the indictment or complaint in a court of competent jurisdiction, the Police Officer 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.
- (6) Acquittal or dismissal of an indictment or a misdemeanor complaint does not mean that a Police Officer has not violated Civil Service Rules nor negate the charges that may have been or may be brought against the Police Officer by the Chief of Police.
- (7) 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.
- (8) The Chief of Police 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 Chief of Police to protect a criminal investigation of the employee's conduct. If the Chief of Police intends to order an indefinite suspension after the 180-day period, the Chief of Police 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.

#### **§ 143.057. HEARING EXAMINERS**

- (1) The letter of disciplinary action issued to an employee shall state, in addition to other notice requirements prescribed by these Rules, that in an appeal to an order by the Chief of Police of an indefinite suspension, disciplinary suspension, a promotional bypass, or a recommended demotion, the appealing Police Officer may elect to appeal to an independent third party hearing examiner instead of the Commission. The letter issued by the Chief of Police to the Police Officer must also state that if the person elects to appeal to a Hearing Examiner, the Police Officer waives all rights of appeal to a district court except as provided by Section 143.057.
- (2) To exercise this choice, the appealing employee must submit to the Director a written request as part of the original notice of appeal required under Section 143.052 of these Rules stating the person's decision to appeal to an independent third party hearing examiner.
- (3) The Hearing examiner's decision is final and binding on all parties. If the Police Officer decides to appeal to an independent third party hearing examiner, the person automatically waives all rights to appeal to a district court except as provided Section 143.057 (10) below.

- (4) If the appealing Police Officer chooses to appeal to an independent third party hearing Examiner, the employee and the Chief of Police 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 an impartial hearing examiner on or within ten (10) days after the date the appeal is filed, the Director shall immediately request a list of seven (7) qualified, neutral arbitrators from the American Arbitration Association or Federal Mediation and Conciliation Service or their successor in function. The Police Officer and the Chief of Police or their designees may mutually agree on one of the seven (7) neutral arbitrators on the list. If they do not agree within five (5) business days after receipt of the list, each party or the party's designee shall alternate striking a name from the list and the name remaining shall be the hearing examiner. The parties or their designees shall mutually agree on a date for the hearing.
- (5) The appeal hearing shall commence as soon as the hearing examiner selected can be scheduled. If the hearing examiner cannot commence the hearing within forty-five (45) calendar days after the date of selection, the Police Officer may, within two (2) days of learning of that fact, call for the selection of a new hearing examiner using the same procedure as provided by subsection (4) of this Section 143.057.
- (6) In all hearings conducted under this section, the hearing examiner has the same duties, powers, and authority as the Commission, including the right to issue subpoenas.
- (7) 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 ten (10) days after the conclusion of the hearing.
- (8) In appeals not involving an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on an appeal within thirty (30) days after the conclusion of the hearing or the filing of the briefs. The inability of the hearing examiner to meet the time requirements does not affect the validity of the disciplinary action or the hearing examiner's final decision or affect the jurisdiction of the hearing examiner.
- (9) All fees and expenses of the hearing examiner are shared equally by the appealing Police Officer and by the Department. The cost of witnesses for either side shall be paid by the party who calls the witnesses.
- (10) 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 is located.

# E. LEAVES

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## § 143.071. LEAVES OF ABSENCE; RESTRICTION PROHIBITED

- (1) If a sufficient number of Police Officers are available to carry out the normal functions of the Department, a Police Officer may not be refused a “reasonable leave” of absence without pay to attend a police school, convention, or meeting if the purpose of the school, convention, or meeting is to secure a more efficient Department and better working conditions for Department personnel. "Reasonable Leave" shall be determined by the Chief of Police.
- (2) No part of these Rules shall be construed to limit a Police Officer's constitutional right to appear before or to petition the legislature.

## § 143.072. MILITARY LEAVE OF ABSENCE

- (1) The Commission, on written application of a Police Officer, shall grant military leave of absence without pay to such Police Officer to enable the person to enter military service of the United States in any of its branches. Such leave of absence may not exceed the compulsory military service or the basic minimum enlistment for the branch of service the Police Officer enters.
- (2) The Commission, on written application of a Police Officer, shall grant military leave of absence for annual training or duty.
- (3) During the absence from the Department of any Police Officer to whom military leave of absence shall have been granted by the Commission, the position in the Department held by such member shall be filled in accordance with the other provisions of Chapter 143 and these Rules subject to the person filling such position being replaced by the member to whom military leave of absence has been granted upon the person's return to employment with the Department. The City and the Commission intend to comply with all aspects of USERRA.
- (4) On termination of active military service, a Police Officer that received a military leave of absence under this section is entitled to be reinstated to the position that the person held in the Department at the time the leave of absence was granted, provided the person:
  - 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 the military service.
- (5) On reinstatement, the Police Officer shall receive full seniority credit for the time spent in the military service.
- (6) If the reinstatement of a Police Officer who received a military leave of absence causes a surplus in the rank to which the Police Officer was reinstated, the Police Officer who has the least seniority in the position shall be returned to the position immediately below the

position to which the returning Police Officer was reinstated. If a person's replacement is to a lower position in grade or compensation, the replaced person is placed on a position reinstatement list in order of seniority and has a preferential right to a subsequent appointment or promotion to the same or a similar position from which the person was demoted. This preferential right has priority over an Eligibility List and is subject to the replaced person remaining physically and mentally fit to discharge the duties of the position.

**§ 143.073. LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE**

- (1) A municipality shall provide to a Police Officer a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for at least one year.
- (2) At the end of the one-year period, the municipality's governing body may extend the line of duty illness or injury leave at full or reduced pay. If the Police Officer's leave is not extended or the person's salary is reduced below 60 percent of the person's regular monthly salary and the person may retire on pension until able to return to duty. If pension benefits are not available to the Police Officer who is temporarily disabled by a line of duty injury or illness and if the year at full pay and any extensions granted by the governing body have expired, the Police Officer may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave.
- (3) If a Police Officer is temporarily disabled by an injury or illness that is not related to the person's line of duty, the person may use all sick leave, vacation time, and other accumulated time before the person is placed on temporary leave. Temporary leave under this section shall not exceed one (1) year.
- (4) After recovery from a temporary disability, a Police Officer shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another Police Officer may voluntarily do the work of an injured of Police Officer until the person returns to duty.
- (5) Employees on injury or illness leave for more than the number of days established in Department General Orders, must notify the Chief of Police, or his designee, of their status on a weekly basis. The Chief of Police may designate an individual to perform home checks on employees absent from work due to illness or injury.
- (6) The Police Chief may order home checks to be made on any employee off work under this subsection, and may order any employee to provide physician's documentation for verifying any claimed illness or non-work injury in order to pay for the absences that fraud is suspected.

**§ 143.074. REAPPOINTMENT AFTER RECOVERY FROM DISABILITY**

With the Commission's approval and if otherwise qualified, a Police Officer who has been certified by a physician selected by a Police Officers' relief or retirement fund as having recovered

from a disability for which the person has been receiving a monthly disability pension is eligible for reappointment to the classified position that the person held on the date the person qualified for the monthly disability pension.

**§ 143.075. MILITARY LEAVE TIME ACCOUNTS.**

- (1) A municipality shall maintain military leave time accounts for the police department and must maintain a separate military leave time account for each department.
- (2) A military leave time account shall benefit a Police Officer who:
  - a) is a member of the Texas National Guard or the armed forces reserves of the United States;
  - b) was called to active federal military duty while serving as a Police Officer for the municipality;
  - c) has served on active duty for a period of 12 continuous months or longer; and
  - d) has exhausted the balance of the person's vacation holiday and compensatory leave time accumulations.
- (3) A Police Officer may donate any amount of accumulated vacation, holiday, sick or compensatory leave time to the military leave time account in that Police Officer's department to help provide salary continuation for Police Officers who qualify as eligible beneficiaries of the account under Subsection (2). A 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 Police Department and approved by the municipality.
- (4) A municipality shall equally distribute the leave time donated to a military leave time account among all 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.

## F. MISCELLANEOUS PROVISIONS

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### § 143.081. DETERMINATION OF PHYSICAL AND MENTAL FITNESS

- (1) If a question arises whether a Police Officer is sufficiently physically or mentally fit to continue the person's duties and to perform fully the essential functions of his/her job, the Police Officer may be requested to or may voluntarily submit to the Commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.
- (2) If the Commission, the Chief of Police, or the Police Officer questions the report, the Commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the Police Officer and to submit a report to the Commission, the Chief of Police, and the person.
- (3) If there is no question or dispute as to the Police Officer's personal report, the Chief of Police may accept the Police Officer's own statements and proceed directly to terminate the Police Officer for not being fit for duty and/or able to perform the essential functions of his or her job.
- (4) If the report of the Commission appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the Police Officer's personal physician, psychiatrist, or psychologist, as appropriate, the Commission shall appoint a three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the Police Officer. The board's findings on the Police Officer's fitness for duty shall determine the issue of fitness for duty.
- (5) The Commission shall forward the report(s) and/or findings to the Chief of Police for action consistent with the reports.
- (6) The Police Officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The City shall pay all other costs.

### § 143.082. EFFICIENCY REPORTS

The Commission has elected to dispense with the requirement for bi-annual efficiency reports at this time but reserves the right to reconsider and adopt such requirements in the future should it be deemed appropriate.

### § 143.085. FORCE REDUCTION AND REINSTATEMENT LIST

- (1) In the event any position in the Department is vacated or abolished by ordinance of the city council, the Police Officer incumbent holding such position shall be demoted to the position immediately below the vacated or abolished position. If one or more positions of equal rank are abolished or vacated, the Police Officers with the least seniority in a position shall be demoted to the position immediately below the vacated or abolished position. The names of employees so demoted shall be placed on a position reinstatement list in order of their seniority. If a vacated or abolished position is filled or recreated within one (1) year after the date it was vacated or abolished, the position must be filled from the reinstatement list. The position reinstatement list for such position shall be exhausted

before any employee not on such list is promoted to such position. Promotions from a position reinstatement list shall be made in the order of seniority.

- (2) In the event positions in the lowest classifications are abolished or vacated, and it 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 without charges having been filed against them for violation of these Rules, shall be placed on the reinstatement list in order of their seniority. The reinstatement list shall be exhausted before appointments are made from any eligibility list. Appointments from the reinstatement list shall be in order of seniority. Those who shall have been on any such reinstatement list for a period of three (3) years shall be dropped from such list but shall be restored to the list at the request of the Commission.

#### **§ 143.086. POLITICAL ACTIVITIES**

- (1) Police Officers shall not be permitted to take an active part in any political campaign of another for an elective position of the city if they are in uniform or on active duty.
- (2) For the purpose of this section, a person takes an active part in a political campaign if the person:
  - a) Makes a political speech;
  - b) Distributes a card or other political literature;
  - c) Writes a letter;
  - d) Signs a petition;
  - e) Actively and openly solicits votes; or
  - f) Makes public derogatory remarks about a candidate for an elective position of the municipality.
- (3) Police Officers coming under the provisions of Chapter 143 may not be required to contribute to any political fund or render a political service to any person or party. A Police Officer shall not be removed, reduced in classification or salary or otherwise prejudiced by refusing to contribute to a political fund or to render a political service.
- (4) A Municipal Official who attempts to violate 143.086 violates these Rules.
- (5) Except as expressly provided by this section, the Commission or the governing body of the City of Seabrook may not restrict a Police Officer's right to engage in a political activity off duty.

#### **§ 143.087. STRIKE PROHIBITION**

- (1) A Police Officer may not engage in a strike against the City of Seabrook.
- (2) In addition to the penalty prescribed by Section 143.016, any Police Officer who is convicted of an offense for violating the provisions of this section shall be automatically released and discharged from the Department and thereafter not be eligible to receive any pay or compensation from public funds used for the support of the Department.

#### **§ 143.088. UNLAWFUL RESIGNATION OR RETIREMENT**

- (1) A person commits an offense if the person accepts money or anything of value from another person in return for retiring or resigning from the person's civil service position.
- (2) A person commits an offense if the person gives money or anything of value to another person in return for the other person's retirement or resignation from the person's civil service position.
- (3) An offense under this section is a Class A misdemeanor.

### **§ 143.089. PERSONNEL FILE**

(a) File:

- (1) The official personnel file, which contains the permanent personnel records of each Police Officer of the Department, are maintained by the Human Resources Department under the control and management of the Director or the Director's designee. The record keeping system assures the relevance, accuracy and confidentiality of the information contained therein and provides employees with fair and reasonable access to that information which relates to them. No official personnel files are to be maintained in the Police Department, but the Department may retain copies for its own reference purposes.
- (2) Employee records will contain only that information required by law and documents relevant and necessary to the personnel function. Information included in the personnel file of a Police Officer will be any letter, memorandum or document relating to the following:
  - a) A commendation, congratulation or honor bestowed on the Police Officer by a member of the public or by the employing Department for an action, duty or activity that relates to the individual's official duties;
  - b) Any misconduct by the Police Officer if the letter, memorandum or document is from the Department and providing the misconduct resulted in disciplinary action in accordance with these Rules and within the provisions of Chapter 143 ; and
  - c) The periodic evaluation of the Police Officer by a supervisor.
- (3) A letter, memorandum or document relating to alleged misconduct by a Police Officer may not be placed in the person's official personnel file if the Police Department determines that there is insufficient evidence to sustain the charge of misconduct.
- (5) A letter, memorandum or document relating to disciplinary action taken against the Police Officer, or to alleged misconduct by the Police Officer that is placed in the official personnel file shall be removed from the person's file if the Commission finds that:
  - a) the disciplinary action was taken without just cause; or
  - b) the charges of misconduct were not supported by sufficient evidence.
- (5) If a negative letter, memorandum, document or other notation of negative impact is included in a Police Officer's official personnel file, the Director shall, within thirty (30) days, notify the affected individual. (Examples of such documents are written reprimands and documentation of oral reprimands.) The Police Officer may, on or before the 15th

day after the date of receipt of the notification from the Director, file a written response to the negative letter, memorandum, document or other notation. If the Director or Director's designee fails to notify a Police Officer in accordance with this section, the Police Officer may file a written response within fifteen (15) days of becoming aware that the document is in his or her file.

- (6) The Police Officer is entitled, on written request, to a copy of any letter, memorandum, or document placed in the individual's official personnel file. A reasonable fee per copy may be imposed.
- (7) The Director or the Director's designee may not release any information contained in the official personnel file of a Police Officer without first obtaining the person's written permission, unless the release of the information is required by law.

(g) File:

The Police Department may not release any information contained in a Departmental file to any agency or person requesting information relating to a Police Officer. Any person or agency requesting such information is to be referred to the Director.

# APPENDIX "A"

# APPENDIX A

## Hearing Procedures

### (1) FORMAT OF APPEAL HEARINGS

The format for the hearing of an appeal before the Commission shall be as follows:

- (a) City's opening statement
- (b) Employee's opening statement
- (c) The City's/Department's case in chief
  - (i) Direct testimony of all City witnesses
  - (ii) Cross-examination of each witness
  - (iii) Redirect examination of each witness
  - (iv) Additional questions, if any, by Commission
- (d) Employee's defensive case
  - (i) Direct testimony of all witnesses called by employee
  - (ii) Cross-examination of each witness
  - (iii) Redirect examination of each witness
  - (iv) Additional questions, if any, by Commission
- (e) Rebuttal by the City, if any:
  - (i) Direct testimony of witnesses, if any
  - (ii) Cross-examination of witnesses, if any
  - (iii) Redirect examination of each witness, if any
  - (iv) Additional questions, if any, by Commission
- (f) City's closing argument
- (g) Employee's closing argument
- (h) City's rebuttal
- (i) Deliberation by the Commission in executive session
- (j) Decision announced in open session

### (2) HEARING PROCEDURES

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

may “carry” such pre-hearing motions until the hearing is completed and all factual evidence has been presented before making its final ruling thereto.

- (e) Unless waived by the parties, 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 Chief of Police which forms the basis of the disciplinary action imposed on the employee.
- (f) Upon request by either party, the hearing process may utilize what is commonly known as “invoking the Rule” concerning oral testimony, meaning that a person who shall be expected to testify at the hearing, other than the parties and their representatives, shall not be allowed to observe or listen to any of the proceedings except when he/she is actually testifying as a witness. “The Rule” may be used to ensure one witness’ testimony is not influenced by another’s testimony. While under “the Rule,” a potential witness shall not discuss any aspect of the appeal or hearing except with the attorneys or the representatives involved. Invoking “the Rule” is not mandatory and may be waived in whole or in part by agreement between the parties.
- (g) The hearing shall then proceed to develop the evidence and testimony as to those contested matters in the format articulated above.
- (h) The City shall make the first presentation of evidence and testimony. Thereafter, the employee shall have the opportunity to respond with his/her own evidence, witnesses or testimony. Thereafter, the City may come forward with rebuttal evidence or testimony as may be necessary.
- (i) Presentations by both parties shall be as brief and as closely related to the issue(s) as much as is possible. Throughout the proceedings, a Commission member may also ask questions as needed in order to aid his/her consideration of the testimony or evidence.
- (j) A witness may be sworn and his/her testimony taken under oath or affirmation. A witness is subject to reasonable and relevant cross examination by the opposing party.
- (k) The Chair shall exercise reasonable control over the questioning of a witness and the presentation of evidence so as to:
  - i. Effectively ascertain the truth;
  - ii. Keep such presentations relevant to the issues to be determined; and
  - iii. Avoid the needless consumption of time and expense.
- (l) A party and his/her representative shall cooperate in keeping all presentations as brief and to the point as possible. Long drawn-out sessions shall be discouraged. The Commission may establish equal time limits for presentation of each side of the case.
- (m) A hearing shall remain business-like and focus upon resolution of factual matters. A hearing shall not be a time for accusations, threats, speeches or arguments. The

Commission shall have the discretion to adjourn any meeting that deteriorates into a “shouting match” or where fruitful dialogue ceases.

- (n) 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, breaks, lunch hours, etc.
- (o) Before adjourning, the Commission may adjourn to Executive Session to deliberate. Thereafter, the Commission shall reconvene in open session and shall, upon motion and second, vote upon its decision. Thereafter, a written Order containing the Decision shall be prepared and signed by the concurring Commissioners. Two of three votes in favor of a party will result in a win for that party or issue. Where only two Commissioners are present for a quorum, both Commissioners must vote unanimously on an issue in order for it to prevail.
- (p) Once all matters on the agenda have been disposed of on open record by hearing or administrative review, or other resolution, the Commission meeting may be adjourned.

(3) **DIRECTOR TO COORDINATE ALL MATTERS**

The location and accommodations for an appeal hearing shall be arranged by the Director. All subsequent matters raised by the appealing employee or the Department (“the parties”) regarding attendance, scheduling, requests for subpoenas, request for continuance, etc., shall be determined by the Commission and coordinated through the Director. In a hearing coordinated by an outside agency, that agency shall also provide coordination services between the parties and the hearing examiner in conjunction with the Director.

(4) **FAILURE TO ATTEND SCHEDULED HEARING**

The Commission or hearing examiner shall treat the appealing employee’s failure to attend a scheduled appeal hearing or to file a timely request for a continuance as a request to withdraw the appeal. Absent extenuating circumstances, any request for a continuance must be filed with the Director or the Hearing Examiner at least three (3) business days before the date of the Hearing.

(6) **EMPLOYEE AND DEPARTMENT REPRESENTATIVES**

The hearing process shall recognize the right of the employee, as well as the Department, to be represented throughout the appeal. However, only one representative shall be allowed to speak or otherwise present evidence on behalf of either party respectively throughout the questioning of a particular witness.

The function of the representative shall be to articulate the best interests of the employee or the Department represented and to make his/her presentations pertinent to the issue(s) being considered. A representative or an employee who represents him/herself shall become familiar with and follow these Rules at all times during the disciplinary appeal process.

(7) **LIMITED DISCOVERY**

Mediation rules and processes do not apply to any civil service hearings. Arbitration rules

may be applicable to hearings before independent third party hearing examiners.

The rules regarding what is commonly known as “discovery” shall not apply to any civil service proceedings. Items from Departmental policies, Rules and regulations manuals may be photocopied. Items such as time and attendance records, duty status forms and other such documents may also be provided so long as they are relevant to the employee and the disciplinary action under appeal.

An employee and his/her representative may obtain copies of documents contained in the employee’s official civil service file, maintained under Section 143.089(a) upon request and will be provided in accordance with state law.

## **(7) RULES OF EVIDENCE**

The Texas Rules of Evidence, and all other Rules of Procedure, whether civil or criminal, shall apply where they are appropriate and conducive to the presentation of credible evidence and elucidation of the legal issues and principles which serve as the basis for the Department’s actions and the employee’s defense.

- (a) Technicalities and maneuvering of the Rules of evidence shall not apply nor control the conduct of any hearing if their sole purpose is to suppress or thwart the legitimate exposition of the facts and the evidence in support of the facts which serve as the basis for the actions taken.
- (b) The scope of evidence to be considered at a disciplinary hearing shall be generally limited to matters material and probative to the statement of charges as set forth in the Department’s written statement, the employee’s notice of appeal as well as the employee’s previous employment record with the Department.
- (c) Either party may offer such material and probative evidence as he/she may desire to aid in the determination of disputed issues. Relevance and materiality are the primary focus and determinant. Hearsay may be presented, if and only if, the source is credible and authentic.
- (d) It shall be the province of the Commission to determine:
  - (i) The admissibility of any particular evidence or testimony;
  - (ii) The materiality or probative value, of any evidence or testimony; and
  - (iii) The weight to be given to any particular evidence or testimony.
- (e) Subject to limited exceptions for compelling reasons shown by a party, the Commission shall refuse to hear or consider any testimony or item of evidence after the hearing has been closed to evidence. Closing arguments shall be limited to the evidence admitted at the hearing.
- (f) The Commission may receive and consider the evidence of a witness by affidavit and assign same such weight as it deems proper after consideration of objections, if any, made to its admission.
- (g) On-site inspections are discouraged and shall be conducted only if the evidence to be considered cannot be otherwise presented via stipulations, photographs, videotapes, maps, diagrams, etc.

- (h) All evidence and testimony shall be presented and received into the record while in open session.
- (i) The hearing shall provide the employee a reasonable opportunity to produce objective evidence and/or testimony to demonstrate:
  - (i) That the employee did not commit the misconduct as alleged, i.e., “the allegations are not true”; or
  - (ii) That even if the employee committed the acts as alleged, that such activity does not constitute actionable misconduct; or
  - (iii) That even if the employee committed actionable misconduct, that the degree of discipline imposed is too harsh or severe, i.e. the disciplinary action imposed was “unreasonable, arbitrary or capricious”; or
  - (iv) A combination of any of these matters would justify or compel modification of the Chief of Police’s action.
- (j) An employee’s mere disagreement or difference in opinion in regard to the Chief of Police’s actions or reasoning shall not constitute grounds to overturn nor modify the disciplinary action.
- (k) If the Commission determines one valid charge of misconduct is supported by evidence sufficient to establish its truth, the Commission shall sustain that charge even if the evidence at the hearing does not support other charges in the letter of disciplinary action.

**(10) FINDINGS AND ORDERS OF THE COMMISSION**

- (a) On the basis of the evidence and testimony presented at the hearing, the Commission shall vote and issue a decision on the matter via a written Order finding the truth of the specific charge(s) against the employee, or a written Order finding that the specific charge(s) against the employee is(are) not true.
- (b) The Commission’s decision may be made by the majority vote of two of the three Commissioners present. If only two Commissioners are present, the final decision shall be made unanimously.
- (c) In the event that the charge(s) of misconduct against the employee is(are) found to be “not true,” then the Final Order shall be to promptly restore the employee to the employee’s proper position or status.
- (d) In the event that the charge(s) of misconduct against the employee is found to be “true,” then the Final Order shall clearly state whether the action of the Chief is affirmed, modified or overturned and the employee
  - (i) Permanently dismissed from the Police Department; or
  - (ii) Temporarily suspended from the Department and shall then set forth the definite time period and conditions of suspension which shall be imposed;
  - (iii) Demoted (See Section 143.054) or
  - (iv) Restored to the former position or status.
- (e) The Final Order on a disciplinary appeal shall also include such other matters as to resolve the issues under consideration, particularly:

- (i) The employee's resulting employment status;
  - (ii) Restoration of back pay and other employment benefits, if any; and/or
  - (iii) Any offsets due to payments made in the interim.
- (f) If modifying the disciplinary action of the Department, the Final Order shall clearly explain in writing the factors and rationale for doing so. If affirming the disciplinary action imposed by the Chief, it shall be presumed to be for the same reasons and facts as presented by the Chief in the disciplinary letter unless otherwise indicated.
- (g) The Commission may consider evidence of facts or events during the disciplinary appeal process that are outside the scope of the Department's statement of charges or the employee's notice of appeal to the extent permitted by law and the employee's defense
- (h) A copy of the Department's disciplinary action, a copy of the employee's request for appeal, the record of the proceedings, a copy of the exhibits submitted together with a copy of the Final Order shall be filed in the Commission record. The tape recording of the proceedings shall be kept as a part of the record of the Commission meeting. The Commission may cite these records as reference material in subsequent determinations.