
City of Weslaco
Civil Service Commission

Rules and Regulations

TABLE OF CONTENTS

INTRODUCTION.....2

SECTION I
CIVIL SERVICE COMMISSION.....3

SECTION II
GENERAL CONDUCT.....7

SECTION III
ON DUTY CONDUCT10

SECTION IV
CAUSE FOR REMOVAL OR SUSPENSION.....13

SECTION V
EXAMINATION RULES AND PROCEDURES.....14

SECTION VI
REINSTATEMENT AFTER RESIGNATION.....19

SECTION VII
DISCIPLINARY APPEAL HEARINGS.....20

SECTION VIII
PHYSICAL AND MENTAL FITNESS.....26

DEFINITIONS.....28

INTRODUCTION

The Fire Fighters and Police Officers' Civil Service Commission of the City of Weslaco have adopted Chapter 143 of the Texas Local Government Code as the fundamental authority for administering Civil Service. That authority is primary in questions of administration. Some elements of Chapter 143 may be modified by specific mention in applicable collective bargaining agreements under Chapter 174, Local Government Code.

In addition, rules and or general or specific order established by the Fire or Police Department shall be adopted by the commission as rules necessary for the proper conduct of commission business as long as such rules are not in conflict with the most recent editions of Chapter 143 and any current collective bargaining agreement.

The Weslaco Civil Service Commission adopts these and the following "Rules and Regulations" under the authority granted to it by Section 143.008 of the statute.

RULES AND REGULATIONS

- (1) The rules of the Civil Service 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 These rules have been approved by the Commission and shall remain in effect until officially amended, revised or repealed by the Commission.
- (2) Notice of Rules - Immediately upon becoming effective, all rules contained herein shall thereafter be deemed to constitute full and effective prior notice to all civil service employees of prescribed or prohibited conduct as stated in any such rule.
- (3) Amendment to these rules may be made at any meeting of the Commission and such amendments shall become effective on the date of their approval by the Commission and subsequent 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.

SECTION I

A. CIVIL SERVICE COMMISSION

1. **CHAIR AND VICE-CHAIR REPLACEMENT** - When vacancies of members of the Commission occurs, the replacement of chair and vice-chair will be handled as follows: 1) in the event of a vacancy in the chair position, the vice-chair will assume the role of chair and an interim election will be held to elect a new vice-chair: 2) in the event of vacancy in the vice-chair position, an interim election will be held to fill that office.

2. **TERM OF OFFICE** - Each member of the Commission holds office for a staggered three-year term and thereafter until a successor is appointed and confirmed. Interim vacancies 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.

3. **RESPONSIBILITIES** - The Commission, acting in compliance with Chapter 143, has the authority to adopt, publish and enforce rules, including but not limited to:
 - (a) The proper conduct of Commission business meetings;
 - (b) The proper conduct of examinations for entry level and promotional eligibility;
 - (c) The proper conduct of appeals of testing and examination scoring;
 - (d) The prescribed cause or causes for the removal or suspension of a civil service employee;
 - (e) The procedures for the hearing of disciplinary appeals concerning suspensions without pay, indefinite suspensions, promotional passovers; recommended demotions; or written promotional examinations; and
 - (f) Such other matters reasonably related to the selection, promotion and discipline of civil service employees, not otherwise vested in the discretionary or managerial authority of the City Council, City Manager, Director of Civil Service, or Department Head.

4. **RULE OF CONDUCT**

In the discharge of their duties, members of the Civil Service Commission act as a body and not as individuals. An individual Commission member has no legal or moral right to speak for the Commission unless specially authorized to do so by action of the Commission.

5. **QUORUM** - Two members of the Commission constitute a quorum sufficient to conduct business meetings and hearings.

6. CONDUCT OF BUSINESS MEETINGS - The Commission may set reasonable rules and procedures for proper and efficient conduct of business. The Chairperson shall conduct meetings in an orderly and timely fashion. The general, but-not-required, order-of-business-at non-disciplinary-or-non-appeal-hearings shall be generally:

- (a) Call to order
- (b) Approval of minutes
- (c) Action items
- (d) Miscellaneous matters from the Director of Civil Service
- (e) New business - Commission members may suggest items for future agendas.
- (f) Adjourn

The order of business may be altered at any time by agreement of Commission members present at the meeting.

7. MINUTES - The Secretary of the Commission shall prepare the minutes of each meeting. The minutes of a meeting are to 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. A Commission member may record in the minutes an approval of, or objection to any act of the Commission together with the Commissioner's reasons. Copies 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 the Chairperson, or in the Chairperson's absence, the Vice-chairperson.

8. COMMUNICATIONS - All communications or requests to the Commission are to be made in writing through the office of the Director of Civil Service.

9. REMOVAL FROM OFFICE - A member of the Commission may tender his or 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 Civil Service Commission member is absent three (3) consecutive regular meetings during a twelve (12) month period without good and reasonable cause, then 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 thereafter be made by the Director to the City Manager for a replacement of such member.

B. CIVIL SERVICE DIRECTOR

1. **APPOINTMENT** - The Commission shall appoint a director who shall be responsible for implementing these rules and administering the civil service system.
2. **DUTIES** - The Director or designee shall also act as secretary to the Commission and as chief examiner of tests. The Director's duties include but are not limited to:
 - (a) Serves as Secretary to the Commission;
 - (b) Serves as the chief test examiner for the Commission and supervisor of all examinations, including the preparation, scheduling, scoring and security thereof;
 - (c) Recruitment and examination of applicants;
 - (d) Sets agenda for Commission meetings;
 - (e) Acts as liaison and provides staff support to Commission;
 - (f) Determines whether any matter is appropriately brought before Commission in a reasonable and timely fashion;
 - (g) Calls, schedules, reschedules, and cancels meetings of the Civil Service Commission;
 - (h) Acts as records custodian as provided by Chapter 143;
 - (i) Acts on behalf of Civil Service Commission for actions and issues not specifically addressed in Chapter 143 or these rules;
 - (j) Recodifies Civil Service Commission rules as necessary in a professional and timely fashion;
 - (k) Establishes and monitors procedures for disciplinary matters; and
 - (l) Performs 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.

C. MEETINGS OF THE COMMISSION

1. The members of the Commission shall, at a date, hour, and place set by the Commission, hold such meetings as may be required in the proper discharge of their duties. Two members of said Commission shall constitute a quorum to transact business. The Director of Civil Service may call, schedule, reschedule or cancel meetings of the Civil Service Commission. All agenda items shall be submitted in a manner prescribed by the Director. (The Director shall have discretion to place or not to place on the agenda any item which he/she believes the Commission lacks jurisdiction.) The Director shall have the discretion to present jurisdiction (issues) to the commissioner for its consideration.
2. All meetings of the Commission shall be open to the public and to representatives of the press, except to the extent that closed meetings are allowed under the Texas Open Meetings Act, Section 551 of the Texas Government Code.

3. Notice of all meetings of the Commission shall be given by the Director to the members of the Commission and an agenda shall be posted on the bulletin board at City Hall at least 72 hours prior to any meeting. Only such topics as are listed on the agenda may be acted upon. However, the Commission may meet in an emergency session by complying with the provisions of the Texas Government Code.
4. The Commission may, by majority vote, make rules of procedure from time to time to implement the administration of these rules.

An employee may receive a written reprimand from the head of the department for each separate violation of any of the rules in Section II and/or III. Violations of the rules may result on the initiation by the head of the department of procedures set out in Chapter 143, for disciplinary action.

SECTION II GENERAL CONDUCT

All Fire Fighters and Police Officers shall:

- A. Be familiar with and abide by the Civil Service Rules and Regulations.
- B. Not violate any provisions of the rules and regulations of the City of Weslaco Civil Service. In the event of improper action or breach of discipline, it will be presumed that the Fire Fighter or Police Officer was familiar with the Rules and Regulation of the City of Weslaco Civil Service.
- C. Be responsible for fulfilling the public's trust, which is to conduct themselves in a manner, on or off duty, which will not impair the public's confidence or trust in the operation of the Department or the public's confidence or trust in the integrity of the Employees of the Department.
- D. Not procure appointment in the Department by means of willful misrepresentation or omission of any fact concerning their personal history, qualifications for employment, or physical condition.
- E. Not engage in any activity, which would be unbecoming, of a member of the Department. Conduct unbecoming a member of the department includes any unethical or otherwise reprehensible acts that law-abiding, self-respecting citizens would find offensive and which would seriously damage the personal integrity of the individual and the Department. Conduct unbecoming a member of the Department would also lessen the confidence of the public in the Department and/or its personnel.
- F. Not engage in any personal conduct or act, which if brought to the attention of the public, could result in justified unfavorable criticism of oneself and/or the department.
- G. Adhere to the Department's chain-of-command in the transaction of Department business unless otherwise specified by a supervisor officer.
- H. Not attempt to circumvent or undermine the chain-of-command by anticipating any disciplinary action before such action occurs nor seek the influence of others to intercede before any grievable action has occurred, nor make any threats to a person involved in any way in the investigation and/or disciplinary process.

- I. Not seek the influence or intervention of anyone outside the Department for purpose of personal advancement, advantage, or transfer within the Department.
- J. Not participate in or conduct abrasive and/or abusive personal attacks on supervisors or public officials, which could undermine the harmony necessary for an effective and efficient Department.
- K. Not publicly criticize or ridicule the Department or other Employees by talking, writing or expressing in a manner which is defamatory, obscene, unlawful, knowingly untruthful, or tends to impair the operation of department by interfering with its efficiency, by interfering with the ability of officers and supervisors to maintain discipline, or by a reckless disregard for the truth.
- L. Not accept directly or indirectly any gift, gratuity, reward, loan, fee, discount, rebate, bribe, or special consideration arising from or offered, which provides personal gain or benefit. An exception to this rule is a community wide effort to honor fire and police officers by giving them honorariums or gifts.
- M. Pay all just personal debts and legal liabilities incurred on a timely basis.
i.e.- child support
- N. Possess a valid Texas driver's license of the type required for their assigned duties.
- O. Make truthful and accurate records and reports, and will not make misleading entries or statements with the intent to deceive. Employees will not willfully mutilate or discard Department record books or document.
- P. Keep themselves in proper physical condition necessary to perform the duties of their position.
- Q. Not abuse the use of Sick Leave.
- R. Maintain an accurate and current residential address, personal telephone number and part-time job telephone number (if any) on file with the department and Personnel Office of the City.
- S. Be responsible and accountable for any Department and/or city equipment assigned to them or entrusted to their care. Any loss, damage, or malfunction of such equipment will be immediately reported to one's supervisor.
- T. Neither lend, sell, give away, nor appropriate to their own personal use any Departmental equipment, supplies, and/or City property.
- U. Not loan Departmental property to any person or organization.
- V. Not engage in any form of political activity while on duty or in uniform.

W. Not, while in uniform, purchase, possess, or be under the influence of or drink intoxicants while on or off duty.

X. Not at any time, on or off duty purchase, possess, or be under the influence of any illegal substances without a doctor's prescription.

Y. Not, at any time, on or off duty, be intoxicated in public view.

Z. Not engage in off-duty employment except when:

1. such employment does not interfere with the officers employment with the Department;
2. Prior written approval has been granted by the Chief.
3. The employee does not engage in any business involving the sale or distribution of alcoholic beverages for on-premise consumption, bail bonds agencies, wrecker services, or investigative work for insurance agencies, private guard services, collection agencies or attorneys.

AA. Approval may be denied, but not limited to, in instances where the outside employment might:

1. Interfere with the employee's availability during an emergency,
2. Physically or mentally exhaust the employees to the point where their performance may be affected,
3. Require that any special consideration be given to scheduling of the employees' regular duty hours, bring the Department into disrepute or impair the operation of the department or the employee.

SECTION III ON-DUTY CONDUCT

All Fire Fighters and Police Officers when on duty shall:

- A. Report at the appointed time, fit and able to perform their duties. If unable to report at the appointed time, fit and able, employee must notify their supervisor of any inability to report for duty one (1) hour prior to the time to report.
- B. Not report to work in an unfit condition due to, but not restricted to, the use and/or abuse of drugs or alcohol.
- C. Not possess, ingest, inhale, or inject into their bodies drugs/alcohol during their working hours. Exceptions are those medications and/or legitimate medical prescriptions that do not interfere with an employee's performance of duty.
- D. Remain at their place of assignment unless ordered otherwise by the commanding officer. Employees dispatched to emergencies will not be relieved at the scene without the permission of the commanding officer.
- E. Not be relieved until the commanding officer of the incident (or the place of assignment) has given permission for the employee to leave the location.
- F. Not be absent without leave. (Absence without leave is defined as either a failure to report for duty at the time and place of duty or the leaving of a place of duty or assignment without proper authorization.)

*Note: Employees absent without leave for three consecutive working days will be deemed to have abandoned their job and will be removed from the payroll.
- G. Work beyond their regular hours of duty when so directed and when so required.
- H. Perform the duties of a higher rank when assigned to act in such position.
- I. Exercise precautionary measures and good judgment to avoid injury to themselves and others while on duty and at all times exercise caution consistent with the performance of their duty to avoid unnecessary damage or loss of Department equipment.
- J. Respond to the directives of the ranking officer or acting ranking officers. However should a conflicting order be given, the employee will notify the person issuing the conflicting order.
- K. Exhibit courtesy and respect to all officers, referring to them by their proper rank and name.

- L. Refrain from any act of insubordination. Insubordination includes but is not limited to:
 - 1. Striking or assaulting a superior.
 - 2. Willfully disobeying the directives of a superior.
 - 3. Being disrespectful in language or behavior toward a superior.
- M. Not act in a rebellious, obstinate, unmanageable, or resistant manner toward any employee.
- N. Be granted permission to converse with the next officer in the chain of command, other than their immediate officer, when such request is made following the chain of command.
- O. Promptly notify their immediate superior of any accident, sickness or injury that occurred while on duty.
- P. Promptly notify their immediate superior of any injury that occurred to them while off duty that requires medical care, intervention by a medical practitioner or any injury that may disable them from reporting fit for duty to their assignment.
- Q. Not fraudulently report themselves injured on duty when the injury occurred off duty or the injury is nonexistent.
- R. Not knowingly be untruthful with a superior officer that will constitute disrespect and will be considered insubordination.
- S. Exhibit courtesy and respect to other Employees of the Department and to the public, compatible with the performance of their duties.
- T. Give their full name to any person upon request.
- U. Not use loud, indecent, profane, abusive, racist, sexist or provocative language while on duty.
- V. Put forth every effort to be compatible with other Employees of the department while on duty and at no time resort to physical violence.
- W. Not engage in nor solicit any type of sexual conduct while on duty.
- X. Not gamble while on duty.
- Y. While on duty present a neat, clean, and professional appearance to the public and comply with the uniform and appearance standards promulgated by the Head of the Department.

Z. Practice prudence in the use of supplies and metered utilities. The hoarding of supplies and equipment is prohibited.

AA. Drive safely and practice defensive driving techniques to minimize accidents.

BB. Not sign or circulate any petition, poll, letter or other document, (excluding grievances and/or formal complaints) that relates to Department personnel, policies or business without getting the prior written approval of the Head of the Department or City Manager.

SECTION IV CAUSE FOR REMOVAL OR SUSPENSION

The head of the Fire or Police Department may suspend or remove a fire fighter or police officer under the department head's supervision or jurisdiction for the violation of any of the following:

- A. conviction of a felony or other crime involving moral turpitude;
- B. violation of a municipal charter provision;
- C. acts of incompetence;
- D. neglect of duty;
- E. discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the line of duty;
- F. acts showing lack of good moral character;
- G. drinking intoxicants while on duty or intoxication while off duty
- H. absence without leave;
- I. conduct prejudicial to good order;
- J. refusal or neglect to pay just debts;
- K. testing positive for any controlled substance in any drug/alcohol screening;
- L. violation of any applicable fire/police department rule or special order;
or
- M. as otherwise permitted under Chapter 143 of the Texas Local Government Code.

SECTION V EXAMINATION RULES AND PROCEDURES

A. ENTRANCE EXAMINATIONS

Application for employment shall be made to the Director of Civil Service on the appropriate application forms. Upon request to the Director of Civil Service or designee, accommodations will be provided to applicants in accordance with the Americans with Disability Act. The Director shall set forth the requirements and timelines for receipt of the notification.

Any person shall be permitted to take the entry-level examination so long as the applicant has not been rejected by the Director for cause in accordance with the provisions of these rules.

The Director may, because of the small number of applicants for any position, or because of any other good and sufficient reason, postpone an examination to a later date. Any examination may be cancelled by the Director should its occurrence become unnecessary because of a change in the personnel requirements of the classified service.

The Director shall provide an eligibility list after the examination that shall remain in effect for the number of months specified by these regulations or until all names have been referred to the appropriate department, whichever event occurs first. Each eligibility list for a beginning position shall be kept in effect for no more than 12 months, unless the names of all applicants on the list have been referred to the appropriate department.

1. EXAMINATIONS

All examinations shall be of such nature that they will test the relative suitability and ability of the persons examined to discharge the duties of the particular position to which they seek appointment.

The actual conduct of every examination shall be under the direction of the Director of Civil Service who shall be responsible to the Commission. The Director shall have the authority to designate an assistant to administer tests or examinations. No individual shall deceive or obstruct any person in respect to his/her right of examination under the provision of these rules and the Texas 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. Applicants shall not deceive the Commission for the purpose of improving their chances for appointment or promotion. Any person found to be cheating on an examination, or otherwise deceiving the Commission for purposes of improving his or her chances for appointment, shall be removed from further consideration and dropped from the eligibility list. Only persons with a passing raw score will be ranked on the eligibility list.

2 TIE BREAKERS

If a tie in grades occurs between the applicants, their rank will be determined by whoever completes the examination first.

3. ENTRANCE EXAMINATION ADMINISTRATION PROCEDURES

- (a) Smoking shall be prohibited at all times in the testing area.
- (b) Check In - All applicants shall check in and provide proof of identity with a valid Driver's License 15 minutes prior to the start of the examination. Failure to timely register will result in a candidate's disqualification from testing.
- (c) Military Service Credit - Those persons who desire to have military service credit of five (5) points added to a passing test score of 70% or better, must provide a DD214 showing a minimum of 180 total days of active military service at the time of application and by the specified application deadline. Any discharge other than honorable discharge is not creditable for the purpose of this section.
- (d) Failure to Appear - The applications of persons who fail to appear for the entrance examination shall be voided and shall be disposed of by the Director of Civil Service.
- (e) Cancellation of entrance examination - The Director may cancel a scheduled entrance examination for sufficient cause.
- (f) Cheating - Any person taking an entrance examination who uses or attempts to use any unfair or deceitful means to answer questions on such an examination shall be informed by the test administrator and the test administrator shall void that person's exam and remove them from the testing site. Talking will be considered cheating. The test administrator shall report the action to the Director of Civil Service or designee.
- (g) Test Monitors - The Director of Civil Service may select a reasonable number of persons employed by the City of Weslaco or an agency of the State of Texas to assist in the administration, proctoring or grading of an entrance examination.
- (h) Personal History Statements - Applicants shall be given a personal history statement to be completed and returned at a time designated by the Department Head or designee. Failure to return this form at the prescribed time shall constitute reason for removal from the eligibility list.
- (i) Upon request, accommodations will be provided to applicants in accordance with the American with Disabilities Act. Applicants who need special arrangements must submit a request in writing to the Civil Service Director or designee at a time to be determined by the Civil Service Director or designee.

B. ENTRY LEVEL ELIGIBILITY LISTS

Each person on an eligibility list shall notify the Director of Civil Service of any change in address. Notices sent to a person's last known address shall be considered sufficient notification.

Each eligibility list for a beginning position shall be kept in effect for no more than 12 months, unless the names of all applicants on the list have been referred to the appropriate department.

C. PROMOTIONAL EXAMINATION PROCEDURE

Each promotional examination is open to each fire fighter or police officer, as applicable, who has continuously held for at least two years a position at the next lower pay grade, if it exists, in the classification for which the examination is to be held. If there are not sufficient fire fighters or police officers, as applicable, in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission shall open the examination to persons in that position with less than two years experience.

If a promotional examination is authorized and scheduled by the Commission which fails to result in the establishment of an eligibility list, then there is not an adequate number of persons to take the promotional examination the second time, and the Commission shall open the examination to persons in that position with less than two years' experience.

All examinations shall be structured to test a candidate's relative capacity to discharge the duties of the particular position.

The actual conduct of every examination shall be under the direction of the Director of Civil Service, who shall be responsible to the Commission. The Director shall have the authority to designate a designee to administer tests and/or examinations.

No individual shall deceive or obstruct any person in respect of his/her right of examination under the provision of these rules and the Civil Service Statute; 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 promotional candidate shall deceive the Commission for the purpose of improving his/her chances for appointment or promotion. Any person acting in this manner will be disqualified from further consideration for the position sought, and the Department Head may take additional disciplinary action.

Employees shall complete an official "Notice of Intent to Test" form for each promotional examination, as prescribed by the Director of Civil Service, in order to take a promotional examination. Failure to submit a completed form in the manner prescribed in the Promotion Examination Notice and failure to file the form with the Director of Civil Service within the time limits prescribed will render the employee ineligible to take the examination.

Effective October 1, 2008, each person that signs up for a promotional examination must pay a fee of 50% of the examination cost, each time that person signs up for the examination. The fee will be due at the time the Notice of Intent to Test is submitted. If a person passes the examination and makes the eligibility list, that person shall be issued a refund equal to the amount of the fee paid.

The Director may, for good and sufficient reasons, postpone an examination to a later date.

Promotional Examination Administration procedures:

1. Smoking shall be prohibited at all times in the testing area.
2. Check In - Candidates shall register with the Civil Service Commissioner or his designee at the testing location and shall provide a valid driver's license as proof of identity no later than 15 minutes prior to the examination. Failure to timely check in will result in a candidate being disqualified from taking an examination.
3. Failure to Appear - The applications of persons who fail to appear for the examination shall be voided and shall be disposed of by the Director of Civil Service.
4. Cancellation of Examination- The Director may cancel a scheduled examination for sufficient cause.
5. Cheating - Any candidate taking an examination who uses or attempts to use any unfair or deceitful means to answer questions on such examination shall be informed by the test administrator and the test administrator shall void that person's exam.
6. The examiner shall report the action to the Director of Civil Service or designee. Any person acting in this manner will be disqualified from further consideration for the position sought, and the Department Head may take disciplinary action.
7. Test Monitors - The Director of Civil Service or designee may select a reasonable number of persons to assist in the administration, proctoring and grading of an examination.
8. Minimum Number To Test - In order to have a promotional examination, at least 1 person must take the test.

D. PROMOTIONAL EXAMINATION GRADES

If a tie in grades occurs between the applicants, their rank will be determined by whoever completes the examination first.

E. REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION

An eligible promotional candidate from the fire or police department is entitled to examine the person's promotional examination and answers, the examination grading, and the source material for the examination immediately following the administration of the examination and for the

period of five (5) business days that follow. This total five day period comprises the promotional examination review period.

A fire or police promotional candidate dissatisfied with the examination answers, the examination grading, or the source material may file an appeal within five business days of the administration of the promotional examination that is the subject of the appeal.

Each promotional candidate may review his/her examination and answers, the examination grading, and the source material for the examination by him or herself in the presence of a monitor designated by the Civil Service Director.

At the time a promotional candidate submits a written appeal to the Civil Service Director, a copy of the appealed question(s) along with the respective answer(s) from the answer key and the title and page number from the reference material will be given to the appellant.

Promotional examination questions appealed to the Civil Service Commission will be sustained, overruled, or eliminated by a ruling issued by the Civil Service Commission. Rulings shall be as followed:

1. Sustain the answer key (test scores will remain as reported)

A ruling which rejects the appeal presented to the commission will require the Director of Civil Service or designee to accept the answer as given on the answer key, while grading the promotional examinations of all eligible candidates.

2. Overrule the answer key (the Commission will designate another answer(s) to be accepted)

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

3. Eliminate the test question (the test question will not be included)

A ruling, which rejects the test question, related to the appeal of a promotional examination question will require the Director of Civil Service or designee to disregard the question and its answer while grading the promotional examination of all eligible candidates.

4. Order a re-test and discard prior examination and grades

A ruling which discards the examination and grades and orders a retest shall be done when, in the opinion of the Commission, such method is the best way to handle an issue with the examination.

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

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

SECTION VI
REINSTATEMENT AFTER RESIGNATION

This provision only applies to the Police Department.

An employee who voluntarily resigns and remains in good standing with the department may be allowed to be reappointed without taking another departmental entrance examination within eighteen (18) months of the date of resignation. However the candidate must pass a physical agility test and a current background check. An employee reappointed under this rule shall be reappointed to a beginning position within the department and shall not be eligible for a promotional exam until meeting the qualifications pursuant in Texas Local Government Code 143.028.

If someone is reappointed pursuant to this rule, the time said employee was resigned from employment with the City shall not be considered in calculating seniority or longevity pay. The employee's anniversary date for purposes of seniority or longevity pay shall be the date of reappointment to the department.

**SECTION VII
DISCIPLINARY APPEAL HEARINGS**

A. OPTIONS FOR DISCIPLINARY HEARINGS

1. At any time after filing the original notice of appeal but before either party has incurred third party hearing examiner expenses; an employee may withdraw the original request for the independent third party hearing examiner and submit the appeal to a hearing before the Commission. The election must be made in writing and filed with the Director's office. However, this election may not be used to manipulate the thirty (30) day hearing deadline imposed on Commission decisions by Chapter 143.

2. At any time after filing of the notice of appeal, the parties may mutually agree to withdraw the appeal from an independent third party hearing examiner and submit the appeal to a hearing before the Commission. The mutual agreement must be made in writing and filed with the Director's office.

B. DIRECTOR TO COORDINATE ALL MATTERS

1. The location and accommodations for all hearings and appeals shall be arranged by the Director of Civil Service.

2. All subsequent matters raised by either party 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's office.

C. EXPENSE AND COSTS

1. The appropriate amount as well as payment of all costs and expenses may be determined and collected by the Director of Civil Service. An employee may receive an estimate of anticipated costs upon written request to the Director.

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

D. FAILURE TO ATTEND SCHEDULED HEARING

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

E. EMPLOYEE AND DEPARTMENT REPRESENTATIVES

1. The hearing process shall recognize the right of employees as well as the Department to be represented by one or more persons throughout the proceedings of a disciplinary appeal. 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.
2. Employee and Department representatives shall use their best efforts to conclude all proceedings smoothly, expeditiously, and as fairly as possible to all concerned.
3. The function of the representatives shall be to articulate the best interests of the employee or the department represented and to make their presentations pertinent to the issue(s) being considered. Dissatisfaction with a representative shall not constitute grounds for modification of the final ruling.
4. All representatives or employees who represent themselves shall become familiar with and follow these rules and regulations at all times during the disciplinary appeal process.
5. Any problems or concerns regarding the manner in which the opposing party or their representative is handling a particular disciplinary appeal should be brought to the attention of Director of Civil Service. The difficulty will be expeditiously addressed.

G. EXCHANGE OF DOCUMENTATION AND IDENTITY OF WITNESSES

1. The Texas Rules of Civil Procedure, the Texas Rules of Criminal Procedure, and all other rules of court regarding what is commonly known as "discovery" shall **not** apply to any civil service proceedings. Mediation and arbitration rules and processes do **not** apply to any civil service hearings.
2. Parties who request photocopies of documents from the opposing party should be accommodated if such requests are reasonable. Items from departmental policies, rules and regulations manual 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.
3. Employees and their representatives may obtain copies of matters contained in the employee's own personnel and departmental files after the employee has signed the appropriate release form(s).
4. Before requesting a subpoena duces tecum for the production of documentation material, a party shall first make a request for the materials directly to the other party and allow a reasonable time for a response. If the request is refused or otherwise not produced, then a request may be made to the Commission to issue the subpoena duces tecum. Requests for subpoenas

shall be completed at least ten (10) days prior to the scheduled hearing date in order to be processed in a timely manner.

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

H. FORMAT OF APPEAL HEARINGS

The format for an appeals hearing before the Commission will be as follows:

1. Both parties may be allowed to make brief opening statements.
2. The City's (department's) case:
 - a) Direct testimony of witness
 - b) Cross-examination of witness
 - c) Redirect
 - d) Additional questions, if any, by Commission
3. Employee's response:
 - a) Direct testimony of witness
 - b) Cross-examination of witness
 - c) Redirect
 - d) Additional questions, if any, by Commission

(4) Rebuttal by City Department, if any:

- a) Direct testimony of witness
- b) Cross-examination of witness
- c) Redirect
- d) Additional questions, if any, by Commission

- (5) Short argument, summary by City
- (6) Short argument, summary by employee
- (7) Short argument by City
- (8) Consideration by Commission of facts
- (9) Decision

I. HEARING PROCEDURES

- (1) At the scheduled time and place, the hearing shall be called to order.
- (2) All parties shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process. All parties shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission at the hearing.

(3) All disciplinary appeal proceedings shall be public hearings. The Commission may close a hearing at the request of the employee or of the Department Head if the subject matter would invade the privacy of the appellant, or any other employee or would compromise any ongoing investigation. The Commission may also close the meeting for any purpose authorized in the Texas Government Code.

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

(5) After being called to order but prior to the beginning of testimony or evidence, consideration shall be made as to any pre-hearing motions, requests or jurisdictional matters as submitted by either party. The participants shall also seek to obtain as many stipulations as possible as to non-contested or non-material matters. The Commission may "carry" such pre-hearing motions until the hearing is completed and all factual evidence has been presented before making its final ruling thereto.

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

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

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

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

(10) Upon request by either party, the hearing process may utilize what is commonly known as "the Rule" concerning oral testimony, meaning that all persons who shall be expected to testify at the hearing, other than the parties and their representatives, shall not be allowed to observe or listen to any of the proceedings except when they are actually testifying as a witness. "The Rule" may be used to ensure one witness' testimony is not influenced by another's testimony. While under "the Rule," potential witnesses shall not discuss any aspect of the appeal or hearing except with the attorneys or the representative involved. Invoking "the Rule" is not mandatory and may be waived in whole or in part by agreement.

(11) The Chairperson shall exercise reasonable control over the questioning of witnesses and the presentation of evidence so as to:

- (a) Effectively ascertain the truth;
- (b) Keep such presentations relevant to the issues to be determined;
- (c) Avoid the needless consumption of time and expense; and
- (d) Protect the witnesses and employees from harassment or undue embarrassment.

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

(13) All hearings must remain business-like and focus upon resolution of factual matters. Hearings shall not be a time for accusations, threats, speeches or arguments. The Commission shall have the discretion to adjourn any meeting, which deteriorates into a "shouting match" or where fruitful dialogue ceases.

(14) 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.

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

J. RULES OF EVIDENCE

(1) Technical rules of evidence shall not apply nor control the conduct of any hearing. The Texas Rules of Court, and the Texas Rules of Evidence shall not apply nor govern any aspect of any civil service proceeding.

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

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

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

- (a) The non-admissibility or non-consideration of any particular evidence of testimony;
- (b) The relevance or non-relevance of any particular evidence or testimony;
- (c) The credibility, or lack thereof, of any particular evidence or testimony; and
- (d) The materiality or "weight" to be given to any particular evidence or testimony

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

(a) A party has deliberately withheld previously known and duly requested evidence from the other party until the hearing, and the said evidence should have been previously produced as per these rules; or

(b) The hearing has been closed.

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

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

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

**SECTION VIII
PHYSICAL AND MENTAL FITNESS**

A. Fitness for Duty – Police Department

The Weslaco Civil Service Commission has established this section of the Weslaco Civil Service Rules and Regulations to measure a Police Officer's ability to perform physical functions and/or tasks of their job.

*The following is a list of physical functions and/or task that an officer must be able to perform:

- Searching;
- Arresting and detaining suspects;
- Lifting, carrying, pushing, and pulling objects and people;
- Restraining people;
- Pursuing suspects over long and short distances;
- Controlling crowds;
- Driving;
- Climbing stairs, fences, and walls.

*The list is not limited to the above mentioned physical functions/and or task.

The following must also be considered in order to perform the required physical functions and/or task:

- Cardiovascular endurance;
- Anaerobic power;
- Upper and lower muscular strength;
- Abdominal muscular strength;
- Flexibility;
- Body composition.

In compliance with this Section, each Police officer shall successfully complete the following fitness test:

- 15 consecutive push-ups in 90 seconds;
- 15 consecutive sit-ups in 90 seconds;
- Scale a five (5) foot fence;
- Drag (may use the fireman's carry technique) a 180 lb. dummy 20 yards;
- 1.5 mile walk/run in 18 minutes.

Failure to successfully complete the physical fitness evaluation will result in the following:

The Chief of Police may invoke section 143.081 of the Texas Local Government Code upon any unsuccessful attempt.

B. Return to Work From Injury or Illness

Any firefighter or police officer who does not report for duty for thirty calendar days or more because of injury or illness must complete a functional capacity examination upon returning to work.

DEFINITIONS

"Fire Fighter" means a member of a fire department who was appointed in substantial compliance with this chapter or who is entitled to civil service status under Section 143.005 or 143.084. The term includes fire fighters who performs:

- A) Fire suppression;
- B) Fire prevention;
- C) Fire training;
- D) Fire safety educations;
- E) Fire maintenance;
- F) Fire communications;
- G) Fire medical emergency technology;
- H) Fire photography; or
- I) Fire administration.

"Police Officer" means a member of a police department or other peace officer who was appointed in substantial compliance with this chapter or who is entitled to civil service status under Section 143.005, 143.084, or 143.103.

"Commanding Officer" means the highest ranking officer on duty, usually the police lieutenant assigned to the patrol shift/division acting as "Watch Commander" or the highest ranking officer temporarily assigned to the duties of Watch Commander in the absence of the lieutenant.

"Immediate Supervisor" is the police officer or firefighter with the next highest rank on the assigned shift or the division.

"Employee" a person hired to perform the job of a police officer or fire fighter who has the protections afforded under chapter 143 of the Texas Government Code.

