

**MINUTES
CIVIL SERVICE COMMISSION MEETING
CITY OF LEANDER, TEXAS**

Development Services - San Gabriel Conference Room
201 N. Brushy Street - Leander, Texas
Tuesday, September 24, 2024
Regular Meeting at 6:00 PM



Place 1 - Kate McDonald, Vice Chair
Place 2 – Nathan Rasmussen, Chair
Place 3 – Donna Sherrill

Director - Christy Davis
Legal - Paige Saenz
Staff Liaison – Dara Crabtree

REGULAR MEETING

1. Open meeting and confirm a quorum is present.

Opened meeting at 6:07 p.m. and confirmed all Commissioners were present.

CONSENT AGENDA: ACTION

Motion: Approve minutes as amended with the footnote reflecting Leander Fire Department.

By: Board Member Rasmussen
Seconded: Board Member Sherrill

Vote: 3-0

Motion: Amend Section 34 E 8 (b) previously approved to read as follows: In order to preserve the order and decorum of the meetings of the commission and to provide attendance and participation in the meeting. any person who becomes disruptive during the meeting may be removed from the meeting location. Comments must be topically related to the agenda items for which the speaker has registered to speak, following a discussion.

By: Board Member McDonald
Seconded: Board Member Rasmussen

Vote: 3 - 0

2. Approval of the minutes for meeting held on September 10, 2024.

REGULAR AGENDA

3. Discuss and consider action on adoption of rules necessary for the proper conduct of commission business.

Discussion included recommendations of Subchapter D, Sections 51 through 57 (attached).

4. Adjournment

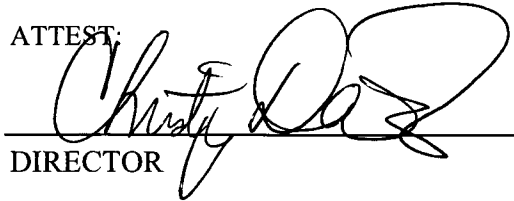
Adjourned 8:07 p.m.

APPROVED

A handwritten signature in black ink, appearing to be "N. M. S.", written over a horizontal line.

CHAIR

ATTEST:

A handwritten signature in black ink, appearing to be "Christy D. S.", written over a horizontal line.

DIRECTOR

**LEANDER FIRE DEPARTMENT
CIVIL SERVICE COMMISSION LOCAL RULES**

SUBCHAPTER D. DISCIPLINARY ACTIONS

Section 51.	Cause for Removal or Suspension	*
Section 52.	Disciplinary Suspensions	*
Section 53.	Appeal of Disciplinary Suspension	*
Section 54.	Demotions	*
Section 55.	Not Applicable.....	*
Section 56.	Procedures After Felony Indictment or Misdemeanor Complaint	*
Section 57.	Hearing Examiners.....	*

SECTION 51. CAUSE FOR REMOVAL OR SUSPENSION

See Texas Local Government Code § 143.051.

PURPOSE - These Rules shall apply to and govern all disciplinary actions and appeals of Fire Department employees subject to Chapter 143. The following are declared to be grounds for dismissal or suspension of any employee from the classified service in the City of Leander:

1. Indictment, deferred adjudication, pre-trial diversion, or other deferred disposition, or conviction of a felony, State Class A or B misdemeanor, federal misdemeanor, or other crime involving moral turpitude;

2. Violation of the provisions of the Charter of the City of Leander;

3. Acts of incompetence or the inability or failure to perform essential job duties;

4. Neglect of duty;

5. Discourtesy to the public or to fellow employees;

6. Acts showing a lack of good moral character;

7. Drinking intoxicants while on duty or intoxication while off duty;

8. Conduct prejudicial to good order;

9. Insubordination.

;

10. Refusal or neglect to pay other just debts;

11. Absence without leave;

12. Shirking of duties;

13. Cowardice;

14. Violation of any of the rules and regulations of the Fire Department; of special orders, as applicable; of these rules and regulations; or of any of the City Personnel policies and regulations; or of any other City Ordinance or Policy applicable to Fire Department employees.

SECTION 52. DISCIPLINARY SUSPENSIONS

See Section 143.052, Chapter 143

A. "CAUSE" FOR SUSPENSION – An employee may be suspended for violation of:

1. An applicable provision of Chapter 143, Texas Local Government Code;
2. An applicable rule or regulation duly adopted by the Commission;
3. Fire Department rules and regulations ;
4. The City's Personnel Policies; or
5. Or any other City Ordinance or Policy applicable to the Fire 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 of their Department, who is also mindful of the responsibilities and needs of their 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.

Prior to imposing any particular level of disciplinary action, the Fire Chief may use lesser forms of disciplinary or corrective action. However, nothing herein shall prohibit the Fire Chief from proceeding directly to the appropriate level of discipline without using progressive discipline if, in the opinion of the Fire Chief, the employee's misconduct warrants more severe discipline.

B. WORKING OFF SUSPENDED TIME - The provisions of this Section shall apply solely to a suspension, which is agreed to by the employee and no appeal to the Commission or to a Hearing Examiner may be instituted on a suspension where the employee has agreed to the suspended time.

1. A classified employee in the Fire Department who is suspended 60 hours or less may, upon the employee's request and at the respective Fire Chief's discretion, forfeit vacation designated by the Fire Chief for a period equal to the time of the suspension. The employee shall be required to work on the forfeited vacation days.
2. The employee shall have their vacation leave accumulated balance deducted in an amount equal to the suspension to qualify for this provision. In order to request Working Off Suspended Time, the suspended employee shall make a written request to the respective Fire Chief within 240 hours after receiving the Notice of Suspension. Failure to make a written request to the Fire Chief within the allotted time shall result in an employee not being eligible for the provisions of this Section.

SECTION 53. APPEAL OF DISCIPLINARY SUSPENSION

See Section 143.053, Chapter 143

(A) SCOPE OF MATTERS SUBJECT TO APPEAL

(1) MATTERS SUBJECT TO APPEAL-The following matters are subject to appeal:

- (a) Indefinite suspension;
- (b) Temporary suspension;
- (c) Demotion (except as to demotions under§ 143.014); and/or

(d) Promotional passover.

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

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

(3) Employee dissatisfaction resulting from a discretionary policy decision or policy matters, shall not constitute grounds for disciplinary appeal procedures.

(4) An employee who has voluntarily resigned or retired from their position thereby forfeits all rights to the disciplinary appeal processes.

(5) An employee may voluntarily enter a written agreement that expressly evidences their 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 further proceedings in the disciplinary appeal processes.

(B) OPTIONS FOR DISCIPLINARY HEARINGS

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

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

(C) DIRECTOR TO COORDINATE ALL MATTERS

(1) The location and accommodations for all hearings and appeals shall be arranged by the Director.

(2) All subsequent matters raised by either party regarding attendance, scheduling, requests for subpoenas, request for continuance, etc., shall be coordinated through the Director. All such information shall be provided to the Director who shall then provide copies of same to the opposing party or representative and also coordinate the appropriate response or action to be taken. In a hearing coordinated by an outside agency, that agency

shall also provide coordination services between the parties and the hearing examiner in conjunction with the Director's office.

(D) EXPENSE AND COSTS

(1) If appealed to a Hearing Examiner, the Hearing Examiner's fees and expenses are shared equally by the employee and the Fire Department. The cost of a witness is paid by the party who calls the witness.

(2) 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. Any costs of the Commission or a third-party hearing examiner to reset and/or continue a hearing under these Rules, regardless of whom requested the reset and/or continuance, shall be split equally between the parties.

(3) 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 Fire Chief.

(E) FAILURE TO ATTEND SCHEDULED HEARING

The failure of a party to attend a scheduled appeal hearing, or to file a timely request for a continuation of the hearing to a later date, shall not in itself prevent the hearing from proceeding as scheduled nor prevent the Commission from proceeding to take such action as may be appropriate. Requests for continuation of the hearing to a later date must be filed with the Director at least three (3) business days prior to the date and time of the scheduled hearing. Requests for continuance must be date(s) specific and must address the thirty (30) day hearing deadline imposed on Commission decisions as required by Chapter 143. The thirty (30) day Commission Decision deadline will be enforced unless the appealing party and Commission can agree on new dates.

(F) EMPLOYEE AND DEPARTMENT REPRESENTATIVES

(1) The hearing process shall recognize the right of employees as well as the Fire Department to be represented by one or more persons throughout the proceedings of a disciplinary appeal. However, only one (1) representative shall be allowed to speak or otherwise present evidence on behalf of either party throughout the questioning of a particular witness.

(2) Employee and Fire Department representatives shall use their best efforts to conclude all proceedings smoothly, expeditiously, and as fairly as possible to all concerned.

(3) The function of the representatives shall be to articulate the best interests of the employee or the Fire Department represented and to make their presentations pertinent

to the issue(s) being considered. Dissatisfaction with a representative shall not constitute grounds for modification of the final ruling.

(4) All representatives or employees who represent themselves shall become familiar with and follow these rules and regulations at all times during the disciplinary appeal process.

(5) Any problems or concerns regarding the manner in which the opposing party or their representative is handling a particular disciplinary appeal should be brought to the attention of Director. The difficulty will be expeditiously addressed.

(G) EXCHANGE OF DOCUMENTATION AND IDENTITY OF WITNESS

(1) The Texas Rules of Civil Procedure, the Texas Rules of Criminal Procedure, and all other rules of court regarding what is commonly known as "discovery" shall not apply to any civil service proceedings. Mediation and arbitration rules and processes do not apply to any civil service hearings.

(2) Parties who request photocopies of documents from the opposing party should be accommodated if such requests are reasonable. Items from departmental policies, rules and regulations manual may be photocopied upon request, and payment of applicable copying charges. Items such as Accident Review Board recommendations, time and attendance records, duty status forms and other such documents may also be provided so long as they are relevant to the employee and the disciplinary action under appeal.

(3) Employees and their representatives may obtain copies of matters contained in the employee's own personnel and fire departmental files after the employee has signed the appropriate release form(s).

(4-5) Revisiting

(H) FORMAT OF APPEAL HEARINGS

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

(1) Both parties may be allowed to make brief opening statements.

(2) The City's (Fire Department's) case:

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

(3) Employee's response:

- (a) Direct testimony of witness
- (b) Cross-examination of witness

- (c) Redirect
 - (d) Additional questions, if any, by Commission
- (4) Rebuttal by City /Fire Department, if any:
- (a) Direct testimony of witness
 - (b) Cross-examination of witness
 - (c) Redirect
 - (d) Additional questions, if any, by Commission
- (5) Short argument, summary by City
- (6) Short argument, summary by employee
- (7) Rebuttal by City
- (8) Deliberation by the Commission in executive session.
- (9) Decision-rendered by public vote.

(I) HEARING PROCEDURES

- (1) All disciplinary appeal proceedings shall be public hearings. The Commission or Hearing Examiner may place limitations on photographers, media personnel, and audience when necessary to avoid distraction or violation of the sequestration rule.
- (2) At the scheduled time and place, the hearing shall be called to order.
- (3) All parties shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process. All parties shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission at the hearing.
- (4) A record of the proceedings, capable of clear and accurate reproduction or transcription, shall be made and maintained by the Director.
- (5) After being called to order but prior to the beginning of testimony or evidence, consideration shall be made as to any pre-hearing motions, requests or jurisdictional matters as submitted by either party. The participants shall also seek to obtain as many stipulations as possible as to non-contested or non-material matters. The Commission may "carry" such pre-hearing motions until the hearing is completed and all factual evidence has been presented before making its final ruling thereto.
- (6) Unless waived by the participants, the hearing shall then proceed with the reading into the record the statement of charges and specifications as well as factual summary of the operative events as filed with the Commission by the Fire Chief and which forms the basis of the disciplinary action imposed on the employee.
- (7) The hearing shall then proceed to develop the evidence and testimony as to those contested matters.

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

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

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

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

- a. effectively ascertain the truth;
- b. keep such presentations relevant to the issues to be determined;
- c. avoid the needless consumption of time and expense; and
- d. protect the witnesses and employees from harassment or undue embarrassment.

(12) The Commission may establish equal time limits for presentation of each side of the case.

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

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

(15) 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.

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

(J) RULES OF EVIDENCE

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

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

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

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

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

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

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

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

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

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

(K) ISSUES TO BE DETERMINED IN DISCIPLINARY APPEALS

(1) Generally, the determinative issues to be considered and determined by the disciplinary action appeal process shall be:

- (a) Did cause exist to support the imposing of some form of disciplinary action as to the employee?
- (b) Was the degree of disciplinary action imposed by the Fire Department reasonable under the circumstances? and

(c) Has the hearing process developed matters that justify or compel modification of the Fire Chief's disciplinary action?

(2) The Fire Chief shall establish the violation(s) by a preponderance of the evidence standard.

(3) It shall be recognized that prior to imposing any form of discipline, the Fire Chief may use lesser forms of disciplinary or corrective action, or progressive discipline.

However, the failure to utilize progressive discipline shall not in itself be grounds to overturn or otherwise modify a Fire Chief's decision to proceed directly to the appropriate level of discipline if the employee's misconduct warrants such disciplinary action, including indefinite suspension. Progressive discipline need not always apply and the seriousness of a single offense may negate a previously unblemished record.

(4) The hearing shall provide the employee a reasonable opportunity to produce objective evidence and/or testimony to develop:

(a) That the employee did not commit the misconduct as alleged, i.e., "the allegations are not true"; or

(b) That even if the employee committed the acts as alleged, that such activity does not constitute actionable misconduct; or

(c) 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

(d) A combination of any of these matters would justify or compel modification of the Fire Chief's action.

(5) An employee's mere disagreement or difference in opinion in regard to the Fire Chief's actions or reasoning shall not constitute grounds to overturn or modify the disciplinary action.

(6) If the Commission determines one (1) 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.

(L) FINDINGS AND ORDERS OF THE COMMISSION

(1) As a result of the evidence and testimony presented at the hearing, the Commission shall vote and issue a decision on the matter via a written statement finding the truth of the specific charge(s) against the employee, or a written statement finding that the specific charge(s) against the employee are not true.

(2) In the event that all of the charge(s) of misconduct against the employee are found to be "not true," then the final order and ruling shall be promptly to restore the employee to the employee's proper position or status without penalty.

(3) In the event that specific charges of misconduct against the employee are found to be "true," then the final order and ruling shall clearly state whether the employee is:

- (a) Permanently dismissed from the Fire Department; or
- (b) Temporarily suspended from the Fire Department and shall then set forth the definite time period and conditions of suspension which shall be imposed or
- (c) Demoted (Section 143.054).

(4) The final written ruling on all disciplinary appeals shall also include such other matters so as to finally and clearly resolve the issues under consideration, particularly to resolve questions concerning:

- (a) The employee's resulting employment status;
- (b) Back pay and other employment benefits; and
- (c) Mitigation of damages.

(5) If modifying the disciplinary action of the Fire Department, the final 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.

(6) The Commission may consider matters involving questions of applying Chapter 143 to facts or events that may arise during the disciplinary appeal process and 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.

(7) The final ruling and order of the Commission may be made by the majority vote of two (2) of the three (3) Commissioners present. If only two (2) Commissioners are present, the final ruling and order must be made in agreement by both Commissioners present.

(8) A copy of the Fire 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 decision shall be filed in the Commission record. The Commission may cite these records as reference material in subsequent determinations

SECTION 54. DEMOTIONS

See Section 143.054, Chapter 143

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

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

SECTION 55. NOT APPLICABLE

See Section 143.055, Chapter 143

SECTION 56. PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT

See Section 143.056, Chapter 143

Conviction or deferred adjudication of a felony shall result in the employee being terminated from their position. No hearing before the Commission or a Hearing Examiner shall be provided.

SECTION 57. HEARING EXAMINERS

See Section 143.057, Chapter 143

APPEALS TO INDEPENDENT THIRD PARTY HEARING

(A) Disciplinary actions concerning an indefinite suspension, suspension, a promotional passover, or a recommended demotion are appealable to Hearing Examiners. When an employee requests the appeal to a Hearings Examiner, the employee filing the appeal shall strike the first name from the list of possible hearing examiners.

1. At the time that the Director submits the parties' agreed date(s) for the hearing, the Director shall also forward to or see that the Hearing Examiner has the following materials:
 - (a) A copy of these Civil Service Commission Rules and Regulations:
 - (b) A copy of Chapter 143; and
 - (c) A copy of the applicable City Policy and Procedure, Fire Department Rules and Regulations alleged to have been violated.

(B) The Director shall thereafter coordinate with the parties and the agency sponsoring the Hearing Examiner as to all matters regarding scheduling, place of hearing, accommodations, etc.

(C) The rule-making power and authority of the Civil Service Commission is in no way conferred upon and/or delegated to any Hearing Examiner, either by implication or otherwise.

(D) In every 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.

(E) 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.

(F) The Hearing Examiner is to conduct a hearing fairly, objectively and impartially under the provisions of Chapter 143 and these Rules and Regulations. The Hearing Examiner is to render a fair and just decision based solely on the evidence presented in the hearing. The scope of evidence to be considered at the hearing shall be generally limited to matters closely relevant to the charges of misconduct as set forth in the Fire Department's written statement and the employee's notice of appeal as filed with the Commission as well as the appealing party's previous work record with the Fire Department.

(G) All hearings conducted by Hearing Examiners shall also be recorded so as to be capable of clear and accurate reproduction or transcription. The Director will coordinate with the Hearing Examiner for use of City equipment for this purpose.

(H) After the close of evidence and testimony a Hearing Examiner may deliberate and thereafter enter the ruling either in the same manner as the Commission or as per Chapter 143.

(I) If a situation arises pertaining to the administration process of selecting a Hearing Examiner, or meeting notices, or request for rescheduling, refusal, conflict or interest, etc., and the situation is not provided for Chapter 143 or in these Rules and Regulations, then the parties and the Director shall attempt to mutually resolve the situation by agreement. If the matter is not one capable of being reasonably resolved by agreement then the Director may refer the matter to the administrative processes of the entity sponsoring the Hearing Examiner to resolve the situation within their own processes.

(J) 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 agency sponsoring the Hearing Examiner, which shall then resolve the dispute according to its own administrative processes. The response shall either excuse the Hearing Examiner or thereafter provide a new list or it shall provide a written statement of reasons why the Hearing Examiner was not excused.

(K) Essential Elements

1. The time limit for appeal to a Hearing Examiner will be the same as for appeal to the Commission.
2. In appeals to a Hearing Examiner, the "rules of evidence" will not be observed.
3. Hearing examiners shall base their decisions on a preponderance of the evidence.
4. All hearings conducted by a Hearing Examiner will be conducted within the City limits of Leander.
5. Hearing Examiners are limited to the scope of Fire Chief options when hearing disciplinary appeals. Hearing Examiners may: (a) uphold, reduce, or overturn a temporary suspension; (b) uphold an indefinite suspension; (c) reinstate an indefinitely suspended employee and provide for a reduced suspension; or (d) overturn the indefinite suspension entirely. If the appeal concerns a temporary or indefinite suspension, the Hearing Examiner has no authority to order an involuntary demotion of an employee.
6. Hearing Examiners will observe the procedures as described in Tex. Local Gov't Code Sections 143.010, 143.052, 143.053, and 143.057