

## ARTICLE 32. PROMOTIONS

### Section 1. Definitions.

- A. Seniority - For purposes of this Article, each Fire Fighter shall be given one (1) point added to only the passing score on any written promotional examination for each year as a classified Fire Fighter in the San Antonio Fire Department. In no event shall the number of such seniority points exceed ten (10). "Classified Fire Fighter" is meant to include service as a Fire Trainee and a Probationary Fire Fighter. Seniority is defined as all years of service, whether interrupted or uninterrupted, on the San Antonio Fire Department, and not merely the 1st continuous period of service. Accrual of seniority points shall begin with the first day of employment as a Fire Trainee in the Fire Academy.
- B. Eligibility.
1. Fire promotional examinations shall be open to all Fire Fighters who have held a classified position with the San Antonio Fire Department for minimum required continuous years, immediately below that rank for which the examination is to be held. (This period shall consist of time spent by the Fire Fighter in actual service with the Department. Any absences other than for scheduled Annual Vacation/Holidays, Line-of Duty (LOD) or for serving on active military duty, in excess of fourteen (14) consecutive days will cause the Fire Fighter to be required to remain in that position and rank for a period of time equal to the time of such absence. Time spent on leave for less than fourteen (14) days shall not apply. Example: A Fire Fighter is an Engineer as of 1/1/87. S/he is off work on Sick Leave for fifteen (15) days. S/he would be eligible for promotional examination to the position of Lieutenant as of 1/16/89. Fire Fighters who receive a retroactive promotion will be entitled to use the retroactive promotion date for purposes of determining eligibility to take future promotional examinations.)
  2. The two (2) year continuous period required for eligibility to take the promotional examination for the rank of Fire Engineer shall commence with the date the Fire Fighter entered the Fire Academy. If the employee was hired 6/30/07 the minimum continuous period required for eligibility shall be three (3) years from the date the employee entered the Fire Academy.
  3. A Fire Fighter who has completed two (2) continuous years of service as Fire Engineer shall be eligible for promotion to the rank of Lieutenant. The two (2) year continuous period required for eligibility on promotion shall commence with the date s/he was promoted to Fire Engineer. If the employee was hired after 6/30/07 the minimum continuous period required for eligibility shall be three (3) years from the date the employee was promoted to Fire Apparatus Operator.

4. A Fire Fighter who has completed two (2) continuous years service as a Fire Lieutenant shall be eligible for promotion to the rank of Captain. The two (2) year period required for eligibility on promotion shall commence with the date s/he was promoted to Fire Lieutenant.
5. A Fire Fighter who has completed two (2) continuous years service as a Fire Captain shall be eligible for promotion to the rank of District Chief. The two (2) year continuous period required for eligibility for promotion shall commence with the date s/he was promoted to Fire Captain.
6. Any Fire Fighter that would become eligible to take an exam during the month that the exam is given, shall be eligible to take the exam.
7. In the event the scheduling of a promotional examination is prior to the ninetieth (90th) day of the vacancy, any Fire Fighter that would become eligible for such exam if it was given on the ninetieth (90th) day would be allowed to take such exam. For the purposes of calculating the ninetieth (90th) day, day one (1) begins from the first day of vacancy. Such Fire Fighter will also need to have met the criteria for eligibility for such exam as if it were given on the ninetieth (90th) day.
8. Promotional examinations for the rank of Fire Engineer, Lieutenant and Captain shall be administered during the same month each year as illustrated by example below:

	Month Examination Given	Date List Effective
Lieutenant	February 2012	First Day of March 2012
Captain	March 2012	First Day of April 2012

Fire Engineer promotions examination will be administered as soon as possible after execution of this Agreement in compliance with the "unscheduled written examination" procedure set forth in Section 1.B.9.

Each eligibility list shall be valid for a period of one (1) year from the effective date listed above. For example, the Fire Captain eligibility list shall be effective from April 1, 2012 through March 31, 2013 at 11:59 p.m.

9. If a promotional eligibility list for a rank is exhausted more than ninety (90) days prior to the next scheduled promotional exam for that rank, the City may conduct an unscheduled promotional exam for that rank as follows:
  - A. The date of the unscheduled written examination and the list of source materials for the examination shall be posted in accordance with the provisions of Local Government Code Chapter 143.
  - B. The unscheduled exam will be conducted in accordance with the requirements of this

Article.

- C. The resulting Eligibility List will be created in accordance with the requirements of this Article, and will be effective for a period of one (1) year beginning on the first day of the month following the month the unscheduled written examination was given as illustrated under Section 1.B.8.
- D. The date of the next scheduled exam will be administered during the same month which is one (1) year after the date of the unscheduled written examination.

10. In order to implement the above promotion examination schedule it is agreed that in the event that a vacancy occurs prior to implementation of the above schedules, the time limits under Chapter 143 to hold an exam and make the permanent appointment shall be superseded, subject to the right to back pay below. This does not include either the required ninety (90) day posting of study material prior to the promotional exam, or the thirty (30) day notice provision for posting notice of the exam. Persons promoted during the implementation of the new schedule above shall retain the right to back pay as provided under Chapter 143, so long as those persons would have been eligible to take the test within ninety (90) days of the vacancy. In the event a person becomes eligible following the ninety (90) day period, that person will only be entitled to back pay back to the date of that person's eligibility.

11. In the case of a Force Majeure Occurrence which prevents the conduct of the promotional exam, the actual date of the exam may be rescheduled for up to sixty (60) days. Notice of the examination is sufficient if posted prior to the ninetieth (90<sup>th</sup>) day before the scheduled date of the examination notwithstanding the actual date if rescheduled. In the event of a rescheduling, no further notice of the examination is required other than the new time, place, and date of the rescheduled examination. This provision specifically preempts Chapter 143 of the Texas Local Government Code, including but not limited to sections 143.029 and 143.107.

A "Force Majeure Occurrence" shall mean an occurrence beyond the control and without the fault of the City. Without limiting the generality of the foregoing, force majeure occurrences shall include: acts of nature (including fire, flood, earthquake, storm, hurricane, ice storm or other natural disaster), war, invasion, acts of foreign combatants, terrorists acts, military or other usurped political power or confiscation.

C. Seniority in Rank.

- 1. The employee with the most time in a classified rank shall be considered the senior in rank.
- 2. Where employees of classified ranks other than the rank of Fire Fighter have been promoted at the same time, seniority in rank shall be determined by the employee's

placement on their respective eligibility list.

3. Where employees of the rank of Fire Fighter have the same amount of time in that classification, seniority in rank shall be determined by their badge number.

D. Return From Military Service.

Effective with the signing of this Agreement Fire Fighters who were serving on active military duty as members of the Armed Forces and who were eligible promotional candidates according to the rules as set out by USERRA when a Department promotional exam was offered, who did not take the exam, may apply to take the next available promotion exam given for the rank for which they are currently eligible. At the time of the registration for that exam, the Firefighter must indicate in writing that they are requesting that their score be applied to the exam(s) missed. within thirty (30) calendar days after notice by the City of their rights and obligations under this subsection upon return to the Department from active duty, to take the promotional exam given for that rank. The consulting firm who constructs the promotional exam given for each applicable rank will as part of the exam create an "A" and "B" exam for each test. Each test will be similar in construction and material covered. Fire Fighters covered by this section will be offered the ability to take the "B" test on their return and after being given the same amount of study time as officer who took, the original "A" exam. If the Fire Fighter's score would have resulted in a promotion if it had been achieved on the exam(s) missed due to active military service, the Fire Fighter must be promoted to the next available vacancy in that rank. Seniority in rank and retroactive back pay owed will be established as of the date the Fire Fighter would have been promoted based on the score made at the time, as if s/he had not been on active military service. This provision is intended to comply with requirements of the Federal Uniformed Services Employment and Reemployed Rights Act (USERRA), and to supersede the terms of Section 143.032(b) of the Texas Local Government Code.

**Section 2. Study Materials Committee.**

This selection section applies to future selection of source materials and posting of notice beginning January 2012.

The Chief shall establish a separate committee for the selection of proposed study materials for each promotional examination by rank. This committee will be comprised of two (2) members appointed by the Chief and two (2) members appointed by the President of the Association and shall be facilitated by the SAFD Human Service Division. This Committee will consult with the test consulting company to assure support from the job analysis throughout the materials selection process. Each member of the Committee will sign a pledge of confidentiality, agreeing to not release any information pertaining to any study materials selected by the Committee to be forwarded to the Chief in order to maintain the security of the selection process. Members of the Committee shall rank the material collectively and forward their recommendations to the Chief. Study materials for all ranks shall not be the same for any two (2) consecutive years.

After reviewing the recommendations, the Chief shall consult with the test consulting company to

assure support from the job analysis. After her/his consultation, the Chief shall make the final decision and forward her/his selections and/or changes to the consulting company hired by the City to create the test. The committee membership will be changed after each testing cycle. The committee members appointed by both the Chief and the President of the Association will hold the same rank or higher as the position being tested for.

A listing of all potential materials from which promotional examination questions may be taken shall be posted annually each January for examinations to be administered within the one (1) year period beginning the following April. Such material may not be used unless available at the time of the posting of the study materials list.

### **Section 3. Promotion to Fire Engineer, ~~Lieutenant, and Captain.~~**

- A. Vacancies in the ranks of Fire Engineer, ~~Lieutenant, and Captain~~ shall be filled by competitive written examination in accordance with Chapter 143 Local Government Code and the rules established by the Fire Fighter and Police Officer Civil Service Commission not inconsistent herewith; however, a passing score of seventy (70) shall be considered minimum for eligibility for promotion.
- B. The City shall engage an outside bonded consultant to prepare written promotional examinations for each rank.
- C. All eligible candidates for promotions to a particular rank shall be given the identical examinations applicable to that rank in the presence of each other. The examinations will consist of multiple choice written questions, which shall have predetermined correct answers to enhance the objectivity of the examination. In addition, the preparer must certify at least seventy five percent (75%) of the questions on each examination for each rank must be newly composed and never before seen on any previous examinations of any rank given by that preparer for the City of San Antonio.
- D. The preparer of the examination shall deliver the examination sealed and numbered to the Civil Service Director who is charged with the responsibility for the security of all promotional examinations. The examination shall remain sealed until opened in the presence of the participants.
- E. All questions formulated by the outside consultant (and their correct answers) shall be derived from the materials selected by the Chief as study materials in accordance with this Section.

### **Section 54. Preemption.**

- A. The provisions in this Article shall apply notwithstanding any contrary provisions in Chapter 143, which are expressly preempted.

Section 4. Promotion to Lieutenant and Captain

The promotional examination for the rank of Lieutenant and Captain shall consist of two (2) parts as follows:

- A. Written Examination—Shall consist of questions relating to the duties of the classification of the position to be filled. All notice of written examinations and publishing of study material shall be in accordance with Chapter 143 Local Government Code and the rules established by the Fire Fighter and Police Officer Civil Service Commission. A score of seventy percent (70%) on the written examination shall be considered a passing score. In the event that written examination scores are the same, the ranking of those scores shall be done on the basis of rules established by the Fire and Police Civil Service Commission. All test participants with passing grades, up to a maximum of the top fifty (50 for Lieutenant and top twenty (20) for Captain, shall be allowed to continue on to the next phase of the examination process, the Assessment Center Board.
- B. Video Recorded Assessment Center Board—Shall consist of three members as follows:
1. Two (2) persons from outside the San Antonio Fire Department who currently hold an administrative position in a Fire Department or fire-related agency in a City of 50,000 or more population or from a state or Federal government agency. One such person shall be selected by the City; one shall be selected by the Union.
  2. One (1) person from outside the San Antonio Fire Department who has held an administrative position in the field of personnel management, city management, fire science, or a related field, for a minimum of five (5) years, to be selected by mutual agreement of the City and the Union.
  3. The City and the Union shall agree on guidelines to be presented to the Video Recorded Assessment Center Board for use in their examination.
  4. A minimum score of seventy percent (70%) on the composite factors evaluated by the Board shall be required to pass the Video Recorded Assessment Center Board.
  5. Failure of an applicant to obtain a passing score on the Video Recorded Assessment Center shall disqualify the applicant from further consideration for one (1) year from the date the written examination was administered, unless the list is exhausted, in which event persons on the list shall be eligible for re-examination. The result of the Video Recorded Assessment Center shall not be appealable to the Civil Service Commission or to arbitration through the grievance procedure.
  6. The Video Recorded Assessment may be appealed using a Second Review Process as established and overseen by the Consulting Company. The decision of the Consulting Company regarding appeals using the “Second Review Process” shall be binding.
- C. Eligibility List—Within seventy-two (72) hours of the completion of the Video Recorded

Assessment Center Process, excluding weekends and holidays, an eligibility list shall be prepared and posted with the respective ranking of all applicants based on the following weights:

1. Written Exam Score 50%
2. Assessment Center Score 50%
  
- Total Score 100%

**Section 4.5. Promotion to District Chief.**

Persons having held the rank of Captain for a period of two (2) continuous years shall be eligible for promotion to the rank of District Chief. In the event all those Captains fail the written portion of the promotion examination which follows, persons holding the rank of Lieutenant for a minimum of five (5) continuous years and all Captains regardless of time-in-rank may be eligible for examination for promotion to District Chief. The promotional examination for the rank of District Chief shall consist of two (2) parts as follows:

A.D. Written Examination—Shall consist of questions relating to the duties of the classification of the position to be filled. All notice of written examinations and publishing of study material shall be in accordance with Chapter 143 Local Government Code and the rules established by the Fire Fighter and Police Officer Civil Service Commission. A score of seventy percent (70%) on the written examination shall be considered a passing score. In the event that written examination scores are the same, the ranking of those scores shall be done on the basis of rules established by the Fire and Police Civil Service Commission. All test participants with passing grades, up to a maximum of the top twenty (20), shall be allowed to continue on to the next phase of the examination process, the Assessment Center Board.

B.E. Assessment Center Board—Shall consist of three members as follows:

1. Two (2) persons from outside the San Antonio Fire Department who currently hold an administrative position in a Fire Department or fire-related agency in a City of 50,000 or more population or from a state or Federal government agency. One such person shall be selected by the City; one shall be selected by the Union.
2. One (1) person from outside the San Antonio Fire Department who has held an administrative position in the field of personnel management, city management, fire science, or a related field, for a minimum of five (5) years, to be selected by mutual agreement of the City and the Union.
3. The City and the Union shall agree on guidelines to be presented to the Assessment Center Board for use in their examination.

4. A minimum score of seventy percent (70%) on the composite factors evaluated by the Board shall be required to pass the Assessment Center Board.
5. Failure of an applicant to obtain a passing score on the Assessment Center shall disqualify the applicant from further consideration for one (1) year from the date the written examination was administered, unless the list is exhausted, in which event persons on the list shall be eligible for re-examination. The result of the Assessment Center shall not be appealable to the Civil Service Commission or to arbitration through the grievance procedure.

C.F. Eligibility List—Within seventy-two (72) hours of the completion of the Assessment Center Process, excluding weekends and holidays, an eligibility list shall be prepared and posted with the respective ranking of all applicants based on the following weights:

1. Written Exam Score 50%
2. Assessment Center Score 50%

Total Score 100%

#### **Section 5. Eligibility List for Lieutenant, Captain, and District Chief.**

The Lieutenant, Captain, and District Chief eligibility list shall be valid for a period of one (1) year from the ~~day after the date of the written examination~~ date of certification of the Commission unless exhausted, notwithstanding any pending disputes, appeals or litigation concerning an applicant's score or right to promotion. For example: the written exam is given on July 30, 2012, the eligibility list shall be effective from July 31, 2012 through July 30, 2013 at 11:59 p.m.

#### **~~Section 5. Preemption.~~**

~~The provisions in this Article shall apply notwithstanding any contrary provisions in Chapter 143, which are expressly preempted.~~

#### **Section 6. Promotional Probation.**

For promotional ranks of Fire Engineer, Lieutenant, Captain, and District Chiefs there shall be a probationary period of six (6) months. During the promotional probationary period, an employee may be demoted by the Chief to the rank from which promoted, and the decision to demote shall not be subject to disciplinary appeal. Upon demotion while holding a probationary promotion, an employee shall resume the competitive rank from which appointed and the salary shall be in accordance with said competitive rank, with service time credited as continuous time in that competitive rank and with all salary increases to which the employee would have been automatically entitled had the employee continuously remained in said competitive rank. If the probationary period is successfully completed, the probationary period shall count as time in grade in the new rank.



## **Section 7. Chief's Review of Promotability.**

Notwithstanding the provisions of this Agreement, the parties understand and agree that in considering a Fire Fighter for promotion the Chief shall have all rights and privileges as contained in Chapter 143 Local Government Code regarding promotability.

## **Section 8. Assessment Center Promotional Dispute Resolution Procedure for District Chief.**

- A. The purpose of this Section of this Article is to provide for the exclusive remedy available to Fire Fighters who question or challenge the Assessment Center process.
- B. Any Fire Fighter who disputes or challenges the Assessment Center process as contained in this Article as it applies to her/him shall file a grievance within ten (10) calendar days of the posting of the results of the examination process with the Director of Personnel of the City, which grievance must state in particular and with specifics the Fire Fighter's objection to said process and/or results. Copies of all grievances so filed shall be provided to the Union.
- C. Within fifteen (15) calendar days of the date of the posting of the results of the Assessment Center process, the City and the Union shall meet to review all such grievances timely filed and shall each designate a representative to act in their behalf. These two (2) representatives shall select and agree upon a third, mutually-satisfactory individual who shall act as an independent arbitrator. Failure of the parties' representatives to agree on this third "neutral" shall result in the parties selecting an arbitrator from the list of ~~six-seven~~ (67) arbitrators previously agreed to in accordance with Section 4-5 of Article 30, Grievance Procedure. The arbitrator or "neutral" so selected shall be notified promptly of her/his appointment and, simultaneously therewith, the parties in agreement with the arbitrator or "neutral" shall select a date for a hearing of all the grievances so submitted, which date shall be within thirty (30) calendar days, except by mutual agreement of the parties.
- D. At the date previously agreed upon, the independent arbitrator or "neutral" shall convene the hearing at a place mutually convenient to all parties. The arbitrator or "neutral" so selected shall hear and take evidence on all of the grievances that were timely filed by Fire Fighters as previously described. The hearing shall continue from day to day until all such evidence has been received. A transcript by a duly authorized court reporter will be taken of the hearing and shall be the only official transcript thereof. All parties to the proceedings, including individual Fire Fighters, shall be entitled to representation of their own choosing, the expense of which must be borne by the respective party.
- E. The arbitrator or "neutral" so selected shall submit a written opinion on each grievance presented and/or heard by her/him without the benefit of the submission of briefs by the City, the Union, and/or the affected Fire Fighter. The decision of the arbitrator or "neutral" shall be brief and concise and shall recite:

1. The name of the grievant;
2. The issue presented;
3. The decision and award of the arbitrator or neutral.

Unless otherwise mutually agreed by the Union and the City, the decision of the arbitrator or "neutral" shall be rendered within fifteen (15) calendar days of the date the hearing was closed. The decision of the arbitrator shall be final and binding on the City, the Union, and the affected Fire Fighter/grievant.

- F. The fees and expenses of the arbitrator or "neutral" and of the official court reporter shall be borne equally by the Union and the City.
- G. Should at any time after the decision and award of the arbitrator or "neutral" any affected Fire Fighter/grievant contest or challenge the award of the arbitrator in any other legal proceeding, the following shall apply:
1. The decision and award of the arbitrator or "neutral" must be upheld, unless the Fire Fighter/grievant can establish by clear and convincing evidence said award was not supported in whole or in part by substantial evidence and/or that the award of the arbitrator or "neutral" was capricious.
  2. As a condition precedent to the filing of any subsequent action challenging the award of the arbitrator or "neutral", the affected Fire Fighter/grievant must file a cost bond in the minimum amount of the sum of the arbitrator's fees and expenses and the fees of the court reporter who took the transcript of the arbitration proceeding.
- H. Should the Union and/or the City be a party to any action by a Fire Fighter/grievant contesting and/or challenging the award of the arbitrator or "neutral", the City and/or the Union may, pursuant to the terms of this Agreement, request the court or administrative body to which the action has been addressed to reimburse it/them for all costs of court, including but not limited to attorneys fees, for having to defend said action. This remedy shall be in addition to any other remedy to which the City and/or the Union may be entitled, including but not limited to those as specified above and/or elsewhere in this Agreement.

**Section 9. Appointment to Assistant Chief and Deputy Chief.**

- A. The Chief shall have the right to appoint six (6) Assistant Chiefs which rank immediately above the rank of District Chief and rank below the Deputy Chief in the chain of command. The Chief shall have the right to appoint two (2) Deputy Chiefs which rank immediately above the rank of Assistant Chief and rank below the Chief in the chain of command. Effective October 1, 2011 the Chief shall have the right to appoint one (1) additional Deputy Chief for a total of three (3) Deputy Chiefs.

- B. No additional appointed positions shall be created other than by this Article.
- C. Hereinafter, no position in the rank of Assistant or Deputy Chief shall be filled other than by appointment. As vacancies occur in the rank of Assistant Chief, the Chief shall have the right to appoint to the position in accordance with this Section. Appointments to the rank of Assistant or Deputy Chief shall be by the Chief at her/his sole discretion, provided that the employee promoted is a classified, sworn member of the San Antonio Fire Department and occupies a rank of either Assistant Chief, District Chief, or Captain.
- D. Persons appointed to the rank of Assistant Chief or Deputy Chief shall be subject to overall City policies and regulations and while appointed to this rank shall not be subject to the provisions of Chapter 143 Local Government Code or any of the provisions of this Agreement, unless specifically so provided in this Article.
- E. Any person appointed to the rank of Assistant Chief or Deputy Chief may be suspended or demoted to the rank from which s/he was promoted at the sole discretion of the Chief without appeal to the Commission and/or Arbitration. Any person appointed to either rank may, further, voluntarily return to the rank from which s/he was promoted at any time. Upon demotion or voluntary return to the previously-held rank pursuant hereto, the employee shall receive thereafter the full benefits provided in Chapter 143 Local Government Code and this Agreement as if s/he had served in either rank on a continuous basis throughout her/his tenure as either Assistant or Deputy Chief.
- F. A person appointed to the rank of Assistant or Deputy Chief may be terminated for cause, provided that such termination shall be subject to appeal in the same manner as applicable to all classified, uniformed employees in the Department.
- G. Except for the positions of Assistant or Deputy Chief, nothing in this Article shall be construed to require the City to create the rank or establish and fill the maximum number of positions authorized herein. Further, nothing in this Article shall be construed to limit any existing right of the City to create ranks and establish positions in accordance with State law and the City Charter.
- H. Assistant or Deputy Chiefs appointed by the Chief pursuant to this Article may receive administrative leave time for work performed in excess of their regularly-scheduled duties. Said leave time may be granted at the discretion of the Chief, subject to scheduling and manpower contingencies that may arise. Said discretionary leave time shall, in no event, exceed that amount of time that said Assistant or Deputy Chiefs have accumulated in excess of their regularly-scheduled work week.
- I. Salary and Benefits for Assistant Chiefs and Deputy Chiefs
  - 1. Fire Fighters appointed to the Assistant Chief position by the Chief as provided for in Article 32, Section 8, of this Agreement, shall be compensated at an annual salary of not less than fifteen percent (15%) above the base salary of a District Chief plus thirty (30) years longevity.

2. The Fire Fighters appointed to the Deputy Chief position by the Chief shall be compensated at an annual salary of not less than twenty-four percent (24%) above the base salary of a District Chief plus thirty (30) years longevity.
3. The Fire Fighters holding appointed positions shall be entitled to all benefits as contained in the following specified Articles of this Agreement: Articles 1. Recognition; 2. Definitions; 4. Rules and Regulations, Special Directives, and Administrative Orders; 5. City Protection of Fire Fighters; 7. Payroll Deductions; 10. No Strikes, No Lockouts; 17. Vacations; 18. Holidays; 19. Bereavement Leave; 20. Uniform Items and Protective Equipment; 23. Sick Leave; 25. Benefit Plans; 27. Miscellaneous, Section 5; 28. Employee Fitness; 29. Drugs and Alcohol; 32. Promotions, Section 10; Appointment to Assistant Chief and Deputy Chief; 35. Agreement Binding; 36. Savings Clause; 37. Declaration of the Full Scope of the Agreement; and 38. Duration of Agreement.
4. The Fire Chief, at her/his discretion, may grant incentive pay as outlined in Article 22. Incentive Pay to qualified appointed personnel. In the event the Chief grants such discretionary incentive pay, all appointed personnel eligible shall receive such incentive pay. To ensure appointed personnel are equally compensated, appointed personnel with paramedic certifications and assigned to the EMS Division shall not receive Paramedic incentive pay but will receive EMT incentive pay.

Date: \_\_\_\_\_

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For the City

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For the Association