



***Rules of the City of Kyle
Police Officers'
Civil Service Commission***

Adopted October 6, 2008
Amended March 6, 2017

TABLE OF CONTENTS

SUBCHAPTER A. - GENERAL PROVISIONS

Section 143.001 - Purpose..... 1
Section 143.002 - Municipalities Covered By Chapter..... 2
Section 143.003 - Definitions 2
Section 143.004 - Election to Adopt or Repeal Chapter 3
Section 143.005 - Status of Employees If Chapter Adopted..... 3
Section 143.006 - Implementation: Commission..... 4
Section 143.007 - Removal of Commission Member 4
Section 143.008 -Adoption and Publication of Rules 4
Section 143.009 - Commission Investigations 5
Section 143.010 - Commission Appeal Procedure..... 5
Section 143.011- Decisions and Records 6
Section 143.012 - Director 7
Section 143.013 - Appointment and Removal of Department Head..... 8
Section 143.014 - Appointment & Removal of Person Classified Immediately Below Dept. Head 8
Section 143.015 - Appeal of Commission Decision to District Court 8
Section 143.016 -Penalty for Violation of Chapter..... 8
Section 143.017 - Commission Procedures..... 8

SUBCHAPTER B. - CLASSIFICATION AND APPOINTMENT

Section 143.021 - Classification: Examination Requirement 10
Section 143.022 - Physical Requirements and Examination..... 11
Section 143.023 - Eligibility for Beginning Position 11
Section 143.024 - Entrance Examination Notice 16
Section 143.025 - Entrance Examinations 17
Section 143.0251-Reappointment of Police Officers..... 19
Section 143.026 -Procedures for Filling Beginning Positions 20
Section 143.027 -Probationary Period 20
Section 143.028 - Eligibility for Promotion..... 21
Section 143.029 - Promotional Examination Notice..... 21
Section 143.031-Eligibility for Police Department Promotional Examination..... 21
Section 143.032 -Promotional Examination Procedure 21
Section 143.033 -Promotional Examination Grades 24
Section 143.034 - Review and Appeal of Promotional Examination..... 25
Section 143.035 - Alternate Promotional System in Police Department 27
Section 143.036 -Procedure for Making Promotional Appointments 27

Section 143.037 - Record of Certification and Appointment.....	27
Section 143.038 - Temporary Duties in Higher Classification	27
SUBCHAPTER C. - COMPENSATION	
Section 143.041 - Salary	28
Section 143.042 - Assignment Pay	28
Section 143.043 - Field Training Officer Assignment Pay	28
Section 143.044 - Certification and Educational Incentive Pay.....	28
Section 143.045 - Accumulation and Payment of Sick Leave	28
Section 143.046 - Vacations	28
Section 143.047 - Shift Differential Pay	28
SUBCHAPTER D. - DISCIPLINARY ACTIONS	
Section 143.051-Cause for Removal or Suspension	28
Section 143.052 - Disciplinary Suspensions.....	29
Section 143.053 - Appeal of Disciplinary Suspension.....	30
Section 143.054 - Demotions	38
Section 143.055 - Uncompensated Duty of Police Officers	38
Section 143.056 -Procedures after Felony Indictment or Misdemeanor Compliant.....	38
Section 143.057 - Hearing Examiners.....	38
SUBCHAPTER E. - LEAVES	
Section 143.071 - Leaves of Absence; Restriction Prohibited.....	40
Section 143.072 - Military Leave of Absence.....	40
Section 143.073 - Line of Duty Illness or Injury Leave of Absence.....	40
Section 143.074 - Reappointment after Recovery from Disability	40
Section 143.075 - Military Leave Time Accounts	40
SUBCHAPTER F. - MISCELLANEOUS PROVISIONS	
Section 143.081-Determination of Physical or Mental Fitness.....	40
Section 143.082 - Efficiency Reports	41
Section 143.083 - Emergency Appointment of Temporary Police Officers	41
Section 143.084 - Civil Service Status and Pension Benefits for Certain Police Officers.....	41
Section 143.085 - Force Reduction and Reinstatement List	41
Section 143.086 - Political Activities.....	41
Section 143.087 - Strike Prohibition	41
Section 143.088 - Unlawful Resignation or Retirement	41
Section 143.089 -Permanent Personnel File	41
Section 143.090 - Voluntary Resignation	42
Section 143.091- Severability	42

RULES OF THE CITY OF KYLE
POLICE OFFICERS' CIVIL SERVICE COMMISSION

The purpose of Chapter 143 of the Texas Local Government Code ("Chapter 143") is to secure an efficient Police Department composed of capable personnel, free from political influence.

These Rules are promulgated in compliance with Chapter 143, 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 Police Department and in accordance with the purpose of Chapter 143.

SUBCHAPTER A. GENERAL PROVISIONS

Section 143.001 PURPOSE

There is hereby established the City of Kyle Police Officers' Civil Service with the adoption of the Rules of the City of Kyle Police Officers' Civil Service Commission, in compliance with Chapter 143, as amended, of the Texas Local Government Code (the "Rules"). 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, City of Kyle Personnel Rules and Policies or the residual discretionary authority vested in a department head. 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 passovers; 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

- (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 Kyle.
- (4) **CHAPTER 143** - The portion of the Texas Local Government Code containing the civil service regulations.
- (5) **CIVIL SERVICE RULE** - Shall be defined to include a rule, regulation, general order, standard operating procedure or special order applicable to civil service employees, whether from Chapter 143, the City's Personnel Policy, these Rules, or the appropriate Department's rules and regulations, as they may exist from time to time.
- (6) **CLASSIFICATION** - A position or group of positions that involve similar duties and responsibilities and require similar qualifications.
- (7) **COMMISSION** -The Kyle Police Officers' Civil Service Commission.
- (8) **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.

- (9) **DAY** - Calendar day, unless otherwise specified.
- (10) **DEPARTMENT** - The Kyle Police Department.
- (11) **DEPARTMENT HEAD** - The Police Chief of the City of Kyle, or that person's equivalent regardless of name or title used.
- (12) **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.
- (13) **DIRECTOR** - The Director of Civil Service as designated by the City of Kyle Civil Service Commission to act in the capacity of Secretary to the Commission and Director of Civil Service, and includes his/her designee.
- (14) **ELIGIBILITY LIST** - A list of applicants 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. Applicant shall successfully pass additional steps in the selection process conducted by the respective Department prior to any offer of employment being extended.
- (15) **MILITARY SERVICE CREDIT** - The points added to the passing score of an entrance examination taken by a qualified veteran.
- (16) **RAW SCORE** - The numerical grade based upon the questions correctly answered on an examination.
- (17) **SENIORITY POINTS** - For the purpose of breaking a tie on a promotional examination, years of service as a full-time peace officer within the City of Kyle 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.
- (18) **TCOLE** -Texas Commission on Law Enforcement, or successor agency.
- (19) **VETERAN** - A person who has served a minimum of 180 days of active duty in the armed forces of the United States of America and who has received a DD-214 that reflects an honorable discharge. A person who receives a discharge other than honorable is not a veteran for the purpose of this section.

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

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. Each January, the members shall elect one member to serve as Chairperson and one to serve as Vice-Chairperson.

When a vacancy on the Commission occurs, the replacement of Chairperson and Vice-Chairperson shall be handled as follows: 1) in the event of a vacancy in the Chairperson position, the Vice-Chairperson shall assume the role of Chairperson and an interim election shall be held to elect a new Vice-Chairperson; and 2) in the event of vacancy in the Vice-Chairperson position, an interim election shall be held to fill that office.

After expiration of the terms of the initial Commission appointments set forth in Section 143.006(d) of Chapter 143, each member of the Commission holds office for a staggered three-year term and thereafter until a successor 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

- (1) The rules 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.
- (2) 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, publication, 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.

- (3) Where there is a conflict between these Rules and other rules pertaining to civil service employees of the City, these Rules shall take precedence. If any section, subsection, paragraph, sentence, clause, phrase or word contained in these Rules shall be held by the courts to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portion of these Rules.
- (4) 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**-Except as otherwise provided in the Rules or Chapter 143, the employee's notice of appeal shall be filed in writing with the Director within 10 calendar days after receiving the Notice of disciplinary action from the Department Head. The Director shall not consider or take any action on any appeal until 10 calendar days has expired. The employee may amend, modify, or correct the appeal at any time prior to the expiration of the 10 calendar-day appeal period. 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 (i) fails to file a notice of appeal of a disciplinary action with the Director within 10 calendar days allowed in Chapter 143; (ii) fails to properly state the basis of appeal; or (iii) 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 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** - The following matters are not appealable to the Commission:

- (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:

(a) **FOR HEARINGS BEFORE THE COMMISSION:**

(1) **DOCUMENT REQUESTS** - The representative of the party requesting the document shall file with the Director a subpoena duces tecum, at least ten calendar (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 at least seven (7) calendar 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 held in compliance with Section 551.125, Tex. Gov't. Code, at the discretion of the Chairman. The Director shall then notify the parties verbally and in writing of the Commission's decision. Because of the short time frame permitted in this process, all written materials pertaining to the documents requested shall be served by email, facsimile or personal delivery by the parties to each other and to the Director, in addition to any other method of service used.

(2) **REQUEST TO COMPEL THE ATTENDANCE OF WITNESS** - All requests for subpoenas to compel the attendance of a witness shall be prepared by the party requesting the subpoenas, and shall be submitted to the Director at least ten (10) days prior to the scheduled hearing date in order to be processed in a timely manner. The Director shall issue subpoena(s) on behalf of the Commission. The party requesting subpoenas compelling the attendance of witnesses shall be responsible for serving all subpoenas issued at the party's request. The Director is not responsible for preparing or serving any subpoenas.

(b) **FOR HEARINGS BEFORE A HEARING EXAMINER**

All requests for subpoenas duces tecum and to compel the attendance of witnesses shall be prepared by the party requesting the subpoenas, and shall be submitted to the American Arbitration Association (AAA) at least ten (10) days prior the scheduled hearing date in order to be processed in a timely manner. The AAA shall obtain the signature of the Hearing Examiner on all requested subpoenas, and shall return them to the party requesting same. A party having objection(s) to a subpoena(s) sought from a Hearing Examiner shall follow the procedures contained in Section 143.010 (e). The Hearing Examiner shall be contacted by AAA to discuss and make rulings on any objections to subpoenas that may be made by the party opposing issuance of the subpoena. The Hearing Examiner may quash or otherwise modify the documents to be produced and/or the witnesses to be subpoenaed. (See, 143.057, infra). All subpoenas shall be served by the party requesting them, and the Civil Service Director shall have no role in coordinating, obtaining or serving same.

- (5) In appeals to the Commission, the "rules of evidence" shall not be observed.
- (6) In all hearings, appeals and reviews, the Commission is performing an adjudicatory function.

Section 143.011 **DECISIONS AND RECORDS**

See Section 143.011, Chapter 143

- (1) All records of the Commission shall be governed by the Texas Public Information Act.
- (2) The Commission shall have the power to correct, amend or revoke any eligibility list, paper or record in which a clerical or procedural error has been made.

Section 143.012 **DIRECTOR**

See Section 143.012, Chapter 143

The Director shall administer these Rules and 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 is not expected to prepare or coordinate the service of subpoenas or to personally serve subpoenas for any type of hearing. The Director's duties include, but are not limited to:

- (1) Supervising all examinations, including the preparation, scheduling, scoring and security of test materials and preparation of eligibility list;
- (2) Coordinating the recruitment and examination of applicants, including certifying names from the eligibility list to the Department Head;

- (3) Assisting in the classification of Police Department positions;
- (4) Assisting the Chairperson in setting the agenda for the 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, attending and cancelling meetings of the Commission;
- (8) Acting as records custodian as provided by Chapter 143;
- (9) Maintaining the personnel files of all employees in the civil service as required by Section 143.089 of Chapter 143 and these Rules.
- (10) Acting on behalf of the Commission for actions and issues not specifically addressed in Chapter 143 or these Rules; this does not require the Director to prepare subpoenas, coordinate subpoenas or serve subpoenas;
- (11) Establishing for the Commission's consideration and monitoring procedures for the discipline and termination of civil service employees;
- (12) 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;
- (13) Recommending to the Commission changes in these Rules;
- (14) 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;
- (15) Keeping minutes of all Commission meetings and obtaining signatures of Commission members after approval of minutes;
- (16) Maintaining the Record of Certification and Appointment as required by Section 143.037 of Chapter 143 and these Rules; and
- (17) Maintaining a seniority list for the Police Departments by date of hire as required by Section 143.008 (d) of Chapter 143.

Section 143.013 **APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD**
See Section 143.013, Chapter 143

Any person appointed Chief or Head of the Police Department who had not previously held any classified civil service position within the Kyle 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) **MEETINGS** - Meetings of the Civil Service Commission will be scheduled by the Civil Service Director 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), provided the Commission may convene into executive session for deliberations, and otherwise, as authorized by Chapter 143.

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 also give the same notice to the Department Head and shall see that Notices of the meetings are posted in the Police Department Building.

Each regular and special meeting of the Commission shall be conducted in general compliance with Robert's Rules of Order. It is, however, specifically provided that the failure of the Commission to follow Robert's Rules of Order shall not create any legal right or cause of action; violate any right of any third party, person or citizen that is not then a member of the Commission; or create or give rise to any claim or cause of action (including any claim or cause of action based on due process) for or on behalf of any third party, person, citizen or member. This policy providing for the Commission to generally follow Robert's Rules of Order may be enforced exclusively by the Chairperson, or by majority vote after a member of the Commission raises a timely point of order at the meeting. Upon a point of order being raised by any member of the Commission, and upheld by a majority vote of the Commission members present and voting, the Chairperson shall, as the case may be, endeavor to conduct the remainder of such meeting in substantial compliance with Robert's Rules of Order. A majority vote of such members of the Commission present and voting shall be finally determinative of any such procedural rule or matter.

The Commission may, by majority vote, make rules of procedure for the administration of Chapter 143. The Chairperson may alter the order of business at his/her discretion.

- (2) **COMMITTEE OF THE WHOLE**-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.
- (3) **AGENDA**-The Director shall assist the Chairperson in preparing an agenda for a Commission meeting. If a Commission member wants an item placed on an agenda, he/she shall submit a written request to the Director for consideration by the Chairperson.
- (4) **QUORUM**-Two members of the Commission constitute a quorum sufficient to conduct business meetings and hearings.
- (5) **CONDUCT OF REGULAR BUSINESS MEETINGS**-The Commission shall set reasonable rules and procedures for proper and efficient conduct of business. The Chairperson shall conduct meetings in an orderly and timely fashion.

The normal 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
- (e) New Business - Commission members may suggest items for future agendas but shall not discuss such items.
- (f) Adjourn

Each individual subject to be considered under each general category shall be listed. The Chairperson may alter the order of business at his/her discretion.

- (6) **MINUTES**-The Director shall prepare the minutes of each meeting. In addition to complying with the Open Meetings Act, the minutes of the Commission shall include the following:
 - (a) Adoption of minutes of previous meeting;
 - (b) Appeals and the action taken on the appeals;
 - (c) Rules and procedures adopted by the Commission; and
 - (d) Any other significant actions taken or reports received by the Commission.

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. 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. 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 the Director and the Chairperson.

- (7) **ORDERS**-The Director shall prepare Orders, as appropriate, and obtain signatures of members on such Orders.

(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 Department are classified on a basis of similarity in duties and responsibilities as follows:

- 1) Police Officer
- 2) Sergeant
- 3) Captain
- 4) Lieutenant

Persons employed by the City as a Police Recruit must attend and successfully complete an authorized Basic Peace Officer Training Course and be certified by TCOLE to be classified as Police Officer.

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 a physical and psychological examination as determined by the Department Head to be reasonably necessary and proper to determine the physical and mental ability of the applicant to perform the essential functions required for the position sought. An applicant who is not capable of performing the essential job functions with or without reasonable accommodation shall not be appointed.
- (2) **ENTRY LEVEL APPEALS**- If an applicant is not appointed due to failure to successfully pass the physical or psychological examination, the applicant may appeal to 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.
- (3) **PROMOTIONAL REQUIREMENTS**- Any candidate for promotion shall successfully complete drug screening test.

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 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 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 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 POLICE OFFICERS** -An applicant for police officer shall meet all of 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 fitness 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) Successfully complete a thorough background investigation, including submitting fingerprints for a criminal record check and a polygraph examination;
- (d) Be a citizen of the United States by birth or naturalization;
- (e) Successfully complete (1) a post-job offer psychological examination conducted by a licensed psychologist or psychiatrist, if required by TCOLE Regulations, and (2) 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 (3) a drug test.
- (f) Be at least twenty-one years of age and not more than forty-four (44) years of age at the time of the testing date.
- (g) Be a graduate of an accredited high school; or have an equivalent certificate and have completed 12 or more hours of college credit (C average or better) from an accredited college or university (Applicants shall be required to furnish official transcripts or other competent evidence of completion of the aforementioned academic or licensing requirements from issuing agency).
- (h) Have a valid Texas or out of state driver's license that is not in jeopardy of suspension or revocation at the date of hire;
- (i) Be able to read, write, and speak the English language fluently;
- (j) Be of good moral character; and
- (k) Shall not be prohibited from purchasing or carrying a firearm or possessing ammunition.

Notwithstanding Section 143.023(2)(g) above, the Department Head may submit a written request to the Commission to enact a temporary rule requiring applicants to hold a valid TCOLE peace officer license in order to be considered for an entry-level position. The request must contain a statement of the reason for the request. The Commission will meet to consider the request, and if the Commission finds sufficient cause, the Commission shall adopt a temporary rule superseding subsection 143.023(2)(g) above, providing that if an applicant is not currently licensed by TCOLE, it is a cause for rejection of the applicant's application. The temporary rule will be adopted and in effect for a specified period of time, not to exceed ninety (90) days.

- (3) **CAUSE FOR REJECTION FOR POLICE OFFICERS** - 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 is submitted by an applicant.
- (a) Applicant is found to lack any qualifications set forth in these Rules;
 - (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;
 - (c) Applicant fails to meet Minimum Standards for Initial Licensure as set forth by Texas Commission on Law Enforcement for peace officer candidates;
 - (d) Applicant fails to demonstrate his/her ability to read, write, and fluently speak the English language. The applicant shall be disqualified until the deficiency is corrected.
 - (e) Applicant is unable to perform the essential functions of the position to which he/she seeks appointment, with or without reasonable accommodation.
 - (f) Applicant has been convicted of conduct that constitutes a Class A or Class B Misdemeanor under the laws of the State of Texas 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 rejection. Applicant has been convicted of conduct that constitutes a Class C misdemeanor within the past five (5) years may result in a 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 recency. Applicant must not be on court-ordered community supervision or probation. 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).

Applicant has been arrested by the Kyle Police Department within five (5) years of date of examination.

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 may result in permanent disqualification.

(g) Commission of any of the following:

- (1) Criminal negligent homicide
- (2) Public lewdness
- (3) Indecent exposure
- (4) Perjury
- (5) Tampering with or fabricating physical evidence
- (6) Impersonating a public servant
- (7) Official oppression
- (8) Theft by public servant
- (9) Prostitution or promotion of prostitution
- (10) Gambling
- (11) Family violence

An applicant shall not be considered for employment while charges are pending for any criminal offense or while he/she is currently on probation 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. 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, 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 a case-by-case basis with consideration given to circumstances and recency.

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 a case-by-case basis with consideration given to circumstances and recency.

An applicant shall be permanently disqualified if it has been determined by the City that, or he/she has admitted to, conduct which constitutes illegal use of felony grade substances as defined in the Texas Penal Code.

- (l) Applicant does not have a valid driver's license.
- (m) 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.
- (n) 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.
- (o) Applicant has exercised poor judgment skills within the past five (5) 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. Rejection for this cause shall be temporary until the applicant can demonstrate that his/her judgment skills have developed.
- (p) Compelling negative evidence regarding the applicant's dependability, situational reasoning ability, interpersonal skills, integrity oral communication skills.
- (q) Evidence that the applicant has inappropriate attitudes towards minorities or

supervision.

- (r) Evidence that the applicant has difficulty working with co-workers in a team setting.
- (s) 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.
- (t) Applicant has failed to meet all legal requirements necessary for future licensing and certification as required by the Texas Commission on Law Enforcement. Rejection for this cause shall be temporary until applicant can meet those standards.
- (u) Applicant has been discharged from any military service under less than honorable conditions, including specifically:
 - (1) Under other than honorable conditions;
 - (2) Bad conduct;
 - (3) Dishonorable;
 - (4) General; or
 - (5) Any other characterization of service indicating bad character.

All applicants with military service must be eligible for re-entry into the military. If a waiver is required to re-enter the military, Applicant must obtain waiver before City will consider Applicant for employment.

- (v) Applicant fails to return a completed Personal History Statement at a time designated by the Department Head.
- (w) Applicant intentionally provides false information related to the selection process.
- (x) Applicant fails any part of background investigation.

To the extent that the above causes for rejection exceed the requirements of Chapter 143 and other applicable state laws, the Police Chief may recommend, and the Commission may authorize, a variance of the above standards not prescribed by State law on a case- by- case basis.

Any applicant rejected during the testing process must wait at least one year before re-applying for employment, unless a longer waiting period is indicated by the reason for the rejection, such as an unacceptable driving record. The one year waiting period does not apply to rejection due to failure to pass the examination.

NOTE: 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 established under the law of that jurisdiction, will be used.

Section 143.024 ENTRANCE EXAMINATION NOTICE

See Section 143.024, Chapter 143

An applicant shall complete a City of Kyle application for Employment and other forms, as prepared by the Director, and submit the form(s) to the Director, in order to take an entrance examination. The Director shall notify any applicant who is obviously disqualified for appointment, *e.g.*, exceeding maximum age limit. 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 stated therein.

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 a Test Monitor to assist in the administering, proctoring and grading of an entrance examination. An examination shall be conducted on an "as needed" basis.

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) Smoking 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. No applicant shall be admitted once test instructions start. No applicant shall be readmitted to the testing area after withdrawing or leaving the examination room, without consent of the Test Administrator.
- (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, shall provide a copy of the DD-214 showing a minimum of two (2) years of active military service

with an Honorable discharge from the United States Armed Forces. Any discharge other than honorable discharge is not creditable for the purpose of this section. In order to receive five (5) points to the passing score, the applicant shall provide a copy of the DD-214 (Member 4) at the time of application and by the specified application deadline.

- (d) Failure to Appear - The application of an applicant who fails to appear for the entrance examination shall be voided and shall be disposed of by the Director.
- (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, who shall report it to the Commission.

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, five business days prior to the testing date, to the Director.

(3) **TIE-BREAKERS-**Whenever two (2) or more competitors 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 Test Score-**If a tie exists, the persons shall be ranked in the order according to which person had the highest examination raw score prior to the addition of Veteran's points.
- (b) **Years of Experience-** If a tie still exists, the persons 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 peace officer.
- (c) **Higher Certification-** If a tie still exists, the persons shall be ranked in the order according to which person has the higher certification level as a peace officer through TCOLE.
- (d) **College Degree-** If a tie still exists, the persons shall be ranked in the order according to which person possesses the higher college degree in the following order: (1) Doctorate's (2) Master's (3) Bachelor's (4) Associate's degree from an accredited institution.
- (e) **Number of college accredited hours in transcript-** If a tie still exists, the persons

shall be ranked in the order to which person has the higher number of college credit hours from an accredited institution.

(f) **Earliest Application Time** - If a tie still exists, the persons shall be ranked in the order according to which person has the earliest completed application packet (i.e. online completed application including all required supporting documentation submitted prior to the posted deadline).

(4) **ELIGIBILITY LIST**-An Eligibility List shall be in effect for at least six (6) months but no more than one (1) year, unless exhausted before six months or one year.

Each person on an Eligibility List shall notify the Director of any change in address. A notice sent to a person's last known address shall be considered sufficient notification.

An applicant may withdraw from consideration for employment by filing a written request with the Director, who shall acknowledge such request in writing.

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 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 Kyle Police Department may be reappointed as a Police Officer with the Department without taking another entrance examination or being placed on an Eligibility List. A person returning to the Department following voluntary resignation will be reappointed to the rank of Police Officer. 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 twelve (12) months 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 alcohol and drug 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 Texas Commission on Law Enforcement.
- (5) A candidate for reappointment may be appointed regardless of the availability of an eligibility list. A candidate for reappointment has priority over candidates on an eligibility list.
- (6) In addition to the reasons for rejection listed in Section 143.023 of Chapter 143 and these Rules, a candidate for reappointment may be rejected for reasons related to previous work performance as a Kyle 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 of accrual.
- (10) Age limitations, as provided under Section 143.023(c) of Chapter 143, do not apply to reappointments.

Section 143.026 PROCEDURE FOR FILLING BEGINNING POSITIONS

See Section 143.026, Chapter 143

(1) CANDIDATE'S ACCEPTANCE

A candidate's offer will be withdrawn if he does not notify the Chief, within seven (7) calendar days, of acceptance of the offer.

(2) DECLINING APPOINTMENT

An applicant may decline an appointment in writing to the Chief on account of a temporary inability, physical or otherwise, to accept it.

If the Chief accepts the temporary declination, the candidate remains on the eligibility list and may be considered for future vacancies.

Section 143.027 PROBATIONARY PERIOD

See Section 143.027, Chapter 143

- (1) A person who is appointed to a beginning position must serve a probationary period of one year beginning on that person's date of employment; provided that a person who is employed by the City as a Police Recruit, who is therefore required to attend and

successfully complete a basic training academy necessary for initial certification by TCOLE and become TCOLE certified, shall serve a probationary period of eighteen months beginning on that person's date of employment.

- (2) During the probationary period, probationary employees shall be subject to discharge without cause by the Chief Executive, which discharge shall be final and unappealable to the Commission. Probationary employees shall not be entitled to a hearing before the Commission, nor to any other hearing or appeal afforded to non-probationary civil service employees. During the probationary period, employees shall not be afforded any rights under these Rules.

Section 143.028 **ELIGIBILITY FOR PROMOTION**

See Section 143.028, Chapter 143

Section 143.029 **PROMOTIONAL EXAMINATION NOTICE**

See Section 143.029, Chapter 143

- (1) **CONTENTS OF NOTICE** - The notice of promotional examination shall contain the following:
 - (a) Position to be filled;
 - (b) Date, time and place of examination;
 - (c) Qualifications required to take the examination; and
 - (d) Dates during which registration for test will be conducted and books provided.

(Section 143.030 reserved for expansion)

Section 143.031 **ELIGIBILITY FOR POLICE DEPARTMENT PROMOTIONAL EXAMINATION**

See Section 143.031, Chapter 143

The length of service for determining the eligibility for taking a promotional examination shall include the probationary period in the Kyle Police Department.

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 person 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 to assist in the administering,

proctoring and grading of an entrance examination.

The Director or Commission 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. Any examination may be canceled by the Commission should its holding become unnecessary because of a change in the personnel requirements in the classified service.

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 143.031(c) of Chapter 143 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. Note: Competitive shall be defined as at least one more applicant than the number of openings for which the test is being given. If necessary, the Director shall make a recommendation to the Commission to open the examination to additional employees, as outlined in Section 143.031(c) of Chapter 143.

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 person 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 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. Each qualified examinee shall be provided an entrance examination slip by the Director.
- (3) **PROMOTIONAL EXAMINATION ADMINISTRATION PROCEDURES**
 - (a) Smoking 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 valid Driver's License, along with an entrance examination slip. No examinee shall be admitted after the posted time or without presenting proper identification and entrance slip.
 - (c) At the beginning of the promotional examination, roll shall be taken from the Notice of Intent forms.

- (d) At the posted examination time, all examinees shall be provided a copy of the test and instructed to read the instructions with the test administrator.
- (e) Instructions will be given as to time and location where examination materials and answer sheets may be reviewed following the examination.
- (f) All examinations shall be given in the presence of all other persons taking the examination, except as provided in Section 143.032(4) of these Rules.
- (g) 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 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.
- (h) 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 five business days prior to the test date.

For any problems that arise during the promotional examination, the Director is authorized to use his/her judgment to determine a proper course of action. The Director 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.

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

- (a) Promotional candidates, who are eligible to take a promotional examination, and who are serving on active military duty, outside the State of Texas or more than 50 miles from Kyle City Hall, are eligible to take a separate promotional examination. An examination, that is or is not identical to the examination administered to other eligible candidates, may be administered outside the presence of other candidates.
- (b) The Director is authorized to coordinate all testing under this subsection and may exercise discretion necessary to ensure the secrecy of the examination and to assure proper administrative procedures are followed.
- (c) Before the 90th day before the date a promotional examination is held, a notice listing the sources from which the examination questions will be taken will be sent to each military promotional candidate. The notice will be sent to the person's last known address, including his last known e-mail address.

- (d) It shall be the military promotional candidate's responsibility to secure the necessary source material.
- (e) Before the 30th day before the date a promotional examination is held, a notice of the examination will be sent to each military promotional candidate at his/her last known address, including his last known e-mail address.
- (f) Promotional candidates must notify the Director at least 25 days in advance of the examination of their desire to have the examination administered off-site.
- (g) It shall be the military promotional candidate's responsibility to work with the Director to schedule the administration of the examination.
- (h) 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.
- (i) 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.
- (j) Candidates serving on military duty, who take the promotional examination outside of Kyle, shall be eligible to examine the candidate's examination and answers, the examination grading, and the source material for the examination and to file an appeal of the examination as provided in Section 143.034 of Chapter 143 and these Rules. 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.
- (l) All employees covered by Chapter 143, who are called to active military duty, must notify the Director of their mailing address and/or their e-mail addresses. The Director shall use his or her best efforts to inform the employees serving active military duty of upcoming promotional examinations.

Section 143.033 PROMOTIONAL EXAMINATION GRADES

See Section 143.033, Chapter 143

- (1) **GRADING OF EXAMINATION-** The requirement for "grading at the examination location" is met if the grading location is in the same building, if examinees who have finished are permitted to accompany the person who takes examination answer sheets to the grading location, and if examinees are allowed to observe as the sheets are graded.
- (2) **SENIORITY POINTS-** Up to ten (10) seniority points shall be added to the score of an examinee for a Kyle Police Department employee. 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.
- (3) **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 service in the position immediately below the position for which the examination was given.
 - (c) **Service in the Kyle Police Department** - If a tie still exists, the candidates shall be ranked in the order according to which candidate has the most service with the Department in a certified position, whether interrupted or uninterrupted.
- (4) **VERIFYING EXAMINATION SCORES** - After the grading of all tests and prior to the posting of the eligibility list, the Director shall verify the calculation of each examinee' s grade. If the Director discovers a clerical error prior to the posting of the eligibility list, the Director shall correct the clerical error and notify all examinees of the error.

Section 143.034 **REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION**
See Section 143.034, Chapter 143

- (1) Beginning on the first business day following the posting of the raw test scores, a promotional candidate may review the examination booklet, his/her answer sheet, and the source material for the examination in the presence of a monitor(s) designated by the Director. At such time that a promotional candidate submits a written appeal to the Director, a copy of the appealed question(s) and the title and page number from the reference materials shall be given to the appealing candidate. In the event that the examination is prepared in-house, the candidate may also review the answer key beginning on the first day following the posting of the raw test scores, and, if a written appeal is submitted to the Director, shall receive a copy of the respective answers from the answer key to the appealed questions from the answer key.
- (2) The period of review of test materials begins the first business day after promotional examination raw scores are posted and is limited to five business days during which an appeal may be filed.
- (3) In the event a candidate for promotion is serving in the military and takes the examination off-site, the Director may prescribe the method for the submission of appeals. In such circumstances, e-mail submission may be used, if determined by the Director to be appropriate.
- (4) During the Commission's appeal hearing, the following rules will apply:

- (a) The appealed questions will be considered in numerical order.
 - (b) If there are multiple appellants on a question, the Chair will call them forward for comments in alphabetical order. The Chair will first ask each appellant if he or she still wishes to appeal. The appellant will then be allowed to make a brief presentation of the reasons for his or her appeal. An appellant may designate a representative to present his or her comments.
 - (c) After all appellants on a question have been given the opportunity to address a question, the Chair will allow other persons who took the examination an opportunity to speak regarding the questions.
 - (d) The Chair may set and enforce a limit on the time for each person to speak on each question. The Commission may vote to alter the time limit set by the Chair.
 - (e) After comments by or on behalf of persons who took the examination, the Director and the head of the department for which the examination was conducted may submit comments to the Commission.
 - (f) The Commission may ask questions of an appellant or anyone else who addresses the Commission.
- (5) After receiving comments on a question, the Commission will discuss and make a determination of the question. A promotional examination question appealed to the Commission shall be sustained, overruled, or eliminated by a ruling issued by the Commission. Each ruling shall be made by a majority vote of the Commission, as follows:
- (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, while grading the promotional examinations of all eligible candidates.
 - (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 a different answer or 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.

Formula for calculating scores after appeals:

The formula for calculating the promotional test scores shall be as follows: $(100)/(\text{total number of test questions used}) = \text{point value of each question}$ $(\# \text{ of total test questions}) - (\# \text{ of wrong questions}) = \# \text{ of correct questions}$ $(\# \text{ of correct questions}) \times (\text{value of each question}) = \text{score}$

- (7) After all questions have been considered, the Director of Civil Service will re-score or cause the commercial testing company, if one was used, to rescore all answer sheets, and the Director will establish an amended eligibility list. The amended eligibility list shall have the same effective date as the original list. Seniority points will be added after the re-scoring. The Director will post the new eligibility list within 24 hours of the Commission meeting.

Section 143.035 **ALTERNATE PROMOTIONAL SYSTEM IN POLICE DEPT.**
See Section 143.035, Chapter 143

Section 143.036 **PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS**
See Section 143.036, Chapter 143

A vacancy occurs in the Police Departments on the date the position is vacated by resignation, retirement, death, promotion, conviction of a felony, or issuance of an indefinite suspension.

If the Department Head has passed over an individual on an eligibility list three times, the Department Head files the reasons for the refusals in writing with the Commission, the Commission does not set aside the refusals, 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. Service in the military does not create a "vacancy" in a higher classification.

(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.

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.

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 Kyle:

- (1) Indictment, deferred adjudication 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 Kyle;

- (3) Acts of incompetency;
- (4) Neglect of duty;
- (5) Discourtesy by said employee to the public or to fellow employees;
- (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;
- (9) Neglect or refusal 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;
- (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) Violation of any of the rules and regulations of the Kyle Police Department; or of special orders as applicable; or of these Rules; or of any of the City Personnel Policies; or of any other City Ordinance or Policy applicable to Police Department employees.

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) Kyle Police Department Policies and written directives;
 - (d) The City Personnel Policies; or
 - (e) Any other Charter provisions, City Ordinance or Policy applicable to Kyle Police Department employees.

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, 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 Commission.

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.

Section 143.053 APPEAL OF DISCIPLINARY SUSPENSION

See Section 143.053, Chapter 143

(1) **SCOPE OF MATTERS SUBJECT TO APPEAL**-The following disciplinary matters are subject to appeal only to the Kyle Civil Service Commission and may not be appealed through the City's grievance procedure:

- (a) Indefinite suspension;
- (b) Temporary suspension;
- (c) Demotion; 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 of Chapter 143 and these Rules. 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 of Chapter 143 and these Rules.

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 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 may voluntarily enter a written agreement with the Police Chief that expressly evidences his/her intent finally 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 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 CERTAIN MATTERS**-The location and accommodations for a hearing or appeal shall be arranged by the Director.

All subsequent matters raised by the appealing employee or the Department ("the parties") regarding attendance, scheduling, receiving requests for subpoenas prepared by either party, requests for continuance, etc., shall be coordinated through the Director. The Director shall not prepare subpoenas, coordinate the service of subpoenas or be in any other way responsible for the attendance of witnesses of either party. 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 provide coordination services between the parties and the Hearing Examiner in conjunction with the Director. (*See*, 143.057, *infra*).

- (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 court reporter 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.

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 of each party shall be allowed to

speaking or otherwise presenting evidence on behalf of either party throughout the questioning of a particular witness. An employee or Department representative shall use his/her best efforts to conclude all proceedings smoothly, expeditiously, and as fairly as possible to all concerned.

The function of the representative shall be to prepare subpoenas and submit to the Commission or Hearing Examiner for signature, and arrange for service of such subpoenas, and 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 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.

- (6) **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, rules and regulations manuals may be photocopied. Items such as time and attendance records, duty status forms and other such documents may also be provided so long as they are relevant to the employee and the disciplinary action under appeal.

An employee and his/her representative may obtain copies of documents contained in the employee's official civil service file, maintained under Section 143.089(a) of Chapter 143, after the employee has signed the appropriate release form(s). An employee and his/her representative may obtain copies of documents contained in the employee's departmental file maintained under Section 143.089(g) of Chapter 143 only after the appropriate Protective Order has been signed by the Chairman of the Commission or the Hearing Examiner. The Protective Order must provide for return of the 143.089(g) documents no later than 10 days after an appeal is finalized.

Neither party is required to exchange witness and/or exhibit lists prior to the commencement of an appeal hearing; however, the parties may agree to do so.

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

- (a) City's opening statement
- (b) Employee's opening statement

- (c) 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
- (d) Employee's response:
 - (i) Direct testimony of witness
 - (ii) Cross-examination of witness
 - (iii) Redirect
 - (iv) Additional questions, if any, by Commission
- (e) 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
- (f) City's closing argument
- (g) Employee's closing argument
- (h) City's rebuttal
- (i) Deliberation by the Commission in Executive Session
- (j) Decision and vote in open session

(9) **HEARING PROCEDURES**

- (a) At the scheduled 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 or the Hearing Examiner 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.

The parties shall follow the procedures established by a Hearing Examiner, to the extent they may vary from those contained herein.

- (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 which forms 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. The Commission/Hearing Examiner shall also caution all attendees in the hearing room that they may not communicate via cell phone or other means the testimony occurring during the hearing; No attendees with the exception of the court reporter, including media representatives at the hearing shall tape record the proceedings. Invoking "the Rule" is not mandatory and may be waived in whole or in part by agreement between the parties.
- (g) The hearing shall then proceed to develop the evidence and testimony as to those contested matters.
- (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) A party and his/her representative shall cooperate in keeping all presentations as brief and to the point as possible. Long drawn-out sessions shall be discouraged. The Commission/Hearing Examiner 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 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 issue to be considered and determined by the disciplinary action appeal process shall be: Did cause exist to support the imposing of some form of disciplinary action as to the employee?
- (b) 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 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. Employees are not entitled to progressive discipline and the seriousness of a single offense may negate a previously unblemished record.
- (c) 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 these matters would justify or compel modification of the Department Head's action.
- (d) 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 or modify the disciplinary action.
- (e) 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 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;
 - (iii) Demoted (See Section 143.054 of Chapter 143 and these Rules) 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 written notice to the employee of the public hearing required by Section 143.054(c) of Chapter 143 shall include notice of the employee's option to appeal to the independent third party Hearing Examiner under Section 143.057 of Chapter 143 and these Rules.

After the Commission has determined that probable cause exists for a requested demotion and has provided the employee with the written public hearing notice, the public hearing may be conducted according to the same hearing procedures 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 or deferred adjudication of a felony shall result in a vacancy in the position of the employee convicted of or placed on deferred adjudication for the felony.

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

- (1) Only a promotional passover or disciplinary action concerning an indefinite suspension, a suspension, or a recommended demotion is appealable to a Hearing Examiner.
- (2) The Director shall coordinate with the parties and the agency sponsoring the Hearing Examiner as to all matters regarding scheduling, place of hearing, accommodations, etc.
- (3) The 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.
- (4) 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.
- (5) 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.

- (6) The Hearing Examiner is to conduct a hearing fairly, objectively and impartially under the provisions of Chapter 143 and these Rules. 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. The Hearing Examiner may not rely on published standards of discipline, outside those issued by the City of Kyle, the Kyle Civil Service Commission and Police Department Orders, Rules and Regulations.
- (7) A hearing conducted by a Hearing Examiner shall also be recorded so as to be capable of clear and accurate reproduction or transcription.
- (8) 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 in Chapter 143 or in these Rules, 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.
- (9) 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.
- (10) In all cases that the parties are required to choose the Hearing Examiner by striking names from the list of seven arbitrators provided in accordance with Section 143.057(d) of Chapter 143, the employee filing the appeal shall strike the first name from the list of possible hearing examiners, with the parties then alternatively striking names until only one name remains; that person becoming the Hearing Examiner.

(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

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

(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 willfully fail to properly follow the regimen prescribed by their physician or therapist 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).

Section 143.082 **EFFICIENCY REPORTS**

See Section 143.082, Chapter 143

Section 143.083 **EMERGENCY APPOINTMENT OF TEMPORARY POLICE OFFICERS**

See Section 143.083, Chapter 143

Section 143.084 **CIVIL SERVICE STATUS AND PENSION BENEFITS FOR CERTAIN 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

- (1) 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, the Texas Government Code, and appropriate federal statutes.
- (2) When a hearing is to be conducted by the Commission or a hearing examiner under Section 143.052 or Section 143.054 of Chapter 143 or these Rules, or a promotional passover under Section 143.036 of Chapter 143 or these Rules, the Chief may submit confidential material from the Departmental Personnel file *in camera* for the Commission's consideration. If the Commission decides to admit the confidential documents as evidence, the Commission shall admit them under seal with instructions they are not to be released to any third party. The Commission shall sign a protective order to this effect and make such order a part of the official record of the hearing. This rule applies equally to hearings conducted under Section 143.057 of Chapter 143 or these Rules by hearing examiners.

Section 143.090 **VOLUNTARY RESIGNATIONS**

When a 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 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. The Department Head shall indicate in writing to the Director whether the employee resigned in good standing and whether the employee is eligible for re-hire. If the employee is eligible for re-hire, he or she may be re-hired only in accordance with the provisions of the Civil Service Act and these Rules.

Section 143.091 **SEVERABILITY**

It is hereby declared that the sections, paragraphs, sentences, clauses and phrases of these Rules are severable, and if any word, phrase, sentence, paragraph or section of these Rules should be declared invalid by a final judgment or decree of any court of competent jurisdiction, such

invalidity shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs or sections of these Rules, since the same would have been enacted without the incorporation of any such invalid word, phrase, clause, sentence, paragraph or section. If any provision of these Rules shall be adjudged by a court of competent jurisdiction to be invalid or to conflict with state law, the invalidity or inconsistency shall not affect any other provision or application of these Rules which can be given effect without the invalid or inconsistent provision, and to the fullest extent possible, these Rules shall be construed and read in a manner to give effect to the original intent and meaning of these Rules as modified only by the deletion of such invalid word, phrase, clause, provision or section, and to this end, the provisions of these Rules are declared to be severable.

