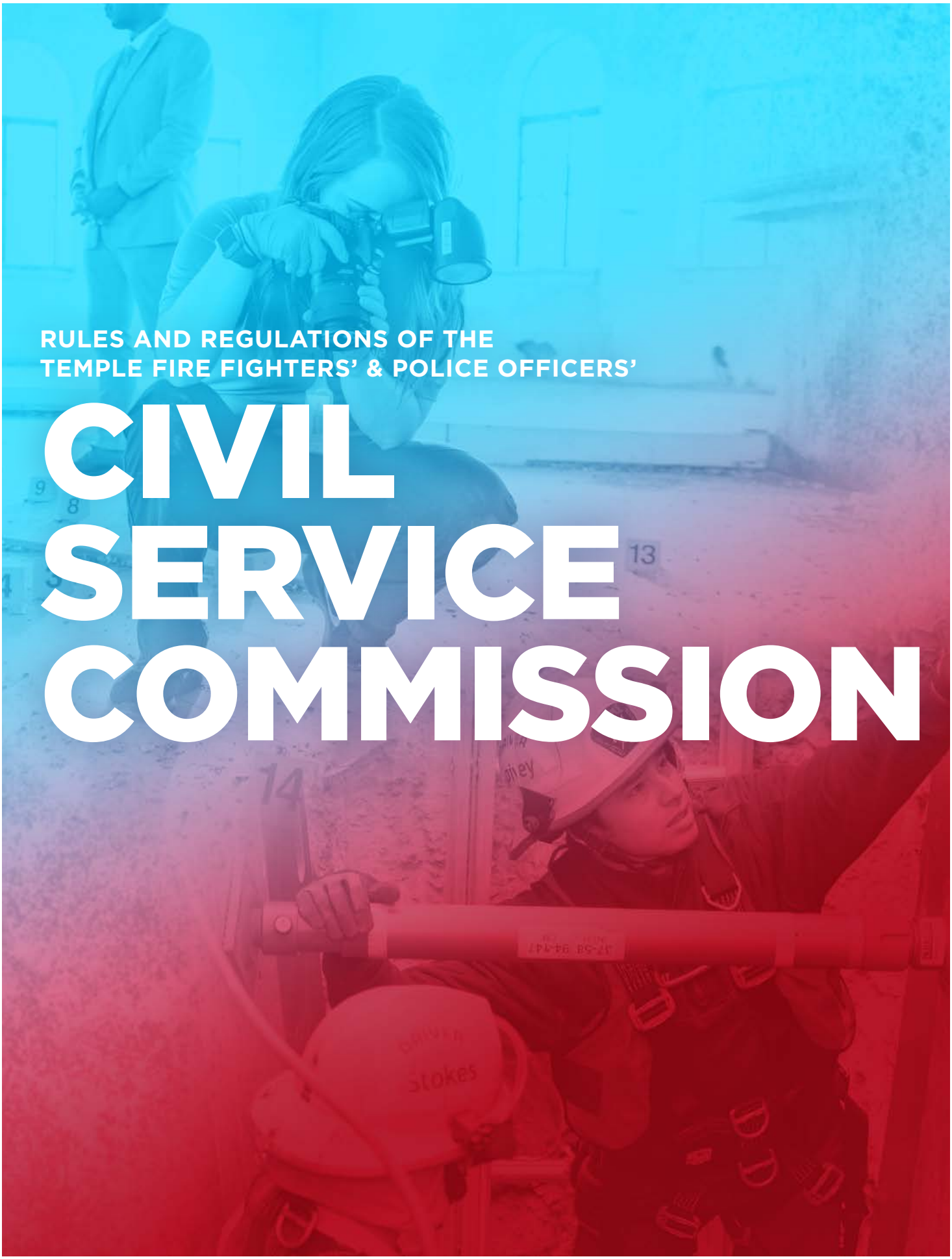

RULES AND REGULATIONS OF THE
TEMPLE FIRE FIGHTERS' & POLICE OFFICERS'

CIVIL SERVICE COMMISSION

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IF MEET & CONFER EXISTS, MEET & CONFER WILL SUPERCEDE CIVIL SERVICE RULES.

SECTION 1 PURPOSE

1.1 The following rules represent a complete revision of the Rules and Regulations of the Temple Fire Fighters' and Police Officers' Civil Service Commission. These rules completely repeal and replace all earlier rules approved by the City of Temple Civil Service Commission.

1.2 The purpose of these rules is to provide for the local administration of Civil Service in the police and fire departments, and in particular to:

A. prescribe rules and regulations for:
   1. hiring personnel into the Temple Civil Service system;
   2. conducting entry level and promotional examinations;

B. provide rules and regulations governing disciplinary matters;

C. provide procedures governing meetings and hearings by the Commission, and

D. provide general information concerning the rights and benefits of Civil Service employees.

1.3 Records of the Civil Service Commission shall be governed by the Texas Public Information Act. Those portions of an employee's personnel file and employment record that are deemed not normally subject to public disclosure under the Texas Public Information Act and the legal precedent interpreting same are specifically exempted from the provision of this paragraph.

SECTION 2 APPLICATION OF THESE RULES

2.1 These rules are promulgated in accordance with Chapter 143, Tex. Loc. Govt. Code Ann., (hereinafter Chapter 143) and the terms of the Meet and Confer Agreement between the City of Temple and the Temple Police Association as adopted, and apply to all employees appointed in substantial compliance with Chapter 143 holding a classified position in the police or fire department as shown in the most recently approved classification ordinance approved by the City Council of the City of Temple.

2.2 No person shall be discriminated against under these rules based upon race, gender, creed, religion, color, national origin or any non-disqualifying disability.

SECTION 3 DEFINITIONS

3.1 All terms, words, or phrases contained in these rules shall be interpreted in harmony with the provisions of Chapter 143, and all subsequent amendments thereto. The following specific definitions shall also apply:

A. "Chief Executive" means the City Manager, who is the officer of the City of Temple with final authority to make appointments to the classified service.

B. "Civil Service Employee" is any employee in a classified service position.

C. “Classification” means the title of an individual position in the classified service and also the process by which the proper title and pay grade for each position is determined.

D. “Classified Service” means the administrative division of the fire and police department as designated by ordinance of the City Council, and composed of employees who are appointed in substantial compliance with Chapter 143.

E. “Commission” means the Fire Fighters’ and Police Officers’ Civil Service Commission of the City of Temple, Texas.

F. “Convicted” means when a defendant has plead guilty or no contest (Nolo), or been found guilty in a trial, regardless of whether:

1. the sentence is subsequently probated and the person is discharged from probation;
2. the defendant has received an un-adjudicated or deferred adjudication probation for a criminal offense;
3. the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense;
4. the cause has been made the subject of a expunction order, or
5. the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

G. “Day” means calendar day unless otherwise specified in the statute or rule.

H. “Chief” means the Police Chief or Fire Chief depending on context and usage.

I. “Director” or “Deputy Director” means the Director and Deputy Director of the Fire Fighters’ and Police Officers’ Civil Service Commission, appointed by the Commission to act in the capacity of Secretary to the Commission. The Director or Deputy Director shall be the administrator of the City of Temple Civil Service system. The term Director in these rules will refer to both the Director and the Deputy Director of the Civil Service Commission.

J. “Fire Fighter” as used in these rules and regulations shall include employees who are Probationary Member, Fire Fighter, Driver, Captain, Battalion Chief, and Assistant Chief.

K. “Police Officer” as used in these rules and regulations shall include employees who are Probationary Member, Police Officer, Corporal, Sergeant, Lieutenant, and Deputy Chief.

L. “He” or “His,” as used in these Rules and Regulations, shall be interpreted to refer to both the masculine and feminine genders.

M. “Business Day” means Monday through Friday, 8 a.m. until 5:00 p.m. CST, except legal holidays.

SECTIONS 4 – 5 **RESERVED**

SECTION 6 CIVIL SERVICE COMMISSION

6.1 The Commission consists of three members appointed by the City Manager subject to confirmation by the City Council.

6.2 Each member of the Commission holds office for a staggered three-year term and thereafter until a successor is appointed and has qualified. Interim vacancies on the Commission shall be filled for the unexpired term of the member whose position has been vacated.

6.3 The Commission may take official action by a majority vote of its members at a properly posted meeting of the Commission at which a quorum of its members are present. A quorum of the Commission shall consist of two members.

6.4 Commission meetings will be held in the City Council Chambers at the Municipal Building unless posted for another location in accordance with the Texas Open Meetings Act.

6.5 All meetings of the Commission are open to the public except to the extent that executive sessions are allowed under the Texas Open Meetings Act and Chapter 143 of the Texas Local Government Code.

6.6 The Commission shall meet at such times as may be required for the proper discharge of their duties. Meetings may be called by the Director, the Chairperson, or any two (2) Commissioners. The Commission shall meet annually in January to elect new officers.

6.7 The Director, or designee, shall be responsible for posting the public notices prior to each meeting. Notice of all meetings of the Commission shall conform to the requirements of the Open Meetings Act, which requires that a written agenda be posted outside the Municipal Building at least seventy-two (72) hours prior to the meeting. The Commission may, if necessary, meet with not less than two (2) hours' notice under certain emergency meeting requirements set out in the Texas Open Meetings Act.

6.8 The Director, or designee, may, for good cause, cancel a scheduled Commission meeting by writing "Canceled" across the meeting notices posted in all required posting areas. The Director shall report said cause to the Commission.

6.9 A request for an item to be added to the Commission's agenda will be considered by the Commission or the Director, who may respond by informing the employee whether the issue is appropriate for the Commission's consideration. If appropriate, the Director, or designee, will place the matter on the Commission's agenda. The Director, or designee, will forward to the Commission a copy of all correspondence and responses made, if applicable.

6.10 Disciplinary appeal hearings shall proceed as set forth in Section 10.16 of these Rules and Regulations.

6.11 The Director, or designee, shall be responsible for preparing the minutes of each Commission meeting, obtaining the Chair's signature on the minutes, and distributing the minutes to the Commission for approval. The minutes, other than matters discussed in executive session, shall be available for public inspection as required by the Public Information Act and Chapter 143 of the Local Government Code.

6.12 A member of the Civil Service Commission cannot be a relative of a person in a City of Temple classified service position, a Chief of the Police or Fire Departments, the Director or Deputy Director of the Civil Service Commission, the Chief Executive, or a member of the City Council. Refer to the City of Temple's Nepotism Policy for the definition of a relative.

SECTION 7 RESERVED

SECTION 8 ADOPTION AND PUBLICATIONS OF RULES

8.1 The Commission shall publish and adopt local rules governing the proper conduct of Commission business, appointment to and promotion within the classified service, removal or suspension of a fire fighter or police officer, and other matters pertaining to the local implementation of Chapter 143 of the Texas Local Government Code and any effective Meet and Confer Agreement. These rules shall remain in effect until amended or repealed by the Commission in the same manner that the original rules were adopted.

8.2 The Director shall keep copies of these rules and regulations for free distribution to members of the Fire and Police Departments who request copies, and for inspection by interested persons.

8.3 Newly adopted rules or amendments shall be posted for seven (7) days in the Police and Fire Departments after adoption by the Commission.

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

8.5 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.

SECTION 9 RESERVED

SECTION 10 COMMISSION APPEAL PROCEDURE

10.1 A police officer's or fire fighter's notice of appeal and request for hearing shall set forth the police officer's or fire fighter's basis for appeal in compliance with Chapter 143 of the Texas Local Government Code.

10.2 The written notice of appeal must be delivered in person, by certified mail, email, or fax so that it is received by the Director no later than 5:00 p.m. on the tenth (10th) business day after the date the employee receives a copy of the disciplinary letter. If the tenth (10th) business day after receipt of a copy of the disciplinary letter is a holiday, the notice of appeal must be delivered no later than 5:00 p.m. on the first regular business day following the holiday. A police officer or fire fighter may withdraw his request for an appeal by delivering a written, signed notice of withdrawal to the Director at any time after the appeal is filed. A written, signed notice of withdrawal delivered to the Director will terminate the appeal process.

10.3 The Director shall arrange the location and accommodations for all hearings and appeals. Any questions regarding the hearing should be coordinated with the Director.

10.4 Failure by a police officer or fire fighter to attend a scheduled appeal hearing shall not in itself prevent the hearing from proceeding as scheduled or prevent the Commission from proceeding to take such action as may be appropriate.

10.5 Only one representative of each party is allowed to question any particular witness.

10.6 Dissatisfaction with a representative shall not constitute grounds for modification of the final ruling.

10.7 The Texas Rules of Civil Procedure, the Texas Rules of Criminal Procedure, and all other rules of court regarding what is commonly known as "discovery" shall not apply to any Civil Service proceedings. Mediation and arbitration rules and processes do not apply to any Civil Service hearings.

10.8 Reasonable requests for photocopies of documents from the opposing party should be accommodated. A request for City documents which are not considered "public information" under the Public Information Act is not a reasonable request. Items such as recommendations by the Vehicle Accident Review Board and Workers' Compensation Review Board, time and attendance records, duty status forms, and other similar documents may be provided as long as they are relevant to the fire fighter or police officer and the disciplinary action under appeal.

10.9 Police officers and fire fighters and their representatives may obtain copies of documents contained in the Director's files, pursuant to 143.089(a) Texas Local Government Code, after the police officer or fire fighter has signed the appropriate release form(s),

10.10 All exhibits of documentary character shall be limited to facts which are relevant and material to the issues involved in the proceedings. Rules of Evidence shall not apply.

10.11 The original exhibit shall be given to the presiding officer of the Commission. A copy of the exhibit shall be furnished to the opposing counsel or parties. If the exhibit is admitted into evidence, the document shall be made a part of the record of the proceeding, but the Commission may grant permission to the admitting party to withdraw the original and substitute a copy, if such action is deemed appropriate and reasonable.

Hearing Procedures

10.12 The presiding officer of the Commission or the Hearing Examiner will call the hearing to order at the scheduled time and place.

10.13 All parties shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process. All parties shall exchange exhibits with counsel at the beginning of the hearing, unless there is an extenuating circumstance which requires consideration of a document or exhibit in the interest of justice and/or privacy concerns.

10.14 All disciplinary appeal proceedings shall be public hearings except the deliberations of the Commission, which shall be conducted in executive session. A Hearing Examiner may hold a conference with the parties' representatives in private..

10.15 The Director shall maintain a clear and accurate record of the proceedings, including retaining a court reporter for all disciplinary appeal, demotion, bypass, or promotion hearings.

10.16 Unless otherwise specified, the procedure for hearings before the Commission or a Hearing Examiner shall generally be as follows:

A. Call to order

B. Statement of purpose of the hearing

C. Swearing in of witnesses

D. City's opening statement

E. Appellant's opening statement

F. City's (Department's) Case
   1. Direct testimony of City witness
   2. Cross-examination by appellant
   3. Re-direct
   4. Additional questions, if any, by Commission or Hearing Examiner

G. Appellant's Case
   1. Direct testimony of appellant's witness
   2. Cross-examination by City
   3. Re-direct
   4. Additional questions, if any, by Commission or Hearing Examiner

H. Rebuttal by City/Department, if any
   1. Rebuttal testimony of witness
   2. Cross-examination by appellant
   3. Re-direct
   4. Additional questions, if any, by Commission or Hearing Examiner

10.17 Final Stages of Commission hearing

A. Short argument, summary by City

B. Short argument, summary by appellant

C. Rebuttal by City

D. Deliberation by the Commission in executive session

E. Decision – rendered by vote in open session

F. Hearing Examiner is not required to follow the procedures in this subsection.

SECTION 11 DECISIONS AND RECORDS

11.1 Each concurring Commission member shall sign a decision issued by the Commission.

11.2 Each rule, opinion, directive, decision, or order issued by the Commission must be written and constitutes a public record that the Commission shall retain on file.

11.3 Hearing Examiners' opinions must be retained by the Commission.

SECTION 12 DIRECTOR

12.1 Upon recommendation of the City Manager or designee, the Commission shall appoint a Director to administer the Civil Service system.

12.2 The Director will act as Secretary to the Commission.

12.3 The Director will prepare and recommend rules and regulations for the administration of Chapter 143 of the Texas Local Government Code, which shall become effective after approval by the Civil Service Commission.

SECTION 13 APPOINTMENT AND REMOVAL OF CHIEF

13.1 The City Manager shall appoint the Police Chief and Fire Chief, subject to confirmation by the City Council.

SECTION 14 DEPARTMENTAL RULES

14.1 The Police Chief and the Fire Chief shall each adopt and promulgate written rules, regulations, guidelines, policies, and directives pertaining to the operation of their respective departments.

14.2 Electronic or digital copies of Police Department rules shall be made readily available to all members of the Police Department at the Police Headquarters. Electronic or digital copies of Fire Department rules shall be made readily available to all members of the Fire Department at the Central Fire Station and at each branch fire station.

SECTION 15-20 **RESERVED**

SECTION 21 **CLASSIFICATION: EXAMINATION REQUIREMENT**

21.1 The Civil Service Commission establishes the following classifications in the Fire Department:

A. Probationary Status

CADET
An employee not certified in this state shall start in this position. Upon successful completion of the requirements for certification as Fire Fighter I & Fire Fighter II by the Texas Commission on Fire Protection (TCFP) and the EMT National Registry, the Cadet shall automatically advance to the Probationary position.

PROBATIONARY
Only TCFP Fire Fighter I & Fire Fighter II and Nationally Registered EMT certified personnel in Texas shall occupy this position until the end of the probationary period. Upon successful completion of all aspects of the Probationary position, the Probationary fire fighter shall automatically advance to the Fire Fighter classification.

B. Civil Service Protected or Affected Positions:

FIRE FIGHTER
Once the Fire Chief has certified that the probationary personnel has completed the probationary period, they shall move to the classified position of Fire Fighter.

DRIVER
A tested position

CAPTAIN
A tested position

The Fire Chief shall assign the positions of training officer from the captain rank.

BATTALION CHIEF
A tested position

ASSISTANT FIRE CHIEF
One appointed and one tested position as provided for in Section 143.014 of the Texas Local Government Code.

21.2 The Civil Service Commission establishes the following classifications in the Police Department:

A. Probationary Status

PROBATIONARY
Only TCOLE certified personnel shall occupy this position until the end of the probationary status. Upon successful completion of all aspects of the Probationary position, the Probationary personnel shall automatically advance to the Police Officer classification.

B. Civil Service Protected or Affected Positions:

POLICE OFFICER
Once the Police Chief has certified that the Probationary personnel has completed the probationary period, they shall move to the classified position of Police Officer.

CORPORAL
A tested position

SERGEANT
A tested position

LIEUTENANT
A tested position

DEPUTY CHIEF
As provided for in Chapter 143.014 of the Texas Local Government Code

SECTION 22 PHYSICAL REQUIREMENTS AND EXAMINATIONS

22.1 Each applicant shall be required to take a work fitness examination and shall be required to submit to such tests as are reasonably necessary and proper to determine the physical fitness of the applicant to perform the essential functions required of the position sought. Applicants who are not capable of performing the essential job functions with or without reasonable accommodation will not be appointed. Applicants must meet all of the physical requirements contained in this section.

Physical Requirements for Police Officer Applicants

22.2 Vision All applicants must meet the following vision standards which are based on recommended vision standards for police officers.

A. Visual Acuity Corrected (with spectacles or contact lenses)
   1. Standard - 20/40 binocular (both eyes open)
   2. Screening referral - less than 20/100 (binocular) or 20/100 (either eye alone) must be referred for confirmation that candidate meets binocular vision standards.

B. Visual Acuity Uncorrected (without spectacles or contact lenses)
   1. Standard - 20/100 binocular (without correction)
   2. Screening failure – Worse than 20/100 binocular
   3. Screening referral - 20/200 or worse with either eye alone must be referred for confirmation that candidate meets binocular vision standard

C. Binocular Vision
   1. Standard - clear, comfortable binocular vision with good stereopsis at all normal working distances and viewing angles with correction.
   2. Screening referral - stereo acuity poorer than 80 on Titmus test or equivalent; or distance phoria equal to or exceeding 5 eso or 5xo; or near phoria equal to or exceeding 6 eso or 10 exo.

D. Color Vision
   1. Standard - normal or anomalous trichromacy (no filters may be used)
   2. Screening referral - failure on a series of pseudo isochromatic plates

E. Visual Fields
   1. Standard - normal visual fields
   2. Screening failure - failure to meet perimetry standard
   3. Screening referral - failure on a field screener

F. Pathology
   1. Standard - no pathological conditions which impair or would eventually impair visual performance
   2. Screening referral - failure on ophthalmoscopic examination

22.3 **Hearing** Applicants must have normal hearing of 25 dbs or less at 500 Hz, 100 Hz, 2000 Hz, and 3000 Hz, as defined by the American National Standard Institute (ANSI, 1969).

22.4 **Work Fitness Testing** Testing to ensure the physical ability to perform the Police Officer job duties will be conducted as part of the hiring process.

Physical Requirements for Fire Fighter Applicants

22.5 Testing to ensure the physical ability to perform the Fire Fighter job duties will be conducted as part of the hiring process.

A single retest will be allowed on the same test day for anyone who fails to complete the course in the required time frame. No other retesting will be allowed.

22.6 Conditions of Employment for Fire Fighters

Essential Job Functions Test. As a condition of employment, all Fire Fighters hired after November 18, 1996, shall take and pass the annual physical assessment test (PAT).

SECTION 23 ELIGIBILITY FOR BEGINNING POSITIONS

23.1 **Eligibility requirements for Police Officers**. The City will consider for appointment to an entry level position in the Temple Police Department only individuals meeting the following minimum requirements:

A. achieve a minimum passing score of seventy percent (70%) on the written examination;

B. pass the physical agility/assessment test;

C. pass a background investigation conducted and evaluated in accordance with the general guidelines recognized by the Texas Commission on Law Enforcement or other reputable background investigation authorities;

D. pass a pre-job offer polygraph examination which includes questions concerning, but not limited to, work history, criminal activity, credit history, and drug or alcohol usage;

E. successfully complete an interview with the Chief of Police, the Executive Interview Board process, and a post-job offer, conditional work fitness medical examination that includes a physician certification that the applicant is free of drug dependency and does not use illegal drugs, and

F. successfully complete a post-job offer, conditional psychological test as required by the Texas Commission on Law Enforcement standards that includes certification by a licensed psychologist or psychiatrist that the candidate is in satisfactory psychological and emotional health.

G. Age:

1. be at least twenty-one (21) years of age at the time the applicant presents himself to TCOLE for the state licensing exam, and not have attained 56 years of age at the time the applicant passes the written exam and the physical assessment/agility testing, or
2. be at least twenty (20) years of age and meet the following criteria:
   a. will turn twenty-one (21) years of age by academy graduation date;
   b. successfully completes all phases of the selection process, and
   c. obtains approval from the Chief of Police.
3. an applicant younger than twenty-one (21) years of age may apply if the applicant is at least 18 years of age and meets the educational qualifications as set forth in section 23 (viii) of the Rules and Regulations of the Temple Fire Fighters' and Police Officers' Civil Service Commission.

H. Education:

1. be a graduate of an accredited high school or have an equivalency certificate issued by the Texas Education Agency, or the equivalent agency in another state or the District of Columbia, and
2. have 12 hours of higher education with at least a 2.0 grade point average.

I. if a veteran, have an honorable discharge from the Armed Forces of the United States after a minimum of 24 months of active duty, and be eligible for re-enlistment;

J. have a valid driver's license issued by the State of Texas;

K. be able to proficiently read, write, and fluently speak the English language;

L. must not be prohibited from carrying a firearm or possessing ammunition;

M. be a citizen of the United States by birth or naturalization;

N. be of good moral character, and

O. meet all requirements of the Texas Commission on Law Enforcement for licensing of peace officers.

23.2 Eligibility requirements for entry level Fire Fighter positions. The City will consider for appointment to an entry-level position in the Temple Fire Department only individuals meeting the following minimum requirements:

A. achieve a minimum passing score of seventy percent (70%) on the written examination;

B. pass the physical assessment test;

C. pass a background investigation;

D. successfully complete an oral interview with an interview board consisting of Fire Department personnel designated by the Fire Chief, and a Chief's interview;

E. pass a psychological examination;

F. be at least eighteen (18) years of age, and not be thirty-six (36) years of age or older at the time the applicant passes the written examination and the physical assessment test;

G. be a graduate of an accredited high school or have an equivalency certificate certified by the Texas Education Agency or the equivalent agency in another state or the District of Columbia;

H. submit to a pre-job offer polygraph examination which includes questions concerning but not limited to work history, criminal activity, credit history, and drug or alcohol usage. Applicants showing deception will be reviewed by a panel of officers appointed by the Chief to determine eligibility to continue in the process;

I. successfully complete the Executive Interview Board process, a post-job offer, and conditional work fitness medical examination that includes a physician certification that the applicant is free of drug dependency and does not use illegal drugs;

J. have a valid Class B Texas driver's license within one (1) year from the date of hire;

K. be a citizen of the United States by birth or naturalization;

L. be able to proficiently read, write, and speak the English language;

M. be of good moral character;

23.3 Retention Requirement for Fire Fighter position. In order to retain appointment as a Fire Fighter, the individual must be certified within one year of appointment as a Fire Fighter I & Firefighter II as established by the Texas Commission on Fire Protection and be certified as an Emergency Medical Technician the Texas Department of State Health Services. Additionally, they must be certified as a Paramedic by the Texas Department of State Health Services within three (3) years of the hire date.

23.4 Causes for Disqualification The City of Temple may reject an applicant for the Police Department or the Fire Department if the applicant:

A. cannot proficiently read, write, or fluently speak the English language;

B. is found to lack any of the qualifications set forth in the published notice inviting application to the departments or fails to meet the minimum qualifications for the position established in these rules;

C. is found to have an unacceptable personal history, financial history, educational performance, unemployment, military service (if applicable), general reputation, interpersonal skills, ability to read, legibly and correctly write and/or fluently speak English, or any combination of some or all of the following:

1. failure to pay just debts;
2. unstable employment;
3. educational suspensions;
4. military disciplinary actions;
5. problems relating to others;
6. poor interpersonal relationships;
7. lack of dependability, or
8. unacceptable conversational, writing, or reading skills.

D. fails to cooperate fully in the employment process by such acts as failure to complete the Personal History Statement in accordance with the instructions; missing appointments; failing to return necessary paperwork; failing to notify the Director, Police Department, or Fire Department of current telephone numbers or addresses; failing to cooperate in the background check required of each applicant, or otherwise failing to complete the employment process;

E. is unable to comply with all applicable City of Temple policies which set forth requirements for applicants seeking employment with the City, or

F. is unwilling to sign the "Condition of Employment" form maintained by the Director.

23.5 Automatic Disqualification The conditions, circumstances, or history described in this subsection will result in an applicant's automatic disqualification.

A. Felonies. For any offense classified as a felony:

1. evidence the applicant committed an offense;
2. applicant is under indictment for committing an offense;
3. applicant has been convicted of or received deferred adjudication or pre-trial diversion for an offense, or
4. applicant is currently, or has ever been, on court-ordered community supervision or probation for an offense.

B. Class A Misdemeanors. For any offense classified as a Class A misdemeanor:

1. applicant has been convicted of an offense;
2. applicant is currently or has previously been on court-ordered community supervision or probation for an offense, or
3. applicant has been charged with, is on probation or parole, court-ordered community supervision, or under complaint on the date of the entrance exam prior to being offered a position.

C. Class B Misdemeanors. For any offense classified as a Class B misdemeanor:

1. applicant has been charged with, is on probation or parole, court-ordered community supervision, or under complaint on the date of the entrance exam or prior to being offered a position;
2. applicant has been on court-ordered community supervision or probation for an offense within ten (10) years prior to the date of the entrance exam;
3. notwithstanding section B.2, above, Fire Department applicant has more than one conviction of, or pending charges for, an offense other than DUI/DWI/DUID within ten (10) years prior to the date of the entrance exam;
4. notwithstanding section B.2, above, Fire Department applicant has been convicted of, or placed on probation or community supervision for, a DUI/DWI/DUID offense within five (5) years prior to the date of the entrance exam.

D. Class C Misdemeanors. Applicant has been convicted of or has a pending charge for an offense classified as a Class C misdemeanor and defined as a crime of moral turpitude by Texas law.

E. Use of Narcotics or Controlled Substances.

1. Applicant has used felony narcotics within five (5) years prior to the date of the written examination, with the exception of a one-time "experimentation use" at least three (3) years prior to the date of the written examination.
2. Applicant has used misdemeanor narcotics or misused a prescription drug within three (3) years prior to the date of the written examination, with the exception of a one-time "experimentation use" at least two (2) years prior to the date of the written examination.
3. Applicant has illegally furnished, e.g., sold or delivered, any controlled substance, marijuana, or drug to another person within five (5) years prior to the date of the written examination..

F. Military History – Applicant received a less than honorable discharge from military service, or an honorable discharge with any condition or conditions that are less than honorable.

G. Driving record

1. Applicant has current charges for, was convicted of, entered a No Contest plea to, received deferred adjudication, or dismissal following defensive driving for:
   a. four (4) or more moving violations within the five (5) year period prior to employment;
   b. three (3) or more moving violations within the two (2) year period prior to employment, or
   c. two (2) or more moving violations within the twelve (12) month period prior to employment.
2. Applicant has been determined to be at fault in two (2) or more traffic accidents within the three (3) year period prior to employment.
3. Applicant has been convicted of moving violations and determined to be at fault in traffic accidents in a combination of violations and accidents totaling three (3) or more events within the three (3) year period prior to employment.

4. If applicant's driver's license has been suspended or revoked for any reason during the five (5) year period prior to employment,applicant will be disqualified from testing for a period of five (5) years from the last day of the revocation or suspension.
5. Notwithstanding section G.5, above, if the applicant's driver's license has been suspended or revoked because of a one-time violation of any single statute listed below, the applicant will be disqualified from testing for a period of two (2) years from the last day of the suspension or revocation:
    a. Texas Alcoholic Beverage Code § 106.02 (Purchase by Minor)
    b. Texas Alcoholic Beverage Code § 106.025 (Attempt to Purchase by Minor)
    c. Texas Alcoholic Beverage Code § 106.4 (Consumption by Minor)
    d. Texas Alcoholic Beverage Code § 106.05 (Possession by Minor)
    e. Texas Alcoholic Beverage Code § 106.07 (Misrepresent Age by Minor)
    f. Texas health and Safety Code § 161.252 (Tobacco Violations by Minor)
    g. Texas Penal Code § 49.02 (Public Intoxication by Minor)
    h. Driver Surcharge Violation for No Insurance Violation
    i. Driver Surcharge Violation for No Driver's License Violation
    j. Failure to Appear on a Citation Violation

H. Unsatisfactory prior service
    1. Applicant was indefinitely suspended, resigned during a suspension, or resigned in lieu of suspension or investigation from any prior public safety position.
    2. Applicant with prior experience in another department has been identified by a prosecutor as a person not eligible to testify in a court of law pursuant to the effect of the Texas Brady Act/Michael Morton Act.

I. Prior disqualification by the Temple Police Department or Temple Fire Department
    1. Applicant was disqualified for employment by the Department at least two (2) times during the twenty-four (24) months prior to the current application.
    2. Applicant disqualified under this rule is eligible for employment consideration by the Department three (3) years after the date of the last disqualification.

J. Failure to complete all required pre-examination documents by the deadline established in the Notice of Examination.

K. Failure to meet one or more of the minimum requirements expressed in these rules or the regulations of the Texas Commission on Law Enforcement, or the Texas Commission on Fire Protection.

L. Makes or knowingly attempts to make a false statement of any material fact in the application, examination, or appointment process.

SECTION 24 **RESERVED**

SECTION 25 **ENTRANCE EXAM**

25.1 The Director shall keep all eligibility lists for applicants for original positions in the Fire Department in effect for one (1) year. The Director shall provide in the eligibility list announcement that the list shall remain in effect for the time specified by these rules, or until all names have been referred to the appropriate department, whichever occurs sooner.

25.2 Any person shall be considered for appointment to a vacancy in the classified service who has completed an application and all steps in the hiring process.

25.3 The Director may, because of a small number of applicants for any position, or for any other good and sufficient reason, postpone an examination to a later date. Any examination may be canceled by the Director if the examination becomes unnecessary due to a change in the personnel requirements of the classified service.

25.4 No letters of recommendation or endorsements, other than those required by the rules, shall be considered in rating any competitor, unless called for in connection with the examination.

25.5 Five points shall be added to the examination grade of any applicant who served in the United States armed forces for not less than one year on active duty, received an honorable discharge, and who made a passing grade on the examination.

25.6 To be eligible to take the exam, the applicant's Civil Service registration form and other required forms must be received by the People Operations Department by the closing time and date established by the Director and set out in the Notice of Examination.

25.7 The certified eligibility lists for Police and Fire entry positions will be established by using the applicant's total score plus the five (5) points for "honorable discharge" after the applicant has passed the physical assessment/agility testing.

25.8 In the event that two or more applicants make identical total final grades, the order of their rank on the eligibility list shall be determined using the following procedures:

A. raw score on the written test;

B. the date the registration form is turned in to the People Operations Department, with the earliest date taking priority;

C. the time the registration form was turned in to the People Operations Department, with the earliest time of day taking priority;

D. the Director shall place the names of the applicants involved in the tie into a container and draw out as many names as necessary to break the tie. The names shall be placed on the eligibility list in the order in which they are drawn.

25.9 Any person requesting an accommodation under the Americans with Disability Act in taking the entrance exam must request the accommodation in writing and present the documentation to the Director at least three (3) weeks prior to the closing date for application.

25.10 An applicant requesting an accommodation must present documentation of a specific disability which would negatively impact the applicant's performance on the exam. The documentation must be on letterhead stationery from a medical

or educational professional who is familiar with the individual's disability. The documentation must be dated within the three (3) years prior to the date of the entrance exam.

25.11 Applicants with disabilities are entitled to, and have the responsibility to meet, the same deadlines for application and submission of documentation established for non-disabled individuals.

25.12 The City of Temple will offer reasonable accommodations for the written entrance exam for those persons with documented disabilities.

25.13 Requests for accommodations on the written examination will be reviewed on a case by case basis.

Entrance Examination Administration Procedures

25.14 The use of tobacco products, including smokeless tobacco, vaping, and simulated smoking devices, is prohibited at all times in the testing area.

25.15 The test monitors will verify each applicant's identification by viewing a photo I.D. of the applicant.

25.16 No applicant will be admitted after the test begins.

25.17 A copy of a DD214 verifying honorable discharge must be provided to the Director no later than 5:00 p.m. on the first business day following the date of the written examination.

25.18 The test administrator may select persons employed by the City to assist in the administration, monitoring, and grading of an entrance examination.

25.19 All examinations will be administered in the presence of all other applicants for such positions. An applicant may not take the examination unless at least one other applicant takes the examination.

25.20 Any person taking an entrance examination who uses, or attempts to use, an unfair or deceitful means to pass the examination will have their examination voided.

25.21 No examinee will be readmitted to the examination after he has withdrawn or left the place of examination without the examination administrator's consent.

25.22 All original papers, applications, examination paper and questions, certificates, etc., are the property of the Commission and will not be returned to the applicant or copied for the applicant.

25.23 The test administrator will bring to the testing site all materials necessary for the applicant to take the examination.

25.24 The examinee may only bring their vehicle key and identification into the testing site. All other items are prohibited.

SECTION 26 PROCEDURE FOR FILLING BEGINNING POSITIONS

26.1 When an opening exists in the Department, the Chief of the Department will request the appropriate number of applicants to fill the vacant position(s) in the Department. If only one vacancy exists, the Director will send the City Manager or designee the names of the three (3) persons having the highest position on the eligibility list. If more than three vacancies exist, the Director will send the names of the three (3) persons having the highest position on the eligibility list for each vacancy.

26.2 Applicants who are selected to be appointed to fill a vacant position will be appointed by the City Manager, in the order in which they appear on the eligibility list, unless there is a valid reason to pass over the applicant.

26.3 Reasons for passing over an applicant may include, but are not limited to, the following:

A. does not meet minimum qualifications for the position;

B. acts showing lack of good moral character;

C. failure to complete or satisfactorily meet the requirements of any part of the selection process;

D. unfit mentally or physically to perform the essential job duties for a police officer or fire fighter with the City of Temple;

E. has illegally used or sold any illicit substance;

F. fails to meet the requirements of the City of Temple Drug and Alcohol Policy;

G. fails to meet the requirements of the City of Temple Licensing Criteria to Obtain/ Maintain City Vehicle Driving Privileges;

H. has been found guilty of, or admitted to, any felony or misdemeanor involving theft, moral turpitude, or conduct unbecoming a member of the Police Department or Fire Department;

I. has been dismissed from public service for misconduct, or resigned in lieu of termination;

J. has intentionally made false statements, or practiced, or used any form of deception or fraud during any part of the registration, examination, application, or selection process;

K. cannot proficiently read, write, and speak the English language;

L. cannot orally communicate in a professional and intelligent manner;

M. has a history of unstable work for no valid reason acceptable to the Police Chief or the Fire Chief, whichever is applicable;

N. past conduct that would be inconsistent with a police officer's or fire fighter's job duties; or

O. department passes over an uncertified applicant in favor of appointment of a certified applicant.

SECTION 27 PROBATIONARY PERIOD

27.1 Police Officer applicants who are already licensed/certified as a Police Officer by the Texas Commission on Law Enforcement, and Fire Fighter applicants who are already licensed/certified as a Fire Fighter I and Fire Fighter II by the Texas Commission on Fire Protection and as an EMT by the Texas Department of State Health Services will serve a one (1) year probationary period from the date of employment with the department. If a probationary officer or firefighter is on an approved leave or light duty assignment which precludes performing the full duties of their position for longer than fourteen (14) days, the officer's or firefighter's probationary period will freeze at that point and will resume at the point left off, when the employee returns to duty.

27.2 Police Officer applicants who must attend a police academy to obtain license/certification by the Texas Commission on Law Enforcement, and Fire Fighter applicants who must attend a fire academy to obtain Fire Fighter I and Fire Fighter II license/certification by the Texas Commission on Fire Protection will serve up to eighteen (18) months of a probationary period from the date of employment with the department. If a probationary officer or firefighter is on an approved leave or light duty assignment for longer than fourteen (14) days, the officer's or firefighter's probationary period will be suspended at that point. When the fire fighter or police officer returns to full duty, the probationary period will resume at the point left off.

27.3 A probationary employee is not protected or covered under Civil Service and is subject to discharge under the City of Temple Employee Policies and Procedures, departmental rules and regulations, and the City Charter.

Probationary employees shall not be entitled to:

A. specific charges filed against them before they can be terminated;

B. a disciplinary appeal hearing before the Civil Service Commission or a Third-Party Hearing Examiner;

C. appeal of a disciplinary decision to District Court in accordance with rights afforded to Civil Service employees pursuant to Chapter 143 of the Texas Local Government Code, or

D. an appeal hearing pursuant to any City appeal procedure.

SECTION 28 ELIGIBILITY FOR PROMOTION

28.1 A fire fighter or police officer must meet the requirements set forth in the Texas Local Government Code to be eligible to take a promotional examination, unless other rules apply pursuant to a valid meet and confer agreement.

28.2 The two-year eligibility requirement to take a promotional examination shall be determined based on the posted date of examination.

28.3 In any classification, at least one more person than the number of vacancies during test registration must be eligible to take a promotion eligibility examination for that classification.

28.4 When criteria of 28.3 are not met at the time of the test registration, eligibility requirements must be expanded.

28.5 When three (3) or more eligible personnel exist within a classification, but fewer than one (1) person more than the number of vacancies in that classification at the time of test registration apply and attend the promotional examination, eligibility standards for that promotional examination shall be expanded as set forth in the Texas Local Government Code. Eligible personnel shall include any individual who meets the expanded standards for promotional eligibility established in sections 143.030 and 143.031 of the Texas Local Government Code.

28.6 When no personnel pass the written promotional examination and alternate promotional system, where applicable, so that an eligibility list cannot be established, the Director shall restart the promotional process for the positions.

28.7 All personnel eligible as of the date of a posted examination and who desire to take the examination shall apply by the closing date set by the Director online. Promotional candidates needing accommodations pursuant to the Americans with Disabilities Act (ADA) shall contact the Civil Service Director. Any person requesting an ADA accommodation in order to take the promotional exam must request the accommodation in writing and present the documentation to the Director at least three (3) weeks prior to the closing date for application.

SECTION 29 **PROMOTIONAL EXAMINATION NOTICE**

29.1 Posting and notice of promotional examinations and study materials for the promotional examinations will be in accordance with Chapter 143 of the Texas Local Government Code and these rules.

29.2 If fewer than one eligible person more than the number of vacancies at the time of test registration applies or presents himself to take a posted examination, then the test shall be re-posted with amended requirements lowering eligibility to applicants with less than two years' service in the classification immediately below the vacant position. If there is still an insufficient number of examination applicants, the Civil Service Director may open the examination to persons with at least two years' service in the second lower classification, as set forth in Chapter 143.030 of the Texas Local Government Code.

SECTION 30-31 **RESERVED**

SECTION 32 **PROMOTIONAL EXAMINATION PROCEDURES**

32.1 The Director will take appropriate steps to ensure that all promotional eligibility examination test questions are prepared by personnel or organizations that possess the level of expertise necessary to prepare test questions of an appropriate nature and level for the tested position. The organization or individual preparing the test questions will provide references by book and page number for each question submitted in order to facilitate proofing of tests.

32.2 All test questions will be based solely on material that is appropriate to the position that is being tested, and from material selected by the Police Chief and Fire Chief.

32.3 The Director will select a testing site that will have as few interruptions or distractions as possible during the testing process.

32.4 All materials necessary to take the examination shall be brought to the test site by the Director.

32.5 The examinee is not allowed to bring to the testing site any books, papers, electronic items of any kind or other items deemed inappropriate by the test administrator.

32.6 No examinee will be allowed to enter the test site after the posted start time.

32.7 Once a person has entered the examination site and accepted the test booklet and answer sheet, they will be considered a valid applicant for promotion, and will be included in the posted results of that promotional examination.

32.8 Any examinee who uses or attempts to use any unfair or deceitful means to pass an examination shall be informed by the test monitor that the candidate's action will be reported to the Civil Service Commission, who may select an investigator to determine the facts and prepare a report. If an investigation determines that the examinee used or attempted to use unfair or deceitful means to pass the examination, the Commission shall take appropriate action, including removing the candidate's name from the eligibility list. The Chief will determine if disciplinary action is warranted.

32.9 Promotional Examination Procedures for Personnel on Active Military Duty:

A. Promotional candidates who are eligible to take a promotional examination and who are serving on active military duty 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 confidentiality of the examination, and to ensure proper administrative procedures are followed.

C. A notice listing the sources from which the examination questions will be taken will be sent to each active duty military promotional candidate.

D. All active military duty employees shall be required to provide an accurate and updated email address and contact information to the Civil Service Director and their respective Department Chief.

E. The Department will provide the active duty military promotional candidate with copies of the necessary source material for the promotional exam after an exam date is determined.

F. Promotional candidates must notify the Director at least 14 days in advance of the examination of their desire to have the examination administered off-site.

G. It is the active duty military promotional candidate's responsibility to work with the Director to schedule the administration of the examination.

H. If the candidate serving on active military duty takes and passes a promotional examination, the candidate's name will 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.

I. The Director will 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.

J. All employees covered by Chapter 143 of the Texas Local Government Code who are called to active military duty must notify the Director of their mailing address and/or their e-mail address. The Director will use his best efforts to inform the employees serving on active military duty of upcoming promotional examinations.

SECTION 33 PROMOTIONAL EXAMINATION GRADES

33.1 The grading of each promotional examination will begin when one eligible examinee completes the examination. The examinations will be graded at the examination location and in the presence of any examinee who wants to remain during the grading.

33.2 Scores on the written promotional examinations will be based upon a maximum of one hundred (100) points and will be determined entirely by the correctness of each examinee's answers to the questions. Examinees receiving seventy (70) points or more on the written exam will be determined to have passed the examination.

33.3 Each examinee is entitled to receive one point for each year of seniority as a classified member of his department, up to a maximum of ten (10) points. Seniority points will be calculated for whole years of service only, and not for partial years of service.

33.4 The Director will establish an eligibility list from persons passing the promotional testing. Examinees will be ranked on the eligibility list in order of their examination scores, from the highest score to the lowest.

33.5 The total final grade of each person on the eligibility list will be computed by adding the seniority points for years of service to the examination raw score.

33.6 Tied total scores on promotional examinations shall be broken using the following procedures:

A. The person with the highest raw score on the written examination will be placed ahead of the others with the same total score.

B. If application of item (A) still results in a tie, the person with the most time in grade shall be placed ahead of the others with the same total score.

C. If application of items (A) and (B) still results in a tie, the person with the most seniority in the department shall be placed ahead of the others with the same total score.

D. If application of items (A), (B), and (C) still results in a tie, the candidates will draw straws for placement on the eligibility list. The person drawing the longer straw will be placed ahead of the one with the shorter straw. Drawing will be conducted in the presence of the Director.

SECTION 34 REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION

34.1 An employee will have until 5 p.m. on the fifth (5th) business day following the examination date to review the results of their exam and file an appeal. The five (5) business day review period begins on the first business day following the exam date.

34.2 Employees wishing to review their examinations may do so in the People Operations Department during normal business days and hours. Once in the reviewing area, the employee will be provided with a copy of the exam, his or her graded answer sheet, a pen, an appeal form and the reading materials. Employees are prohibited from removing, photographing, copying, or recording anything in the reviewing area and must return all materials to the director or authorized designee prior to leaving the review area. Violations of these procedures will result in disciplinary action up to indefinite suspension.

34.3 The appeal must be in writing and delivered in person, by certified mail, or by email to the Civil Service Director or authorized designee at the following:

Civil Service Director, People Operations Director 1 South 1st St., Temple, Texas 76501
Email: civilservicedirector@templetx.gov.

During the appeal hearing, the following rules will apply:

A. Appealed questions will be considered in numerical order.

B. Each appellant will be given an opportunity to present reasons for appeal. The appellant may designate someone else to present comments on the appellant's behalf.

C. The Chair will first ask each appellant if they still wish to appeal. The appellant will then be allowed to make a brief presentation. The Commission will limit the time for each appellant to speak on each question to four (4) minutes.

D. After each appellant has spoken on the question, the Commission may ask questions of the appellant or the Director. The Chair may allow others an opportunity to speak on the question, offering differing opinions if they have material information pertinent to the appeal being considered at that time.

E. The Commission will then consider the arguments of the appellant(s) and any others who spoke on the issue. The Commission shall consider the appealed question and then vote on one of the following alternatives for each appealed question:

1. Keep the same answer as provided on the original answer key;
2. Change the correct answer to a single alternate correct answer;
3. Allow more than one correct answer;
4. Delete the question.

F. The Director will re-score all answer sheets, if necessary, to conform to the Commission's determination regarding each appealed question, and post a new eligibility list after the hearing. The amended eligibility list will have the same effective date as the original list. If a question is deleted, the total number of test questions will be reduced, and the new eligibility list will be based on the

remaining number of questions. For example, if two questions are deleted, the total number of questions on the test will be reduced to 98, and the value of remaining questions will be changed to equal a total of 100 points. All answer sheets will be re-graded to show the total number of correct answers out of 98. Seniority points will then be added to the new scores, and a new eligibility list will be posted, unless an alternative process has been adopted.

SECTION 35-50 RESERVED

SECTION 51 CAUSE FOR REMOVAL OR SUSPENSION

51.1 Any employee of the classified service may be disciplined, suspended or indefinitely suspended if he or she commits or conspires to commit the following acts and/or omissions;

A. conviction of a felony or other crime involving moral turpitude;

B. violation of any provision of the Charter of the City of Temple;

C. acts of incompetency;

D. neglect of duty;

E. discourtesy to the public, or to a fellow employee while in the line of duty;

F. acts showing lack of good moral character;

G. drinking intoxicants while on duty, or intoxication while off duty;

H. conduct prejudicial to good order;

I. refusal or neglect to pay just debts;

J. absence without leave;

K. shirking duty, or cowardice at fire, if applicable, or

L. violation of an applicable Fire or Police Department rule, policy or special order.

SECTION 52 DISCIPLINARY SUSPENSIONS

52.1 General Provisions

A. The Chief has discretion to select which days the employee is suspended, and the days of suspension do not have to be consecutive days.

B. The Chief has discretion to withdraw the suspended employee's right to work off duty. Hardship cases may be requested and decided by the Chief on a case-by-case basis.

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

SECTION 53 APPEAL OF DISCIPLINARY SUSPENSION

53.1 The following rules will apply to disciplinary hearings:

The Texas Rules of Civil Procedure, the Texas Rules of Criminal Procedure, the Texas Rules of Evidence, and all other rules of court regarding what is commonly known as "discovery" shall not apply to any civil service proceedings.

A. The scope of evidence to be considered at a disciplinary hearing shall be generally limited to matters relevant to the statement of the charges as set forth in the Chief's notice of suspension, the appellant's notice of appeal, and the appellant's previous employment record with the Department.

B. Either party may offer relevant and rebuttal evidence as appellant may desire to aid in the determination of disputed issues.

C. It shall be the province of the Commission or Hearing Examiner to ultimately determine:

1. the admissibility of any particular evidence or testimony;
2. the relevance or non-relevance of any particular evidence or testimony;
3. the credibility, or lack thereof, of any particular evidence or testimony, and
4. the materiality, or "weight", to be given to any particular evidence or testimony.

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

1. a party has deliberately withheld previously known and duly requested evidence from the other party until the hearing, and the evidence should have been previously produced as per these rules, or
2. the hearing has been closed.

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

F. The Commission or Hearing Examiner may allow remote testimony of witnesses by telephone if the witness is unavailable for the hearing.

G. On-site inspections shall be discouraged and may be conducted only if the evidence to be considered cannot otherwise be presented via stipulations, photographs, video, maps, diagrams, etc., or if the parties mutually agree.

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

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

J. The City bears the burden of proof in any disciplinary appeal hearing before the Commission or Hearing Examiner and it shall be by a preponderance of the evidence.

K. All parties shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process.

L. All parties shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission or Hearing Examiner at the hearing.

M. A record of the proceedings, capable of clear and accurate reproduction or transcription, shall be made and maintained by the Director.

N. 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 Commission or Hearing Examiner may "carry" such pre-hearing motions until the hearing is completed and all factual evidence has been presented before making its final ruling thereto.

O. The Department shall go first in the presentation of evidence and testimony. Thereafter, the appellant shall have the opportunity to respond with their own evidence, witnesses or testimony. Thereafter, the Department may come forward with rebuttal evidence or testimony as may be necessary.

P. Presentations by both parties shall be as brief and as closely related to the issue(s) as possible.

Q. Throughout the proceedings, the Commission members or Hearing Examiner may also ask questions as needed in order to aid their consideration of the testimony or evidence.

R. Witnesses will be sworn and their testimony taken under oath or affirmation.

S. Upon request by either party, "the Rule" may be invoked concerning oral testimony, meaning that all persons who shall be expected to testify at the hearing, other than the parties and their representatives, shall not be allowed to observe or listen to any of the proceedings except when they are actually testifying as a witness. While under the Rule, potential witnesses shall not discuss any aspect of the appeal or hearing except with the attorneys or the representative involved. Invoking the Rule is not mandatory, and may be waived in whole or in part by agreement.

T. Witnesses are subject to reasonable and relevant cross-examination by the opposing party.

U. The Chair or Hearing Examiner shall exercise reasonable control over the questioning of witnesses and the presentation of evidence so as to:

   1. effectively ascertain the truth;
   2. keep such presentations relevant to the issues to be determined;
   3. avoid the needless consumption of time and expense, and
   4. protect the witnesses and employees from harassment or undue embarrassment.

V. The parties and their representatives shall cooperate in keeping all presentations as brief and to the point as possible. Long, drawn-out sessions shall be discouraged. The Commission or Hearing Examiner may establish time limits for presentation of each side of the case.

W. All hearings must remain business-like and focus upon resolution of factual matters. Hearings shall not be a time for accusations, threats, speeches, or arguments. The Commission or Hearing Examiner shall have the discretion to adjourn any meeting that deteriorates into non-productive dialogue.

X. The Commission or Hearing Examiner 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.

Y. Before adjourning, the Commission may adjourn to executive session for deliberation, Thereafter, the Commission shall reconvene in open session and shall, upon motion and second, make its decision. Thereafter, a written order containing the Commission's decision shall be prepared and signed by the Commissioners prior to adjourning the hearing.

53.2 The location and accommodations for all hearings and appeals shall be arranged by the Director.

53.3 All subsequent matters by either party regarding attendance, scheduling, requests for subpoenas, requests for continuance, etc. shall be coordinated through the Director. All such information shall be provided to the Director, who shall then provide copies of same to the opposing party or representative, and also coordinate the appropriate response or action to be taken.

53.4 The failure of a party to attend a scheduled appeal hearing, or to file a timely request for a continuance of the hearing to a later date, shall not in itself prevent the hearing from proceeding as scheduled nor prevent the Commission or Hearing Examiner from proceeding to take such action as may be appropriate.

53.5 Requests for continuance of a hearing before the Commission or Hearing Examiner to a later date must be filed with the Director at least three (3) business days prior to the date and time of the scheduled hearing, absent an emergency.

A. Requests for continuance must be date(s) specific, and must address the thirty (30) day hearing deadline imposed on Commission or Hearing Examiner decisions as required by Chapter 143 Texas Local Government Code.

B. The thirty (30) day Commission decision deadline will be enforced unless the appealing party and the Commission or Hearing Examiner can agree on new dates.

53.6 Expenses and Costs

A. The appropriate amount, as well as payment of, all costs and expenses may be determined and collected by the Director. Generally, the appellant will be required to pay for one-half the costs of the Hearing Examiner and any other fees assessed by the American Arbitration Association (AAA) or any other outside agency. An appellant may receive an estimate of anticipated costs upon written request to the Director. Both parties shall share equally in the cost of any transcripts of the hearing prepared by a court reporter.

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

53.7 Employee and Department Representatives

A. The hearing process shall recognize the right of employees as well as the Department to be represented by one or more persons throughout the proceedings of a disciplinary appeal.

B. Only one representative shall be allowed to speak or otherwise present evidence on behalf of either party throughout the questioning of a particular witness.

C. Appellant and Department representatives shall use their best efforts to conclude all proceedings smoothly, expediently, and as fairly as possible to all concerned.

D. The functions of the representatives shall be to articulate the best interests of the appellant or the Department represented, and to make their presentations pertinent to the issue(s) being considered. Dissatisfaction with a representative shall not constitute grounds for modification of a ruling.

E. All representatives or employees who represent themselves shall become familiar with and follow these rules and regulations at all times during the disciplinary appeal process.

F. Any problems or concerns regarding the manner in which the opposing party or their representative is handling a particular disciplinary appeal should be brought to the attention of the Director. The difficulty will be expeditiously addressed.

53.8 Exchange of Documentation and Identity of Witnesses

A. Parties who request photocopies of documents from the opposing party should be accommodated if such requests are reasonable.

B. Items from departmental policies, rules and regulations manuals may be photocopied upon request and payment of applicable copying charges.

C. Items such as Vehicle Accident Review Board recommendations, time and attendance records, duty status forms, and other such documents may also be provided so long as they are relevant to the employee and the disciplinary action under appeal.

D. Appellants and their representatives may obtain copies of matters contained in the appellant's own personnel and departmental files after the appellant has signed the appropriate release form(s).

E. Before requesting a subpoena duces tecum for the production of documents or other material, a party shall first make a request for the materials 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 at least ten (10) days prior to the hearing date, and the party requesting the documents shall also serve the opposing party with a copy of the subpoena duces tecum at least ten (10) days prior to the hearing date. If the opposing party wishes to object to the request for the issuance of the subpoena duces tecum, the opposing party shall file its written objections with the Director at six (6) days prior to

the hearing. If the Commission receives written objections to the issuance of a subpoena duces tecum from the opposing party, the Commission shall meet no later than the third day before the hearing to determine whether to issue, quash, or modify the requested subpoena. This meeting may be convened by conference call, at the discretion of the Chairman or Hearing Examiner. The Director shall then notify the parties verbally and in writing of the Commission's or Hearing Examiner's decision. Because of the short time frame permitted in this process, all written materials may be served by email by the parties and to each other and to the Director.

F. All requests for subpoenas to compel the attendance of a witness shall be coordinated through the Director's office. Requests for a subpoena shall be completed at least ten (10) days prior to the scheduled hearing date in order to be processed in a timely manner. The Director may issue subpoenas on behalf of the Commission or Hearing Examiner.

53.9 Issues to Be Determined In Disciplinary Appeals

A. The Chief must establish the violation(s) by a preponderance of the evidence.

B. It shall be recognized that, prior to imposing any form of discipline, the Chief may use lesser forms of disciplinary or corrective action. Failure to use "progressive discipline" shall not in itself be grounds to overturn or otherwise modify a Chief's decision to proceed directly to the appropriate level of discipline if the employee's misconduct warrants such disciplinary action, including indefinite suspension. Progressive discipline need not always apply, and the seriousness of a single offense may negate a previously unblemished record.

C. The hearing shall provide the appellant every reasonable opportunity to produce objective evidence and/or testimony to develop:

1. that they did not commit the misconduct as alleged, i.e. "the allegations are not true"; or
2. that even if the appellant committed the acts as alleged, that such activity does not constitute actionable misconduct; or
3. that even if the appellant committed actionable misconduct, the degree of discipline imposed is too harsh or severe, i.e., the disciplinary action imposed was "unreasonable, arbitrary, or capricious"; or
4. a combination of any of these would justify or compel mediation of the Chief's action.

D. An appellant's mere disagreement or difference of opinion with regard to the Chief 's actions or reasoning shall not constitute grounds to overturn or modify the disciplinary action.

E. If the hearing establishes one valid charge of misconduct supported by evidence sufficient to establish its truth, that charge shall be sustained even if the evidence at the hearing does not support other charges in the letter of disciplinary action.

53.10 Findings and Orders of the Commission or Hearing Examiner

A. As a result of the evidence and testimony presented at the hearing, the Commission shall vote and issue a decision on the matter via a written statement finding the truth of the specific charge(s) against the appellant, or a written statement finding that the specific charge(s) against the appellant are not true.

B. In the event that all of the charge(s) of misconduct against the appellant are found to be “not true”, then the final order and ruling shall be promptly to restore the appellant to the appellant’s proper position or status without penalty.

C. In the event that specific charges of misconduct against the appellant are found to be “true”, then the final order and ruling shall clearly state whether the appellant is:

1. permanently dismissed from the Department; or
2. temporarily suspended from the Department, and shall then set forth the definite time period.

D. The Commission or Hearing Examiner may consider matters involving questions of applying Chapter 143 to facts or events that may arise during the disciplinary appeal process, and that are outside the scope of the Department’s statement of charges or the appellant’s notice of appeal, to the extent permitted by law.

E. The Commission or Hearing Examiner shall base its decisions on “substantial evidence” which is defined as evidence that a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Under the substantial evidence rule, as applied in administrative proceedings, evidence is competent and may be considered, regardless of its source and nature, if it is the kind of evidence that a reasonable mind might accept as adequate to support a conclusion. In all hearings, appeals and reviews, the Commission or Hearing Examiner is performing an adjudicatory function.

F. A final ruling and order of the Commission may be made by the majority vote of two of the three Commissioners present. If only two Commissioners are present, the final ruling and order must be made in agreement by both Commissioners present.

G. A copy of the Department’s disciplinary action, a copy of the appellant’s request for appeal, the record of the proceedings, a copy of the exhibits submitted together with a copy of the final decision shall be filed in the Commission record. The Commission may cite these records as reference material in subsequent determinations.

53.11 Employee dissatisfaction resulting from a transfer, assignment, or reassignment of duties, in and of itself, shall not constitute grounds for any type of appeal procedures.

53.12 Employee dissatisfaction resulting from a discretionary policy decision or policy matters, in and of itself, shall not constitute grounds for any type of appeal procedures.

53.13 A Civil Service employee may voluntarily enter into a written agreement with the Department that expressly evidences his or her intent to finally resolve the issue(s) of any type of disciplinary action imposed. The agreement shall also include a statement that the employee waives all rights to further proceedings in the disciplinary appeal process.

53.14 The Commission’s consideration of whether there is probable cause to support the Chief ‘s recommendations for demotion does not require an evidentiary hearing. If the Commission determines that probable cause exists for a recommended demotion, the Commissioner’s letter to the employee shall include the Hearing Examiner option under Chapter 143.

53.15 After the Commission has determined that probable cause exists for a requested demotion and has provided the employee with a written Notice as Chapter 143, the action for appeal of the demotion shall be conducted according to the same hearing procedures as set forth herein for all other disciplinary actions or as expressly provided otherwise in Chapter 143.

SECTION 54-56 RESERVED

SECTION 57 HEARING EXAMINERS

57.1 The Hearing Examiner must conduct the hearing in the same manner as the Civil Service Commission. The Hearing Examiner cannot modify the rules or the procedures of an appeal hearing.

A. Administrative Rules

1. Only a disciplinary action concerning an indefinite suspension, a suspension, a promotional passover or a recommended demotion is appealable to a Hearing Examiner, except in the case of a suspension of a police officer for 36 hours or fewer.
2. The Director shall coordinate with the parties and the agency sponsoring the Hearing Examiner as to all matters regarding scheduling, place of hearing, accommodations, etc.
3. The City and the disciplined employee's representative shall select a Hearing Examiner pursuant to Section 143.057 (d) Texas Local Government Code.
4. A hearing conducted by a Hearing Examiner shall also be recorded so as to be capable of clear and accurate reproduction or transcription.
5. If a situation arises pertaining to the administration process of selecting a Hearing Examiner, or meeting notices, or request for rescheduling, refusal, conflict or interest, etc., and the situation is not provided for Chapter 143 or in these Rules and Regulations, then the parties and the Director shall attempt to mutually resolve the situation by agreement. If the matter is not one capable of being reasonably resolved by agreement, the Director shall make the final decision and that decision shall be final.
6. In all cases, the employee filing the appeal shall strike the first name from the list of possible hearing examiners

B. Hearing Examiner Procedures

1. The rule-making power and authority of the Civil Service Commission is in no way conferred upon and/or delegated to any Hearing Examiner, either by implication or otherwise.
2. The scope of evidence to be considered at the hearing shall be generally limited to matters closely related and relevant to the charges of misconduct as set forth in the Department's written statement and the employee's notice of appeal as filed with the Commission, as well as the appealing party's previous employment record with the Department, and similarly situated employees.

3. The Texas Rules of Civil Procedure, the Texas Rules of Criminal Procedure, the Texas Rules of Evidence, and all other rules of court regarding what is commonly known as "discovery" shall not apply to any civil service proceedings.
4. The burden of proof shall be by a preponderance of the evidence.
5. After the close of evidence and testimony, the Hearing Examiner shall submit to the parties a written opinion of his findings and conclusion. The hearing examiner is not authorized to calculate back pay.
6. A disciplinary proceeding conducted by a Hearing Examiner instead of the Commission shall not be conducted or resolved via arbitration or arbitration processes. An employee's election of appeal to a Hearing Examiner shall not constitute a right or an agreement to submit the appeal to arbitration or arbitration processes.
7. The Hearing Examiner is to conduct a hearing fairly, objectively and impartially under the provisions of Chapter 143 and these Rules and Regulations. The Hearing Examiner is to render a fair and just decision based solely on the evidence presented in the hearing. The scope of evidence to be considered at the hearing shall be generally limited to matters closely relevant to the charges of misconduct as set forth in the Department's written statement and the employee's notice of appeal as filed with the Commission as well as the employee's previous work record with the Department.

Section 143.082 EFFICIENCY REPORTS

See Section 143.082, Chapter 143

Section 143.083 EMERGENCY APPOINTMENT OF TEMPORARY FIRE FIGHTERS AND POLICE OFFICERS

See Section 143.083, Chapter 143

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

See Section 143.084, Chapter 143

Section 143.085 FORCE REDUCTION AND REINSTATEMENT LIST

See Section 143.085, Chapter 143

Section 143.086 POLITICAL ACTIVITIES

See Section 143.086, Chapter 143

Section 143.087 STRIKE PROHIBITION

See Section 143.087, Chapter 143

Section 143.088 UNLAWFUL RESIGNATION OR RETIREMENT

See Section 143.088, Chapter 143

Section 143.089 PERMANENT PERSONNEL FILE

When a hearing is to be conducted by the Commission or a Hearing Examiner under Section 143.052 or Section 143.054, or a promotional Passover under Section 143.036, the Chief may submit confidential material from the confidential Departmental Personnel file in camera for the Commission's or Hearing Examiner's consideration. If the Commission/Hearing Examiner decides to admit the confidential documents as evidence, the Commission/Hearing Examiner shall admit them under seal with instructions they are not to be released to any third party. The Commission/Hearing Examiner shall sign a protective order to this effect and make such an order a part of the official record of the hearing.

Section 143.090 Release of Photographs of Police Officers

See Section 143.090, Chapter 143