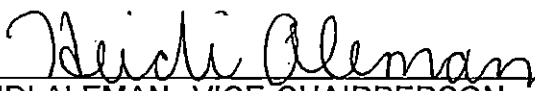


CITY OF NEW BRAUNFELS FIREFIGHTERS AND
POLICE-OFFICERS CIVIL SERVICE COMMISSION
RULES AND REGULATIONS

EFFECTIVE OCTOBER 30, 2011


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CITY OF NEW BRAUNFELS CIVIL SERVICE RULES AND REGULATIONS

INTRODUCTION

The purpose of Chapter 143 of the Local Government Code is to secure efficient Fire and Police Departments composed of capable personnel, free from political influence.

These Rules are promulgated in compliance with Chapter 143 of the Local Government Code, which is incorporated herein for all purposes. It is intended that these Rules shall complement said statute and not conflict with the statute in any manner. No set of rules can be so precise as to provide for every employment situation; therefore, it is intended that the Civil Service Commission administer these Rules in the best interest of the New Braunfels Fire and Police Departments.

**CITY OF NEW BRAUNFELS
FIRE FIGHTERS AND POLICE OFFICERS
CIVIL SERVICE COMMISSION
RULES AND REGULATIONS**

SUBCHAPTER A. GENERAL PROVISIONS

Section 143.001 PURPOSE

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

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

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

- (1) The proper conduct of Commission business meetings;
- (2) The standards for appointment and the procedures for appointment and certification;
- (3) The proper conduct of examinations for entry level and promotional eligibility;
- (4) The proper conduct of appeals of testing and examination scoring;
- (5) The prescribed cause or causes for the removal or suspension of a civil service employee;
- (6) The procedures for the hearing of disciplinary appeals concerning suspensions without pay, indefinite suspensions, promotional pass overs; recommended demotions, including hearings conducted by third party hearing examiners; or written promotional examinations; and
- (7) Such other matters reasonably related to the selection, promotion and discipline of civil service employees, not otherwise vested in the discretion or managerial authority of the City Council, City Manager, Director of Civil Service, or Department Heads.

Section 143.002 MUNICIPALITIES COVERED BY CHAPTER

See Section 143.002 of Chapter 143

Section 143.003 DEFINITIONS

See Section 143.003, Chapter 143

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

- (1) **APPOINTMENT** - The designation of a person by the City Manager to become an employee in a classified civil service position.
- (2) **BUSINESS DAY** - Any day City Hall is customarily open for normal business. "Business Day" does not refer to the employee's workday or holidays observed by the City.
- (3) **CHIEF EXECUTIVE** – The City Manager of the City of New Braunfels.
- (4) **CHAPTER 143** - The portion of the Texas Local Government Code containing the civil service provisions.
- (5) **CITY** – City of New Braunfels.
- (6) **CITY HALL** – Municipal Building.
- (7) **CIVIL SERVICE DIRECTOR/DIRECTOR** – Shall be the Human Resources Director.
- (8) **CIVIL SERVICE RULE** - Shall be defined to include a rule, regulation, general order, standard operating guideline or procedure or special order applicable to civil service employees, whether from Chapter 143, the City's Employee Personnel Policies, Rules and Regulations, these Policies, Rules and Regulations, or the appropriate Department's regulations, guidelines, procedures, as they may exist from time to time.
- (9) **CLASSIFICATION** - A position or group of positions that involve similar duties and responsibilities and require similar qualifications.
- (10) **COMMISSION** – The New Braunfels Firefighters and Police Officers Civil Service Commission.
- (11) **CONVICTION OR CONVICTED** - A person is convicted if he/she has pled guilty, no contest (Nolo contendere), or been found guilty in a trial, regardless of whether:
 - The sentence is subsequently probated, and the person is discharged from probation;
 - The defendant has received an unadjudicated or deferred adjudication probation, pre-trial diversion or similar deferred disposition, for a criminal offense;
 - The case has been made the subject of an expunction order; or
 - The person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.
- (12) **DAY** - Calendar day, unless otherwise specified.
- (13) **DEPARTMENT** - The New Braunfels Fire and/or Police Department (NBFD and/or NBPD).

- (14) **DEPARTMENT HEAD/HEAD** - The Fire Chief and/or the Police Chief of the City of New Braunfels.
- (15) **DEMOTION** - The transfer of an employee from a position in one classification to a position in another classification for which the maximum rate of pay is lower.
- (16) **DIRECTOR** - The Director of Civil Service as designated by the City of New Braunfels Civil Service Commission to act in the capacity of Secretary to the Commission and Director of Civil Service and includes his/her designee.
- (17) **ELIGIBILITY LIST** - A list of candidates for a classified civil service position who have taken the examination and passed and are ranked on the eligibility list in order of the score received, including tiebreakers. Candidates shall successfully pass additional steps in the selection process conducted by the respective Department prior to any offer of employment or promotion being extended. The list is considered an eligibility list once passed, approved and certified by the Commission.
- (18) **EMAIL LIST** – Emailing to the Fire Department employees at FireDept List and to the Police Department employees at NBPD Sworn Staff List.
- (19) **LATERAL ENTRY PROGRAM** – Program adopted by the New Braunfels Police Department to hire a licensed peace officer with prior law enforcement experience in a recognized law enforcement agency at a step higher than Step 1 in the Police Officer classification, on the Civil Service Salary Step Plan, based on the Lateral Entry Program requirements and criteria.
- (20) **MILITARY SERVICE CREDIT** - The points added to the passing score of an entrance examination taken by a qualified veteran.
- (21) **POSTING** – Shall post on the City of New Braunfels website in the Human Resources Department, Civil Service section and to the email list to the Fire and Police Department employees.
- (22) **RAW SCORE** - The numerical grade based upon the questions correctly answered on an examination.
- (23) **RULES/LOCAL RULES** – The Civil Service Rules and Regulations.
- (24) **SENIORITY** – For the purpose of breaking a tie on a promotional examination, years of service as a full-time Firefighter or Police Officer within the City of New Braunfels Fire or Police Department, whether interrupted or uninterrupted. Seniority points shall be awarded only for whole years of service. Under the provisions of USERRA, military service shall not be considered a break in service under these Rules.
- (25) **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.

Section 143.004 ELECTION TO ADOPT OR REPEAL CHAPTER

See Section 143.004, Chapter 143

Section 143.005 STATUS OF EMPLOYEES IF CHAPTER ADOPTED

See Section 143.005, Chapter 143

Section 143.006 IMPLEMENTATION: COMMISSION

See Section 143.006, Chapter 143

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

A meeting shall be called by the Director at the request of the Chairperson, or at the written request of any two (2) Commissioners. Notice of meeting of the Commission shall be given by the Director to the members of the Commission at least seventy-two (72) hours preceding the day of the meeting, except in case of emergency or urgent public necessity, in which case two (2) hours notice shall be given in accordance with the provisions of the Government Code. The Director shall give the same notice to the Fire Chief and the Police Chief and shall see that Notices of the meetings are posted on the City of New Braunfels website in the Human Resources, Civil Service section; emailed to the Fire and Police Department Lists, and outside the main lobby of City Hall.

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

The Director shall assist the Chairperson in preparing an agenda for a Commission meeting. Any Commission member may place an item on the agenda with a written notice to the Director.

- (2) **RULE OF CONDUCT** - In the discharge of their duties, members of the Commission act as a body and not as individuals. An individual Commission member shall not speak for the Commission. Only the Chairperson can speak for the body of the Civil Service Commission.
- (3) **RULES OF THE COMMISSION** - The rules and regulations of the Commission currently in effect are only those contained herein. These Rules have been approved by the Commission and shall remain in effect until officially amended, revised or repealed by the Commission.

Amendment to these Rules may be made at any meeting of the Commission and such amendment shall become effective on the date of compliance with the posting and notice requirements of Chapter 143 and of these Rules. All rules and amendments shall be printed and made reasonably available for access by all civil service employees on the City of New Braunfels website in the Human Resources, Civil Service Section.

- (4) **APPOINTMENT, VACANCY AND TERM OF COMMISSIONER** - The City Manager shall appoint, and the City Council shall confirm the appointment of the three members of the Commission who meet the required statutory qualifications.

When a vacancy on the Commission occurs, if the vacancy is Chairman or Vice-Chairman, the new Commission member will assume the position of Chairman or Vice-Chairman respectively.

Each member of the Commission holds office for a staggered three-year term and thereafter until a successor is appointed and confirmed. A Commissioner may resign at any time in writing to the City Manager. The Commissioner shall remain in office until a qualified replacement is appointed and confirmed. An interim vacancy on the Commission shall be filled by appointment of the City Manager and confirmed by the City Council for the unexpired term of the member whose position has been vacated.

Section 143.007 REMOVAL OF COMMISSION MEMBER

See Section 143.007, Chapter 143

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

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

Section 143.008 ADOPTION AND PUBLICATION OF RULES

See Section 143.008, Chapter 143

These Rules, completely repeal and replace all prior Civil Service Rules, as have been previously adopted for the New Braunfels Firefighters.

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

These Rules 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 143.009 COMMISSION INVESTIGATIONS

See Section 143.009, Chapter 143.

Section 143.010 COMMISSION APPEAL PROCEDURE

See Section 143.010, Chapter 143

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

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

- (2) **FAILURE TO TIMELY FILE AN APPEAL OR SET FORTH BASIS FOR APPEAL—**
There shall be no right to an appeal hearing in a situation where an employee either (i) fails to file a notice of appeal of a disciplinary action with the Director or Designee within the 240 hour period allowed in Chapter 143; (ii) fails to properly state the basis of appeal; (iii) fails to sign the appeal; or (iv) fails to ask for a hearing. Failure to meet all the procedural requirements shall result in the appeal not being valid. If the appeal is untimely or does not otherwise meet all the requirements stated above, the Director or Designee shall notify the employee that the appeal is void and shall not be considered by the Commission or by a third-party hearing examiner.
- (3) **MATTERS NOT SUBJECT TO APPEAL**
- (a) Employee dissatisfaction resulting from a transfer or reassignment of duties.
 - (b) Employee dissatisfaction resulting from a discretionary policy decision and policy matters.
 - (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) Failure to meet stated requirements of position, e.g., loss of license or certification, or required driver's license.
 - (g) Verbal counselings, written reprimands, off duty employment requests and approvals.
- (4) **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 or Designee requesting the Commission to issue a subpoena *duces tecum*. This request shall be filed with the Director or Designee at least ten (10) days prior to the hearing date, and the party requesting the documents shall also serve the opposing party with a copy of the subpoena *duces tecum* at least ten (10) days prior to the hearing date. If the opposing party wishes to object to the request for the issuance of a subpoena *duces tecum*, the opposing party shall file its written objections with the Director or Designee at least six (6) days prior to the hearing. If the Commission receives written objections to the issuance of a subpoena *duces tecum* from the opposing party, the Commission shall meet no later than the third day before the hearing to determine whether to issue, quash or modify the requested subpoena. This meeting may be convened by conference call, at the discretion of the Chairperson. The Director or Designee 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 and/or electronic means (email) by the parties to each other and to the Director or Designee.
- A request for subpoena to compel the attendance of a witness shall be coordinated through the Director or Designee. A request for a subpoena shall be submitted at least ten (10) days prior to the scheduled hearing date in order to be processed in a timely manner. The Director or Designee shall issue a subpoena on behalf of the Commission.
- (5) In appeals to the Commission, the "rules of evidence" shall not be observed.
- (6) The Commission shall base its decisions on "substantial evidence," which is defined as evidence that a reasonable 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."

Section 143.011 DECISIONS AND RECORDS

See Section 143.011, Chapter 143

Section 143.012 DIRECTOR

See Section 143.012, Chapter 143

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

- (1) Supervising all examinations, including the preparation, scheduling, scoring and security of test materials;
- (2) Coordinating the recruitment and examination of applicants;
- (3) Assisting in the classification of Fire and Police Department positions;
- (4) Assisting the Chairperson in setting the agenda and posting seventy-two (72) hours in advance of the Commission meeting and providing agenda packets to Commissioners forty-eight (48) hours in advance of Commission meetings;
- (5) Acting as liaison and providing staff support to the Commission;
- (6) Determining whether any matter is appropriately brought before the Commission in a reasonable and timely fashion;
- (7) Calling, posting agendas, scheduling, rescheduling, and cancelling meetings of the Commission;
- (8) Acting as records custodian as provided by Chapter 143; provide documents pursuant to requests made under Texas Public Information Act.
- (9) Assisting in application and entrance examination processes, including posting required notices, administering and grading examinations, preparing eligibility lists, and performing other administrative duties relative to the civil service hiring process.
- (10) Assisting in promotional process, including posting reading reference list and promotional test notices, obtaining and grading promotional examinations, preparing eligibility list, administering promotional examinations, posting current raw test scores and eligibility lists and performing other administrative duties relative to the civil service promotional process.
- (11) Maintaining a reinstatement list, when applicable.

- (12) Maintaining the personnel files of all Civil Service employees as required by Section 143.089(a).
- (13) Acting on behalf of the Commission for actions and issues not specifically addressed in Chapter 143 or these Rules;
- (14) Monitoring and coordinating procedures for the discipline and termination of civil service employees, including disciplinary appeals;
- (15) When a specific Rule does not address a particular question or issue, interpreting the Rules based on circumstances, facts and issues, and taking appropriate action;
- (16) Performing such other functions as may be deemed reasonably necessary in regard to the efficient and effective administration of the civil service system of the City.
- (17) Maintaining minutes of all Commission meetings and obtaining signature of Commission Chairperson after approval of minutes.
- (18) Maintaining the Record of Certification and Appointment as required by Section 143.037
- (19) Maintaining a seniority roster for the Fire and Police Departments by date of hire.
- (20) Carrying out other duties and responsibilities as required in Chapter 143 and in the Local Rules, or as directed by the Commission in furthering the proper conduct of its business.

Section 143.013 APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD

See Section 143.013, Chapter 143

Any person appointed Chief or Head of the Fire or Police Department who had not previously held any classified civil service position within the New Braunfels Fire or Police Department shall, upon removal as Head of the Department, be terminated as a member of the Department and as a City employee.

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

See Section 143.014, Chapter 143

Section 143.015 APPEAL OF COMMISSION DECISION TO DISTRICT COURT

See Section 143.015, Chapter 143

Section 143.016 PENALTY FOR VIOLATION OF CHAPTER

See Section 143.016, Chapter 143

Section 143.017 COMMISSION PROCEDURES

See Section 143.017, Chapter 143

- (1) **RULE OF CONDUCT**—In the discharge of their duties, members of the Commission act as a body and not as individuals. An individual Commission member shall not speak for the Commission unless specially authorized in advance to do so by action of the Commission.
- (2) **AGENDA** — The Director shall assist the Chairperson in preparing an agenda for a

Commission meeting. Any Commission member may suggest an item be placed on the agenda with a written notice to the Director at least seven days in advance of the meeting.

- (3) **QUORUM**—Two members of the Commission constitute a quorum sufficient to conduct business meetings and hearings.
- (4) **CONDUCT OF REGULAR BUSINESS MEETINGS** —The Commission shall set reasonable rules and procedures for proper and efficient conduct of business. All meetings and hearings of the Commission are open to the public, except where posted for Executive session pursuant to the Texas Open Meetings Act and Chapter 143. Meetings of the Commission shall be held on an as-needed basis, upon advice of the Director. The Chairperson shall conduct meetings in an orderly and timely fashion, and the Commission shall use the Robert's Rules of Order as guide for the conduct of regular business. The Commission may at its option establish rules of procedure and conduct to be followed in meetings and/or appeals hearings.

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

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

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

- (5) **MINUTES** — The Director shall prepare the minutes of each meeting. The minutes of a meeting shall be presented for approval at a subsequent meeting of the Commission. The minutes, other than matters discussed in executive session, upon approval by the Commission, shall be kept open for public inspection as governed by applicable State law and posted electronically on the City of New Braunfels's website in the Human Resources Department, Civil Service section and emailed to the Fire and Police Department List. A copy of the minutes and records may be obtained from the Director for the standard fee charged by the City for similar official record duplication. The minutes of the Commission shall be signed by two members of the Commission and the Director.

The minutes shall contain the time and place of the meeting; the names of the Commissioners present, all official actions of the Commission and each Commissioner's vote; upon request, a Commissioner's dissent with stated reasons; and other such matters deemed appropriate for the record.

- (6) **ORDERS** —The Director shall prepare Orders, as appropriate, and obtain signatures of members on such Orders.
- (7) **POSTINGS** – The Director shall ensure that the following items are posted: Agenda, approved Meeting Minutes, Promotional Examination Reference List, Promotional Written Examination Registration Notice, Seniority List, raw Test Scores, and current Eligibility List.

(Sections 143.018 - 143.020 reserved for expansion)

SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT

Section 143.021 CLASSIFICATION; EXAMINATION REQUIREMENT

See Section 143.021, Chapter 143

The Civil Service positions in the Fire and Police Departments are classified on the basis of similarity in duties and responsibilities.

The Department Head shall develop job descriptions for each classification and provide copies to the Commission and the Civil Service Director upon request.

Section 143.022 PHYSICAL REQUIREMENTS AND EXAMINATION

See Section 143.022, Chapter 143

- (1) **GENERAL REQUIREMENTS**—Each applicant for entry-level positions shall be required to submit to such physical and mental tests as determined by the respective Department Head to be reasonably necessary and proper to determine the ability of the applicant to perform the essential functions required for the position.
- (2) **ENTRY LEVEL APPEALS**—If an applicant is not appointed due to failure to successfully pass the medical or psychological examination, the applicant may appeal to the Commission. The applicant may request an examination by a board of three medical personnel, appointed by the Commission. If the applicant elects to appeal, the applicant shall submit written notice of appeal to the Director within 240 hours of initial receipt of notification of rejection. Untimely appeal of the medical/mental disqualification results in forfeiture of the appeals process. The City may process and select other suitable candidates while the appeal process is ongoing.
- (3) **PROMOTINAL REQUIREMENTS**—Any candidate for promotion shall successfully complete an appropriate medical examination and drug screening test. With the approval of the Department Head, an official Department examination taken within six (6) months of promotion test date may be used to satisfy this requirement, or the Department Head may order the candidate to undergo a medical examination and drug screening test prior to promotion.

Section 143.023 ELIGIBILITY FOR BEGINNING POSITION

See Section 143.023, Chapter 143

- (1) **EMPLOYMENT STANDARDS**—To the extent that employment standards for an entry-level Firefighter or Police Officer, as provided in the Civil Service Classification Plan, exceed the requirements of Chapter 143 and other applicable State laws, any of such entry-level employment requirements not prescribed by State laws may be waived by the Fire Chief or Police Chief with the concurrence of the Director and consent of the City Manager, when such waiver would be in the best interests of the Fire or Police Department and provided further that such waiver of requirements shall not substantially lower the high standards sought by the City. Any changes under this Section shall be based on a case-by-case review.

(2) **MINIMUM ELIGIBILITY REQUIREMENTS FOR BEGINNING FIREFIGHTER POSITION**

- (a) These rules apply to all Fire Department applicants, unless otherwise specified in the Meet and Confer Agreement.

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

- Must have reached their 18th birthday as of the date of the written examination.
 - Must not have reached their 36th birthday as of the date of the written examination.
 - Must be a graduate from an accredited high school (or) have an equivalency certificate (GED) (or) a Home School transcript indicating completion and graduation date.
 - Must hold a valid Texas Driver's License (or must be able to obtain as required by Texas State law if current Driver's License is from another licensing state within the United States)
 - Must be a citizen of the United States by birth or naturalization; or legally eligible to work in the U.S.
 - Must be able to read, write and converse in the English language fluently.
 - Must have a valid Social Security Number and Card.
 - Must not have any of the following items on his/her record:
 - Conviction of a felony or other crime involving moral turpitude.
 - Three traffic violation convictions within the past twelve (12) months.
 - Conviction of a class A or B misdemeanor or its equivalent within the twenty-four (24) months preceding the written examination.
 - Conviction of a DWI/DUI, or the equivalent within the past five (5) years preceding the date of the written examination.
 - Must be of good moral character
- (b) In addition to the minimum eligibility requirements outlined above, each applicant for entry level shall be required to submit to physical and mental tests as are necessary and required to determine the ability of the applicant to perform the essential job functions required for the position.
- (c) Before the date and time of entrance examination, applicant shall be certified as a basic Firefighter, or certifiable, as established by the Texas Commission on Fire Protection (TCFP). Before the date and time of entrance examination, applicants shall provide evidence of certificate issued by the Texas Commission on Fire indicating their current status.

- (d) Before the date and time of entrance examination, applicant shall be certified as EMT-Basic or higher, or certifiable, by the Texas Department of Health and Human Services. Before the date and time of entrance examination, applicants shall provide an EMT Certificate issued by the Texas Department of Health and Human Services indicating their current status.
- (e) Achieve a minimum passing score of seventy (70) percent on the written examination.
- (f) Pass a comprehensive background investigation.
- (g) Successfully complete a post-offer polygraph examination.
- (h) Successfully complete the entire physical abilities tests.
- (i) Successfully complete a post-offer medical examination and drug screening test.
- (j) Each person on an eligibility list shall notify the Civil Service Director, in writing, of any change in address and/or phone number. Notices sent to a person's last known address shall be considered sufficient notification.
- (k) Successfully pass oral interviews as determined by the Chief.
- (l) The Department Head has the discretion to call for a Paramedic-only examination, to hold an examination with Paramedic preference, or to hold an examination without Paramedic preference, as stated in the entry-level posting notice.
 - Paramedic-only Examination: Only applicants who hold a Paramedic certification by the Texas Department of State Health Services, and a Basic Firefighter by the Texas Commission on Fire Protection will be invited to participate in the entry-level exam.
 - Paramedic Preference Examination: Applicants who hold an EMT-Basic or higher, or certifiable, by the Texas Department of Health and Human Services, and a Basic Firefighter by the Texas Commission on Fire Protection will be invited to test. Those with a Paramedic certification will receive preference on the eligibility list. After all Paramedic candidates have been considered, those with an EMT-Basic or higher will be considered in the order of their test scores.
 - Examination without Paramedic Preference: Applicants who hold an EMT-Basic or higher, or certifiable, by the Texas Department of Health and Human Services, and a Basic Firefighter by the Texas Commission on Fire Protection will be invited to test. Candidates will be ranked on the eligibility list based on their test scores, without a Paramedic preference.

(3) **CAUSE FOR REJECTION FOR ENTRY LEVEL FIREFIGHTER**

- a) The City may reject an applicant for one or more of the reasons as outlined in the "Suitability for Employment" standards listed below.
- b) An applicant will be deemed unsuitable for appointment to a beginning position whenever the applicant loses any of the minimum qualifications set forth in these Rules.

- c) **Note:** Suitability for appointment to a beginning position in the New Braunfels Fire Department includes the applicant hold a minimum certification as a Basic Firefighter in good standing with the Texas Commission of Fire Protection prior to the written examination date.
- d) Suitability for appointment to a beginning position in the New Braunfels Fire Department includes the applicant hold a minimum certification as a Basic Emergency Medical technician in good standing with the Texas Health and Human Services prior to the written examination date.
- e) In addition to the minimum qualifications, the following are established causes for determining an applicant's suitability for appointment to a beginning position in the Fire Department. The City may reject an applicant for one or more of the following reasons listed below. Time calculations for an action that constitutes rejection for a specified period of time shall be calculated from the date the application for employment submitted by an applicant, or date of use or incident, dependent upon the type of action that constitutes rejection. Rejections may be temporary or permanent at the discretion of the Civil Service Director or designee unless determined specifically in this section, (3) Cause for Rejection for Entry Level Firefighter, 1-26.
 - (1) Failure of the applicant to pass any part of the entrance examinations;
 - (2) Conviction of and/or admission to conduct which constitutes a Class A and/or B Misdemeanor under the Penal Code or equivalent under federal law, to include the Uniform Code of Military Justice (UCMJ), within the past seven (7) years may result in a temporary rejection. Applicant cannot have formal criminal charges above a Class C misdemeanor pending before a Grand Jury or District Attorney's office. Applicant must not be on court-ordered community supervision; or probation for any misdemeanor offense above the grade of a Class C misdemeanor. Applicant will be rejected if he/she is subject of any arrest warrant above the grade of Class C misdemeanor. All Class C misdemeanor warrants must be cleared within fourteen (14) days of notification of existence of warrant(s).
 - (3) Applicant has been convicted of or admitted to conduct which constitutes a felony under state or federal law to include the Uniform Code of Military Justice (UCMJ) on or after the applicant's seventeenth (17th) birthday regardless of the date of the offense may result in permanent disqualification; conviction of or admission prior to the applicant's seventeenth (17th) birthday shall result in a five (5) year disqualification period starting on the date of incident/occurrence.

Note:

Conviction of an offense is not necessary to establish the commission of an offense. "Commission" of an offense is established by Police reports and/or other law enforcement documents or other evidence that gives rise to a reasonable conclusion that the offense was committed by the applicant.

The designation of offenses by titles or grades refers to the titles and grades established under Texas Law. For offenses in jurisdictions other than Texas, the offense most similar to the one defined by Texas Law and the grade for that offense under the law of that jurisdiction will be used.

- (4) An applicant shall not be considered for employment while charges are pending for any criminal offense or while he/she is currently on probation or deferred adjudication for any offense;
- (5) Crimes involving moral turpitude may result in permanent disqualification and shall be considered on a case-by-case basis with appropriate consideration of circumstances and recency.
- (6) Making or knowingly attempting to make a false statement in any material fact in the application, examination, or appointment;
- (7) Failure to make application in the manner prescribed in the notice of examination, and/or failure to file the application with the Director within the time limits prescribed in the notice of examination;
- (8) If employment of the candidate would result in a violation of the City's Personnel Policy on Nepotism, City Personnel Policies;
- (9) Applicant is not a citizen of the United States of America by birth or naturalization;
- (10) Applicant fails to demonstrate his/her ability to read, write, and fluently speak the English language;
- (11) Applicant is unable to perform, to an acceptable level, the essential functions of the position to which he/she seeks appointment, with or without reasonable accommodation;
- (12) Failure to complete or satisfactorily meet the employment process requirements of the Fire Department, including but not limited to missed appointments, failure to return necessary paperwork, failure to provide written notice to the Department of changes in address or telephone numbers, failure to properly complete any or all application materials, or who otherwise fails to complete application process, including failure to return personal history statement on the prescribed date; failure to withdraw from another agency's hiring process, if requested;
- (13) Failure to meet minimum requirements expressed in the rules of the Texas Commission on Fire Protection and the Texas Department of State Health Services for firefighter candidates;
- (14) Applicant has been dismissed or resigned in lieu of dismissal from any employment for inefficiency, delinquency, or misconduct. Dismissal or termination shall be considered on an individual basis;
- (15) Applicant has a history of unstable work, i.e., including short terms of employment over his/her employment history; difficulty receiving orders or working with coworkers, etc. Due to the variables involved,

each situation shall be considered on an individual basis. Rejection under this provision shall be temporary in nature and an applicant shall be eligible for reapplication after a three (3) year period from the date of application;

- (16) Applicant has a history of employment in an illegal occupation. Due to the variables involved, each situation shall be considered on an individual basis;
- (17) Applicant has exercised poor judgment skills within the past seven (7) years. The applicant has demonstrated either immaturity or poor judgment in the applicant's decision-making process. Examples of such conduct would include but is not limited to: attendance at a party or social function at which controlled substances or dangerous drugs are consumed, and such activity is known or should have been known by the applicant; silent acceptance of known illegal conduct by others in his/her presence; workplace behavior/decisions that adversely affect the business or associates, with little or no objectively justifiable need for such behavior. This shall be considered on an individual basis and rejection for this shall be temporary and an applicant shall be eligible for reapplication after a three (3) year period from the date of application;
- (18) Applicant has a financial background that indicates a failure to pay just debts. Due to the variables involved, each situation shall be considered on an individual basis. Factors which shall be considered include but are not limited to: type and number of debts, reasons for the bad credit, extenuating circumstances, and the potential for the credit-related problems impacting the applicant's judgment and integrity;
- (19) Applicant has been discharged from any military service under less than honorable conditions, including but not limited to:
 - (a) Other than honorable conditions;
 - (b) Bad conduct;
 - (c) Dishonorable; or
 - (d) Other characterization of service indicating bad character;

"General, under Honorable Conditions" is an acceptable discharge from the military. Applicants with military service must be eligible for re-entry into the military. If a waiver is required to re-enter the military, the applicant must obtain the waiver prior to the date of the examination before the City will consider the applicant for employment;
- (20) Dismissal from public service for delinquency, misconduct, conduct unbecoming, or inefficiency;
- (21) Applicant has used illicit substances as indicated by the following guidelines:
 - (a) An applicant may be temporarily or permanently disqualified if it has been determined by the City that he/she has admitted to conduct which constitutes excessive and/or recent use of illicit

substance(s) or excessive use of intoxicants. Conduct involving excessive and/or recent use of illicit substance or excessive use of intoxicants shall be considered on an individual basis.

- (b) An applicant may be temporarily or permanently disqualified if it has been determined by the City that he/she has admitted to conduct which constitutes abuse of legally obtained prescription medication(s), or illegal use of the prescription medication(s) of another person. Conduct involving the abuse and/or misuse of prescription medication(s) shall be considered on an individual basis.
- (c) The suitability of an applicant will be evaluated based on, in part the following Drug Use Disqualifications:
 - The use of hashish/dab/butter in the last ten (10) years will result in ten (10) year rejection from date of use or incident. The use of Methamphetamine at any time. The use of Heroin at any time. The use of LSD (Acid or lysergic acid diethylamide) at any time. The use of Cocaine in the last ten (10) years will result in ten (10) year rejection from date of use or incident. The use of PCP (Angel Dust or phencyclidine) at any time.
 - The use of XTC (Ecstasy or ethylenedioxymethamphetamine) in the past ten (10) years will result in ten (10) year rejection from date of use or incident. The use of hallucinogenic mushrooms, "Magic" mushroom, or any derivative in the past ten (10) years will result in ten (10) year rejection from date of use or incident. The unlawful use of any Texas Health and Safety Code Penalty Groups I and II drugs (excluding marijuana) shall be considered permanent; unlawful use of any Texas Health and Safety Code Penalty Groups III, IV, or V drugs within the last ten (10) years shall be temporary or permanent. The intentional use or abuse of solvent-based chemicals, but not limited to inhaling, sniffing, bagging, dusting or any other introduction of any paint, gas or chemical into or around the person body in order to cause a deliberate reactionary state of intoxication or "high" as a result within the last ten (10) years shall be considered temporary or permanent.
- (22) Applicant has admitted to receiving deferred adjudication or pre-trial diversion for, or has been convicted of Driving While Intoxicated, Boating While Intoxicated, Flying While Intoxicated or Driving Under the Influence (DWI/BWI/FWI/DUI) and/or three (3) moving violation convictions within the past twelve (12) months.

Fewer, 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 will be considered on an individual basis. Rejection under this provision may be considered permanent.

- (23) Applicant is a member of, have belonged to, or been closely

associated with:

1. Any organization which advocates the overthrow of any level of government in the United States including, but not limited to, Federal, State or local, by force or violence.
 2. Any organization which advocates or engages in unlawful conduct directed at individuals or groups based upon the individual's or group's race, sex, religion, national origin, age, skin color, sexual preference, disability, or conduct otherwise commonly known as "Hate Crime".
- (24) Applicant has an unsatisfactory driving record;
- (25) Compelling negative evidence regarding the applicant's dependability, situational reasoning ability, interpersonal skills, and integrity or oral communications skills;
- (26) Evidence that the applicant has inappropriate attitudes towards minorities and/or supervision.

Arrest Record:

An arrest record will not necessarily be a bar to employment. Factors such as the date of the offense, the seriousness and nature of the violation, subsequent rehabilitation and work record may be taken into account in making the suitability decision.

Physical Fitness:

Applicants must possess the physical ability necessary to perform the rigorous physical demands of the position and to professionally accomplish the assignments of a Firefighter without undue risk of injury or fatigue. Applicants must demonstrate they possess an efficient cardiovascular, respiratory system and adequate levels of muscular strength, flexibility and endurance by their successful completion of the physical fitness evaluation in which they meet or exceed the physical fitness standards approved by the Commission.

Withdrawals:

Applicants desiring to withdraw from consideration must submit a signed written statement indicating this desire to the Civil Service Director. In the event no written statement is presented, the applicant will continue in the process subject to the conditions specified in these rules.

Applicants withdrawing their applications are eligible to reapply for subsequent entrance examinations.

Request to Deem an Applicant Unsuitable:

When the Fire Chief or his/her designee determines that such cause exists which renders an applicant unsuitable for appointment to a beginning position, the Fire Chief or designee shall notify the Civil Service Director of such cause(s) and request that the applicant be deemed unsuitable. Such notification and request shall be made in writing.

The Civil Service Director shall cause a written notice to be sent to each applicant deemed

unsuitable.

Such notice shall inform the applicant of the specific rule and cause for which the applicant was deemed unsuitable, the applicant's ability to reapply for subsequent entrance examinations and that the applicant may discuss the findings of unsuitability with the appropriate authority.

e) MINIMUM ELIGIBILITY REQUIREMENTS FOR POLICE OFFICERS

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

- (a) Achieve a minimum passing score of seventy (70) percent on the written examination;
- (b) Successfully complete the physical agility test as prescribed by the Police Department, demonstrating the applicant is physically capable of performing the essential job functions for the position of Police Officer;
- (c) Pass a comprehensive background investigation;
- (d) Successfully pass oral interviews as determined by the Chief;
- (e) Successfully complete a post-offer gun range qualification, polygraph test, psychological examination, and medical examination that includes passing a visual acuity test with the standard established as 20/100 or better in each eye with both eyes correctable, with eyeglasses, to at least 20/20 binocular vision, or 20/200 or better vision correctable to at least 20/20 binocular vision with contact lenses, and the ability to distinguish between basic color groups, and physician certification that the applicant is not dependent on and does not use illegal drugs or misuse legal drugs;
- (f) Be at least twenty-one (21) years of age set by Chapter 143 of the Texas Local Government Code.
- (g) Be a graduate of an accredited high school (or) have an equivalency certificate (GED) (or) a Home School transcript indicating completion.
- (h) Must hold a valid Texas Driver's License (or must be able to obtain as required by Texas State law if current Driver's License is from another licensing state within the United States) and cannot be prohibited from operating a motor vehicle by any other State or Federal law;
- (i) Be a citizen of the United States by birth or naturalization;
- (j) Be able to read, write, and speak the English language fluently;
- (k) Be of good moral character;
- (l) Shall not be prohibited from purchasing or carrying a firearm or possessing

ammunition; and

Before the date and time of the written examination the applicant shall be certified as a Peace/Police officer in good standing as established by the Texas Commission on Law Enforcement (TCOLE); or have passed and provide proof of score for the TCOLE State Licensing examination for Peace Officer.

- (m) Before the date and time of the application deadline, the applicant must have a Peace Officers License from Texas Commission on Law Enforcement (TCOLE) and/or have passed the TCOLE State License Exam no later than time and date of the written examination. A degree is not required if the applicant has this license. Certified applicants who are on the eligibility list will be given preference, regardless of their position on the list.

- (1) Applicant shall provide evidence of peace/police certification indicating their current status in good standing no later than the time and date of the written examination.

- (n) Before the date and time of the application deadline, if the applicant is non-certified, the applicant must have a minimum of thirty (30) hours earned from a regionally accredited university and/or college ("College Hours"), which are accepted and/or recognized by the Texas Commission on Law Enforcement (TCOLE) or two (2) years of active military service.

- (1) By the date and time of the application deadline, applicant shall provide evidence of successful completion of a minimum of thirty (30) hours earned from a regionally accredited college or university, (acceptable evidence is a copied transcript); OR

- (2) By the date and time of the application deadline, applicant shall provide evidence of successful completion of a minimum of two (2) years of active military service, (acceptable evidence is an official government document showing honorable discharge, general discharge with honorable service); OR

- (3) By the date and time of the application deadline, applicant shall provide evidence of serving a minimum of six (6) years of reserve status with the Armed Services or National Guard (acceptable evidence is an official government document showing honorable discharge, general discharge with honorable service, or a copy of leave and earnings statement (LES) accompanied by a copy of current military identification if still actively serving in the reserves).

Applicants who possess this certification shall be considered in the order of their test scores on the entrance examination. After all certified applicants have been considered, and then the applicants with the eligible thirty (30) college hours or two (2) years of active military service requirement or six (6) years of reserve status will be considered, in order of their test scores on the entrance examination.

(4) LATERAL ENTRY PROGRAM

This program is designed to help recruit qualified applicants for the position of Entry-Level Police Officer. The Department Head's determination of whether an applicant meets the criteria of the Lateral Entry Program shall be final and non-appealable to the Civil Service Commission nor to any court.

The New Braunfels Police Department may hire a licensed peace officer with prior law enforcement experience in a recognized law enforcement agency and may place such officer at a step higher than Step 1 in the Police Officer classification, on the Civil Service Salary Step Plan, if the candidate meets the following criteria:

- (a) The applicant is licensed by TCOLE;
- (b) The applicant has a minimum of three years of service as a commissioned peace officer in a full-time, paid capacity. For the purposes of this section, a commissioned peace officer is considered one whose primary job assignments were:
 - (1) Patrolling in a radio-equipped car;
 - (2) Answering calls for the protection of life and property and the enforcement of city, county, or state laws;
 - (3) Responding to calls related to traffic incidents and other emergencies; observing, monitoring, and controlling routine and unusual traffic conditions; assisting and advising motorists; and enforcing traffic safety laws;
 - (4) Collecting and preserving evidence at crime or accident scenes; making arrests as necessary; interviewing victims and witnesses; interrogating suspects; searching and transporting prisoners; and testifying in court; and
 - (5) Filing complaints and performing other work related to the processing of misdemeanor and felony complaints; preparing reports of arrests and activities performed.
- (c) The applicant has more than a 180-day break in service prior to his/her hiring date with the Department.
- (d) The applicant meets all other suitability factors as outlined in Chapter 143.023 (f).

Eligible prior experience entitles the new hire to be placed in the New Braunfels Police Department Step Plan in the Police Officer rank, up to Step 10, using the following criteria:

- (a) One step will be recognized for each completed year of prior service, as deemed applicable by the Department Head.
- (b) Police officers hired under the lateral entry program who have ten or more years of prior qualifying experience, shall be placed at Step 10.
- (c) The length of time of prior qualifying service is to be rounded down to a full year. For example, if the officer has four years and six months of prior qualifying service, the officer shall be placed at Step 4, Police Officer classification on the New Braunfels Police Department Step Plan upon being hired. In such cases, officers

will be hired into the appropriate step and be treated as such in their salary progression.

Participation in the Lateral Entry Program/recognition of prior service does not apply to seniority, utilized in shift bidding to the City of New Braunfels' longevity pay plan. Both policies are applicable to City of New Braunfels seniority only.

Applicants hired under this provision must serve a 365-day probationary period upon being commissioned as a Police Officer in the New Braunfels Police Department and may not be assigned to a specialized unit during these 365 days. The only exceptions will be if there are none interested or qualified for the specialized unit, in which case the Lateral Entrant's Field Training Officer (FTO), in accordance with the Department Head, will determine if the officer may serve prior to the end of the probationary period.

5) CAUSE FOR REJECTION FOR POLICE OFFICERS

The City may reject a Police Officer applicant for one or more of the following reasons listed below. Time calculations for an action that constitutes rejection for a specified period of time shall be calculated from the date the application for employment is submitted by an applicant.

- (a) Applicant fails to pass any part of the entrance examinations;
- (b) Applicant fails to make application in the manner prescribed in the notice of examination, and/or fails to file the application with the Director within the time limits prescribed in the notice of examination;
- ©Applicant fails to meet Minimum Standards for Initial Licensure as set forth by TCOLE for peace officer candidates and is not in good standing;
- (b) (d) Applicant is not a citizen of the United States of America by birth or naturalization.
- (c) € Applicant fails to demonstrate his/her ability to read, write, and fluently speak the English language.
- (d) (f) Applicant is unable to perform the essential functions of the position to which he/she seeks appointment, with or without reasonable accommodation.
- (g) Applicant has been convicted of or admitted to conduct that constitutes a Class A or Class B Misdemeanor under the current Texas Criminal and Traffic Law Manual or Penal Code or equivalent under federal law, to include the Uniform Code of Military Justice (UCMJ), except for marijuana use, within the past ten (10) years may result in a temporary rejection. Applicant cannot have formal criminal charges above a Class C misdemeanor pending before a Grand Jury or District Attorney's office. Crimes involving moral turpitude may result in permanent disqualification and shall be considered on a case-by-case basis with appropriate consideration of circumstances and the date of the incident. Applicant must not be on court-ordered community supervision or probation for any misdemeanor offense above the grade of a Class C misdemeanor. Applicant will be rejected if he/she is subject of any arrest warrant above the grade of Class C misdemeanor. All Class C misdemeanor warrants must be cleared within fourteen (14) days of notification of existence of warrant(s). If

an Applicant has been convicted of any family violence offense, it is cause for automatic rejection.

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

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

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

An applicant may be temporarily or permanently disqualified if it has been determined by the City that, or he/she has admitted to or determined in background investigation, conduct which constitutes excessive and/or recent use of illicit substance(s) or excessive use of intoxicants, under the following guidelines:

- (1) Any voluntary and/or willful consumption or use of marijuana in any form including marijuana derivatives, or synthetic marijuana within the past three (3) years from the date of the application.
- (2) Any voluntary and/or willful consumption or use of any illegal drug (other than marijuana) within the past ten (10) years from the date of the application.
- (3) An applicant admits or is found to have grown, sold, transported, or dealt drugs of any kind will result in a permanent disqualification.
- (4) Conduct involving excessive and/or recent use of illicit substance or excessive use of intoxicants shall be considered on a case-by-case basis with consideration given to circumstances and the date(s) of use.

(5) Any voluntary and/or willful use or consumption of a prescription medication(s), including but not limited to anabolic steroids, which constitutes illegal use of the prescription medication(s) of another person within the past ten (10) years from the date of the application.

(6) Conduct involving the abuse and/or misuse of legally obtained prescription medication(s) shall be considered on a case-by-case basis with consideration given to circumstances and date(s) of use.

(7) The intentional use or abuse of solvent-based chemicals, but not limited to inhaling, sniffing, bagging, dusting or any other introduction of any paint, gas or chemical into or around the person body in order to cause a deliberate reactionary state of intoxication or "high" as a result.

- (l) Police applicant does not have a valid driver's license and/or is prohibited from operating a motor vehicle by any State or Federal law.
- (m) Applicant has a conviction of DWI/BWI/FWI within the past ten (10) years or DUI within the past five (5) years or four (4) moving violation events (moving violations or preventable accidents) within the past three (3) years. An applicant shall be temporarily disqualified until he/she can meet the above standards.

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

- (n) Applicant has been dismissed or resigned in lieu of dismissal from any employment for inefficiency, delinquency, or misconduct. Said dismissal or termination shall be considered on a case-by-case basis. Rejection under this provision shall be considered permanent.
- (o) Applicant has demonstrated a failure to pay just debts. Due to the variables involved, each situation shall be considered on a case-by-case basis. Factors which shall be considered include, but are not limited to: type and number of debts, reasons for the bad credit, extenuating circumstances, and the potential for the credit-related problems impacting the applicant's judgment and integrity. Resolution of bad credit may result in requalification.
- (p) Applicant has exercised poor judgment skills within the past seven (7) years. The applicant has demonstrated either immaturity or poor judgment in the applicant's decision-making process. Examples of such conduct would include, but is not limited to: attendance at a party or social function at which controlled substances or dangerous drugs are consumed, and such activity is known or should have been known by the applicant; silent acceptance of known illegal conduct by others in his/her presence; workplace behavior/decisions that adversely affect the business or associates, with little or no objectively justifiable need for such behavior. This shall be considered on an individual basis and rejection for this shall be temporary and an applicant shall be eligible for reapplication after a three (3) year period from the date of application or shall be permanent.

- (q) Applicant has a history of unstable work, i.e., including short terms of employment over his/her employment history; a history of employment in an illegal occupation. Rejection under this provision shall be temporary in nature and an applicant shall be eligible for reapplication after a five (5) year period. Due to the variables involved, each situation shall be considered on a case-by-case basis. Rejection for employment in an illegal occupation shall be permanent in nature.
- (r) Applicant has failed to meet all legal requirements necessary for future licensing and certification as required by the TCOLE. Rejection for this cause shall be temporary until applicant can meet those standards.
- (s) Applicant has been discharged from any military service under less than honorable conditions, including specifically:
 - (a) Other than honorable conditions;
 - (b) Bad conduct;
 - (c) Dishonorable;
 - (d) Any other characterization of service indicating bad character.

“General, under Honorable Conditions” is an acceptable discharge from the military. Applicants with military service must be eligible for re-entry into the military. If a waiver is required to re-enter the military, the applicant must obtain the waiver prior to the date of the examination before the City will consider the applicant for employment.
- (t) Applicant fails to return a completed Personal History Statement at a time designated by the Director or Department Head.
- (u) Applicant intentionally provides false information related to the selection process.
- (v) Applicant fails any part of background investigation.

Section 143.024 ENTRANCE EXAMINATION NOTICE
 See Section 143.024, Chapter 143

- (1) An applicant shall complete a City of New Braunfels Application for Employment and other documents and forms as prescribed by the Director and submit to the Director, in order to take an entrance examination. Failure to pre-register in the manner and within the time limit prescribed in the “Notice of Entrance Examination,” and/or failure to file the application or other supporting documents with the Director by the specified deadline, shall render an applicant ineligible to take the examination. An applicant shall make the application in his/her own handwriting or in typed form and shall certify the correctness of the facts.
- (2) All “Notice of Entrance Examination” will contain:
 - (a) Job title and salary rate or range.
 - (b) Date, time and place of examination.
 - (c) The minimum qualifications as approved by the Commission.
 - (d) Essential job functions including major job duties.

- (e) Time, place and manner for submitting applications.
 - (f) The period of time for which the eligibility list will be in effect.
- (3) Causes for rejection of an application include:
- b. Application was not received at the designated location by the closing date and time.
 - c. Applicant does not meet the minimum qualifications.
 - d. Application form is incomplete, excludes statements of material fact, or contains false or intentionally misleading statements of material fact.
 - e. The applicant has been dismissed from the City for cause within two (2) years prior to the date of the application.
 - f. The applicant is ineligible to apply.
- (4) The Director shall notify an applicant in writing of the rejection and the reason for the rejection.
- (5) The Director may, because of the small number of candidates, or because of any other good and sufficient reasons, such as death in the immediate family, public emergency, unavailability of test site, etc., postpone an examination to a later date.

Section 143.025 ENTRANCE EXAMINATIONS

See Section 143.025, Chapter 143

- (1) **EXAMINATIONS**—The actual conduct of every examination shall be under the direction of the Director who shall be responsible to the Commission. The Director shall have the authority to designate a Test Administrator, who shall be responsible for administering the examination. The Director may also select one or more persons as Test Monitor to assist in the administering, proctoring and grading of an entrance examination. An examination shall be conducted on an “as needed” basis. Written examinations shall be purchased from an outside vendor, as determined by the Director.

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

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

(2) **ENTRANCE EXAMINATION ADMINISTRATION PROCEDURES**

- (a) Tobacco products shall be prohibited at all times in the testing area.

- (b) Check In – An applicant shall be checked in and provide proof of identity with a valid Driver's License and other registration items/documents as required. No applicant shall be admitted once test instructions start.
 - (c) Military Service Credit – An applicant who desires to have military service credit of five (5) points added to a passing test score of 70% or better, ("Veteran points") shall provide an original DD-214 showing an honorable discharge, and a minimum of 180 total days of active military service at the time of application, or, no later than at the time the applicant takes the written examination. An applicant with a General discharge under honorable conditions is not eligible to receive Veteran points.
 - (d) Failure to Appear - The application of an applicant who fails to appear for the entrance examination shall be voided. An applicant wishing to reapply must start at the beginning of the application process for the next testing.
 - (e) Cancellation or postponement of entrance examination - The Commission or Director may cancel or postpone a scheduled entrance examination for sufficient cause.
 - (f) Dishonesty - An examinee taking an entrance examination who uses or attempts to use any dishonest means to answer a question on such an examination shall have his/her examination confiscated and voided by the Test Administrator. The examinee will be removed from the testing site. The Test Administrator shall report the action to the Director or the Director's designee. Cheating or otherwise using unfair or deceitful means shall render the applicant permanently ineligible to reapply.
 - (g) Upon request, accommodations shall be provided to an applicant in accordance with the Americans with Disabilities Act. An applicant who needs special arrangements shall submit a request in writing to the Director no later than ten working days before the examination.
- (3) **TIE-BREAKERS**—When two (2) or more applicants for an entry-level position attain the same grade, the tie shall be broken in the order listed below prior to the posting of the Eligibility List:
- a. **Highest Raw Test Score** — If a tie exists, the applicants shall be ranked in the order according to which person had the highest examination raw score prior to the addition of Veteran's points.
 - b. **Higher Certification** — If a tie still exists, the applicants shall be ranked in the order according to which person has the higher certification level as a peace officer through Texas Commission on Law Enforcement (TCOLE) for a position with the NBPD or Firefighter through Texas Commission on Fire Protection (TCFP) for a position with the Nbfd.
 - c. **Years of Experience** — If a tie still exists, the applicants shall be ranked in the order according to which person has the most number of years of active paid full-time experience as a certified fire fighter or peace officer.

- d. **Master's Degree** – If a tie still exists, the applicants shall be ranked in the order according to which applicant possesses a Master's Degree.
 - e. **Bachelor's Degree** — If a tie still exists, the applicants shall be ranked in the order according to which person possesses a Bachelor's degree.
 - f. **Associate's Degree** — If no applicant possesses a Bachelor's degree, and if a tie still exists, the persons shall be ranked in the order according to which person possesses an Associate's degree.
 - g. **Earliest Application Time** — If a tie still exists, the persons shall be ranked in the order according to which person has the earliest stamped date and time of application.
 - h. **By Lot** — If a tie still exists, the persons shall be ranked in the order by lot as determined by the Director.
- (4) **ELIGIBILITY LIST** — An Eligibility List for the Fire Department shall be in effect for twelve (12) months from the approved and certified date by the Commission, unless exhausted before twelve (12) months; and twelve (12) months for the Police Department from the approved and certified date by the Commission, unless exhausted before the twelve (12) months. The Commission has the discretion to give a new examination at times the Commission considers it necessary to provide required staffing.

Each person on an Eligibility List shall notify the Director in writing of any change in address and/or telephone number. A notice sent to an applicant's last known address shall be considered sufficient notification.

The Commission shall have the power to order a re-examination of applicants and the power to correct, amend or remove any eligibility list, in which an error has been made, and the power to remove an applicant's name from the eligibility list if the applicant has become ineligible for appointment in the Fire or Police Department. The reason for such actions shall be recorded in the Commission minutes of the meeting at which such action is taken.

Section 143.0251 REAPPOINTMENT OF POLICE OFFICERS

See Section 143.0251, Chapter 143

A classified employee who voluntarily resigns from the City of New Braunfels Police Department may be reappointed as a Police Officer with the Department without taking another entrance examination or being placed on an Eligibility List. Reappointment of a classified employee is totally at the discretion of the Police Chief.

- (1) The former officer shall submit a written request to be reappointed to the Police Chief, who makes the final recommendation to the City Manager for reappointment. A candidate for reappointment shall not be considered unless recommended by the Police Chief and unless his/her re-appointment occurs within two (2) years from the date of separation. A candidate for reappointment may not appeal his/her rejection by the Police Chief.
- (2) Prior to recommending reappointment of a former classified employee to the Department, the Police Chief may review past performance records of the officer,

conduct a background investigation, require appropriate pre-employment tests and require any other portion of the employment process he/she deems appropriate.

- (3) Upon receiving a conditional offer of reappointment, the Police Officer shall pass a drug test and a physical examination prescribed by the City.
- (4) A candidate for reappointment shall fully meet the requirements of the TCOLE.
- (5) A candidate for reappointment may be appointed regardless of the availability of a list of eligibles. A candidate for reappointment has priority over candidates on a list of eligibles.
- (6) In addition to the reasons for rejection listed in Section 143.023, a candidate for reappointment may be rejected for reasons related to previous work performance as a New Braunfels Police Officer.
- (7) Any candidate reappointed to the Police Department shall serve a one (1) year probationary period and prior service shall not count toward service for promotional eligibility. Any candidate reinstated shall not be credited with accrued sick leave or vacation.
- (8) The candidate's years of prior service may be counted to determine placement in the salary step system.
- (9) The candidate's years of prior service shall not count for determining vacation eligibility and rate.
- (10) Age limitations, as provided under Section 143.023(c), do not apply to reappointments.

Section 143.026 PROCEDURE FOR FILLING BEGINNING POSITIONS

See Section 143.026, Chapter 143

(1) SUITABILITY FOR APPOINTMENT TO A BEGINNING POSITION

In making appointments from an eligibility list in the New Braunfels Police Department includes the applicant holding a minimum certification as a peace/police officer in good standing and/or have passed the State License Exam with the TCOLE prior to the written examination.

In making appointments from an eligibility list in the New Braunfels Fire Department includes the applicant holding a minimum certification as a basic firefighter in good standing with the Texas Commission on Fire Protection and a minimum certification as an EMT-basic in good standing with the Texas Department of Health and Human Services.

(2) PROCESS FOR CONSIDERING ELIGIBLES

Upon receipt of a requisition for a list of suitable persons, the Director shall certify to the Chief Executive:

1. A list of names from the reinstatement list for the class of positions in questions, one (1) name for each vacancy to be filled.

2. If there is no reinstatement list, a list of suitable candidates from the eligibility list in ranked order, one (1) name for each vacancy to be filled plus the next two (2) names.
3. The list of suitable persons shall not contain the names of applicants who have been deemed unsuitable.
4. Academic Ability Requirements: Be a graduate of an accredited high school or have an equivalency certificate (GED) or a home school transcript indicating completion and graduation date.
5. Financial Responsibility Requirements: (If applicable), all applicants are required to be current on any and all child support payments. Any recent repossessions, foreclosures, or credit report shall be evaluated as to circumstances and the applicant's history of paying just debts.
6. It is understood that the suitability requirements, as outlined in the New Braunfels Fire or Police Department Application and these rules will be used to assist in the determination of suitability of all applicants.

Section 143.027 PROBATIONARY PERIOD

See Section 143.027, Chapter 143

A person appointed to a beginning position in the Fire or Police Department must serve a probationary period of twelve (12) months, starting on that person's date of employment as a certified Firefighter or Police Officer.

Section 143.028 ELIGIBILITY FOR PROMOTION

See Section 143.028, Chapter 143

Section 143.029 PROMOTIONAL EXAMINATION NOTICE

See Section 143.029, Chapter 143

Promotional examinations shall not be scheduled unless there is a vacancy in the classification or unless an end of employment has been announced or is reasonably certain to occur or on an annual basis as approved by the Commission. Unless otherwise prescribed by the Commission, a registration period of not less than ten (10) business days will be required for each promotional examination. In the event more than 90 days elapses between the occurrence of the vacancy and a permanent promotion into the vacant position, the successful candidate may receive retroactive pay to the 91st day after the permanent vacancy occurred, if the candidate was eligible for promotion on the 90th day.

Section 143.030 ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL EXAMINATION

See Section 143.030, Chapter 143

The length of service for determining the eligibility for taking a promotional examination shall include the probationary period in the New Braunfels Fire Department.

A Firefighter's prior service, whether part-time or full-time with the City does not count toward meeting the two (2) year requirement established in 143.030(b) and (e). A Firefighter, who is rehired, is not given credit for prior service to determine eligibility to take a promotional examination.

Before being eligible for promotion, a Firefighter must successfully pass a physical and a drug screening test.

Section 143.031 ELIGIBILITY FOR POLICE DEPARTMENT PROMOTIONAL EXAMINATION

See Section 143.031, Chapter 143

For Police Officer hired after October 30, 2011, the length of service for determining the eligibility for taking a promotional examination shall include the probationary period in the New Braunfels Police Department. For an employee hired prior to October 30, 2011, the probationary period shall count towards eligibility for taking a promotional examination. The length of the probationary periods for employees hired prior to October 30, 2011, may be different.

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

Before being eligible for promotion, a Police Officer must successfully pass a physical and a drug screening test.

Section 143.032 PROMOTIONAL EXAMINATION PROCEDURE

See Section 143.032, Chapter 143

- (1) **EXAMINATIONS**—An examination shall be of such nature that it will test the relative capacity and fitness of the candidate examined to discharge the duties of the particular position to which he/she seeks appointment.

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

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

To provide for a competitive promotional examination so as to better serve the public, at least three (3) qualified candidates in the next lower position with two years’ service shall sit for an examination. If there are not three (3) candidates in the next lower position, the Commission shall follow the procedures relating to eligibility for promotional examinations outlined in Section 143.030(d) and 143.031(c) until at least three (3) qualified candidates sit for the examination. When more than one vacancy exists at the time an examination is to be given, the Director shall determine whether the number of examinees who have filed Notices of Intent to Test is competitive. If necessary, the Director shall make a recommendation to the Commission to open the examination to additional employees, as outlined in Section 143.030(d) and 143.031(c).

When there are not enough candidates eligible to take a promotional examination to make it competitive under this Rule, and if the promotional examination process exceeds ninety days as a result of obtaining enough qualified candidates to take the examination, then retroactive back pay may be paid to the applicant eventually appointed to the vacancy, if the applicant was qualified to be promoted on the 90th day.

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

- (2) **NOTICE OF INTENT TO TEST**—An employee shall complete in advance a Notice of Intent to Test, as prescribed by the Director, in order to take a promotional examination. Failure to make application in the manner prescribed in the "Notice of Promotional Examination" and failure to file the application with the Director within the time limits prescribed in the "Notice of Promotional Examination" shall render the employee ineligible to take the examination.

(3) **PROMOTIONAL EXAMINATION ADMINISTRATION PROCEDURES**

- (a) Tobacco products shall be prohibited at all times in the testing area.
- (b) Check In – An examinee shall be checked in and provide proof of identity with a physical form of identification from the provided list below. Examinees with questions concerning acceptable forms of identification must contact the Civil Service Director prior to the date of the examination.

- Valid Texas Drivers License
- Valid U.S. Passport or U.S. Passport Card
- Valid U.S. Military Identification Card

The examinee must be present and seated prior to the start time of the examination, as shown by clock at the testing location. Late arrivals will not be admitted and will be considered not eligible to sit for the examination.

- (c) Cancellation or postponement of promotional examination - The Commission or Director may cancel or postpone a scheduled promotional examination for sufficient cause.
- (d) Dishonesty – An examinee taking a promotional examination who uses or attempts to use any dishonest means to answer a question on such an examination shall have his/her examination confiscated and voided with a grade of zero (0) by the Test Administrator. The examinee will be removed from the testing site. The Test Administrator shall report the action to the Director, who shall report it to the Department Head and to the Commission.
- (e) Upon request, accommodations shall be provided to an applicant in accordance with the Americans with Disabilities Act. An examinee who needs special arrangements shall submit a request in writing to the Director at least three (3) business days prior to the examination or as determined by the Director.

For any problems that arise during the promotional examination, the Director or designee is authorized to use his/her judgment to determine a proper course of action. The Director or designee shall thereafter report to the Commission the problem that arose and the course of action he/she determined would best accomplish the goals of the civil service system. The Commission shall thereafter vote to ratify the action taken by the Director or provide other relief, as it may deem appropriate. Note: Some test(s) may be administered in digital format. In these instances, if a technical issue(s) arises during the exam, the affected candidate(s) will be allotted extra time at the end of the exam, if required, equal to the time needed to correct the technical issue(s).

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

- (a) For Fire or Police promotional candidates who are serving on active military duty, outside the State of Texas or more than fifty (50) miles from New Braunfels 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 in this instance.
- (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 proper 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) Candidates serving on military duty, who take the promotional examination outside of New Braunfels, 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.
- (f) Promotional candidates must provide the Director written notification at least twenty-five (25) days in advance of the examination of their desire to have the examination administered off-site.
- (g) All employees covered by Chapter 143, who are called to active military duty, must notify the Director in writing 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.

Section 143.033 PROMOTIONAL EXAMINATION GRADES

See Section 143.033, Chapter 143

- (1) **SENIORITY POINTS**—Up to ten (10) seniority points shall be added to the score of an examinee who receives a grade of at least 70 percent on the written examination,

based upon continuous whole years of service as a certified Firefighter in the New Braunfels Fire Department or as a certified Police Officer in the New Braunfels Police Department. Each full year of service equals one point. Seniority points shall be awarded only for whole years of service and shall not be awarded for years of part-time employment. The Director shall post the written examination scores and seniority points for all applicants;

- (a) Fire Department applicants scoring a minimum passing grade on the written examination of seventy (70), plus seniority points; and
- (b) Police Department applicants scoring a minimum passing grade of seventy (70) points. The term "grade" as it applies to Police Department applicants means the total of the score on the written examination and points for seniority.

The posting shall occur within twenty-four (24) hours after the completion of the promotional examination:

- (1) outside the main lobby of City Hall;
 - (2) on the City's website in the Human Resources, Civil Service section; and
 - (3) should also be emailed to the Fire and/or Police Department List.
- (c) Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the grade that must be placed on the eligibility list for each police officer or fire fighter shall be computed by adding the applicant's points for seniority to the applicant's grade on the written examination, but for a fire fighter applicant only if the applicant scores a passing grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 points and is determined entirely by the correctness of the applicant's answers to the questions. All police officer applicants who receive a grade of at least 70 points shall be determined to have passed the examination and all firefighter applicants who receive a grade on the written examination of at least 70 points shall be determined to have passed the examination. If a tie score occurs, the commission shall determine a method to break the tie.

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

- (a) **Highest Test Score** – If a tie exists, the candidates shall be ranked in the order according to which candidate had the highest examination raw score prior to the addition of seniority points and after the Commission's determination of appeals, if any.
- (b) **Time in Rank** – If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most recent continuous seniority in the position immediately below and above the position for which the examination was given.
- (c) **Seniority in the New Braunfels Fire or Police Department** - If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most seniority with the respective Department in a certified position as

a Peace Officer by TCOLE in a position with the NBPD or Firefighter by TCFP in a position with the NBFD, whether interrupted or uninterrupted.

- (d) **Certification Level** – If a tie still exists, the candidates shall be ranked in the order according to which candidate has the highest certification level.
- (e) **College Degree** – If a tie still exists, the candidates shall be ranked in the order according to which candidate has the highest-level college degree, i.e., Bachelor's and then Associate's degree.
- (f) **Total Years of Experience as a Certified Fire Fighter or 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, full-time, paid Police Officer position in the Police Department or in a Firefighter position in the Fire Department.
- (g) **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 full-time non-classified position.
- (h) **Earliest Date of Initial Application** – If a tie still exists, the candidates shall be ranked in order according to the earliest written or stamped date and time of initial application for the promotion.
- (i) **By Lot** – If a tie still exists, the candidates shall be ranked by lot as determined by the Director.

Section 143.034 REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION

See Section 143.034, Chapter 143

Beginning on the first business day following the examination date, a promotional candidate **may only review** his/her examination booklet, his/her answer sheet, the answer key, and the source material for the examination in the presence of a monitor(s) designated by the Director. The candidate is not allowed to document, make a picture image of and/or make any notes from any part of the examination documents. At such time that a promotional candidate submits a written appeal to the Director on the question(s) that he/she is appealing in the format prescribed by the Director.

The period of review of test materials begins the first business day after the promotional examination is conducted and is limited to five (5) business days during which an appeal may be filed.

In the event a candidate for promotion is serving in the military and takes the examination off-site, the Director may determine the number of days in which the candidate must submit all appeals and may prescribe the method for the submission of same. In such circumstances, e-mail submission may be used, if determined by the Director to be appropriate.

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

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

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

A Ruling which rejects the appeal presented to the Commission shall require the Director to accept the answer as given on the answer key.

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

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

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

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

The Commission may request additional information prior to voting.

Formula for calculating scores after appeals:

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

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

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

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

Section 143.035 ALTERNATE PROMOTIONAL SYSTEM IN POLICE DEPARTMENT

See Section 143.035, Chapter 143

Section 143.036 PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS

See Section 143.036, Chapter 143

When the term "Commission" is used in Section 143.036 of the Local Government Code, the Director may perform the duties specified.

No person whose name is upon an eligibility list may decline the right to be promoted, without being stricken from the list, except for temporary inability, physical or other causes beyond the person's control, to accept the position offered. The person declining the promotion for these reasons shall submit proof of the temporary inability, physical or other causes beyond his/her control and it must be accepted by the Commission. The Commission may grant a waiver of promotion; however, such waiver may not extend beyond ninety (90) days without approval by the Commission. If such waiver is not granted, then the person, who voluntarily declines the promotion, shall be stricken from the eligibility list.

If the Chief has passed over an individual on an eligibility list, and the passed-over individual is the only remaining person on the list, the eligibility list is deemed exhausted and the Director may immediately initiate procedures to conduct an eligibility examination if a vacancy exists or is anticipated.

Section 143.037 RECORD OF CERTIFICATION AND APPOINTMENT

See Section 143.037, Chapter 143

Section 143.038 TEMPORARY DUTIES IN HIGHER CLASSIFICATION

See Section 143.038, Chapter 143

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

(Sections 143.039-143.040 reserved for expansion)

SUBCHAPTER C. COMPENSATION

Section 143.041 SALARY

See Section 143.041, Chapter 143

Section 143.042 ASSIGNMENT PAY

See Section 143.042, Chapter 143

Section 143.043 FIELD TRAINING OFFICER ASSIGNMENT PAY

See Section 143.043, Chapter 143

Section 143.044 CERTIFICATION AND EDUCATIONAL INCENTIVE PAY

See Section 143.044, Chapter 143

Section 143.045 ACCUMULATION AND PAYMENT OF SICK LEAVE

See Section 143.045, Chapter, 143

An employee who is temporarily suspended or indefinitely suspended shall exhaust all appeal rights before the City is obligated to pay any accumulated civil service sick leave as prescribed under Chapter 143. The City shall not authorize a withdrawal from the Texas Municipal Retirement System (TMRS) unless the employee submits a written resignation and terminates employment with the City.

A "day" of sick leave accrual for Police Officers shall be eight (8) hours and eight (8) hours for administrative employees. An employee who is absent from work due to illness shall have his or her sick leave bank reduced by the actual number of work hours missed.

A "day" of sick leave accrual for Firefighters in operations shall be twelve (12) hours and eight (8) hours for administrative employees. An employee who is absent from work due to illness shall have his or her sick leave bank reduced by the actual number of work hours missed.

Section 143.046 VACATIONS

See Section 143.046, Chapter 143

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

A "day" of vacation leave accrual for Police Officers shall be eight (8) hours, and eight (8) hours for administrative employees. An employee who is absent from work due to vacation shall have his or her vacation bank reduced by the actual number of work hours missed.

A "day" of vacation leave accrual for Firefighters in operations shall be twelve (12) hours and eight (8) hours for administrative employees. An employee who is absent from work due to

vacation shall have his or her sick leave bank reduced by the actual number of work hours missed.

Section 143.047 SHIFT DIFFERENTIAL PAY

See Section 143.047, Chapter 143

(Sections 143.048-143.050 reserved for expansion)

SUBCHAPTER D. DISCIPLINARY ACTIONS

Section 143.051 CAUSE FOR REMOVAL OR SUSPENSION

See Section 143.051, Chapter 143

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

- (1) Indictment, deferred adjudication, pre-trial diversion or other deferred disposition, or conviction of a felony, State Class A or B misdemeanor, federal misdemeanor, or other crime involving moral turpitude;
- (2) Violation of the provisions of the Charter of the City of New Braunfels;
- (3) Acts of incompetency;
- (4) Neglect of duty;
- (5) Discourtesy by said employee to the public or to fellow employees, including but not limited to racial, religious, sexist or ethnic slurs and/or remarks;
- (6) Acts of said employee showing a lack of good moral character;
- (7) Drinking of intoxicants while on duty or intoxication while off duty;
- (8) Conduct prejudicial to good order, including but not limited to destruction of City property or property belonging to another; violent acts or threats of violent acts; possession of dangerous or prohibited materials or articles unless authorized by the Fire or Police Chief, gambling on City property or while on duty, falsification of documents, alteration of records, and violation of sexual harassment policy;
- (9) Financial background indicates failure/neglect to pay just debts;
- (10) Absence without leave, including unauthorized absence from work for a period of two (2) consecutive work shifts or more, which shall be considered a resignation;
- (11) Shirking duties;
- (12) Cowardice on duty;
- (13) Failure to follow all requirements and limitations established by a medical professional, including limitations on activities while off duty due to illness or work-related injury; or
- (14) Insubordination
- (15) Violation of any Rules, Regulations, Standard Operating Guidelines or Procedures of

the New Braunfels Fire or Police Department; special orders as applicable; these Rules and Regulations; Employee Personnel Policies; any other City Ordinance or Policy applicable to Fire or Police Departments employees; or other local, state or federal laws.

Section 143.052 DISCIPLINARY SUSPENSIONS

See Section 143.052, Chapter 143

- (1) An employee may be suspended for violation of:
 - (a) An applicable provision of Chapter 143, Texas Local Government Code;
 - (b) An applicable rule or regulation duly adopted by the Commission;
 - (c) New Braunfels Fire or Police Departments Guidelines or Procedures Orders;
 - (d) The Employee Personnel Policies; or
 - (e) Any other Charter provisions, City Ordinance or Policy applicable to New Braunfels Fire and Police Departments employees, as well as local, state or federal laws.

For a suspension, a determination of what constitutes “cause” is generally made by comparison to what a reasonable person, who is mindful of the habits and customs of his/her Department, who is also mindful of the responsibilities and needs of his/her Department and who is also mindful of the standards of justice and fair dealing prevalent in the City, should have done (or should have not done) under similar circumstances. The term “cause” shall also mean “employee misconduct” and shall necessarily include any act or omission that violates: (a) an applicable provision of Chapter 143 or (b) an applicable rule or regulation duly adopted by the Civil Service Commission of New Braunfels.

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

- (2) **WORKING OFF SUSPENDED TIME** – A classified employee in the New Braunfels Fire or Police Department who is temporarily suspended for seventy-two (72) hours or less may, upon the employee’s request and at the respective Department Head’s discretion, forfeit their own accumulated vacation for a period equal to the time of the suspension. The employee shall be required to work on the forfeited vacation days. The provisions of this Section shall apply solely to a suspension which is agreed to by the employee and no appeal to the Commission or to a Hearing Examiner may be instituted on a suspension where the employee has agreed to the suspended time.

The employee shall have his/her vacation leave accumulated balance deducted in an amount equal to the suspension to qualify for this provision. In order to request Working Off Suspended Time, the suspended employee shall make a written request and deliver it directly to the appropriate Department Head within 120 hours after receiving the Notice of Temporary Suspension. Failure to make a written request to the Department Head within the allotted time shall result in an employee not being

eligible for the provisions of this Section. The use of vacation time in lieu of suspension time remains a disciplinary action in the employee's file.

Section 143.053 APPEAL OF DISCIPLINARY SUSPENSION

See Section 143.053, Chapter 143

- (1) **SCOPE OF MATTERS SUBJECT TO APPEAL**—Only the following disciplinary matters are subject to appeal to the New Braunfels Civil Service Commission and they may not be appealed through the City's grievance policy procedure:

- (a) Indefinite suspension;
- (b) Temporary suspension;
- (c) Demotion; (except demotion under §143.014) and/or
- (d) Promotional Passover.

If an action is subject to appeal, the employee may file an appeal. In the event of an appeal, the employee shall give written notice to the Director as provided under Section 143.010. If the appeal is timely and valid, the Director shall arrange to have an appeal hearing placed on the Commission's agenda or obtain a panel of Independent Third-Party Hearing Examiners, as provided under Section 143.057.

Employee dissatisfaction resulting from a transfer or reassignment of duties shall not constitute grounds for disciplinary appeal procedures.

Employee dissatisfaction resulting from a discretionary policy decision or policy issues/matters shall not constitute grounds for disciplinary appeal procedures.

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

An employee who has been terminated from his/her position for failure to maintain the minimum qualifications of employment does not have the right to utilize the disciplinary appeal process in this Section.

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

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

At any time after filing of the notice of appeal, the employee and the Fire or Police Chief may mutually agree to withdraw the appeal from a Hearing Examiner and submit the appeal to a hearing before the Commission. The mutual agreement shall be made in writing and filed with the Director.

- (3) **DIRECTOR TO COORDINATE ALL MATTERS**—The location and accommodations

for a hearing or appeal shall be arranged by the Director. The Director shall also post a notice of the hearing in compliance with the Texas Open Meetings Act.

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 coordinated through the Director. All such information shall be provided to the Director who shall then provide copies of same to the opposing party or representative and also coordinate the appropriate response or action to be taken. In a hearing coordinated by an outside agency, that agency shall also provide coordination services between the parties and the Hearing Examiner in conjunction with the Director.

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

When applicable, the State law governing the doctrine of "mitigation of damages" shall be applied in computing reimbursements or an offset from an award of back pay. The Commission or hearing examiner shall permit introduction of evidence on mitigation of back pay by either the employee or the Department Head.

- (5) **FAILURE TO ATTEND SCHEDULED HEARING**—The Commission or Hearing Examiner shall treat the appealing employee's failure to attend a scheduled appeal hearing or to file a timely request for a continuance as a request to withdraw the appeal. 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 throughout the questioning of a particular witness.

No later than three (3) business days prior to the hearing date, the parties shall provide opposing counsel and the Director with a witness list and an exhibit list.

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

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

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

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

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

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

An employee and his/her representative may obtain copies of documents contained in the employee’s official civil service file, maintained under Section 143.089(a), after the employee has signed the appropriate release form(s).

No later than three (3) business days prior to the hearing date, the parties shall provide opposing counsel and the Director with a witness list and an exhibit list.

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

- (a) Call to order and roll call
- (b) Introduction of Commission, parties and representatives
- (c) Swearing of all witnesses present
- (d) Invocation of the “rule”
- (e) House keeping items
- (f) Consideration of preliminary motions, if any
- (g) City’s opening statement
- (h) Employee’s opening statement—may be deferred
- (i) The City’s (Department’s) case:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (j) Employee’s response:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (k) Rebuttal by the City, if any:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (l) City’s closing argument
- (m) Employee’s closing argument
- (n) City’s rebuttal

- (e) Deliberation by the Commission in Executive Session
- (f) Decision by vote in open session

(9) HEARING PROCEDURES

- (a) At the scheduled date, time and place, the hearing shall be called to order.
- (b) Each party shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process. Each party shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission at the hearing.
- (c) A record of the public proceedings, capable of clear and accurate reproduction or transcription, shall be made and maintained by the Director.
- (d) After being called to order, but prior to the beginning of testimony or evidence, consideration shall be made as to any pre-hearing motions, requests or jurisdictional matters as submitted by either party. The parties shall also seek to obtain as many stipulations as possible as to non-contested or non-material matters. The Commission may “carry” such pre-hearing motions until the hearing is completed and all factual evidence has been presented before making its final ruling thereto.
- (e) 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 Department Head and the forms for the basis of the disciplinary action imposed on the employee.
- (f) Upon request by either party, the hearing process shall utilize what is commonly known as “the Rule” concerning oral testimony, meaning that a person who shall be expected to testify at the hearing, other than the parties and their representatives, shall not be allowed to observe or listen to any of the proceedings except when he/she is actually testifying as a witness. “The Rule” may be used to ensure one witness’ testimony is not influenced by another’s testimony. While under “the Rule,” a potential witness shall not discuss any aspect of the appeal or hearing except with the attorneys or the representatives involved. Invoking “the Rule” is not mandatory and may be waived in whole or in part by agreement between the parties.
- (g) The hearing shall then proceed to develop the evidence and testimony as to the contested matter(s).
- (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. 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.

- (i) 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.
- (j) The Chairperson shall exercise reasonable control over the questioning of a witness and the presentation of evidence so as to:
 - (i) effectively ascertain the truth;
 - (ii) keep such presentations relevant to the issues to be determined; and
 - (iii) avoid the needless consumption of time and expense.
- (k) The employee 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.
- (l) A hearing shall remain business-like and focus upon resolution of factual matters. A hearing shall not be a time for accusations, threats, speeches or arguments. The Commission shall have the discretion to adjourn any meeting that deteriorates into a "shouting match" or where fruitful or factual dialogue ceases.
- (m) 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.
- (n) Before adjourning, the Commission may adjourn to Executive Session to deliberate. Thereafter, the Commission shall reconvene in open session and shall, upon motion and second, vote upon its decision. Thereafter, a written Order containing the Decision shall be prepared and signed by the Commissioners prior to adjourning the hearing.

(10) RULES OF EVIDENCE

- (a) Technical rules of evidence shall not apply nor control the conduct of any hearing. The Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, and all other Rules of Procedure, whether civil or criminal, shall not apply nor govern any aspect of any civil service proceeding.
- (b) The scope of evidence to be considered at a disciplinary hearing shall be generally limited to matters material and probative to the statement of charges as set forth in the Department's written statement, the employee's notice of appeal 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.
- (d) It shall be the province of the Commission to determine:
 - (i) The admissibility of any particular evidence or testimony;
 - (ii) The materiality or probative value, of any evidence or testimony; and
 - (iii) The weight to be given to any particular evidence or testimony.
- (e) Subject to limited exceptions for compelling reasons shown by a party, the

Commission shall refuse to hear or consider any testimony or item of evidence after the hearing has been closed.

- (f) The Commission may receive and consider the evidence of a witness by affidavit and assign same such weight as it deems proper after consideration of objections, if any, made to its admission.
- (g) On-site inspections are discouraged and shall be conducted only if the evidence to be considered cannot be otherwise presented via stipulations, photographs, videotapes, maps, diagrams, etc.
- (h) All evidence and testimony shall be presented and received into the record while in open session.

(11) ISSUES TO BE DETERMINED IN DISCIPLINARY APPEALS

- (a) Generally, the determinative issues to be considered and determined by the disciplinary action appeal process shall be:
 - (i) Did cause exist to support the imposing of some form of disciplinary action as to the employee?
 - (ii) Was the degree of disciplinary action imposed by the Department reasonable under the circumstances? and
 - (iii) Has the hearing process developed matters that justify or compel modification of the Department Head's disciplinary action?
- (b) The Department Head shall establish the violation(s) by a substantial evidence standard. This standard is evidence that a reasonable 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 of the evidence. Evidence 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."
- (c) It shall be recognized that prior to imposing any form of discipline, the Department Head may use lesser forms of disciplinary or corrective action. However, the failure to utilize progressive discipline shall not in itself be grounds to overturn or otherwise modify a Department Head's decision to proceed directly to the appropriate level of discipline if the employee's misconduct warrants such disciplinary action, including indefinite suspension. Progressive discipline need not always apply, and the seriousness of a single offense may negate a previously unblemished record.
- (d) The hearing shall provide the employee a reasonable opportunity to produce objective evidence and/or testimony to demonstrate:
 - (i) That the employee did not commit the misconduct as alleged, i.e., "the allegations are not true"; or
 - (ii) That even if the employee committed the acts as alleged, that such activity does not constitute actionable misconduct; or
 - (iii) That even if the employee committed actionable misconduct, 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 Department Head's action.

- (e) An employee's mere disagreement or difference in opinion in regard to the Department Head's actions or reasoning shall not constitute grounds to overturn nor modify the disciplinary action.
- (f) If the Commission determines one valid charge of misconduct is supported by evidence sufficient to establish its truth, the Commission shall sustain that charge even if the evidence at the hearing does not support other charges in the letter of disciplinary action.

(12) **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 not true.
- (b) The Commission's decision may be made by the majority vote of two of the three Commissioners present. If only two Commissioners are present, the final decision shall be made unanimously.
- (c) In the event that the charge(s) of misconduct against the employee is found to be "not true," then the final Order shall be promptly to restore the employee to the employee's proper position or status.
- (d) In the event that the charge(s) of misconduct against the employee is found to be "true," then the final Order shall clearly state whether the employee is:
 - (i) Permanently dismissed from the Fire or Police Department; or
 - (ii) Temporarily suspended from the respective Department and shall then set forth the definite time period and conditions of suspension which shall be imposed; or
 - (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) Back pay and other employment benefits; and/or
 - (iii) Mitigation of damages.
- (f) If modifying the disciplinary action of the Department, the Order shall clearly explain in writing the factors and rationale for doing so. If affirming the disciplinary action of the Department, it shall be presumed to be for the same reasons and facts as presented by the Department unless otherwise indicated.
- (g) The Commission may consider evidence of facts or events during the disciplinary appeal process that are outside the scope of the Department's statement of charges or the employee's notice of appeal to the extent permitted by law.
- (h) A copy of the Department's disciplinary action, a copy of the employee's

request for appeal, the record of the proceedings, a copy of the exhibits submitted together with a copy of the final Order shall be filed in the Commission record. The Commission may cite these records as reference material in subsequent determinations.

Section 143.054 DEMOTIONS

See Section 143.054, Chapter 143

The Commission's consideration of whether there is probable cause to support the Department Head's recommendation for demotion does not require an evidentiary hearing. If the Commission determines that probable cause exists for a recommended demotion, the Commission's letter to the employee shall include the Hearing Examiner option under Chapter 143.

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

Section 143.055 UNCOMPENSATED DUTY OF POLICE OFFICERS

See Section 143.055, Chapter 143

Section 143.056 PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT

See Section 143.056, Chapter 143

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

All employees must notify their Department Head of any arrest, and any misdemeanor charge or felony indictment within twenty-four (24) hours of its occurrence. Any employee so arrested, charged or indicted must report to his/her Department Head the outcome of the arrest, charge or indictment within twenty-four (24) hours after final disposition. This requirement also applies to all deferred adjudications.

Section 143.057 HEARING EXAMINERS

See Section 143.057, Chapter 143

- (i) Only a disciplinary action concerning an indefinite suspension, a suspension, a promotional pass over or a recommended demotion is appealable to a Hearing Examiner.
- (j) The Director shall coordinate with the parties and the Hearing Examiner and/or the agency sponsoring the Hearing Examiner as to all matters regarding scheduling, place of hearing, accommodations, etc.

- (k) The rule-making power and authority of the Commission is in no way conferred upon and/or delegated to any Hearing Examiner, either by implication or otherwise.
- (l) In a disciplinary appeal conducted under Chapter 143, the Hearing Examiner shall have the “same duties and powers” as would the Commission, including the right to issue subpoenas to compel the attendance of a witness.
- (m) 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.
- (n) 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.
- (o) A hearing conducted by a Hearing Examiner shall also be recorded so as to be capable of clear and accurate reproduction or transcription.
- (p) If a situation arises pertaining to the administration process of selecting a Hearing Examiner, or meeting notices, or request for rescheduling, refusal, conflict or interest, etc., and the situation is not provided for Chapter 143 or in these Rules and Regulations, then the parties and the Director shall attempt to mutually resolve the situation by agreement. If the matter is not one capable of being reasonably resolved by agreement, the Director may refer the matter to the administrative processes of the entity sponsoring the Hearing Examiner to resolve the situation within its own processes.
- (q) If a Hearing Examiner has been initially selected but is thereafter objected to or is asked to be excused by a party, both parties may mutually agree to excuse the Hearing Examiner and thereafter request a new list of qualified and neutral Hearing Examiners and start the selection process over again. If no such agreement can be reached, then both parties shall prepare a written statement including their requests and reasoning therefore which shall be submitted to the Director. The Director shall then transmit it to the entity sponsoring the Hearing Examiner, which shall then resolve the dispute according to its own administrative processes. The response shall either excuse the Hearing Examiner and thereafter provide a new list, or it shall provide a written statement of reasons why the Hearing Examiner was not excused.
- (r) In all cases, the employee filing the appeal shall strike the first name from the list of possible hearing examiners

(Sections 143.058-143.070 reserved for expansion)

SUBCHAPTER E. LEAVES

Section 143.071 LEAVES OF ABSENCE; RESTRICTION PROHIBITED

See Section 143.071, Chapter 143

Section 143.072 MILITARY LEAVE OF ABSENCE

See Section 143.072, Chapter 143

Section 143.073 LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE

See Section 143.073, Chapter 143

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

“Full pay” status is defined as the employee’s current regular base rate of pay for his normally scheduled work time, less the amount of tax savings the employee will have as a result of the non-taxability of workers compensation benefits.

In assigning light duty to employees, the Fire or Police Chief may assign employees to duties outside the Fire or Police Department, with the concurrence of the City Manager.

Employees who are out on injury leave must provide, on a bi-weekly basis or as designated by the Doctor on the Division of Workers’ Compensation Form 73, the DWC (Division of Workers’ Compensation) Form 73 and any applicable City Form(s) to the Department Head or his designee, in order to continue to obtain benefits, and may be ordered to appear before the Commission in the event of a failure to comply with this requirement.

Employees on injury or illness leave for more than the number of days established in Fire or Police Department Procedures, Guidelines or Policies, must notify the Chief, or his designee, of their status on a weekly basis. The Fire or Police Chief may designate an individual to perform home checks on employees absent from work due to illness or injury.

The Fire or Police Chief may order home checks to be made on any employee off work under this subsection and may order any employee to provide a doctor’s letter verifying any claimed illness or non-work injury.

Section 143.074 REAPPOINTMENT AFTER RECOVERY FROM DISABILITY

See Section 143.074, Chapter 143

Section 143.075 MILITARY LEAVE TIME ACCOUNTS

See Section 143.075, Chapter 143

The Civil Service Commission authorizes the establishment of one Military Leave Time Account for Firefighters and another Military Leave Time Account for Police Officers. The Commission authorizes the Civil Service Director to establish and administer the policy and maintain the separate military leave time accounts for each department.

(Sections 143.076 - 143.080 reserved for expansion)

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

Section 143.081 DETERMINATION OF PHYSICAL OR MENTAL FITNESS

See Section 143.081, Chapter 143

Each employee shall continually remain in such physical and mental condition as to be capable of rendering safe and efficient service to the City and performance of the duties and essential functions assigned to the employee.

Each employee shall be required to submit to a psychological or physical examination where there exists some reasonable basis to believe that the employee’s mental or physical fitness for duty is an issue. Determination of the employee’s mental and/or physical fitness for duty shall not be subject to Commission or Hearing Examiner’s review. The findings of the medical panel as outlined in Chapter 143 shall be determinative and final.

Employees who fail to follow the regimen prescribed by their physician for recuperation may be ordered to undergo a fitness for duty evaluation and may be ordered to appear before the Commission to explain any such failure(s).

The Fire or Police Chief shall report to the Commission any employee whom they believe is abusing sick or injury leave, and the Commission may require the attendance of the employee at any meeting convened to discuss a fitness for duty evaluation ordered under this section.

Section 143.082 EFFICIENCY REPORTS

See Section 143.082, Chapter 143

Section 143.083 EMERGENCY APPOINTMENT OF TEMPORARY FIRE FIREFIGHTERS 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

See Section 143.089, Chapter 143

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

Section 143.090 VOLUNTARY RESIGNATIONS

When a Firefighter or Police Officer submits a voluntary resignation, the resignation letter shall be immediately delivered to the City Manager, or his designee, for acceptance. The resignation is effective immediately upon acceptance by the City Manager or his designee. Acceptance may be indicated by, among other actions, authorizing the payment of accrued leave and/or salary. A Firefighter or Police Officer shall not be permitted to retract a voluntary resignation letter, without approval of the City Manager. Once the City Manager has accepted the voluntary resignation, it shall be filed with the Director.

10/28/2011

ORDER OF ADOPTION

BE IT HEREBY KNOWN, that on this date, the Civil Service Commission of the City of New Braunfels, Texas, met in open session for the purpose of consideration and adoption of the City of New Braunfels Firefighters' and Police Officers' Civil Service Commission Rules and Regulations. Upon proper motion having been made and seconded, the Commission proceeded to officially adopt the Rules and Regulations for Civil Service employees as set forth on the attached pages.

These Rules supersede all earlier Rules of the Commission. Adoption of these Rules repeals all other Rules in conflict with these Rules.

Therefore, it is the ORDER of this Commission that the Rules and Regulations as set forth be and are hereby adopted as the official Rules and Regulations for New Braunfels Civil Service Employees.

It is the further ORDERED of this Commission that the Director of Civil Service shall immediately cause these Rules and Regulations to be officially recorded and thereafter published in accordance with Chapter 143 of the Texas Local Government Code.

It is the further ORDERED of this Commission that the Rules and Regulations as adopted shall become fully effective on October 30, 2011 and as soon as all the conditions contained in Chapter 143.008(e) have been met.
Signed this day of 28th October, 2011.

JAN KOTYLO, CHAIRPERSON

Fritz Welsch
FRITZ WELSCH, JR., VICE-CHAIRPERSON

Pat Clifton
PAT CLIFTON, COMMISSIONER

ATTEST:

Julie O'Connell
Julie O'Connell
Civil Service Director

Adopted
Effective