

ARTICLE 28
Disciplinary Actions

Section 1. Authority of the Chief.

The Chief shall have authority to demote and/or suspend not to exceed forty-five (45) calendar days, or indefinitely suspend (as provided for in Chapter 143 of Local Government Code) any Officer for the causes set forth in the Rules and Regulations of the Commission. The Officer may appeal such actions, if any, as provided for here. Nothing contained herein prevents the Chief and the accused Officer from reaching an agreed settlement on any matter so long as both parties concur in writing in advance of settlement. Officers suspended for three (3) days or less who appeal the suspension shall not serve the suspension unless a suspension with loss of pay is awarded by an arbitrator.

Section 2. Contemplated Disciplinary Action.

Prior to any such disciplinary action, the Officer shall be given notice of contemplated disciplinary action by personal service, stating the action or actions contemplated and the reasons therefore, and notifying the Officer that he/she may rebut the charges to the Chief, either orally, or in writing, within seven (7) calendar days. If the Chief should be unable to secure personal service of the contemplated disciplinary action after due diligence, service may be made by placing the notice in certified mail addressed to the Officer's last known address along with delivery of the statement to the Association, and proof of such service shall be sufficient to provide notice to the Officer of his/her right to rebut the contemplated disciplinary action to the Chief.

Section 3. Written Statement of Charges.

After the notice and opportunity for rebuttal provided in the preceding paragraph, the Chief may demote, suspend, or indefinitely suspend an Officer by service in accordance with this Article on the officer of a written statement of charges addressed to the Civil Service Commission. A copy of the disciplinary statement shall be promptly filed with the Human Resources Director of the City.

The written statement shall point out the particular rule or rules alleged to have been violated by the Officer and the specific act or acts alleged to be in violation. In the event of demotion, suspension, or indefinite suspension, the statement informing the officer of disciplinary action and the reason(s) for the action shall also inform the Officer that an appeal may be made by filing an appeal in writing with the Human Resources Director, within fifteen (15) calendar days after receipt of this written statement unless the case is automatically appealed due to alternate service via mail to the officer.

Section 4. Notice of Right to Appeal.

The Chief or the Chief's authorized designee shall not be required to deliver in person a written statement of charges to the Officer being suspended. The written statement of suspension shall be deemed to have been delivered upon the officer when the written statement (1) is hand-delivered to the suspended Officer by the Chief, the Chief's authorized designee, or by a designated messenger; (2) is delivered to an attorney representing the suspended Officer, or (3) mailed as provided below. A written statement is deemed delivered to the Officer's attorney by handing it to the attorney or by leaving it with another attorney in the attorney's office or a member of the attorney's staff, or by delivering it by any other means that the attorney consented to in writing. If the City attempts in good faith to deliver the written statement as provided in this Section, but the attempts are unsuccessful, the written statement may be mailed by certified mail to the last known address of the suspended Officer. Service is complete upon mailing and the Officer or Officer's attorney has thirty (30) calendar days to appeal after service by mail, or the matter will be dismissed.

Section 5. Arbitrator Defined.

For the purposes of this Article, the term arbitrator shall mean the same as a third-party hearing examiner as referred to in Chapter 143 of the Local Government Code. Appeal from demotion, suspension or indefinite suspension shall be decided by one (1) arbitrator, selected according to this agreement. Upon receiving an appeal from the Officer, the Human Resources Director shall act promptly to notify the Association, the Chief, and the City Manager of the appeal.

Section 6. Arbitration Selection and Scheduling.

The counsel for the Officer and the counsel for the Chief of Police shall attempt to mutually agree on an arbitrator. If the parties fail to agree on an arbitrator within fourteen (14) calendar days after the appeal is filed, the Human Resources Director shall within five (5) business days from the expiration of the fourteen (14) calendar days request a list of seven (7) qualified neutrals from the American Arbitration Association. The parties may mutually agree on one of the seven (7) neutrals. If they do not agree, the parties shall alternatively strike the names on the list within seven (7) calendar days after receipt of the list, and the remaining name shall be the arbitrator. All parties shall act to complete the selection process at the earliest possible date. The arbitrator shall be promptly notified of his/her selection. The parties will not have ex parte communication with the arbitrator. Communication with the arbitrator will be through the counsel for the Chief of Police and the counsel for the Officer jointly.

Section 7.

The hearing shall be commenced, but need not be completed, within ninety (90) calendar days of the arbitrator's selection. Delay in commencement of the hearing within these time periods may

occur due to unavoidable conflicts between the arbitrator and the parties' schedules, or by mutual agreement of parties and for no other reason. However, if the arbitrator selected cannot commence the hearing within ninety (90) calendar days from his/her selection, and there is no agreement to extend the hearing to a later date by the parties, the parties shall attempt to agree on a substitute arbitrator. If the parties cannot agree upon a substitute within seven (7) calendar days of so learning, another arbitrator shall be selected from a new list of seven (7) names promptly requested from the American Arbitration Association, according to the procedure set out here. The arbitrator shall make an award within thirty (30) calendar days of the close of evidence or after receipt of briefs if any in arbitration hearings, and within seven (7) calendar days of the close of evidence in expedited arbitration hearings under 143.057 of the Local Government Code. Post hearing briefs shall only be permitted in standard arbitration hearings, and must be mailed to the arbitrator within such time as is agreed to by the parties, or as directed by the arbitrator.

Section 8.

A stenographic transcription of the proceedings shall be made only upon written agreement of the parties prior to the commencement of the hearing. Should there be no agreement, the party desiring the transcript may have the transcript made at its sole expense.

Section 9.

The award of the Arbitrator shall state whether the Chief's disciplinary decision(s), which includes the original written statement and charges, is supported in whole or in part by a preponderance of the evidence considering the reliable and probative evidence in the record as a whole. The arbitrator may not substitute his/her judgment for the judgment of the Chief on the disciplinary penalty chosen except as provided below.

Suspensions. If the Chief's decision, or any part thereof, is supported by the evidence, the Arbitrator shall uphold a disciplinary action less than an indefinite suspension unless it is arbitrary, unreasonable, or unrelated to the needs of the service in which case the arbitrator may reduce a suspension to a lesser period.

Indefinite Suspensions. If the Chief's decision, or any part thereof, is supported by the evidence, the Arbitrator shall uphold an indefinite suspension if the Officer's actions demonstrate a substantial shortcoming. The Arbitrator may substitute his/her judgment for the judgment of the Chief on the disciplinary penalty chosen only if the Chief fails to establish a substantial shortcoming. If the Arbitrator finds the Chief's decision must be modified under the above standards, this Agreement authorizes an arbitrator to reduce an indefinite suspension to a period greater than 45-days. A "substantial shortcoming" is defined as either (1) a violation or conduct which renders the Officer's continuance in office in some way detrimental to effective law enforcement and the needs of the Department, or (2) which the law and sound community expectations recognize as good cause for depriving the Officer of his/her position.

Section 10.

The following rules shall govern the conduct of arbitration hearings under this Section, and of certain preliminary matters.

A. Both parties shall provide, at least twelve (12) calendar days prior to the date of the hearing, the names and addresses of witnesses expected to be called at the hearing. In the absence of good or excusable cause, the arbitrator may exclude the testimony of a witness upon the failure of a party to disclose such a witness. The parties, in writing, may request discovery from each other concerning the case. Should the opposing party not agree to provide the requested information within seven (7) calendar days of the request, the request shall be deemed denied. The requesting party may then apply to the Arbitrator who shall order such discovery as is appropriate to the nature of the case, consistent with, but not bound by, the rules of discovery in Texas civil cases. In considering the application, the arbitrator shall consider the burden and expense of producing the information, the need of the requesting party, the amount of time available prior to the hearing, and such other matters as he/she may deem material. In no event shall discovery be requested within seven (7) calendar days prior to the hearing.

B. The arbitrator shall have the power to subpoena witnesses. Where the subpoena request is not opposed by a party, the Human Resources Director shall issue the subpoena in the name of the Arbitrator and such issuance shall be considered the act of the arbitrator. If the subpoena is opposed, the moving party shall apply to the arbitrator for issuance of the subpoena. The City will serve subpoenas on any City employee; otherwise the party issuing the subpoenas shall be responsible for obtaining service.

C. All hearings shall be public unless it is expressly agreed in writing by the parties that the hearing shall be closed to the public. In any event, the final decision of the arbitrator shall be public, although public announcement may be reasonably delayed upon request of the parties.

D. Unless otherwise provided in this Agreement, the conduct of the hearing shall be governed by the rules of the American Arbitration Association.

Section 11.

Except as otherwise provided in this Agreement, the arbitrator shall have all those powers and only those powers vested in the Commission under Chapter 143 of the Local Government Code and the Commission Rules.

Section 12.

Any notice or statement required to be filed by the Chief of Police or the Officer in a disciplinary proceeding under Chapter 143 of the Local Government Code, under Commission Rules, or under this Agreement, shall be filed with the Human Resources Director of the City.

Section 13.

Hearings conducted by the Commission shall be in accordance with Chapter 143 of the Local Government Code except that the Commission's jurisdiction is similarly limited as an arbitrator's jurisdiction in Section 9.

Section 14.

Unless otherwise provided in this Agreement, with respect to demotions, suspensions, and indefinite suspensions as defined in Chapter 143 of the Local Government Code the Officer shall have such right to appeal the arbitrator's decision to district court as he/she is given in Chapter 143 of the Local Government Code to appeal the Commission's decision, and no greater right.

Section 15.

Unless otherwise provided in this Agreement, in cases of conflict, the provisions of this Agreement will control over Chapter 143 of the Local Government Code, and any other civil service provision or rule, and American Arbitration Association Rules; and Chapter 143 of the Local Government Code, and any other civil service provision, and Civil Service Rules promulgated pursuant to it shall control over American Arbitration Association Rules. Once an Officer receives a formal notification from Internal Affairs, the officer may initiate a written request to the Chief to waive the normal investigative track through Internal Affairs for the investigation to be submitted to an expedited disciplinary track, however in no event can the expedited disciplinary track be requested within thirty (30) calendar days of the expiration of the complaint's one-hundred-and-eighty (180) calendar day timeline in Chapter 143 of the Local Government Code. Both the Officer and the Chief must agree to submit a matter to the expedited disciplinary track for an expedited disciplinary finding. An expedited disciplinary finding is an agreement by the Officer and the Chief that disciplinary action is warranted and enacted, but did not proceed through the conventional track. Any disciplinary action resulting from the expedited disciplinary track must be agreed upon by the Officer and the Chief, and must be enacted within thirty (30) calendar days of the parties' agreement to expedite the disciplinary process, but under no circumstances later than the time limitation as expressed in Section 19. Absent an agreement by both the Chief and the Officer, the matter will continue through the regular investigative procedure.

Section 16.

Notwithstanding any other provision of this Agreement, the Chief shall have authority to suspend an Officer for a period of not more than one hundred and twenty (120) calendar days, or implement an agreed disciplinary action only where the Officer agrees to the disciplinary action in writing.

An agreed disciplinary action is an agreement between the Officer and the Chief that may include, but is not limited to, any one, or combination of, a suspension, demotion, or nondisciplinary actions such as professional counseling, re-training, or re-assignment. The Officer shall have no right to appeal such agreed disciplinary actions, and no administrative or judicial body shall have power to review such a suspension or alter the terms of the Agreement.

Section 17.

Any deadline or time restrictions set out in this Agreement with respect to disciplinary proceedings may be modified by written agreement of the parties. However, neither party may be compelled to waive its right to insist upon the deadline and time restrictions provided by the Agreement.

Section 18.

Officers suspended up to a maximum of forty-five working days may, at the Chief's discretion, forfeit either accumulated compensatory time, vacation, bonus time or holiday leave equal to the suspension. Approval of forfeiting time by the Chief shall not be unreasonably withheld and may only be denied because of a consistent overall pattern of substandard performance. The Officer shall have ten (10) calendar days from receipt of notice of the suspension to decide whether or not he/she wishes to forfeit accumulated leave or exercise his/her appeal rights pursuant to Chapter 143 of the Local Government Code or the Grievance and Arbitration Procedures of this Agreement. The provisions of this Section shall apply solely to suspensions which are agreed to by the Officer, and no appeal to the Commission or to arbitration may be instituted on suspensions where the Officer has forfeited accumulated compensatory, vacation, bonus time or holiday leave pursuant to the terms of this Article.

Section 19.

A. In the original written statement and charges and in any hearing conducted under this Article, the Chief may not impose discipline for any act that occurred more than 180 days prior to the date the Chief knew, or should have known, of the act, provided that no discipline may issue more than two years after the date of the act, except for certain criminal conduct addressed in section B.

B. **Certain Criminal Conduct.** The Chief may order an indefinite suspension based on an act classified as a felony or Class A or B misdemeanor after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the Chief intends to order an indefinite suspension after the 180-day period, the Chief must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date of the discovery of the act complained of occurred.

C. **Evidence.** Solely to aid the Commission or arbitrator in the assessment of appropriate discipline and not to prove a charge of a violation of Civil Service Rules, the Chief

and the City may introduce evidence of any prior sustained disciplinary actions that is relevant or likely to show a cause for progressive discipline against the Officer that the Chief used to determine the disciplinary action if the Chief outlined the prior disciplinary action in the original written statement and charges.

Section 20.

The City shall develop records, which, to the fullest extent possible, quantify the work done by each Officer in each assignment. Such records shall be available by assignment upon specific request of Officers appealing disciplinary actions or their representatives.

Section 21.

Section 143.056 of the Local Government Code regarding procedures after felony indictment and certain misdemeanor complaints shall be modified to provide:

A. The Officer shall provide written notice to the Chief's Office when the Officer's criminal matter is resolved. Should the Chief fail to charge the Officer with a violation of Civil Service Rules within thirty (30) calendar days following written notice by the Officer ~~of the Officer's acquittal or dismissal of the criminal charges~~, the Officer shall be reinstated with all back pay and benefits; and

~~B. In the event an Officer proceeds under 143.056(d) and requests a delay in the disciplinary proceedings until 30 days after the final disposition in the criminal matter, the Officer is precluded from seeking an expunction until after all disciplinary proceedings (including appeals) are concluded. In the event the criminal matter results in an acquittal, the Officer may seek an expunction prior to the conclusion of the disciplinary proceeding, but the Officer agrees that documents and records that do not pertain to the arrest, criminal investigation and/or prosecution of the Officer, are not to be expunged and can be retained and used in any disciplinary proceeding. Any document or record created independent of the arrest that were created by Internal Affairs and do not relate or refer to the arrest, criminal investigation and/or prosecution are not subject to an expunction order and can be used in any subsequent disciplinary proceeding. In the event an Officer has been demoted or suspended, either temporarily or indefinitely, for any action which results in the Officer being indicted for a felony or charged with a misdemeanor of Class B or above, no further action may be taken on the Officer's appeal until the completion of trial on the merits on those charges; except that a hearing on an officer's appeal may be initiated prior to completion of trial on the merits by mutual agreement between the City and the Officer. Delay of an appeal pending the results of criminal proceedings as specified above shall apply both to appeals to arbitration and appeals to the Commission pursuant to this Article.~~

C. In the event an Officer files for an expunction, the Officer must notify in writing the Chief's office the same day upon its filing.

Section 22.

Pursuant to Section 17, 19 and 21, the Chief or his/her counsel and the Officer and his/her counsel may mutually agree in writing to extend the 180-day deadline for disciplinary proceedings by delaying the execution of the disciplinary written statement of charges, if any, to a date no later than thirty (30) calendar days after the final adjudication of the criminal charge pending. By entering into a mutually agreeable written agreement, neither party intends to create, nor does a written waiver directly or indirectly create a past practice.

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