



**NOTICE OF MEETING  
OF THE GOVERNING BODY  
OF COPPERAS COVE, TEXAS**

*An agenda information packet is available for public inspection in the Lobby of City Hall and may be viewed on the City's Web Page, [www.copperascove.tx.gov](http://www.copperascove.tx.gov), under the "Government" tab.*

Notice is hereby given that a **Workshop Council Meeting** of the City of Copperas Cove, Texas, will be held on **November 1, 2011 at 6:00 p.m.** in the City Hall Council Chambers at 507 South Main Street, Copperas Cove, Texas 76522, at which time the following subjects will be discussed:

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. WORKSHOP ITEMS**

1. Presentation and discussion on the Water/Sewer Rate Study. **Andrea M. Gardner, City Manager**
2. Direction to Staff on item C-1. **Andrea M. Gardner, City Manager**

**D. ADJOURNMENT**

The City Council reserves the right to adjourn into Executive Session at any time regarding any issue on this agenda for which it is legally permissible.

City Hall is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to the meeting. Please contact the City Secretary at (254) 547-4221, (254) 547-6063 TTY, or FAX (254) 542-8927 for information or assistance.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Governing Body of the City of Copperas Cove was posted at \_\_\_\_\_, October 28, 2011, on the glass front door of City Hall, a place convenient and readily accessible to the general public at all times.

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Jane Lees, TRMC, CMC  
City Secretary

**City Council Workshop**

**C. 1.**

**Meeting Date:** 11/01/2011

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**Information**

**Subject**

Presentation and discussion on the Water/Sewer Rate Study. **Andrea M. Gardner, City Manager**

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**City Council Workshop**

**C. 2.**

**Meeting Date:** 11/01/2011

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**Information**

**Subject**

Direction to Staff on item C-1. **Andrea M. Gardner, City Manager**

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**NOTICE OF MEETING  
OF THE  
GOVERNING BODY OF  
COPPERAS COVE, TEXAS**

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Notice is hereby given that a **Regular Council Meeting** of the City of Copperas Cove, Texas, will be held on **November 1, 2011** at **7:00 p.m.** in the City Hall Council Chambers at 507 South Main Street, Copperas Cove, Texas 76522, at which time the following subjects will be discussed:

- A. **CALL TO ORDER**
- B. **INVOCATION AND PLEDGE OF ALLEGIANCE**
- C. **ROLL CALL**
- D. **ANNOUNCEMENTS**
- E. **PUBLIC RECOGNITION**
- F. **CITIZENS FORUM** – At this time, citizens will be allowed to speak for a length of time not to exceed five minutes per person. Thirty minutes total has been allotted for this section. Pursuant to §551.042 of the Texas Open Meetings Act, any deliberation or decision about the subject of inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.
- G. **CONSENT AGENDA** – All matters listed under this item are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and considered separately.
  - 1. Consideration and action on approving minutes from the workshop council meeting of October 18, 2011. **Jane Lees, City Secretary**
  - 2. Consideration and action on approving minutes from the regular council meeting of October 18, 2011. **Jane Lees, City Secretary**
  - 3. Consideration and action on a resolution accepting the quarterly investment report as presented for the quarter ending September 30, 2011 per the Investment Policy. **Velia Key, Director of Financial Services**

H. **PUBLIC HEARINGS/ACTION - None.**

I. **ACTION ITEMS**

1. Consideration and action on an ordinance amending Chapter 7, Article II of the City's Code of Ordinances; providing for a severability clause; providing for a savings clause; and, declaring an effective date. **J. Mike Baker, Fire Chief/Emergency Management Coordinator**
2. Consideration and action on an ordinance amending Section 18-16.2, Same - North FM 116 (South Main Street, Avenue F, and 1st Street), of the Code of Ordinances, establishing speed limits on FM 116. **Wesley Wright, P.E., Public Works Division Head/City Engineer**
3. Consideration and approval of a resolution electing not to require the remittance of a PEG fee by holders of a state issued certificate of franchise authority. **Ryan D. Haverlah, Assistant Director of Financial Services/Budget Director**
4. Consideration and approval of a resolution opposing action taken by the Coryell Central Appraisal District on October 6, 2011, regarding voting members to elect the Board of Directors. **Ryan D. Haverlah, Assistant Director of Financial Services/Budget Director**
5. Consideration and action on an ordinance updating Personnel Policy No. 312, Holidays. **Kelli Sames, Human Resources Division Head.**
6. Consideration and action on an ordinance updating Personnel Policy No. 120, Salary Program Administration. **Kelli Sames, Human Resources Division Head**
7. Consideration and action on authorizing the City Manager to execute a 380 Economic Development Agreement between the City of Copperas Cove, Texas and Endeavor Real Estate Group or its Affiliates. **Andrea M. Gardner, City Manager**

J. **REPORTS FROM OUTSIDE ENTITIES, ADVISORY COMMITTEES AND BOARDS**

1. Chamber of Commerce 3rd Quarter Financial Report for 2011. **Marty Smith-Cook, President, Copperas Cove Chamber of Commerce**

K. **ITEMS FOR FUTURE AGENDAS**

L. **EXECUTIVE SESSION**

1. Pursuant to §551.087, Deliberation Regarding Economic Development Negotiations, of the Open Meetings Act, Tex. Gov't Code, Council will meet in Executive Session to deliberate the offer of a financial or other incentive to a business prospect - First Advisors, Inc.

M. **RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ANY ITEMS POSTED AND LEGALLY DISCUSSED IN EXECUTIVE SESSION**

N. **ADJOURNMENT**

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Jane Lees, TRMC, CMC  
City Secretary

**City Council Regular**

**G. 1.**

**Meeting Date:** 11/01/2011

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**Information**

**Subject**

Consideration and action on approving minutes from the workshop council meeting of October 18, 2011.

**Jane Lees, City Secretary**

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**Attachments**

Workshop Minutes

Workshop Minutes Attachment 10/18/11

**CITY OF COPPERAS COVE  
CITY COUNCIL WORKSHOP MEETING MINUTES  
October 18, 2011 – 6:00 P.M.**

- A     **CALL TO ORDER** - Mayor Hull called the workshop to order at 6:06 p.m. and announced that the City Council would meet in Executive Session pursuant to Section 551.071, Consultations with Attorney, of the Open Meetings Act, Tex. Gov't. Code, to discuss issues with outsourcing EMS.

Mayor Hull recessed the workshop at 6:07 p.m.

Mayor Hull reconvened the workshop at 6:22 p.m.

B     **ROLL CALL**

Present:     John Hull  
              Cheryl L. Meredith  
              Charlie D. Youngs  
              Gary L. Kent  
              Kenn Smith  
              Jim Schmitz  
              Frank Seffrood

Absent:     Danny Palmer  
Attendees:  Andrea M. Gardner, City Manager  
              Charles E. Zech, City Attorney  
              Jane Lees, City Secretary

C     **WORKSHOP ITEMS**

- 1     Review of Civil Service/Outsourcing EMS. **Andrea M. Gardner, City Manager**

Ms. Gardner presented a PowerPoint presentation, which is attached to and made a part of these minutes.

- 2     Direction to staff on item C-1. **Andrea M. Gardner, City Manager**

Mayor Hull requested that City staff further research the issue of outsourcing EMS and bring findings back to Council at a later date. The Council concurred.

- D     **ADJOURNMENT** - There being no further business, Mayor Hull adjourned the meeting at 7:00 p.m.

\_\_\_\_\_  
John Hull, Mayor

ATTEST:

\_\_\_\_\_  
Jane Lees, City Secretary

# Outsourcing Fire/Emergency Medical Services (EMS)



# Fire Services

- As requested by City Council
  - Outsourced fire services are generally offered in a specific regional or geographic area serviced by an established volunteer, municipal, district, or state fire department.
    - Larger metropolitan areas (example: Pasadena, Texas)
    - California, Florida, Washington
  - Few private fire service companies exist that provide service to municipalities.
  - One third-party company has contacted the City

# EMS Services

- As requested by City Council
  - Several organizations provide contractual emergency medical services (EMS) throughout the country and the region.
  - Estimated cost to outsource EMS services
    - \$700,000 - \$1,000,000
    - Use/purchase of assets
    - Price structure to citizens

# Budget for City of Copperas Cove Fire/EMS Department

|              |             |
|--------------|-------------|
| FY 2011-2012 | \$3,405,689 |
| FY 2010-2011 | \$3,229,145 |
| FY 2009-2010 | \$3,003,768 |
| FY 2008-2009 | \$3,103,956 |

# Outsourcing Options

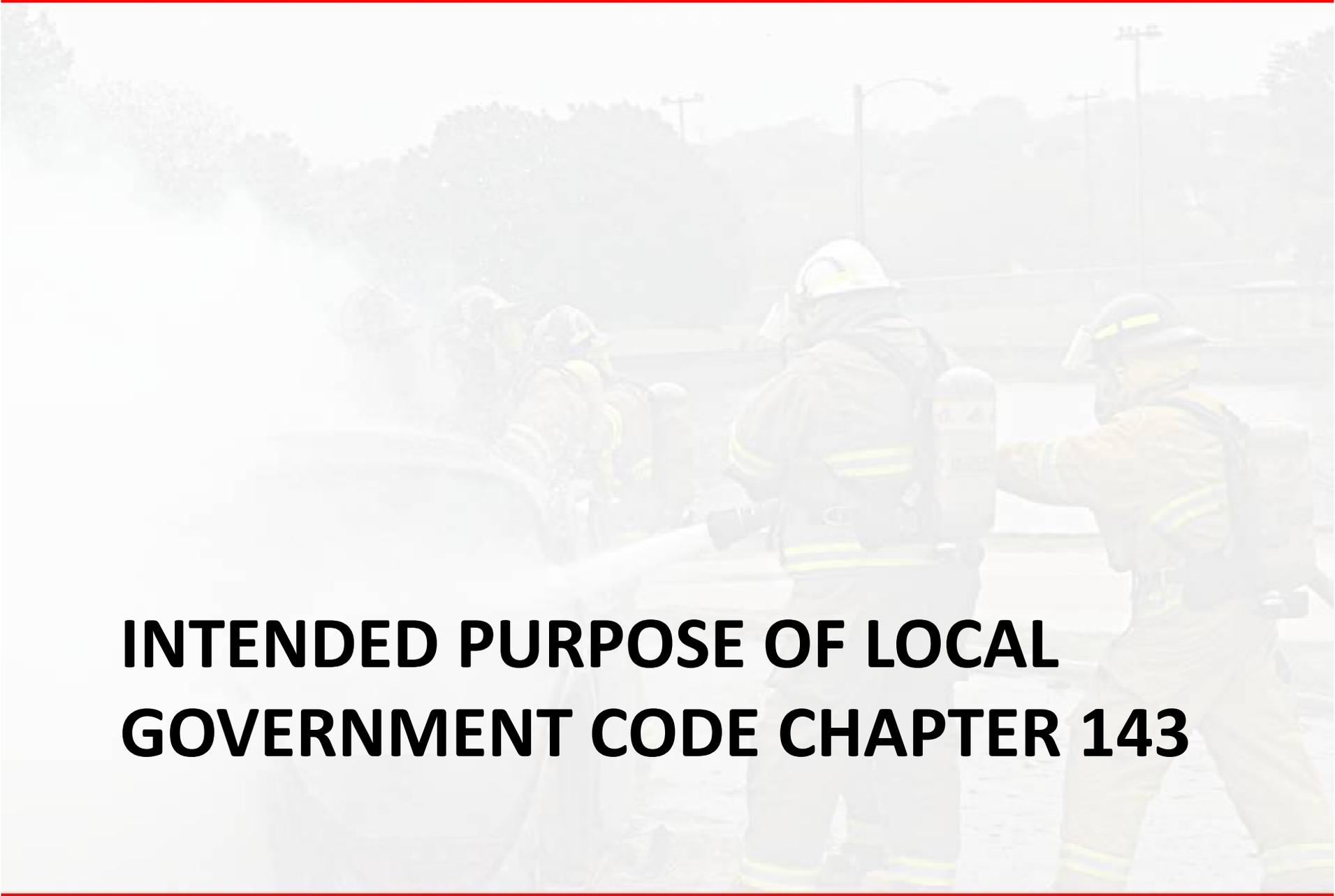
- Fire only
- EMS only
- Fire and EMS
- Emergency Services District – Fire and/or EMS
  - Health Code – Chapter 775
  - Voter initiative (petition)

**LOADING ...**

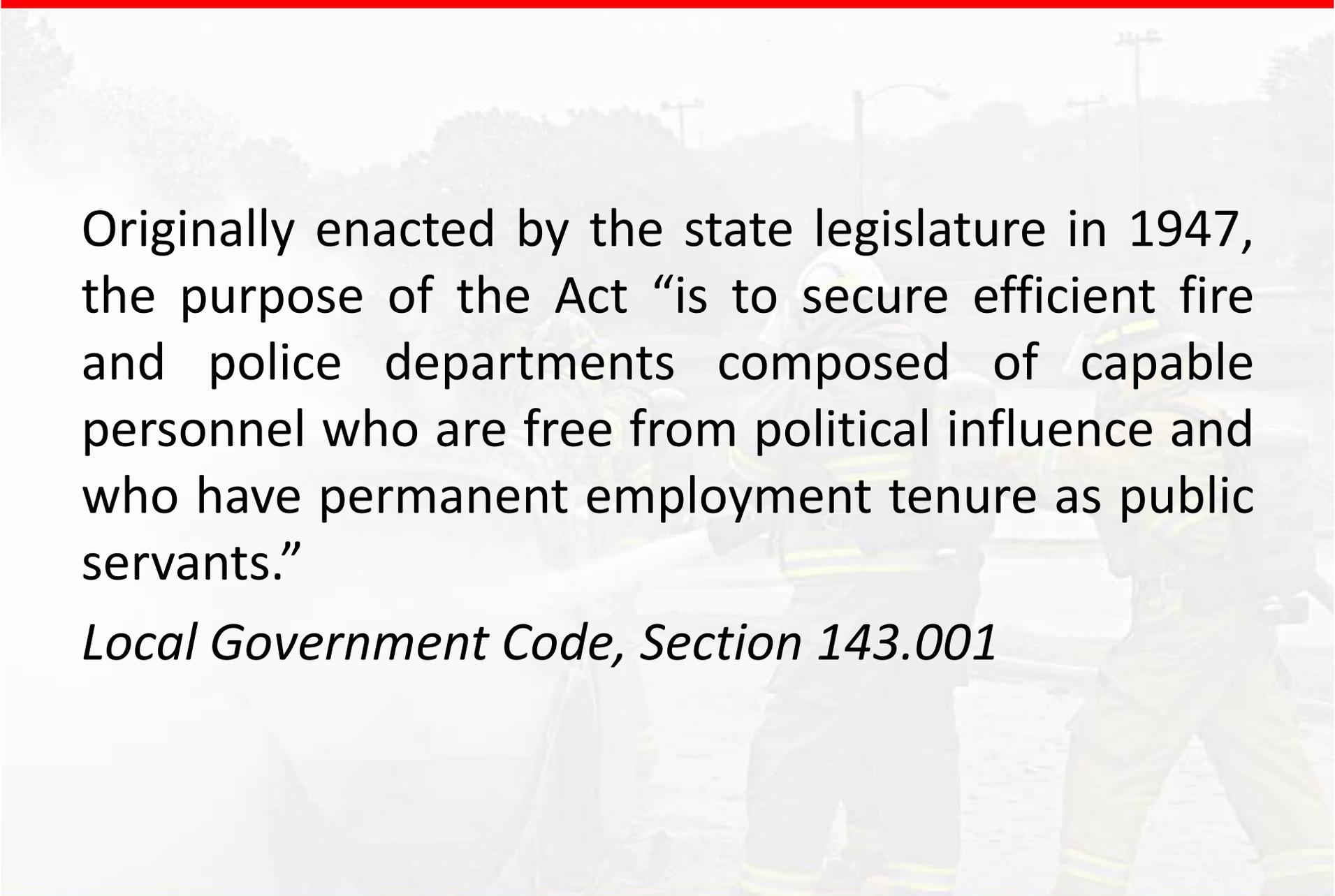
# Local Government Code Chapter 143

**Municipal  
Civil Service for  
Fire Fighters  
and Police  
Officers**





**INTENDED PURPOSE OF LOCAL  
GOVERNMENT CODE CHAPTER 143**

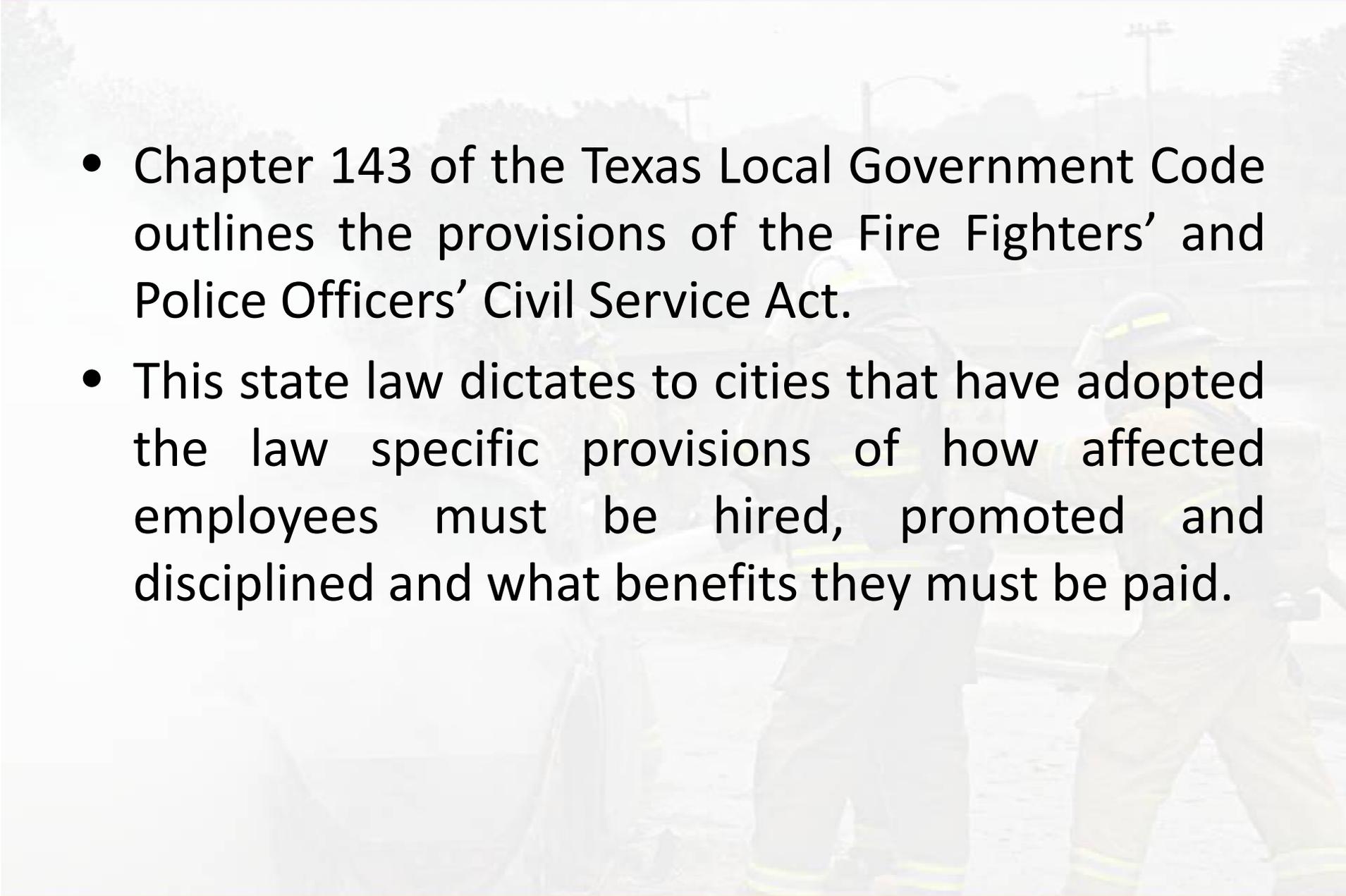


Originally enacted by the state legislature in 1947, the purpose of the Act “is to secure efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants.”

*Local Government Code, Section 143.001*

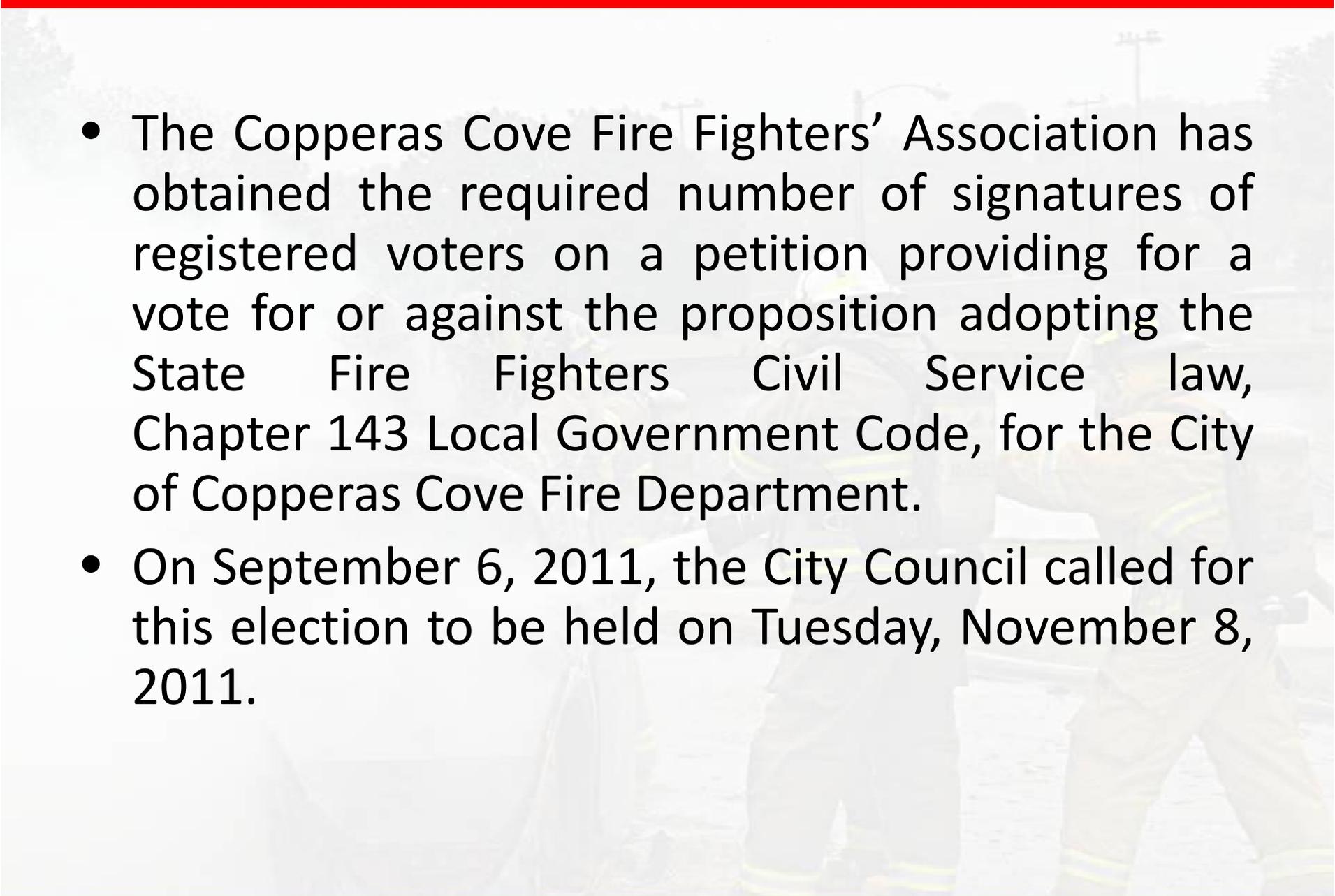


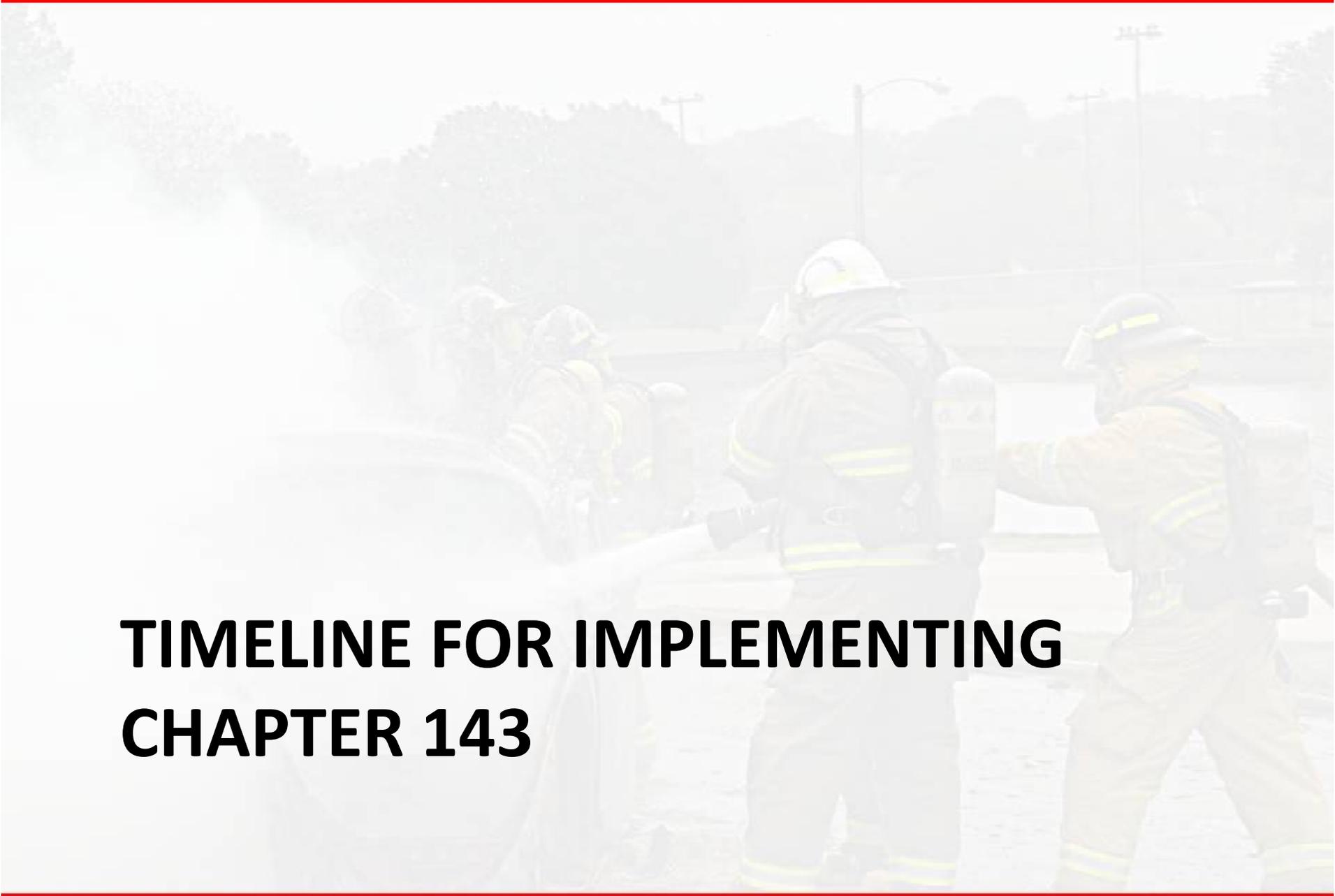
**CIVIL SERVICE ACT**

- 
- Chapter 143 of the Texas Local Government Code outlines the provisions of the Fire Fighters' and Police Officers' Civil Service Act.
  - This state law dictates to cities that have adopted the law specific provisions of how affected employees must be hired, promoted and disciplined and what benefits they must be paid.



# THE ADOPTION PROCESS

- 
- The Copperas Cove Fire Fighters' Association has obtained the required number of signatures of registered voters on a petition providing for a vote for or against the proposition adopting the State Fire Fighters Civil Service law, Chapter 143 Local Government Code, for the City of Copperas Cove Fire Department.
  - On September 6, 2011, the City Council called for this election to be held on Tuesday, November 8, 2011.



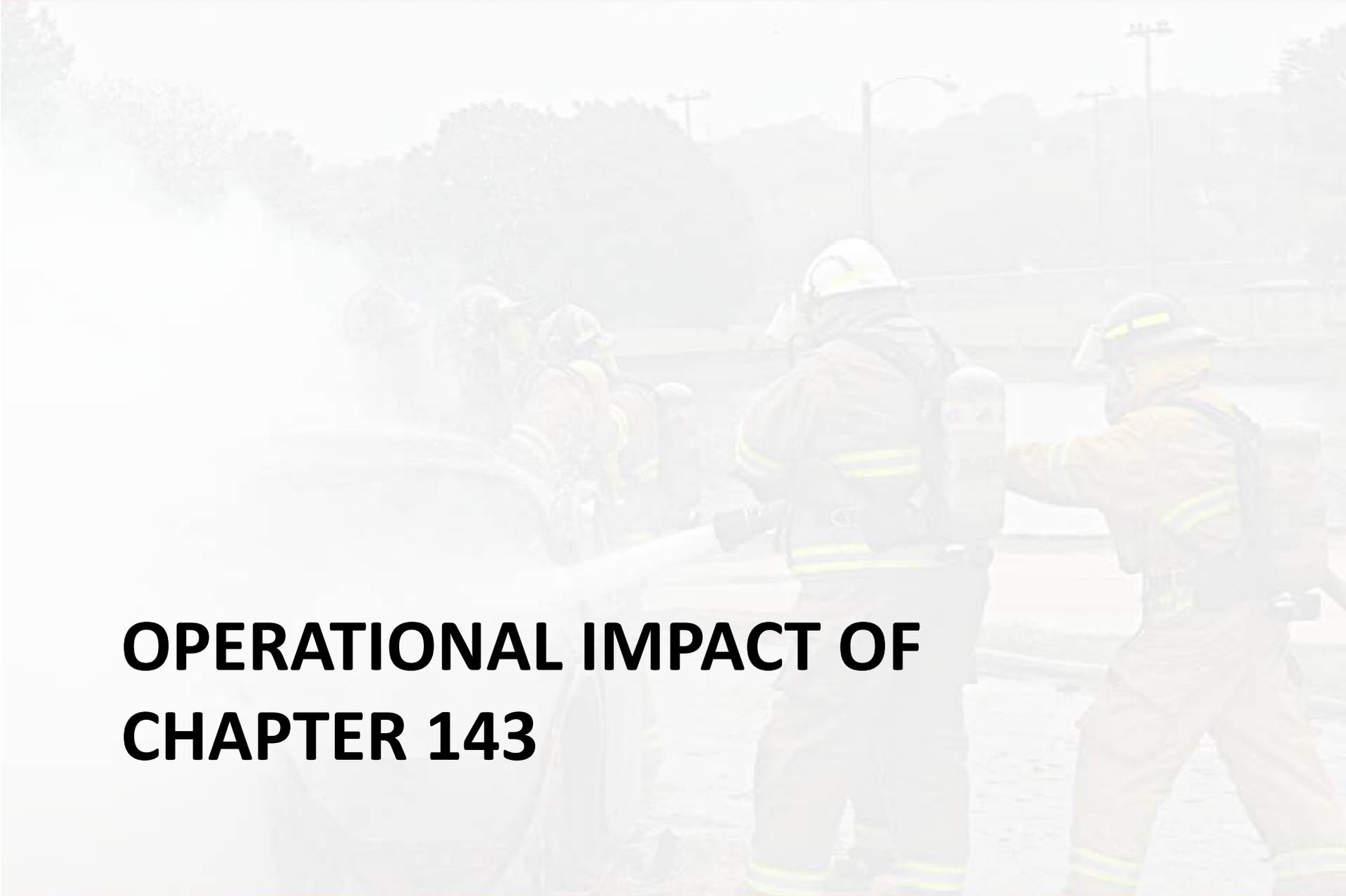
**TIMELINE FOR IMPLEMENTING  
CHAPTER 143**

- 
1. November 8, 2011
    - Election Day
  2. January 7, 2012  
(within 60 days)
    - Chief executive appoint Commission members
  3. Between Jan 7, 2012  
and October 30, 2012
    - Adoption and publication of rules before implementation
  4. October 30, 2012
    - Fully Implement Chapter 143



# Adoption and publication of rules before implementation

- Pays: Longevity, Education, Assignment, Certification, Shift Differential, & Fitness Incentive
- Eligibility List: 6 or 12 months
- Hiring Process – Interviews?
- Classification system
- Number of employees under each classification
- Salary Pay Plan
- Probationary period: 6 or 12 months
- Vacation leave
- Continue: Birthday leave, Bereavement/Personal time off, Holidays?



**OPERATIONAL IMPACT OF  
CHAPTER 143**

# Loss of “At-Will” Employer Status

- The State of Texas is an “At-Will” state meaning that
  - Employment relations may be broken by either party without cause provided there is no express contract for a definite term.
- Civil Service changes the “At-Will” status by providing
  - Limited circumstances whereby a covered employee may be disciplined and/or terminated.
  - A Civil Service employee has the right to appeal a disciplinary decision to the Civil Service Commission or to an independent third-party hearing examiner.
  - The decision of the Civil Service Commission can only be appealed to state district court.



# Applicant Eligibility, Recruitment, and Selection

- Maximum age of 36 for entry-level fire fighters.
- Civil Service will reduce the pool of experienced applicants eligible for employment with the Copperas Cove Fire Department.
- Additionally, the City's freedom to reject applicants would be limited.
- Hiring is restricted to the applicant list based on the test results and the department must exhaust the unexpired list when hiring individuals.

# Applicant Eligibility, Recruitment, and Selection (cont.)

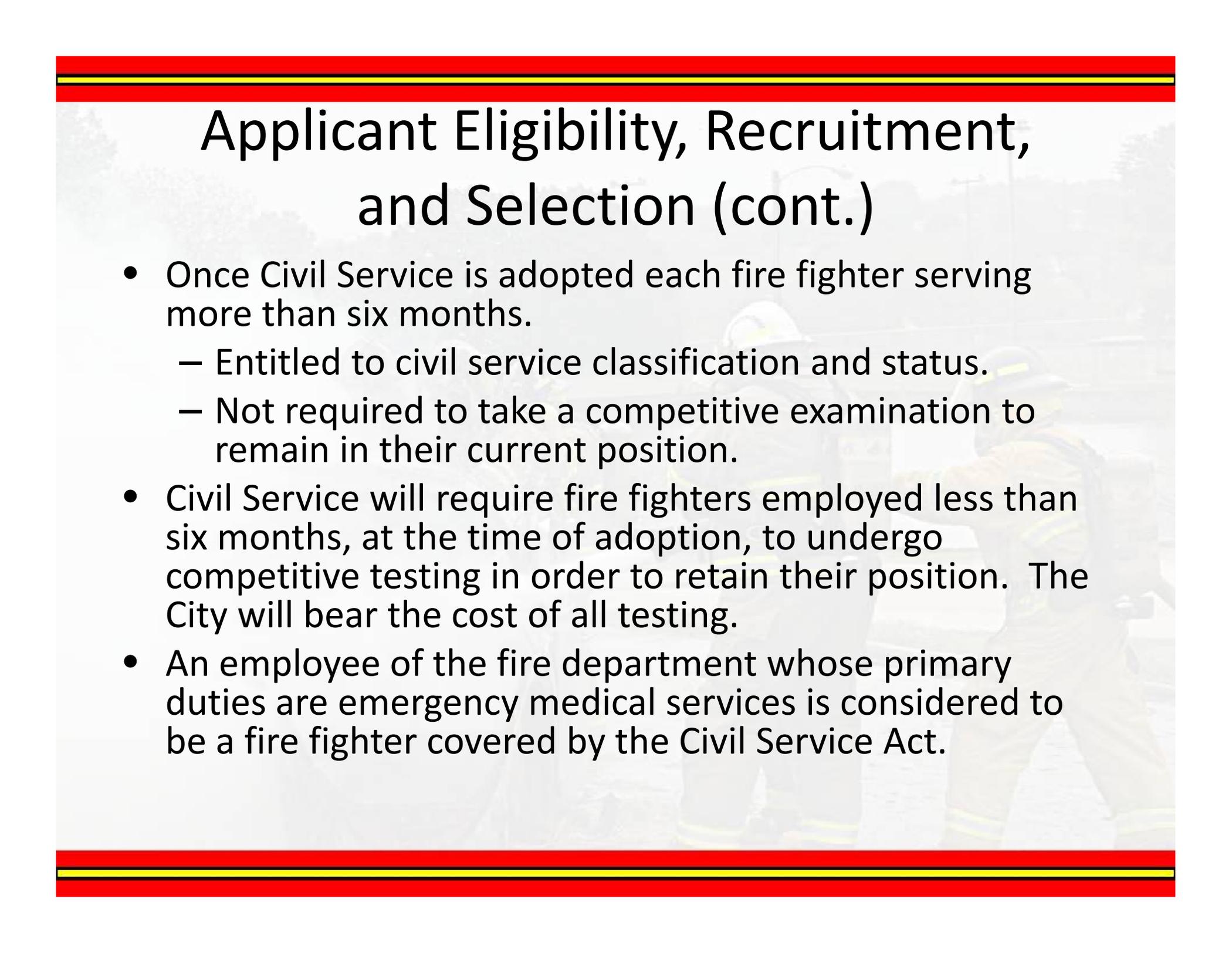
## Current Operations

- Testing
- Interviews/Background Check
- Fitness
- 6 month probation

## Civil Service

- Testing
- Background Check
- Fitness
- Minimum of 6 month probation, maximum of 12 month probation

During probationary period, employees do not have protections of Civil Service Law.

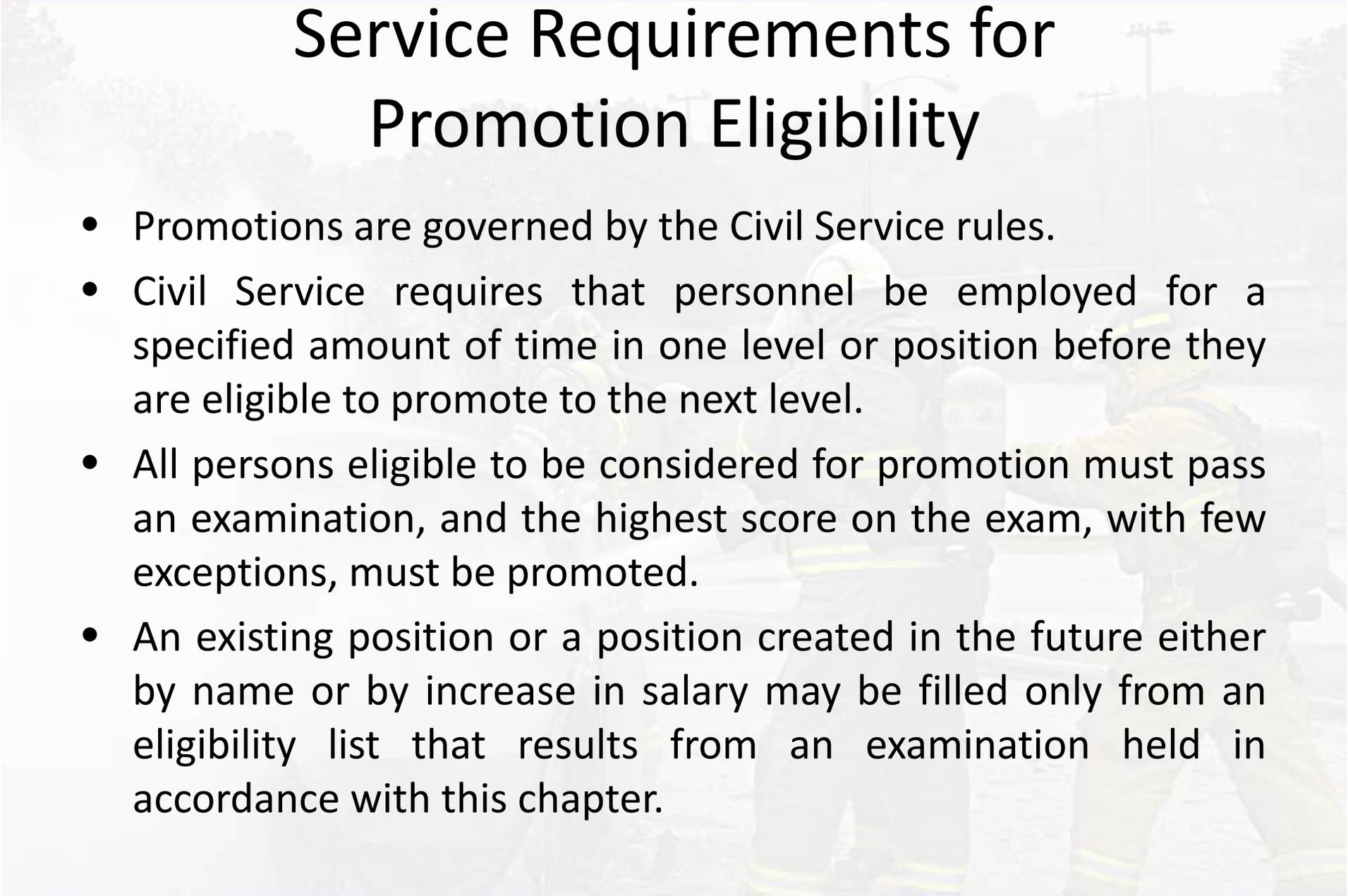
The background of the slide features a faded image of several firefighters in full protective gear, including helmets and jackets, standing in a line. The image is semi-transparent, allowing the text to be clearly visible over it.

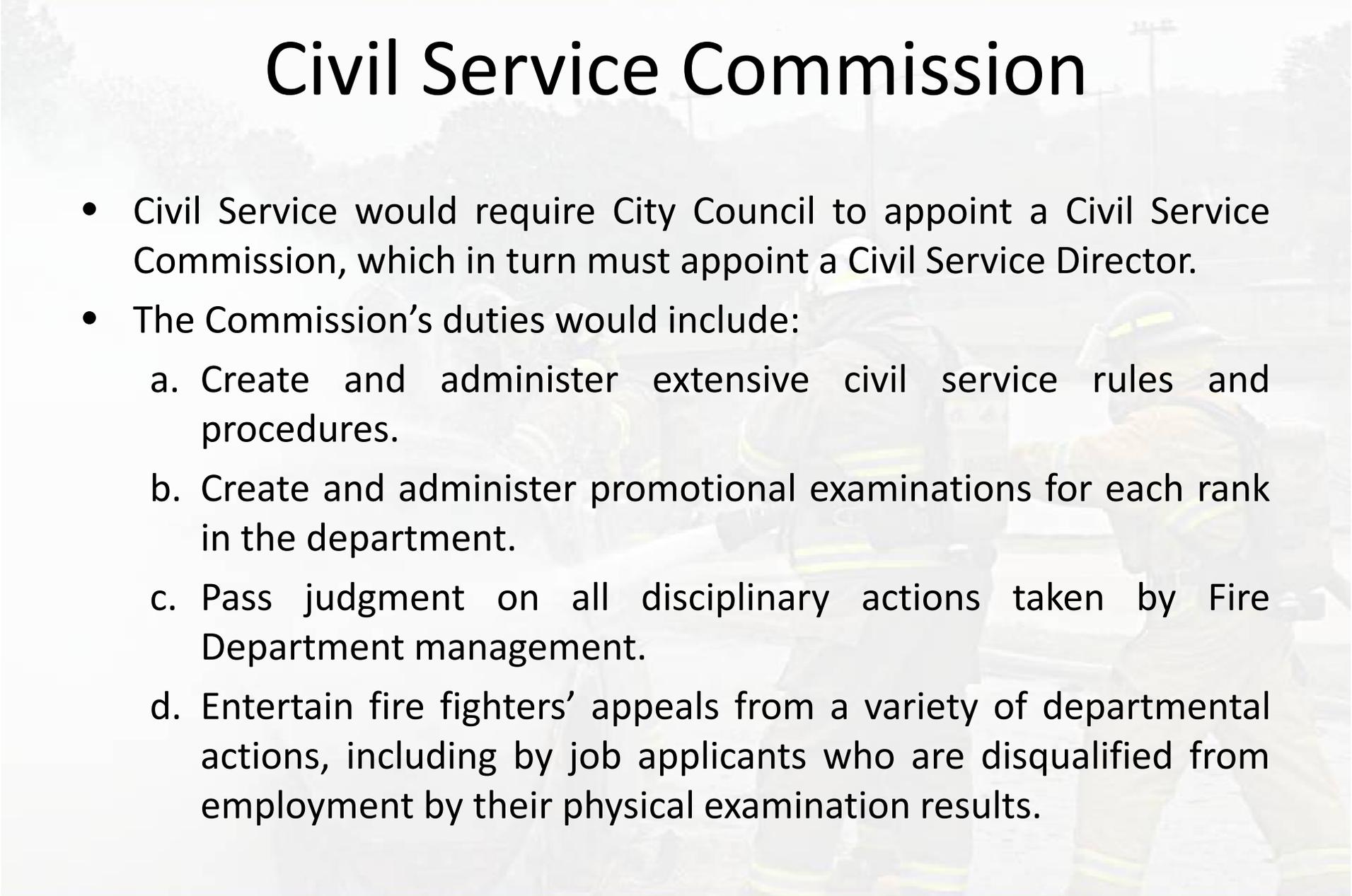
# Applicant Eligibility, Recruitment, and Selection (cont.)

- Once Civil Service is adopted each fire fighter serving more than six months.
  - Entitled to civil service classification and status.
  - Not required to take a competitive examination to remain in their current position.
- Civil Service will require fire fighters employed less than six months, at the time of adoption, to undergo competitive testing in order to retain their position. The City will bear the cost of all testing.
- An employee of the fire department whose primary duties are emergency medical services is considered to be a fire fighter covered by the Civil Service Act.



# Service Requirements for Promotion Eligibility

- Promotions are governed by the Civil Service rules.
  - Civil Service requires that personnel be employed for a specified amount of time in one level or position before they are eligible to promote to the next level.
  - All persons eligible to be considered for promotion must pass an examination, and the highest score on the exam, with few exceptions, must be promoted.
  - An existing position or a position created in the future either by name or by increase in salary may be filled only from an eligibility list that results from an examination held in accordance with this chapter.
- 
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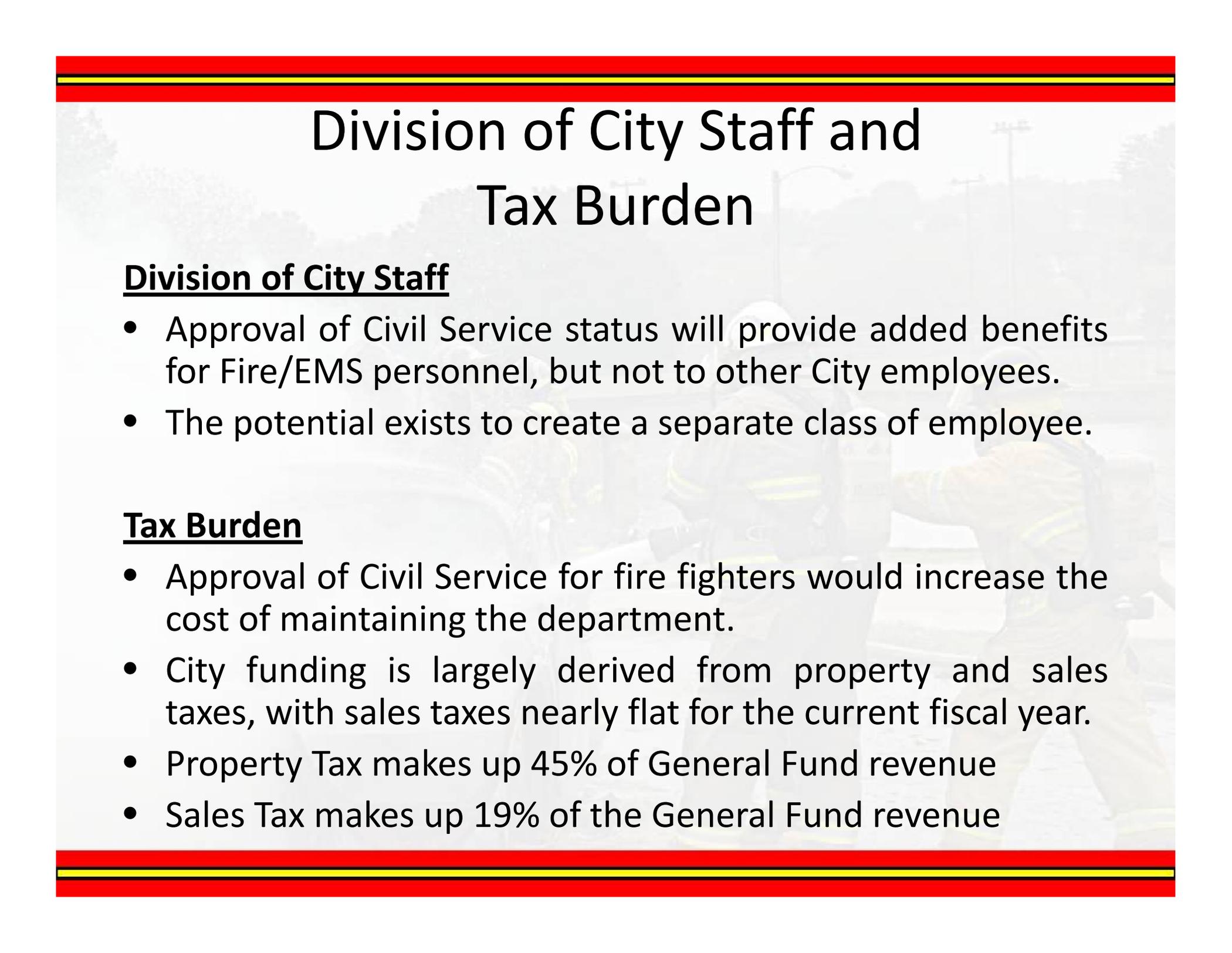


# Civil Service Commission

- Civil Service would require City Council to appoint a Civil Service Commission, which in turn must appoint a Civil Service Director.
- The Commission's duties would include:
  - a. Create and administer extensive civil service rules and procedures.
  - b. Create and administer promotional examinations for each rank in the department.
  - c. Pass judgment on all disciplinary actions taken by Fire Department management.
  - d. Entertain fire fighters' appeals from a variety of departmental actions, including by job applicants who are disqualified from employment by their physical examination results.

# Added Administrative Costs

- In addition, an aggrieved fire fighter would have the right to bypass Commission procedures and demand that a termination, suspension, demotion or promotional by-pass can be heard by a hearing examiner rather than the Commission. This alternative procedure would require hiring and paying for one-half of the costs of a hearing examiner. Due to the nature of these proceedings, the City would incur additional legal expenses in defending against such lawsuits.
- The City of Copperas Cove will be required to provide administrative support and office resources to the Civil Service Commission and Director. Based upon the experiences of other local municipalities who recently implemented Civil Service, an additional administrative position will be required to establish rules, administer payroll and benefits for fire fighters, and to support the Civil Service Director and Commission.



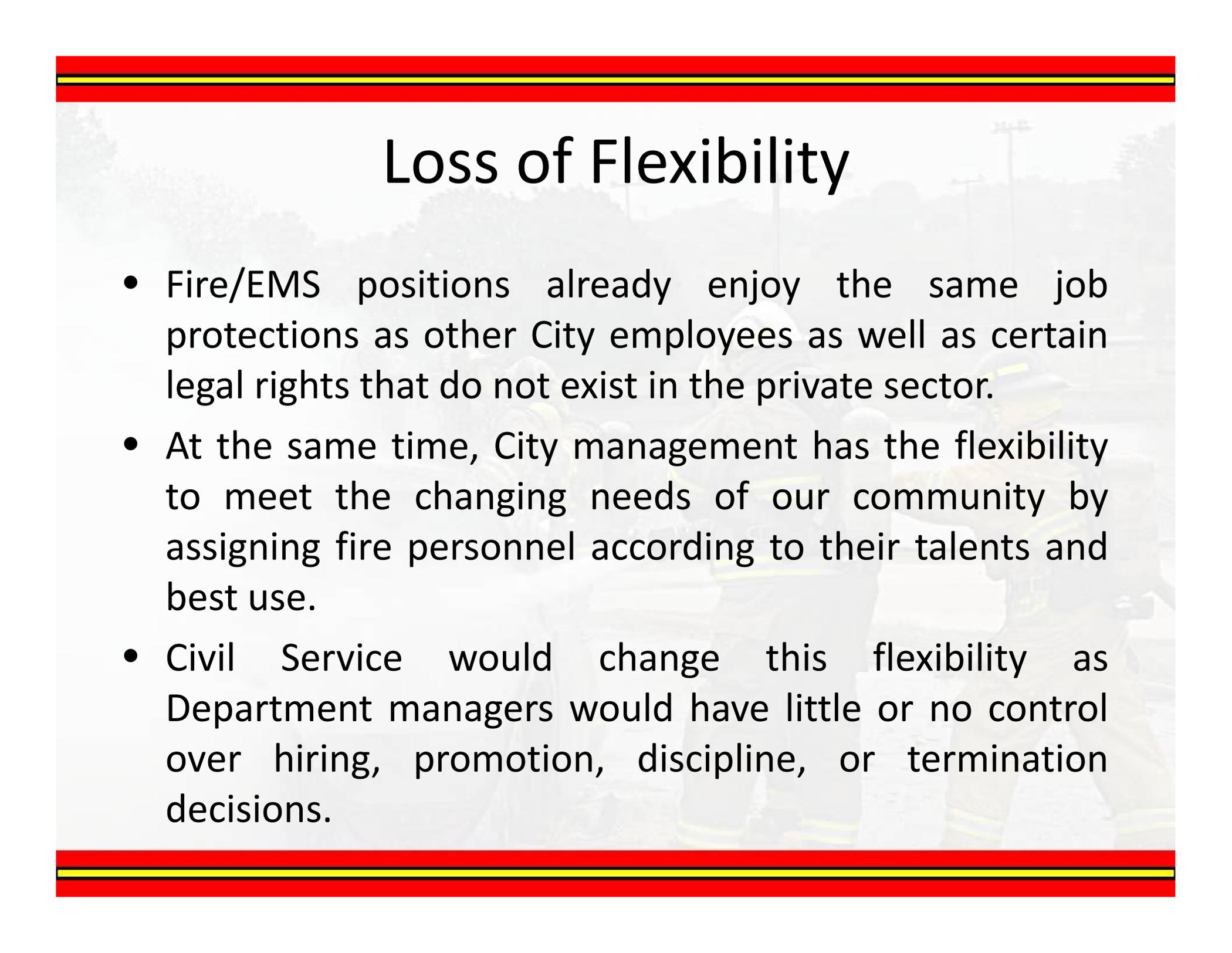
# Division of City Staff and Tax Burden

## Division of City Staff

- Approval of Civil Service status will provide added benefits for Fire/EMS personnel, but not to other City employees.
- The potential exists to create a separate class of employee.

## Tax Burden

- Approval of Civil Service for fire fighters would increase the cost of maintaining the department.
- City funding is largely derived from property and sales taxes, with sales taxes nearly flat for the current fiscal year.
- Property Tax makes up 45% of General Fund revenue
- Sales Tax makes up 19% of the General Fund revenue

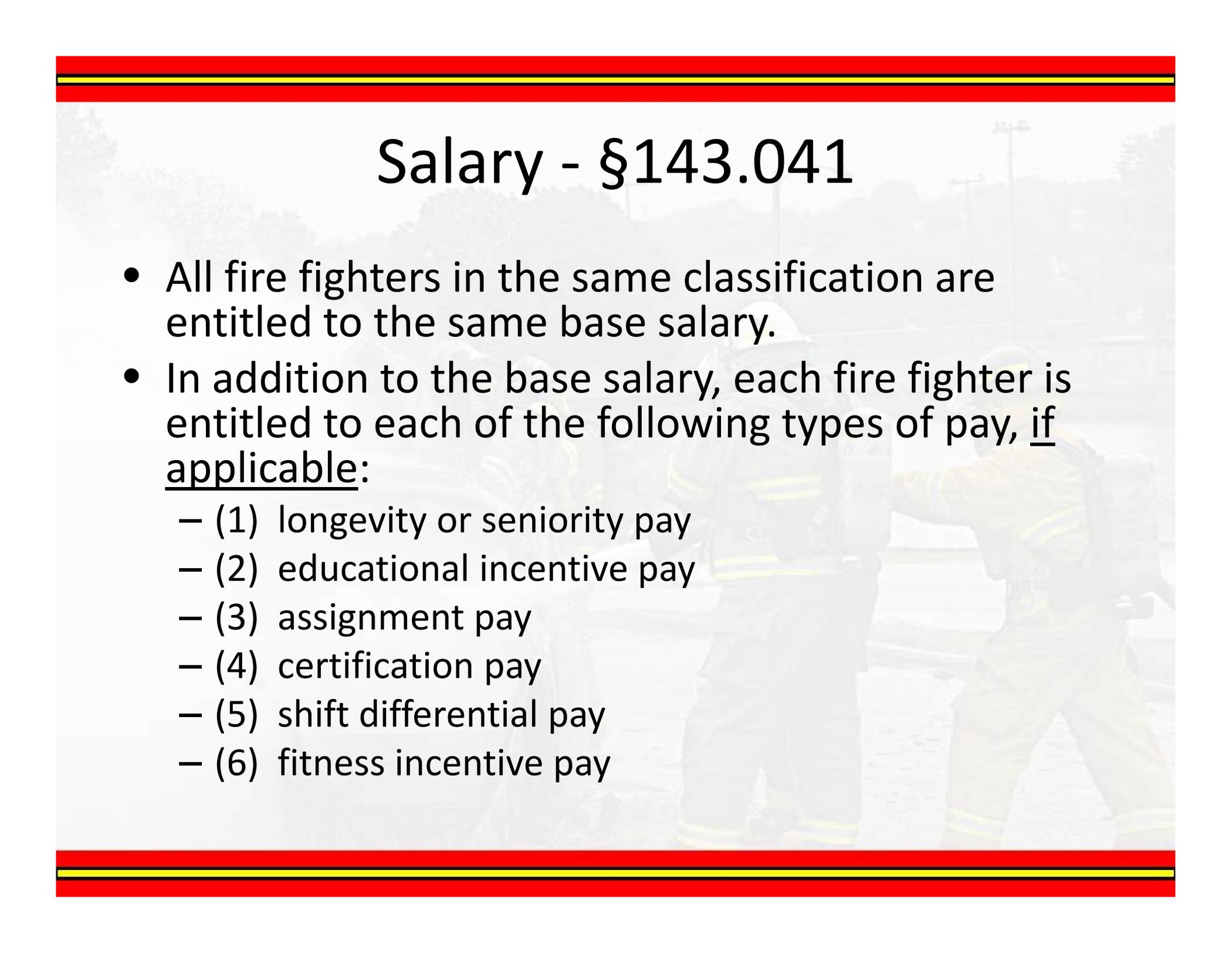


# Loss of Flexibility

- Fire/EMS positions already enjoy the same job protections as other City employees as well as certain legal rights that do not exist in the private sector.
- At the same time, City management has the flexibility to meet the changing needs of our community by assigning fire personnel according to their talents and best use.
- Civil Service would change this flexibility as Department managers would have little or no control over hiring, promotion, discipline, or termination decisions.

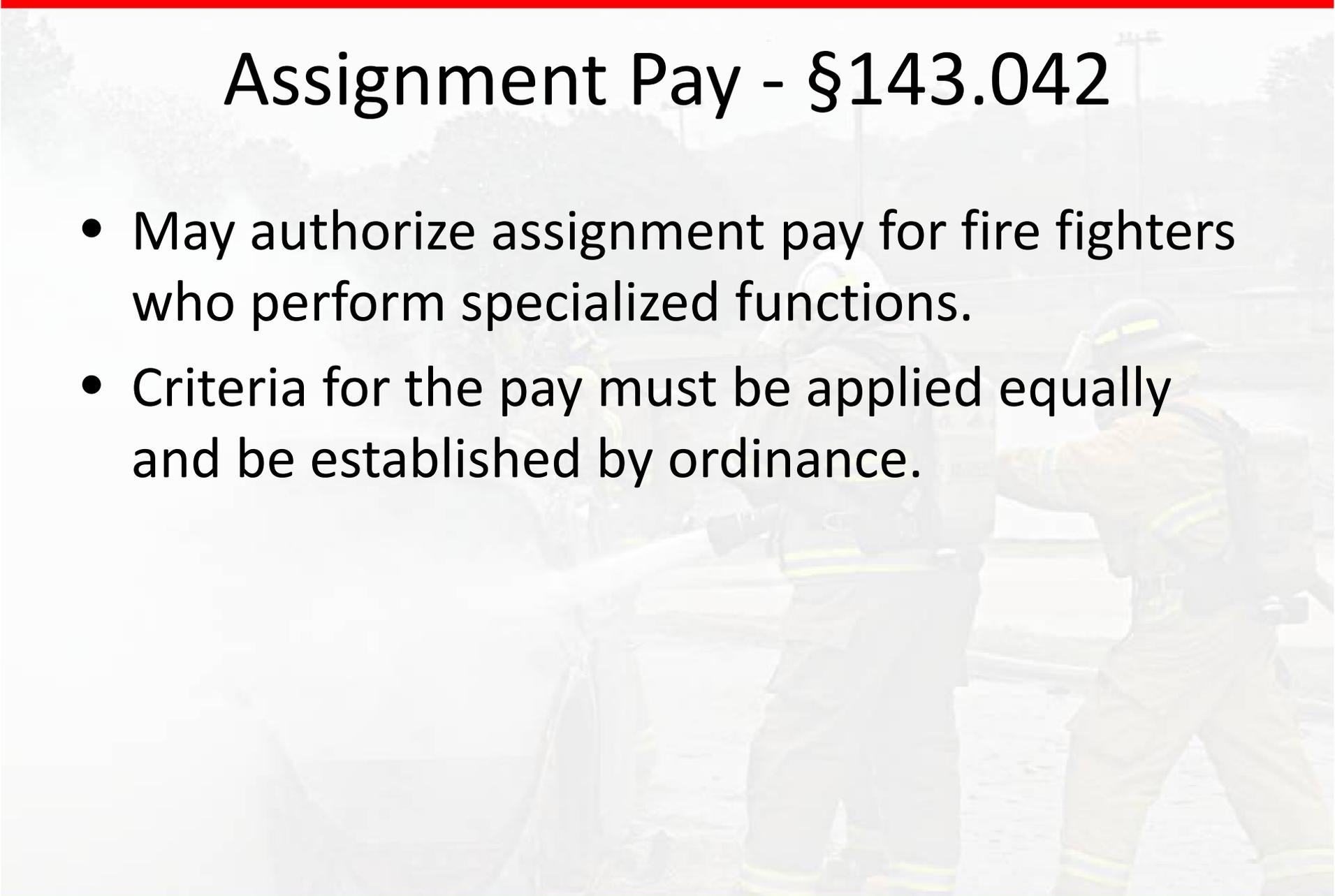
# Temporary Duties - §143.038

- Out-of-Class or Step-Up Pay
  - A person fills the next higher rank of position as designated by a supervisor.
  - This may not be construed as a promotion.
  - The designated person is entitled to the base salary of the higher position plus the designated persons other pay.
  - Fire fighters assigned to temporarily serve in a higher classification, i.e., Lieutenant or Battalion Chief, are entitled to the base salary of the higher position

The background of the slide features a faded image of several firefighters in full protective gear, including helmets and jackets with reflective stripes. They appear to be in an outdoor setting, possibly at a training exercise or a fire scene. The image is semi-transparent, allowing the text to be clearly visible over it.

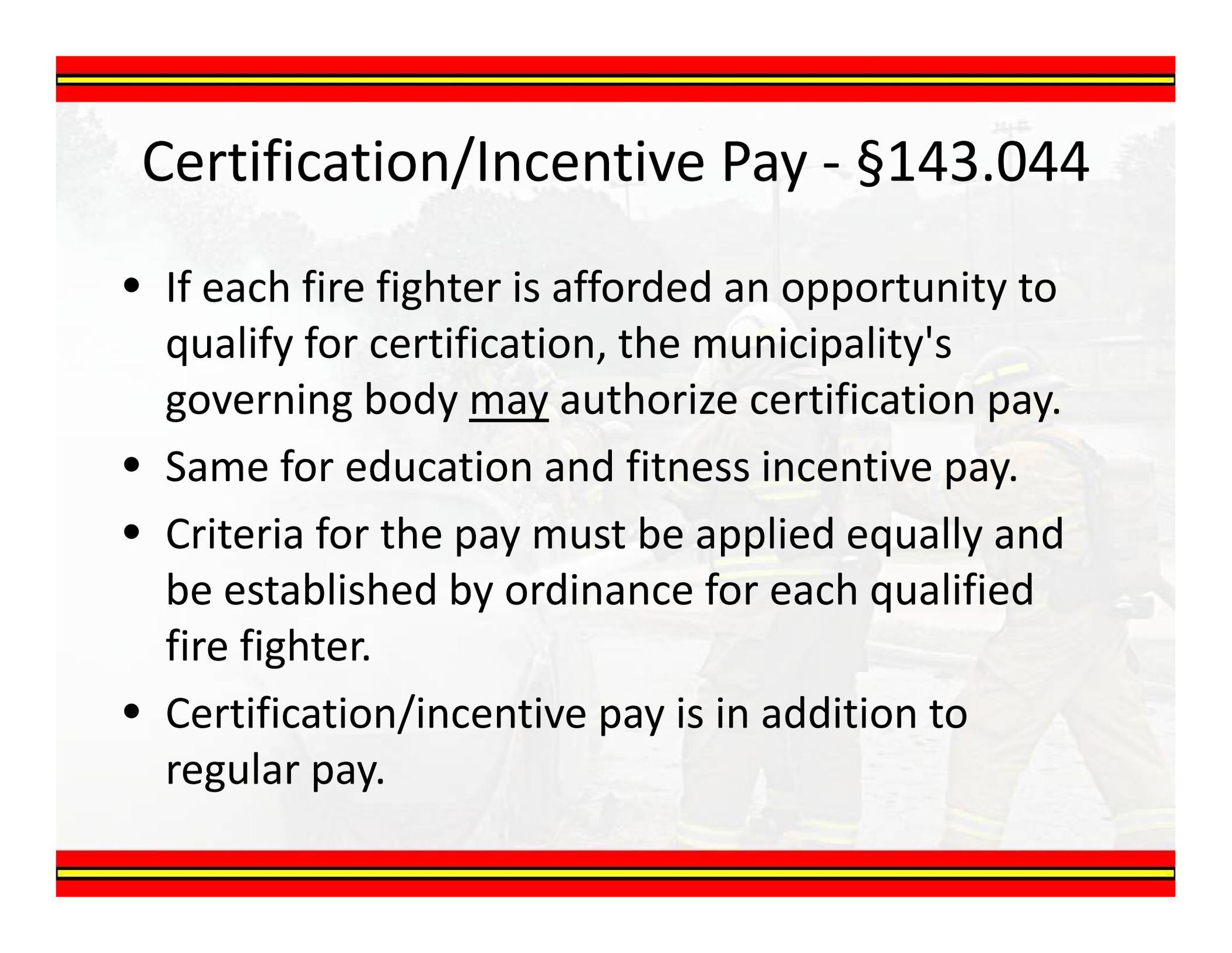
# Salary - §143.041

- All fire fighters in the same classification are entitled to the same base salary.
- In addition to the base salary, each fire fighter is entitled to each of the following types of pay, if applicable:
  - (1) longevity or seniority pay
  - (2) educational incentive pay
  - (3) assignment pay
  - (4) certification pay
  - (5) shift differential pay
  - (6) fitness incentive pay



## Assignment Pay - §143.042

- May authorize assignment pay for fire fighters who perform specialized functions.
- Criteria for the pay must be applied equally and be established by ordinance.



## Certification/Incentive Pay - §143.044

- If each fire fighter is afforded an opportunity to qualify for certification, the municipality's governing body may authorize certification pay.
- Same for education and fitness incentive pay.
- Criteria for the pay must be applied equally and be established by ordinance for each qualified fire fighter.
- Certification/incentive pay is in addition to regular pay.

# Accumulation & Payment of Sick Leave

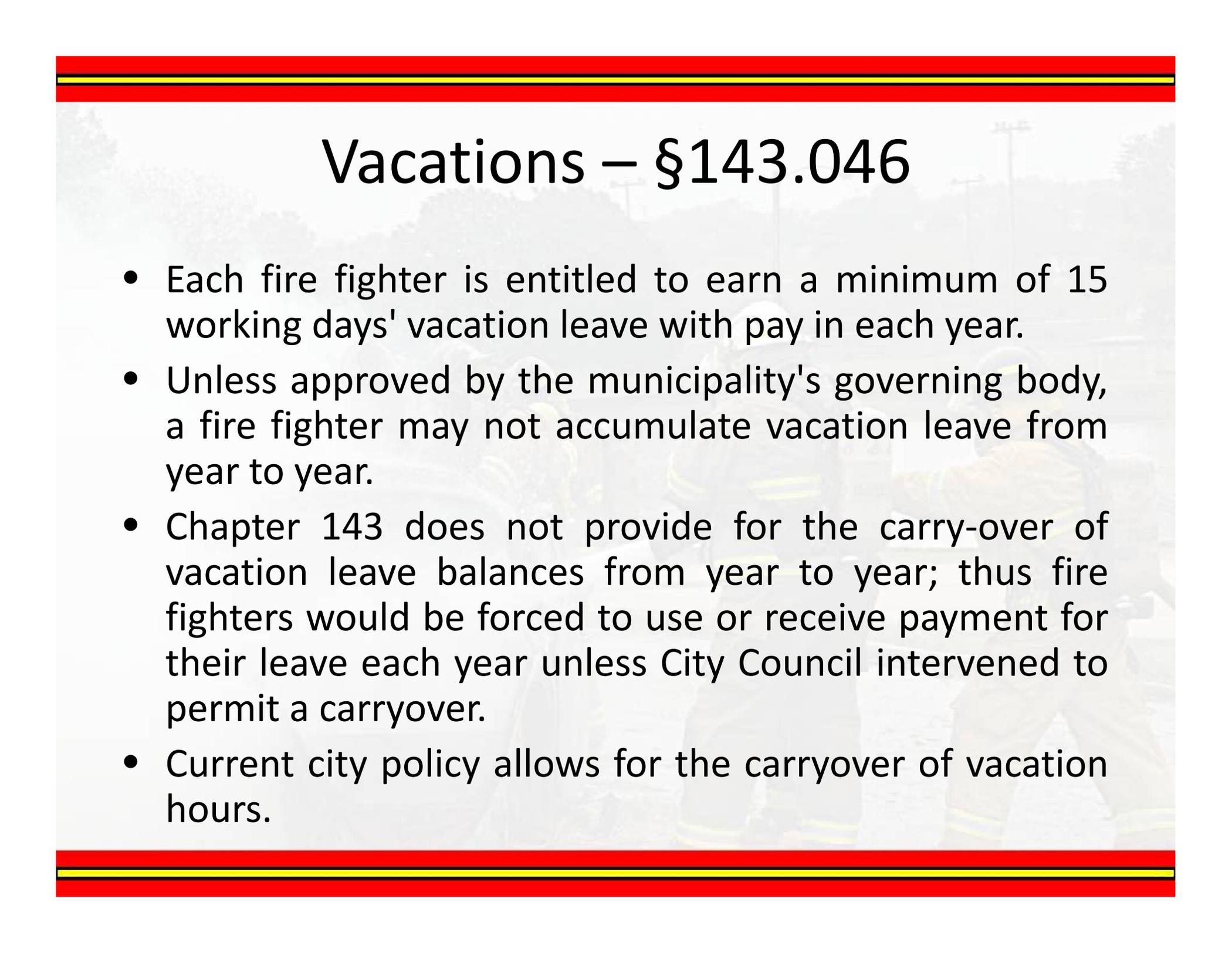
## – §143.045

- A fire fighter is allowed to accumulate 15 workings days of sick leave a year.
- The maximum accrual level would be unlimited under Civil Service.
- A fire fighter who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount of their salary for accumulated sick leave up to 90 days (1,080 hours).

# Accumulation & Payment of Sick Leave

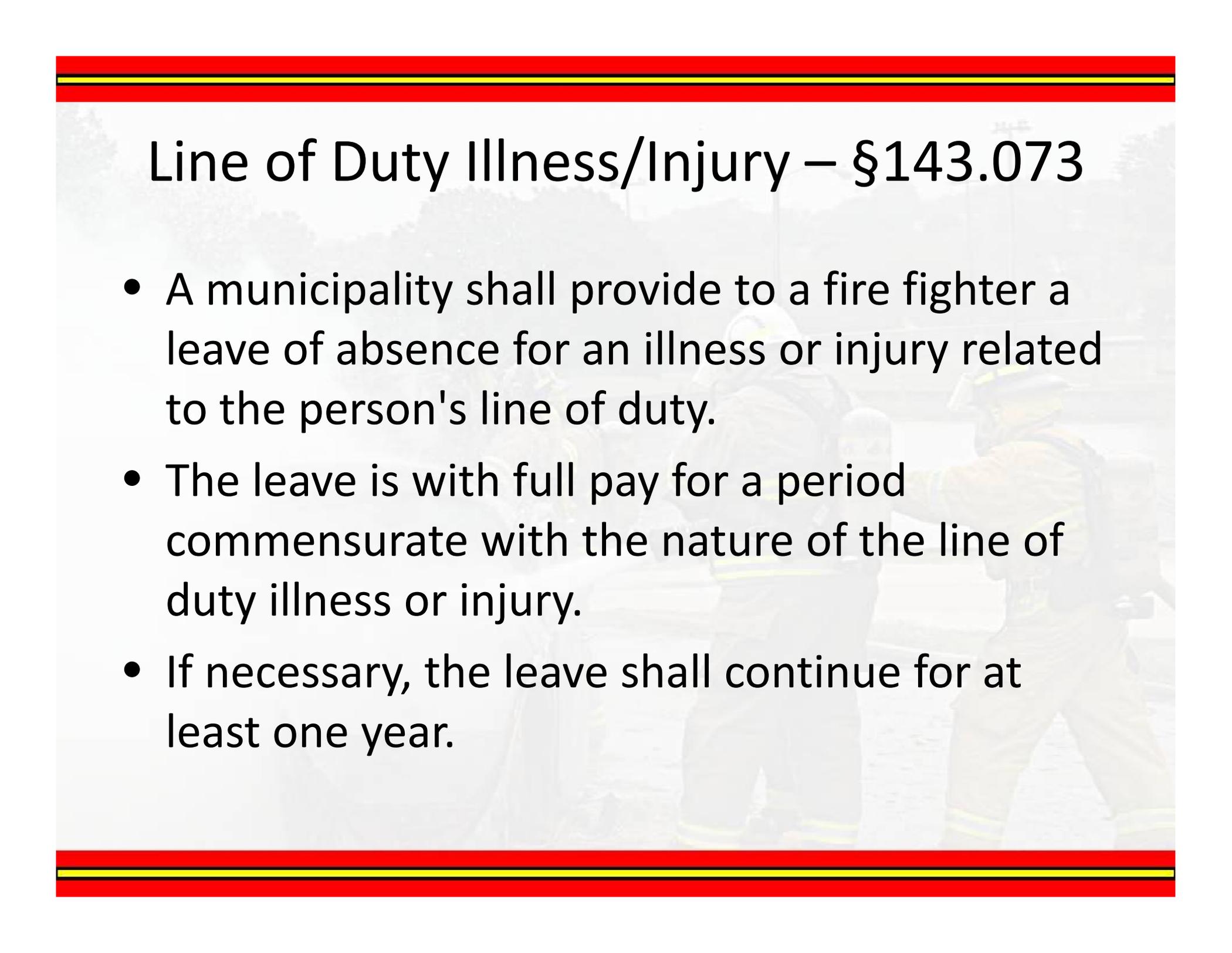
## – §143.045 (cont.)

- This would be a new cost that would have to be budgeted for annually.
- Conditions for payment of accumulated sick leave after the adoption of the Civil Service Law would change and, in fact, increase the liability of the city for accrued sick leave.
- Additional Impact: §143.116 – The municipality shall provide in its annual budget a sum reasonably calculated to provide funding for sick leave benefits for the fiscal year covered by that budget.



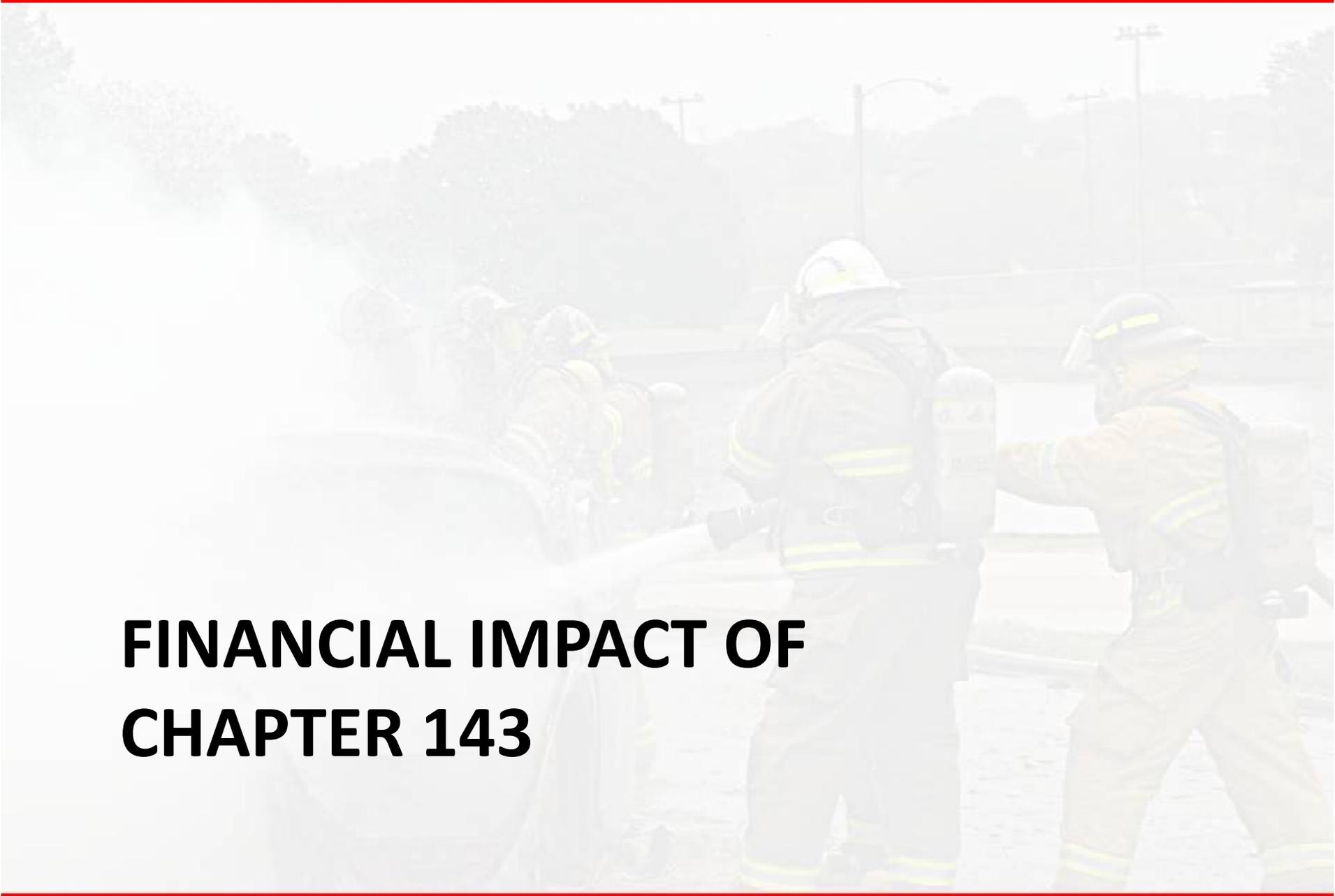
# Vacations – §143.046

- Each fire fighter is entitled to earn a minimum of 15 working days' vacation leave with pay in each year.
- Unless approved by the municipality's governing body, a fire fighter may not accumulate vacation leave from year to year.
- Chapter 143 does not provide for the carry-over of vacation leave balances from year to year; thus fire fighters would be forced to use or receive payment for their leave each year unless City Council intervened to permit a carryover.
- Current city policy allows for the carryover of vacation hours.

A background image showing several firefighters in full gear, including helmets and jackets, standing in a line. The image is faded and serves as a backdrop for the text.

## Line of Duty Illness/Injury – §143.073

- A municipality shall provide to a fire fighter a leave of absence for an illness or injury related to the person's line of duty.
- The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury.
- If necessary, the leave shall continue for at least one year.



**FINANCIAL IMPACT OF  
CHAPTER 143**

| Category                               | Current           | Civil Service                 |
|--|-------------------|-------------------------------|
| Exams                                  | \$ 1,850          | \$ 5,275                      |
| Legal                                  | \$ -0-            | \$ 32,000                     |
| Discipline                             | \$ -0-            | \$ 45,000                     |
| HR Support                             | \$ -0-            | \$ 50,325                     |
| Temporary Duties                       | \$ -0-            | \$ 249,000                    |
| Establish Salary Classification System | \$ -0-            | \$ 20,000 + "True up"         |
| Assignment Pay                         | \$ 33,250         | \$ 33,250                     |
| Certification Pay                      | \$ 204,000        | \$ 204,000                    |
| Sick Leave Funding                     | \$ -0-            | \$ 89,606                     |
| Vacation                               | \$ 5,376          | \$ 3,360                      |
| Injury Pay                             | \$ -0-            | \$ 15,205                     |
| <b>Total</b>                           | <b>\$ 244,476</b> | <b>\$ 747,021 + "True up"</b> |

# Examinations – §143.021

## Current Operations

- 2 testing a year
- \$18.50/test
- 50 applicants at each test
- Fiscal impact: \$1,850

## Civil Service

- 2 testing a year
- \$18.50/entrance test
- 75 applicants for entrance test
- \$1,250/promotional testing
- 2 promotional opportunities/year
- Fiscal impact: \$5,275

- *Neighboring community - cost of one (1) promotional exam: \$5,000*

## Oral interviews...

- may be used for new hires if made a part of the local rules.
- are prohibited under civil service law for promotions.

# Legal/HR Services

- Policy preparation \$32,000/one time
- Discipline (§143.051-143.057)
  - Disciplinary Actions \$20,000/year
  - Arbitration (1 hearing) \$25,000/year
- Human Resources staffing
  - 1 additional position \$48,000/year
  - Does not include specialized training
  - Office space considerations \$2,325/one time

# Temporary Duties – \$143.038

## Current Operations

- These temporary assignments are not paid
- Part of the job duties
- Fiscal impact: \$0

## Civil Service

- Approximately 10 substitutions (temporary assignments) a week
- Fiscal impact: \$249,000

# Salary – \$143,041

## Current Operations

- City Council sets the salaries
- Increases
  - Organization-wide cost of living adjustments (COLA)
  - Individual performance merit increases
- Fiscal impact: determined each year

## Civil Service

- City Council sets pay plan structure
- Consultant to create plan: \$20,000
- Increases
  - Built into pay plan and automatic
  - Not performance based
- Fiscal impact:
  - \$20,000 first year
  - “True up” of current salaries
  - Increases based on pay plan

# Assignment Pay – \$143.042

## Current Operations

- City Council sets the assignment pay.
- Currently, a paramedic assigned to an ambulance receives \$25 per shift.
- Fiscal impact: \$33,250

## Civil Service

- City Council sets the assignment pay.
- Keeping assignment pay as currently set and paid.
- Fiscal impact: \$33,250

# Certification/Incentive Pay – \$143.044

## Current Operations

- City Council sets the certification pay
  - Paramedic
  - Intermediate
  - Advanced
  - Master
- Fiscal impact: \$204,000

## Civil Service

- City Council sets the certification pay
  - Paramedic
  - Intermediate
  - Advanced
  - Master
- Fiscal impact: \$204,000
- City Council may authorize additional pays set out in the Civil Service Act

# Accumulation & Payment of Sick Leave – \$143.045

## Current Operations

- Accrual of 96.2 hrs/year
- Maximum of sick leave to carry from year to year: 960 hours
- Maximum payout
  - Only after 20 years of continual service to COCC
  - 480 eligible hours
  - Average salary: \$15.35
  - Total: \$8,961

## Civil Service

- Accrual of 180 hrs/year
- Maximum of sick leave to carry from year to year: “without limit”
- Maximum payout
  - When a fire fighter leaves for any reason
  - 1,080 eligible hours
  - Average salary: \$15.35
  - Total: \$20,161

# Accumulation & Payment of Sick Leave – §143.045 (cont.)

## Current Operations

- Fire fighters eligible to retire (20 years): 3
- Accumulated sick leave hours: 1,923
- Eligible for payout: 50%
- Fiscal impact: \$32,865

## Civil Service

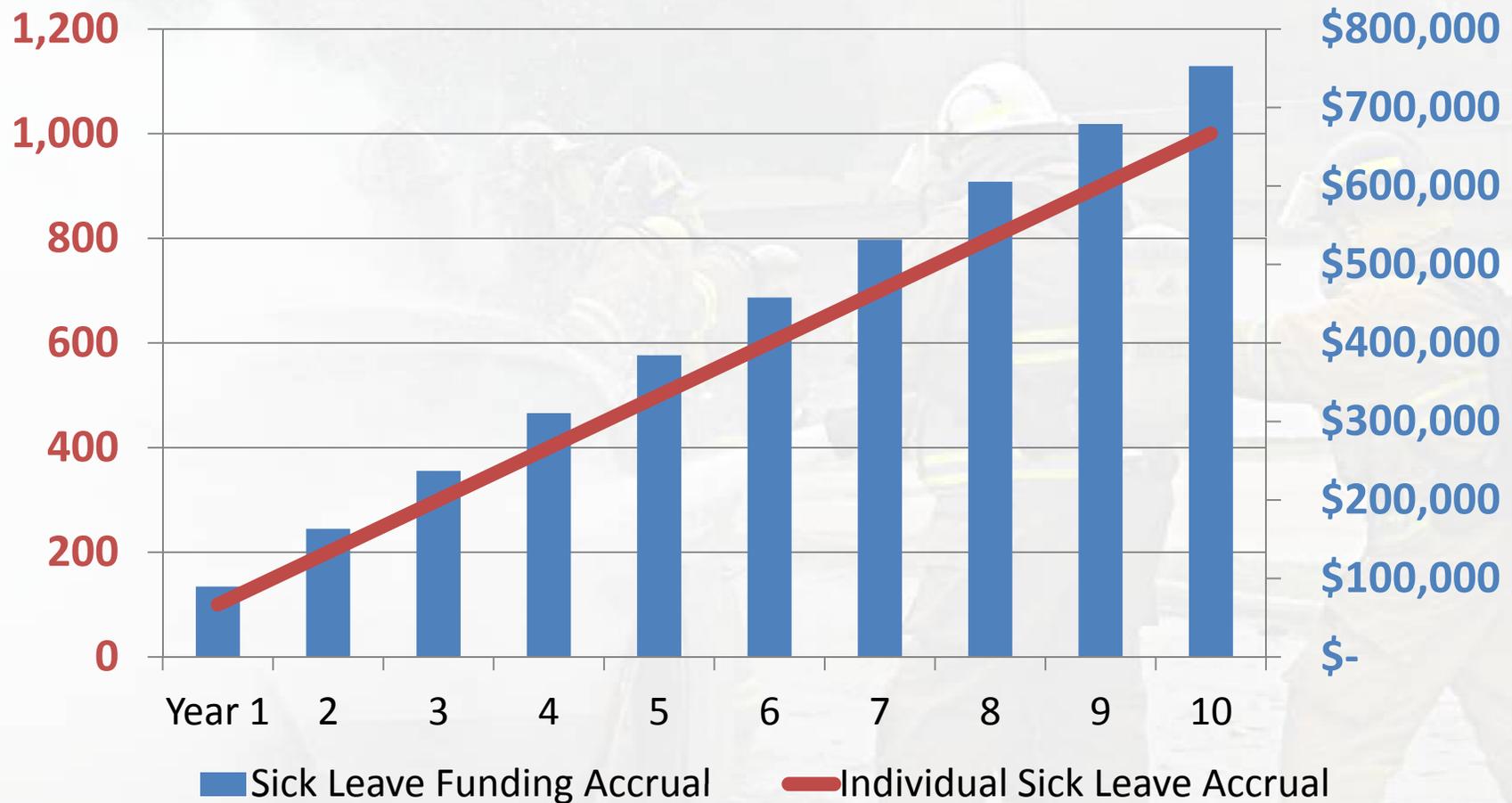
- Eligible fire fighters for lump-sum payment: ALL
- Accumulated sick leave hours: 10,606
- Eligible for payout: 100%
- Fiscal impact: \$226,819

*(Current FD Sick Leave Liability assuming it is payable in full)*

# Funding Sick Leave – §143.116

- Annually budget a sum reasonably calculated to provide funding for sick leave benefits for the fiscal year covered by that budget.
- Example:
  - 48 positions
  - Earn 180 hours annually, historically use 80 hours annually
  - Average salary: \$15.35
  - Estimated annual budget: \$89,606

# Funding Sick Leave – \$143.116 (cont.)



# Funding Sick Leave – \$143.116 (cont.)

|         | Cumulative Amount | Equivalent to...                   |
|---------|-------------------|------------------------------------|
| Year 1  | \$89,606          | \$0.0083/\$100 on the tax rate     |
| Year 5  | \$359,100         | funding 7 police officers          |
| Year 7  | \$507,000         | funding the library                |
| Year 10 | \$725,400         | funding 13 fire fighters           |
|         | \$752,000         | overlaying 10 miles of streets     |
|         | \$752,000         | seal coating 22.7 miles of streets |
|         | \$107,850         | \$0.01/\$100 on the tax rate       |

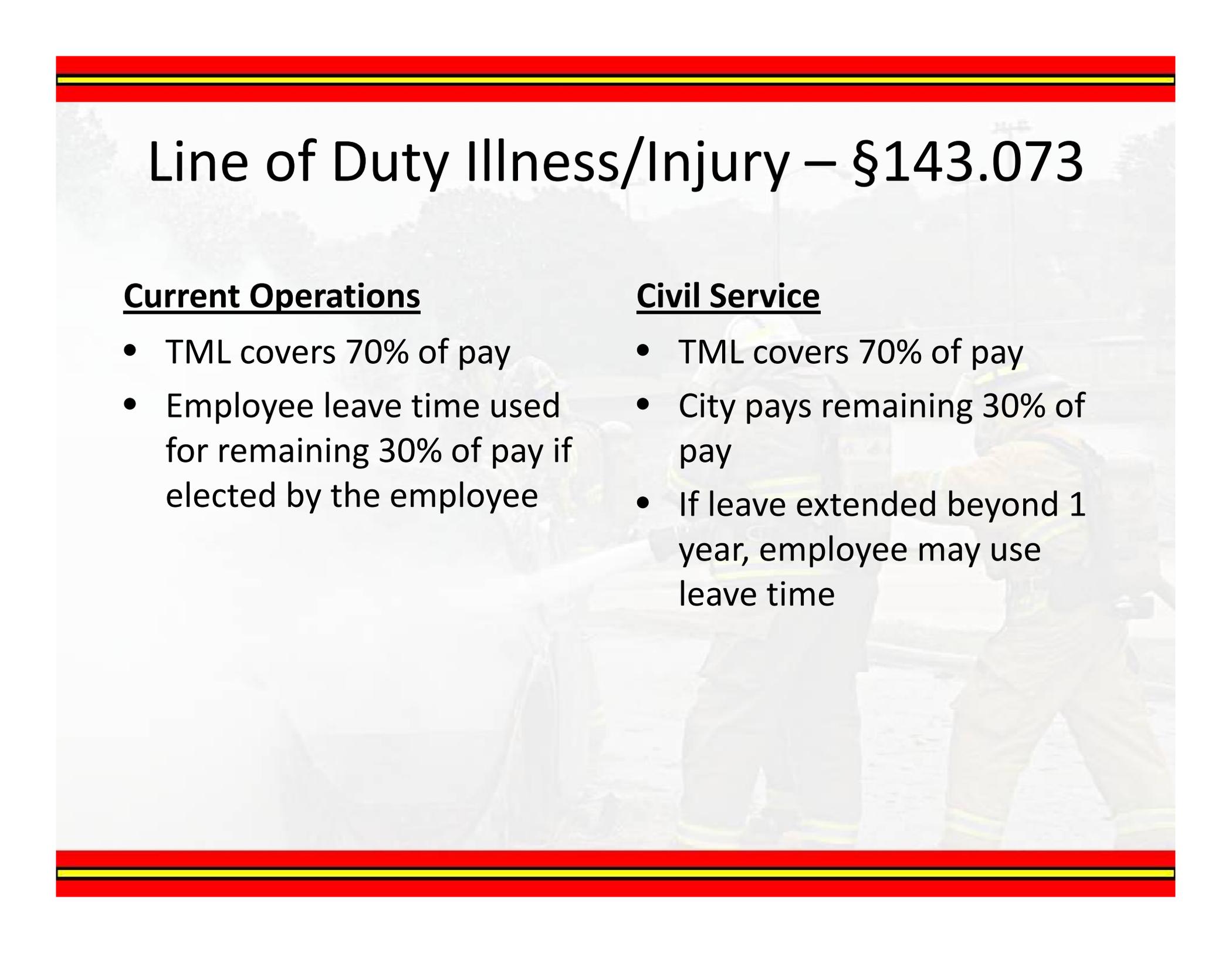
# Vacation – §143.046

## Current Operations

- Growing accrual based on years of service from 180 to 264 hrs/year
- Maximum of vacation leave to carry from year to year: 288 hours
- Maximum payout
  - 288 eligible hours
  - Average salary: \$15.35
  - Total: \$5,376

## Civil Service

- Minimum accrual of 180 hrs/year
- Civic service law does not require leave to carry from year to year, unless approved by City Council
- Maximum payout
  - Zero (0) eligible hours
  - Average salary: \$15.35
  - Total: \$3,360



# Line of Duty Illness/Injury – §143.073

## Current Operations

- TML covers 70% of pay
- Employee leave time used for remaining 30% of pay if elected by the employee

## Civil Service

- TML covers 70% of pay
- City pays remaining 30% of pay
- If leave extended beyond 1 year, employee may use leave time

# Line of Duty Illness/Injury – §143.073

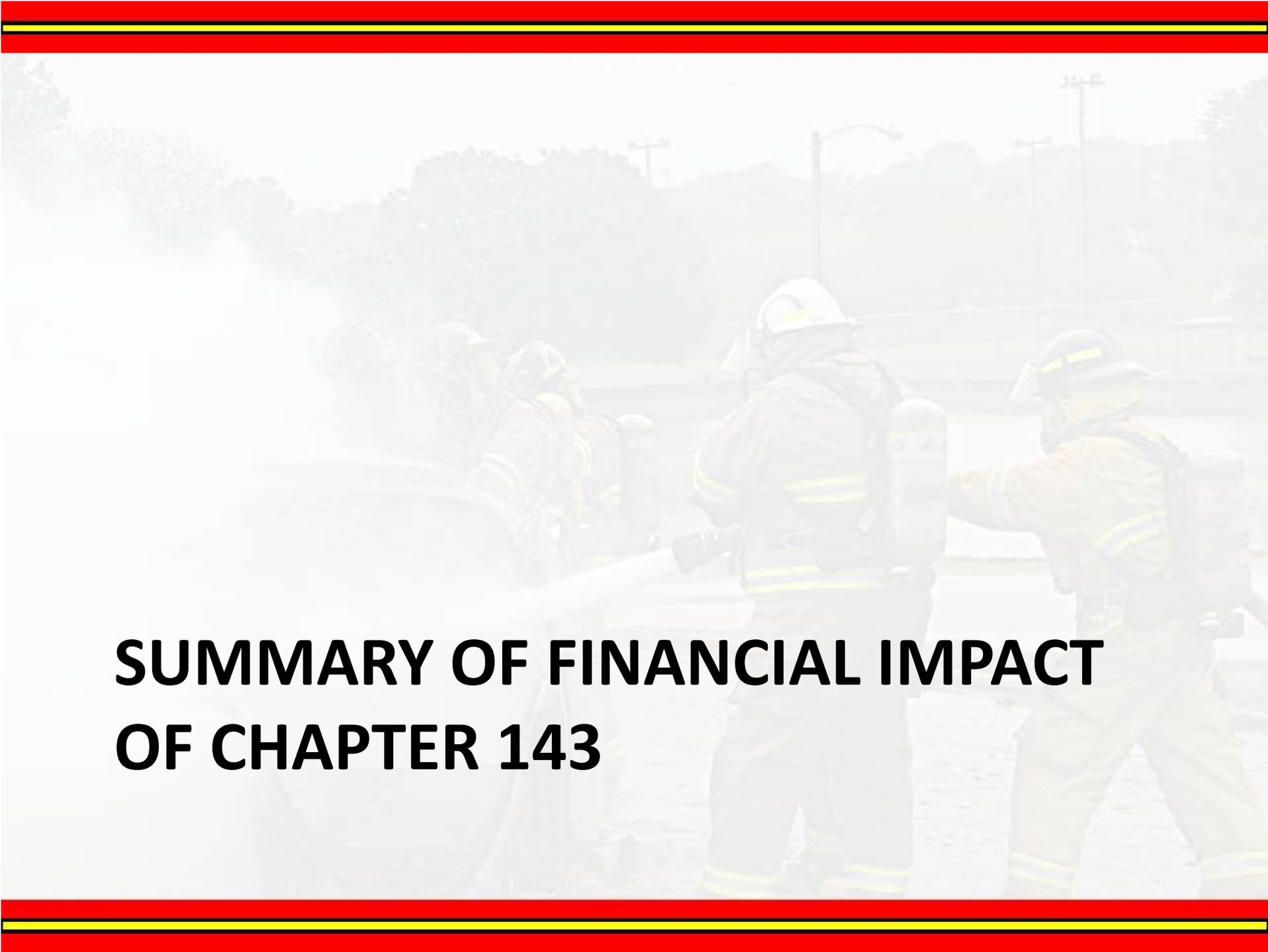
## Current Operations

- Maximum impact:
  - Injured January 1<sup>st</sup>
  - 2,715 regular hours worked
  - Average salary: \$15.35
  - Employee leave used: \$15,205
  - City cost: \$ -0-

## Civil Service

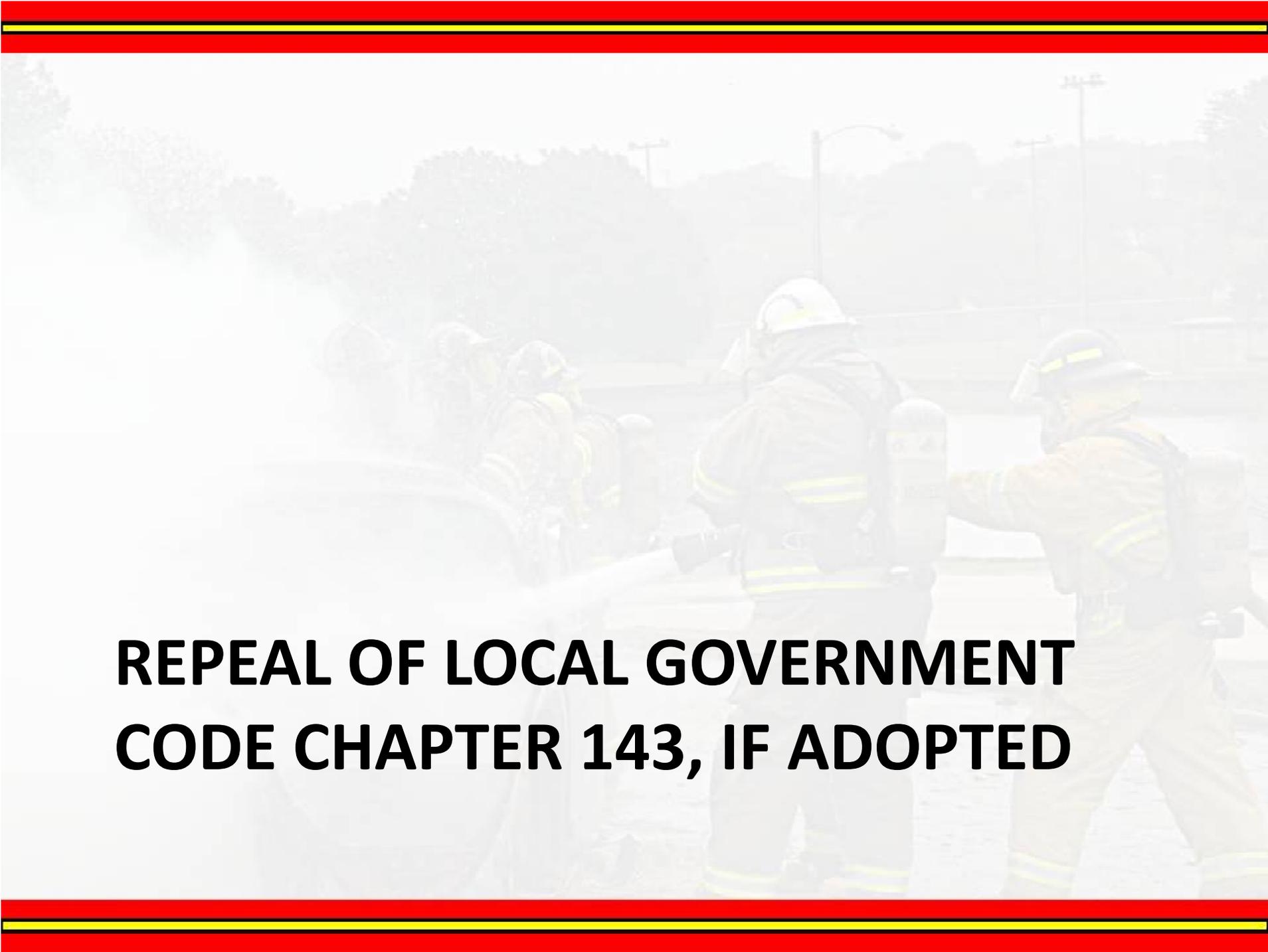
- Maximum impact:
  - Injured January 1<sup>st</sup>
  - 2,715 regular hours worked
  - Average salary: \$15.35
  - Employee leave used: \$ -0-
  - City cost: \$15,205

There have been two (2) actual line of duty injuries within the last year that resulted in lost time from work to qualify for Temporary Income Benefits.



**SUMMARY OF FINANCIAL IMPACT  
OF CHAPTER 143**

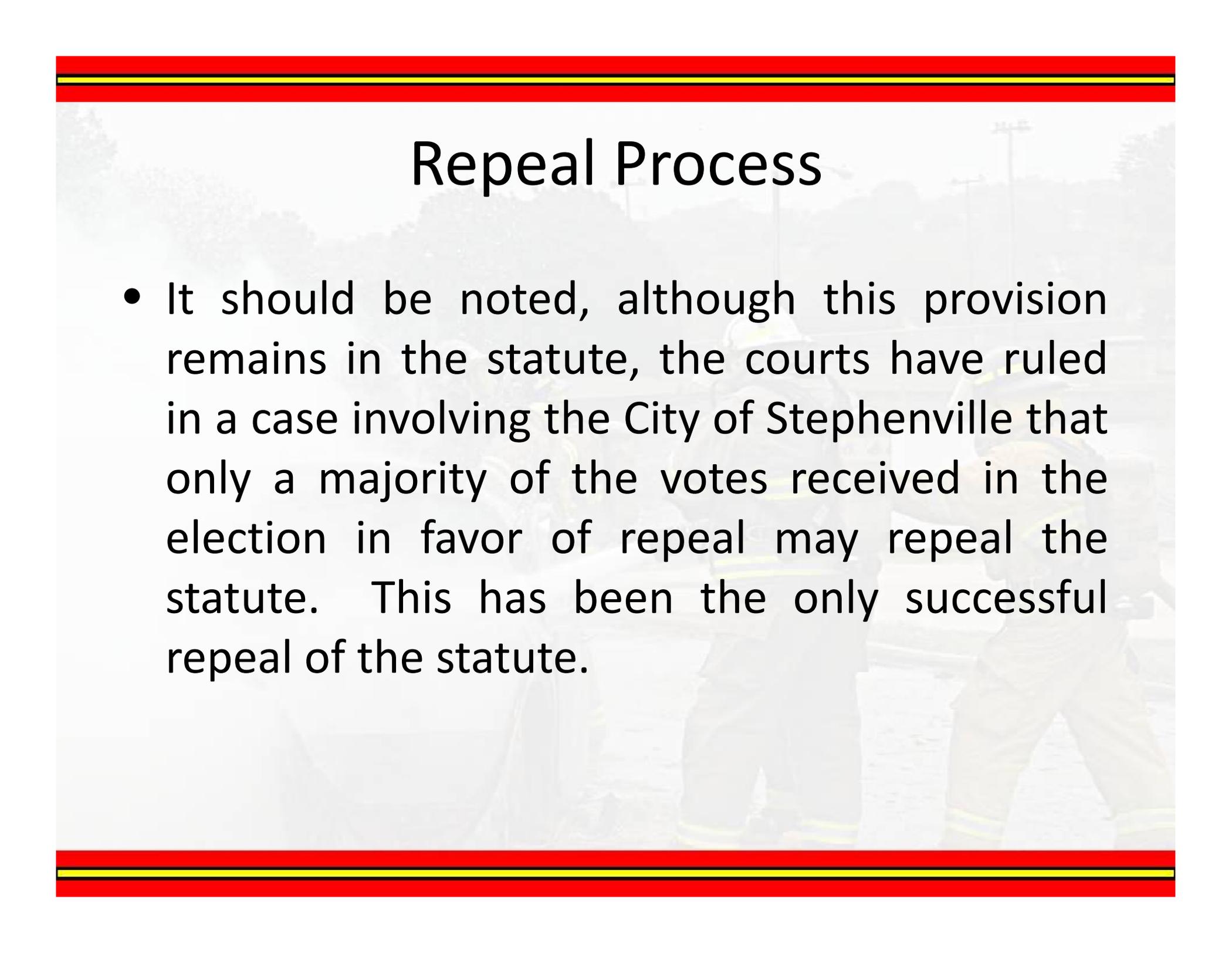
| Category                               | Current           | Civil Service                 |
|--|-------------------|-------------------------------|
| Exams                                  | \$ 1,850          | \$ 5,275                      |
| Legal                                  | \$ -0-            | \$ 32,000                     |
| Discipline                             | \$ -0-            | \$ 45,000                     |
| HR Support                             | \$ -0-            | \$ 50,325                     |
| Temporary Duties                       | \$ -0-            | \$ 249,000                    |
| Establish Salary Classification System | \$ -0-            | \$ 20,000 + "True up"         |
| Assignment Pay                         | \$ 33,250         | \$ 33,250                     |
| Certification Pay                      | \$ 204,000        | \$ 204,000                    |
| Sick Leave Funding                     | \$ -0-            | \$ 89,606                     |
| Vacation                               | \$ 5,376          | \$ 3,360                      |
| Injury Pay                             | \$ -0-            | \$ 15,205                     |
| <b>Total</b>                           | <b>\$ 244,476</b> | <b>\$ 747,021 + "True up"</b> |



**REPEAL OF LOCAL GOVERNMENT  
CODE CHAPTER 143, IF ADOPTED**

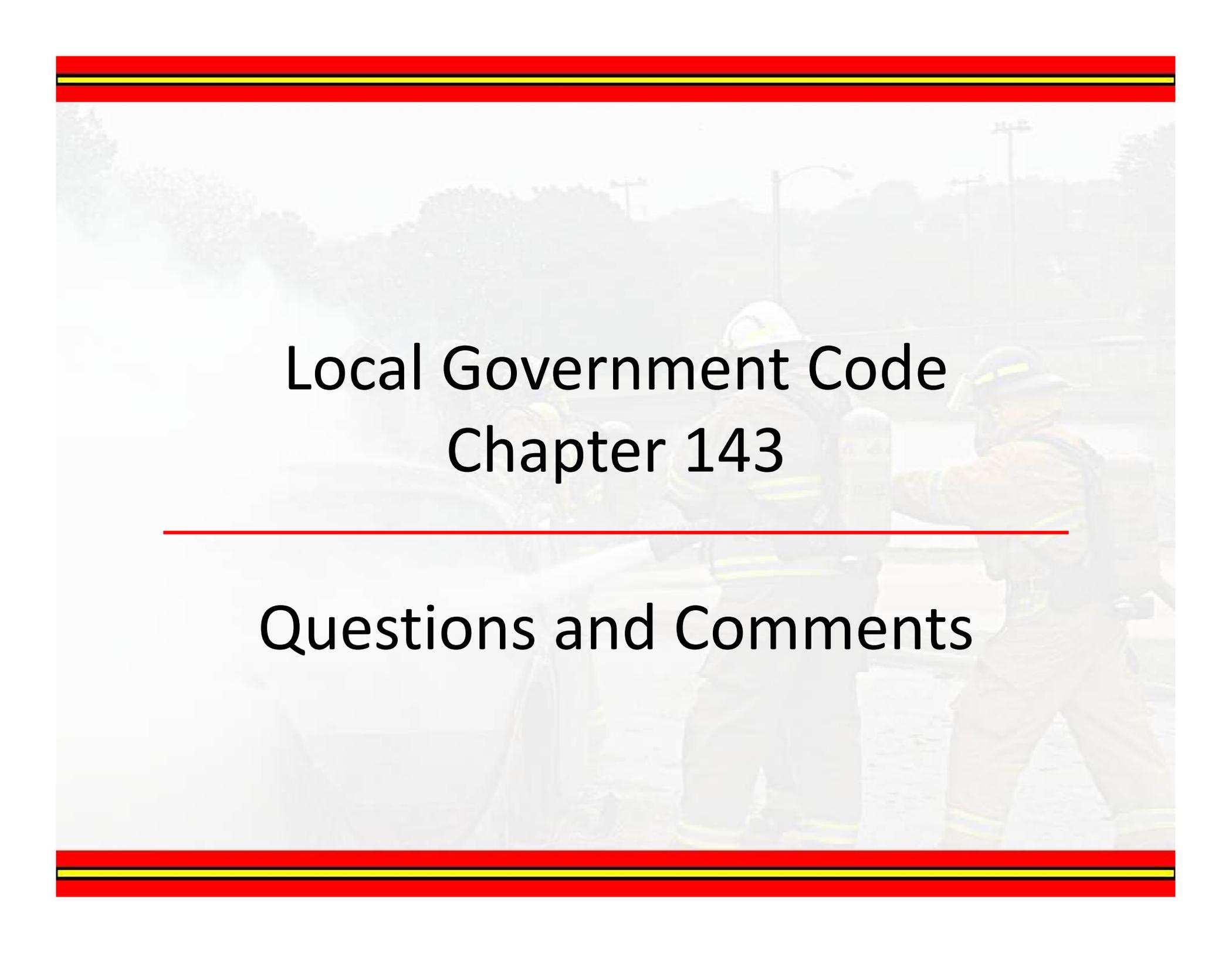
# Repeal Process

- The language of the Act, which allows voters to place their fire departments under chapter 143, is clear. However the provisions, which would give citizens the power to repeal the state-mandated civil service system, are ambiguous.
- As the law is written in Chapter 143.004(e), ***a majority of the qualified voters*** must vote to repeal the statute. Such a requirement is virtually unattainable, since it would require more than one-half of the total number of registered voters to vote for repeal.

The background of the slide is a faded image of several firefighters in full gear, including helmets and jackets, standing in a line. The image is semi-transparent, allowing the text to be clearly visible over it. The slide is framed by a red border at the top and bottom, with a thin yellow line just inside the red border.

# Repeal Process

- It should be noted, although this provision remains in the statute, the courts have ruled in a case involving the City of Stephenville that only a majority of the votes received in the election in favor of repeal may repeal the statute. This has been the only successful repeal of the statute.



Local Government Code  
Chapter 143

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Questions and Comments

**City Council Regular**

**G. 2.**

**Meeting Date:** 11/01/2011

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**Information**

**Subject**

Consideration and action on approving minutes from the regular council meeting of October 18, 2011.

**Jane Lees, City Secretary**

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**Attachments**

Regular Minutes

**CITY OF COPPERAS COVE**  
**CITY COUNCIL REGULAR MEETING MINUTES**  
**October 18, 2011 – 7:00 P.M.**

**A CALL TO ORDER**

**B INVOCATION AND PLEDGE OF ALLEGIANCE** - Pastor Brian Hawkins of Cove Fellowship Church gave the invocation and Mayor Hull led the pledge of allegiance.

**C ROLL CALL**

Present: Cheryl L. Meredith  
Charlie D. Youngs  
Gary L. Kent  
Danny Palmer  
Kenn Smith  
Jim Schmitz  
Frank Seffrood  
John Hull

Attendees: Andrea M. Gardner, City Manager  
Charles E. Zech, City Attorney  
Jane Lees, City Secretary

**D ANNOUNCEMENTS** - Council Member Kent stated that he had the opportunity this past week to visit with and lobby members of Congress on behalf of Copperas Cove during his attendance at the Annual AUSA Convention in Washington, D.C. He thanked the other members of the Council for their support in sending him on behalf of the City.

**E PUBLIC RECOGNITION**

**1 Employee Service Awards – October 2011. Andrea M. Gardner, City Manager**

- Jeffrey Stoddard, Police Lieutenant, Police Department , 20 Years of Service
- Cheryl Forester, Executive Secretary, Police Department , 15 Years of Service
- Carla Polidoro, Fire Captain, Fire Department, 15 Years of Service
- Tanja Martin, Firefighter/Paramedic, Fire Department 10 Years of Service
- Steven Spink, Battalion Chief, Fire Department, 10 Years of Service
- Jason Kruttlin, Patrol Officer, Police Department , 5 Years of Service
- Gene Williams, Parks Supervisor, Parks & Leisure Services, 5 Years of Service

**2 Breast Cancer Awareness Month Proclamation. John Hull, Mayor**

Gary Young, Deputy Fire Chief, accepted the proclamation.

**3 Texas Amateur Athletic Federation (TAAF) Female and Male Athlete of the Year. Andy Cedillo, Director of Parks & Leisure Services**

Mr. Cedillo recognized Haley Petet, a ten-year old fifth grade A/B honor roll student, as the Local Female Athlete of the Year and Cameron Everts, a nine-year old fourth grade honor roll student as the Local Male Athlete of the Year. Both athletes are involved in multiple sports and are eligible to be considered at the regional level for Regional Athlete of the Year. If that is

achieved, they would be eligible for consideration of the Federations (State) Athlete of the Year.

F **CITIZENS FORUM** – Jim Rudd, 2310 Veterans Avenue. Mr. Rudd said that he was representing the Exchange Club. The Exchange Club held their 13th annual golf tournament on October 8 to raise funds for the upcoming year. He thanked the golf course staff for all their help prior to and during the tournament. He said that they would not have been able to get everything done if it had not been for the excellent help from Ken Wilson, Andy Cedillo, Davis Dewald, Mike Chandler and the entire golf course staff. He said that the golf course employees have a 'can do' attitude and it was very much appreciated.

G **CONSENT AGENDA** – All matters listed under this item are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and considered separately.

1 Consideration and action on approving minutes from the regular council meeting of October 4, 2011. **Jane Lees, City Secretary**

2 Consideration and action on authorizing the City Manager to extend the Interlocal Agreement with Central Texas Council of Governments for Public Safety Answering Points (PSAPs) maintenance. **Kevin Keller, Police Sergeant.**

3 Consideration and action on authorizing the Mayor of Copperas Cove to execute a letter to Texas State Senator Brian Birdwell, Texas State Senator Troy Fraser, Texas State Representative Sid Miller and Texas State Representative Jimmy Don Aycock requesting an extension for compliance with the State of Texas mandated Project 25 radio requirements. **Andrea M. Gardner, City Manager**

4 Consideration and action to authorize the City Manager to renew a contract for Fire Department uniform rental and cleaning services with ZIP Uniform and Rentals. **Gary D. Young, Deputy Fire Chief**

Council Member Kent made a motion to approve the Consent Agenda, Items G-1, G-2, G-3 and G-4 as presented. Council Member Smith seconded the motion, which passed unanimously.

## H **PUBLIC HEARINGS/ACTION**

1 Public hearing and action on adoption of an ordinance amending the 2011-2012 fiscal year budget for the City of Copperas Cove. **Ryan D. Haverlah, Assistant Director of Financial Services/Budget Director**

Mayor Hull opened the public hearing at 7:39 p.m.

Speaking: Council Member Palmer requested an explanation regarding the purpose of the stem wall. Ms. Gardner stated that the item would be coming back to the Council for approval as a separate agenda item and that questions and/or concerns about the construction/engineering would better be answered after design for the project has been completed.

Mayor Hull closed the public hearing at 7:43 p.m.

Council Member Smith made a motion to approve Ordinance No. 2011-51 as presented.

Council Member Meredith seconded the motion, which passed unanimously.

**ORDINANCE NO. 2011-51**

**AN ORDINANCE APPROVING AND ADOPTING AN AMENDMENT TO THE BUDGET FOR OPERATING THE MUNICIPAL GOVERNMENT OF THE CITY OF COPPERAS COVE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2011, AND ENDING ON SEPTEMBER 30, 2012; REPEALING ALL ORDINANCES AND APPROPRIATIONS IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; AND ESTABLISHING A SAVINGS CLAUSE AND AN EFFECTIVE DATE.**

- 2 Public hearing, discussion and possible action to vacate the Morse Valley Addition, Phase 8 Plat. **Chris Stewart, AICP, Planning Consultant**

Mayor Hull opened the public hearing at 7:46 p.m.

Speaking: None.

Mayor Hull closed the public hearing at 7:47 p.m.

Council Member Schmitz made a motion to approve the vacation of Morse Valley Addition, Phase 8 Plat. Council Member Kent seconded the motion, which passed unanimously.

- 3 Public hearing, discussion and possible action on the final plat of the Five Hills Subdivision. **Chris Stewart, AICP, Planning Consultant**

Mr. Stewart noted that there was a sentence on General Note No. 4 of the plat relating to the development of a spine road and given that we don't have full information about the full development of this site, staff believes that it is premature to put that on the plat. He requested that the motion include the removal of General Note No. 4 regarding the spine road. He also requested that the motion include the addition of a note regarding the possible resubdivision of Lot 3.

Mayor Hull opened the public hearing at 7:50 p.m.

Speaking: None.

Mayor Hull closed the public hearing at 7:51 p.m.

Council Member Palmer made a motion to approve the final plat of the Five Hills Subdivision based on the recommendations of staff to delete the sentence regarding the spine road and the addition of a general note stating that resubdivision of Lot 3 may necessitate the dedication of public improvements, easements and right-of-way. Council Member Smith seconded the motion, which passed unanimously.

**I ACTION ITEMS**

- 1 Consideration and action on an ordinance amending Chapter 10 of the City of Copperas Cove Code of Ordinances. **Margaret Handrow, Library Director**

Council Member Meredith made a motion to approve Ordinance No. 2011-58 as presented. Council Member Palmer seconded the motion, which passed unanimously.

**ORDINANCE NO. 2011-58**

**AN ORDINANCE OF THE CITY OF COPPERAS COVE, TEXAS, AMENDING CHAPTER 10 OF THE CITY'S CODE OF ORDINANCES; PROVIDING A SEVERABILITY CLAUSE;**

**PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

- 2 Discussion on Section 8-9, Allowing high weeds, grass, rubbish, junk or other objectionable, unsightly or unsanitary matter on premises, of the City of Copperas Cove Code of Ordinances.  
**Danny Palmer, City Council Place 4**

Council Member Palmer stated that there are situations that have come up in various areas of the City where weeds are not being trimmed, cut down, or at least taken care of, particularly in undeveloped lots. Other issues include bushes that block views at intersections and trees that extend over sidewalks. Some people believe that this presents a fire hazard and also goes against City Code Section 8-9 (c)(3). Council Member Palmer read the following from the Code: "On tracts of land of more than two (2) acres, it shall be unlawful to permit or allow grass, weeds and brush in excess of twelve (12) inches in height to grow uncultivated within one hundred (100) feet adjacent to and along any dedicated public street within the corporate limits of the city or within one hundred (100) feet on either side of any lot that is occupied by a residence or business. Such condition or conditions are hereby defined as public nuisances." Council Member Palmer stated that this tells him that people with undeveloped lots that allow the weeds to grow up next to a citizen's property that is being maintained is against the City Code.

Council Member Palmer said that he would like to have the Code revised to state that a triangle should exist on a corner lot for vegetation as well as for fences. He also stated that many sidewalks are inaccessible because of the trees that extend over them. He said that City Code should be revised to state that trees should be trimmed at least 14 feet from the curb line off the sidewalk areas.

Mayor Hull stated that these problems would be better worked out if the City formed a committee to rewrite the ordinance and then bring it back to the Council.

Mr. Zech stated that the things that were just discussed are not actually nuisances. He said that the appropriate place to make the changes suggested are not in the nuisance ordinance. Mr. Zech said that the City probably has ordinances which state how rights of ways and encroachments upon rights of ways should be handled. Those areas in the ordinances is where these issues should be addressed. He said that the section of the code that was read aloud is actually straight from the Texas Health & Safety Code and the City could not change that without violating the law. The issue needs to be addressed in another area of the ordinances.

Ms. Gardner stated that she already has plenty of documentation on this subject. She said that if it is a staff committee, she would be more than happy to have Council Member Palmer participate in the discussions. Mayor Hull said it should be a staff committee and anyone who wished to sit in on the discussions could do so. Council direction was to defer the issues to a staff committee.

**J REPORTS FROM OUTSIDE ENTITIES, ADVISORY COMMITTEES AND BOARDS - None.**

- K ITEMS FOR FUTURE AGENDAS -** Council Member Palmer stated that he would like to go over the Drainage Plan for the future and the CIP. Council Member Youngs asked if the City needed to look at a Charter Review Committee for 2012. Ms. Gardner said that she was working on that item. Council Member Youngs stated that the City has been working on solving the easement problems over on the east side. He stated that he knows the EDC, the Industrial Foundation and the developer has various projects within the Industrial Park area. There is the Northeast Sewer Line Phase IA, Northeast Sewer Line Phase IB, Northeast Sewer Line Phase II, Northeast Water Line and Ground Storage Tank, and the Transfer Station. All these projects are have been on hold until the City resolves the easement issues

in that area. Council Member Youngs requested for an update on those projects because they are high priority in 2012.

- L     **EXECUTIVE SESSION** - Mayor Hull recessed the open meeting at 8:12 p.m. to hold Executive Session.
- 1     Pursuant to §551.074 of the Open Meetings Act, Tex. Gov't Code, Council will meet in Executive Session to deliberate the evaluation and duties of the City Secretary, Jane Lees.
- 2     Pursuant to §551.087, Deliberation Regarding Economic Development Negotiations, of the Open Meetings Act, Tex. Gov't Code, Council will meet in Executive Session to deliberate the offer of a financial or other incentive to a business prospect - First Advisors, Inc.
- M     **RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ANY ITEMS POSTED AND LEGALLY DISCUSSED IN EXECUTIVE SESSION** - Mayor Hull reconvened the open session at 9:11 p.m. and stated that there was no action to be taken as a result of Executive Session discussions.
- N     **ADJOURNMENT** - There being no further business, Mayor Hull adjourned the meeting at 9:12 p.m.

**ATTEST:**

\_\_\_\_\_  
John Hull, Mayor

\_\_\_\_\_  
Jane Lees, City Secretary

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**Information**

**SUBJECT**

Consideration and action on a resolution accepting the quarterly investment report as presented for the quarter ending September 30, 2011 per the Investment Policy. **Velia Key, Director of Financial Services**

**BACKGROUND/HISTORY**

The Public Funds Investment Act of Chapter 2256, Texas Government Code, requires investment management reports to be accepted by the governing body. The City's Investment Policy requires that the Investment Officer shall report to City Council no less than on a quarterly basis, a detailed listing of all purchases, sales and payments, and a description of each security held as well as management summary information. The attached exhibits are those reporting requirements for the quarter ending September 30, 2011.

**FINDINGS/CURRENT ACTIVITY**

See attached quarterly investment report.

**ACTION OPTIONS/RECOMMENDATION**

City staff recommends that the City Council approve Resolution No. 2011-48, accepting the quarterly investment report as presented for the quarter ending September 30, 2011 per the Investment Policy.

---

**Attachments**

Resolution

Investment Report

**RESOLUTION NO. 2011-48**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS APPROVING THE INVESTMENT REPORT FOR QUARTER ENDED SEPTEMBER 30, 2011.**

**WHEREAS,** Chapter 2256 of the Texas Government Code, commonly known as the "Public Funds Investment Act," requires the Investment Officer of the City to present not less than quarterly a written report of investment transactions for all funds covered for the preceding reporting period to the governing body; and

**WHEREAS,** This quarterly investment report must be approved quarterly; and

**WHEREAS,** This reporting is authorized by the Public Funds Investment Act; and

**WHEREAS,** The Public Funds Investment Act requires the quarterly investment report be presented to the governing body; and

**WHEREAS,** The attached quarterly investment report complies with the Public Funds Investment Act.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:**

**Section 1.**

That the City of Copperas Cove has complied with the requirements of the Public Funds Investment Act, and the Quarterly Investment Report for quarter ended June 30, 2011 attached hereto as "Exhibit A," is hereby approved as the quarterly investment report for quarter ended September 30, 2011 of the City effective November 01, 2011.

**PASSED, APPROVED, AND ADOPTED** on this 1st day of November 2011 at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

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John Hull, Mayor

**ATTEST:**

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Jane Lees, City Secretary

**APPROVED AS TO FORM:**

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Denton, Navarro, Rocha  
& Bernal, P.C., City Attorney



# **Quarterly Investment Report Ending as of September 30, 2011**

# *City of Copperas Cove, Texas*

## *Quarterly Investment Report*

*July 1, 2011– September 30, 2011*

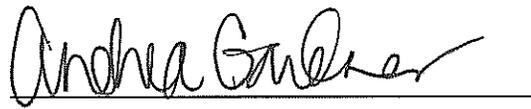
*The following reports are submitted in accordance with the Public Funds Investment Act (Chapter 2256). The report also offers supplement not required by the Act to fully inform the City Council of the position and activity within the City of Copperas Cove's portfolio of investments. The reports include a management summary overview, detailed holdings report for the end of the period, and a transaction report as well as graphic representations of the portfolio to provide full disclosure to the City Council.*

*The City of Copperas Cove's portfolio is managed in full compliance with the Public Funds Investment Act, the City's Investment Policy and Strategy and under the strictest safety parameters as set by the City Council.*

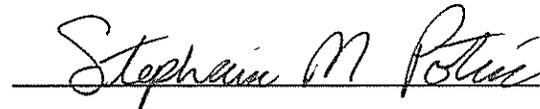
*City of Copperas Cove, Texas*  
**Operating Fund Quarterly Investment Report**  
*July 1, 2011 – September 30, 2011*  
**Portfolio Summary Management Report**

This quarterly report is in compliance with the investment policy and strategy as established by the City and the Public Funds Investment Act (Chapter 2256, Texas Government Code).

| <u>Portfolio as of July 1, 2011</u>   |              | <u>Portfolio as of September 30, 2011</u> |              |
|---------------------------------------|--------------|---|--------------|
| Ending Book Value                     | \$26,918,155 | Ending Book Value                         | \$20,676,727 |
| Ending Market Value                   | \$26,918,155 | Ending Market Value                       | \$20,676,727 |
| Unrealized Gain/Loss                  | \$0          | Unrealized Gain/Loss                      | \$0          |
| <b>Change in Unrealized Gain/Loss</b> | <b>\$0</b>   | <b>Change in Unrealized Gain/Loss</b>     | <b>\$0</b>   |



Andrea Gardner  
City Manager



Stephanie Potvin  
Project Accountant



Velia Key  
Director of Financial Services

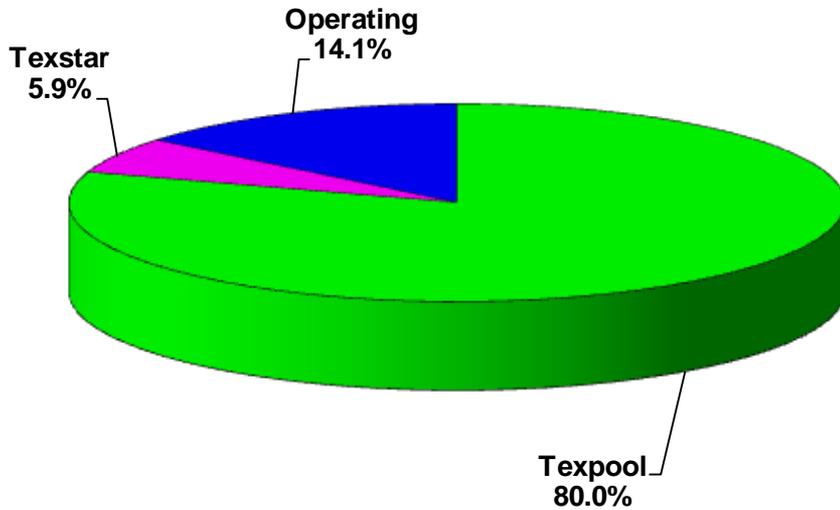


Ryan Haverlah  
Budget Director

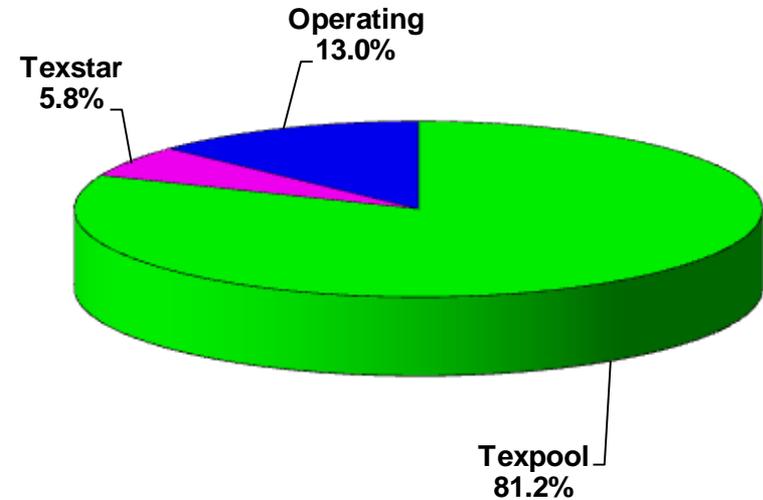
# City of Copperas Cove, Texas

## Portfolio Allocation Analysis

Fiscal Year 2010-11  
3RD Quarter (April-June)



Fiscal Year 2010-11  
4TH Quarter (July-September)



**CITY OF COPPERAS COVE**  
**MONTHLY COUNCIL REPORT**  
**SCHEDULE OF CASH ACCOUNTS AND INVESTMENTS (By Account)**  
As of September 30, 2011 (FY 2010-11)

|   |                               |
|---|-------------------------------|
| <b>FUNDS IN INVESTMENT POOLS</b>                      |                               |
| TEXSTAR   | \$ 1,345,152.09               |
| TEXPOOL   | 17,414,837.13                 |
| <b>Subtotal on Funds in Investment Pools</b>          | <u>\$ 18,759,989.22</u>       |
| <br>  |                               |
| <b>CHECKING ACCOUNTS</b>                              |                               |
| Master Account  | \$1,708,102.49                |
| Accounts Payable                                      | 144,779.00                    |
| Payroll   | 6.70                          |
| Rental Rehab  | 15,309.85                     |
| Police Department Funds                               | 13,005.90                     |
| Law Enforcement Block Grant                           | 8,107.69                      |
| Pending Forfeitures                                   | 24,651.62                     |
| Non-Interest Bearing Account - Grants and Court Bonds | 229.00                        |
| <b>Subtotal Checking Accounts</b>                     | <u>\$1,914,192.25</u>         |
| <br>  |                               |
| <b>SAVINGS ACCOUNTS (Per Quarterly Strmts)</b>        |                               |
| Subdivision Escrow                                    | 2,545.99                      |
| <b>Subtotal Savings Accounts</b>                      | <u>\$2,545.99</u>             |
| <br>  |                               |
| <b>TOTAL INVESTMENTS &amp; CASH ACCOUNTS</b>          | <u><u>\$20,676,727.46</u></u> |

**SCHEDULE OF CASH ACCOUNTS AND INVESTMENTS (By Fund)**  
As of September 30, 2011 (FY 2010-11)

| FUND  | TOTAL CASH & INVESTMENTS       |
|---|--------------------------------|
| General Fund  | \$5,565,833.76                 |
| Water & Sewer Fund  | \$3,274,253.70                 |
| Solid Waste Fund  | \$956,707.10                   |
| Youth Activity Fund   | \$26,863.64                    |
| Drainage Utility Fund   | \$940,227.48                   |
| Cemetery Fund   | (\$14,737.06)                  |
| General Obligation Interest & Sinking Fund                            | \$2,020,284.13                 |
| Municipal Golf Course Fund  | (\$225,026.60)                 |
| Small Business Revolving Loan Fund                                    | \$76,375.35                    |
| Library Gifts & Memorials Fund  | \$12,631.00                    |
| Hotel/Motel Tax Fund  | \$36,571.38                    |
| Animal Shelter Donations Fund   | \$17,577.36                    |
| Police Court Order Fund   | \$0.00                         |
| City-Wide Donations Fund  | \$38,883.42                    |
| City Wide Grants  | (\$174,896.19)                 |
| FEMA Grant Funds  | \$9.37                         |
| Municipal Court Efficiency  | \$18,225.88                    |
| Municipal Court Technology  | \$48,274.38                    |
| Municipal Court Security  | \$6,020.67                     |
| Police Restricted Fund  | \$27,598.15                    |
| Police Federal Seizure Fund   | \$2,104.23                     |
| Law Enforcement Block Grant Fund                                      | \$12,627.18                    |
| Fire Department Grant Fund  | \$9,425.42                     |
| Library Grant Fund  | \$15,394.47                    |
| Step Grant  | \$3,306.65                     |
| Tobacco Grant   | \$1,672.99                     |
| 2009 General Obligation (Drainage)                                    | \$8,004.09                     |
| 2009 General Obligation (Tax Supported)                               | \$112,523.97                   |
| 2009 Tax Notes (Tax Supported)  | \$1,608.69                     |
| 2009 Tax Notes (Water & Sewer)  | \$0.69                         |
| 2009 Tax Notes (Solid Waste)  | \$400,990.85                   |
| 2009 Tax Notes (Hotel Occupancy Tax)                                  | \$118,703.53                   |
| FM 1113 Grant   | \$50,178.66                    |
| 2006 Limited Tax Notes  | \$18,195.22                    |
| 2008 Tax Note   | \$6,725.70                     |
| 2008 Tax Note (Drainage)  | \$153,540.15                   |
| 2008 Tax Note Golf  | \$209,167.94                   |
| 2008A Limited Tax Notes (Tax Supported)                               | \$250,557.44                   |
| 2008A Limited Tax Notes (Water & Sewer)                               | (\$1.35)                       |
| 2008A Limited Tax Notes (Solid Waste)                                 | \$73,860.42                    |
| 2008A Limited Tax Notes (Drainage)                                    | \$60,009.72                    |
| 2010 General Obligation (Water & Sewer)                               | \$2,308,103.54                 |
| 2010 General Obligation (Tax Supported)                               | (\$0.71)                       |
| 2010 Tax Notes (Water & Sewer)  | \$2,822,680.97                 |
| 2010 Tax Notes (Tax Supported)  | \$344,364.67                   |
| 2009 Tax Notes (W&S)  | \$0.00                         |
| 2010A Tax Notes (Tax Supported)                                       | \$556,846.58                   |
| 2010A Tax Notes (Water & Sewer)                                       | \$50,698.85                    |
| 2010A Tax Notes (Solid Waste)   | \$310,236.08                   |
| 2011 Tax Notes  | \$65,793.18                    |
| 2011 General Obligation Bonds   | \$4,646.78                     |
| Reliever Route  | \$14.86                        |
| 2005 Certificates of Obligation (Water Projects)                      | \$0.00                         |
| 2001 Combination Tax & Revenue C/O's (Capital Equip. & Improvements)  | (\$0.25)                       |
| 2001 Combination Tax & Revenue C/O's (Water/Wastewater Phase II CIP)  |                                |
| 2003 Combination Tax & Revenue C/O's (Capital Equip. & Improvements)  | \$41,454.01                    |
| 2003 Combination Tax & Revenue C/O's (Water/Wastewater Phase III CIP) | \$43.32                        |
| 2007 Combination Tax & Revenue C/O's (Police Facility)                | \$11,572.00                    |
| <b>TOTAL CASH &amp; INVESTMENTS</b>                                   | <u><u>\$20,676,727.46</u></u>  |
| <br>  |                                |
| <b>RECAP OF CASH &amp; INVESTMENTS:</b>                               |                                |
| INVESTMENTS IN TEXPOOL  | \$ 17,414,837.13               |
| INVESTMENTS IN TEXSTAR  | 1,345,152.09                   |
| CASH IN BANK  | \$1,916,738.24                 |
| <b>TOTAL CASH &amp; INVESTMENTS</b>                                   | <u><u>\$ 20,676,727.46</u></u> |



CITY OF COPPERAS COVE  
 QUARTERLY COUNCIL REPORT  
 MONTHLY YIELD for CASH ACCOUNTS AND INVESTMENTS (By Account)  
 As of September 30, 2011 (FY 2010-11)

**THE NATIONAL BANK OF CENTRAL TEXAS CASH BALANCES**

| FY 2010-2011<br>MONTH | AVERAGE<br>BALANCE  | INTEREST<br>EARNED | EFFECTIVE<br>YIELD |
|-----------------------|---------------------|--------------------|--------------------|
| July                  | 4,187,145.44        | 265.93             | 0.077%             |
| August                | 3,097,518.59        | 106.70             | 0.041%             |
| September             | 1,809,875.95        | 82.78              | 0.056%             |
| <b>TOTALS</b>         | <b>3,031,513.33</b> | <b>455.41</b>      | <b>0.058%</b>      |

**TEXPOOL CASH BALANCES**

| FY 2010-2011<br>MONTH | AVERAGE<br>BALANCE   | INTEREST<br>EARNED | EFFECTIVE<br>YIELD |
|-----------------------|----------------------|--------------------|--------------------|
| July                  | 21,056,720.93        | 1,189.02           | 0.069%             |
| August                | 18,650,169.41        | 1,363.32           | 0.086%             |
| September             | 17,485,285.37        | 1,335.18           | 0.093%             |
| <b>TOTALS</b>         | <b>19,064,058.57</b> | <b>3,887.52</b>    | <b>0.083%</b>      |

**TEXSTAR CASH BALANCES**

| FY 2010-2011<br>MONTH | AVERAGE<br>BALANCE  | INTEREST<br>EARNED | EFFECTIVE<br>YIELD |
|-----------------------|---------------------|--------------------|--------------------|
| July                  | 1,375,635.45        | 87.19              | 0.077%             |
| August                | 1,368,287.32        | 109.28             | 0.094%             |
| September             | 1,365,699.27        | 101.74             | 0.091%             |
| <b>TOTALS</b>         | <b>1,369,874.01</b> | <b>298.21</b>      | <b>0.087%</b>      |

**TOTAL PORTFOLIO PERFORMANCE SUMMARY**

| FY 2010-2011<br>MONTH | AVERAGE<br>BALANCE   | INTEREST<br>EARNED | EFFECTIVE<br>YIELD |
|-----------------------|----------------------|--------------------|--------------------|
| July                  | 26,619,501.82        | 1,542.14           | 0.070%             |
| August                | 23,115,975.32        | 1,579.30           | 0.080%             |
| September             | 20,660,860.59        | 1,519.70           | 0.089%             |
| <b>TOTALS</b>         | <b>23,465,445.91</b> | <b>4,641.14</b>    | <b>0.080%</b>      |

| National Bank | Texpool       | Texstar      | Totals        |
|---------------|---------------|--------------|---------------|
| 3,031,513.33  | 19,064,058.57 | 1,369,874.01 | 23,465,445.91 |
| 0.12919       | 0.81243       | 0.05838      | 1.00000       |

**City Council Regular**

**I. 1.**

**Meeting Date:** 11/01/2011

**Contact:** Mike Baker, Fire Chief/Emergency Management Coordinator

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### **Information**

#### **SUBJECT**

Consideration and action on an ordinance amending Chapter 7, Article II of the City's Code of Ordinances; providing for a severability clause; providing for a savings clause; and, declaring an effective date. **J. Mike Baker, Fire Chief/Emergency Management Coordinator**

#### **BACKGROUND/HISTORY**

The ordinance was last updated in 1970. Many revisions to the codes, staffing and operations have taken place since that time.

#### **FINDINGS/CURRENT ACTIVITY**

After budget workshop discussions and staff review of the ordinance, the conclusion was to recommend updating to reflect modern best practices, the changes to the fire and other model codes, and to reflect the changes in organizational staffing. The changes reflect the duties of the Fire Marshal and include provisions for a cooperative effort with the criminal investigation division of the Copperas Cove Police Department.

#### **ACTION OPTIONS/RECOMMENDATION**

City staff recommends adoption of Ordinance No. 2011-59, amending Chapter 7, Article II of the City's Code of Ordinances.

---

### **Fiscal Impact**

#### **FINANCIAL IMPACT:**

During the budget workshops for the FY 2012 Budget, staff discussed with Council the opportunity to unfund the position of Fire Inspector/Investigator and relocate the investigations to the Criminal Investigations Division within the Police Department. The remaining inspector duties are being absorbed by other Fire Department staff.

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### **Attachments**

Ordinance

**ORDINANCE NO. 2011-59**

**AN ORDINANCE OF THE CITY OF COPPERAS COVE, TEXAS, AMENDING CHAPTER 7, ARTICLE II OF THE CITY'S CODE OF ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Copperas Cove has previously created the position of Fire Marshal for the City of Copperas Cove; and

**WHEREAS**, the City Council has set certain conditions of employment and method of operation for the position of Fire Marshal; and

**WHEREAS**, the City Council hereby finds and determines that it is in the best interest of the health, safety and welfare to amend the certain methods of operation of the position of Fire Marshal.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:**

**SECTION 1.**

That Chapter 7, Article II of the City's Code of Ordinances is hereby amended as follows:

Section 7-20 is amended to read as follows:

The office of fire marshal is hereby created, as a full-time position with the city. Such office shall be situated within the fire department, the fire marshal reporting directly to the fire chief. Such office shall be filled by appointment by the fire chief. The fire marshal shall be properly qualified for the duties of such office, and shall be removed only for cause. The fire marshal shall receive an annual salary, payable equal to other City Employees, as full compensation for such services, which salary shall be included in the city budget the same as for other positions of the city government.

Section 7-22 is amended to read as follows:

The fire marshal shall investigate the cause, origin and circumstances of every fire occurring within the city by which property has been destroyed or damaged, and shall especially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within twenty-four (24) hours, of the occurrence of such fire. The

fire marshal shall keep in such officer's office, a record of all fires, together with all facts, statistics and circumstances, including the origin of the fires and the amount of the loss, which may be determined by the investigation required by this section.

Section 7-24 is hereby amended read as follows:

Sec. 7-24. - Same— Criminal Investigation; prosecuting arsonists.  
The fire marshal when in such officer's opinion, further investigation is necessary, shall forward all findings of the initial investigation to the Criminal Investigation Division of the police department. The Criminal Investigation Division shall conduct a full investigation of the fire and if there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, such officer shall cause such person to be lawfully arrested and charged with such offense, and shall furnish to the proper prosecuting attorney all such evidence for prosecution. The fire marshal in coordination with the Criminal Investigation Division in the police department may at their discretion call upon outside agencies to assist in investigations to include but is not limited to the State Fire Marshal's Office and/or the United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms.

Section 7-25 subsection (b) is hereby amended to read as follows:

(b) Any witness who refuses to be sworn, or who refuses to appear or testify, or who disobeys any lawful order of the fire marshal, or who fails or refuses to produce any book, paper or document touching any matter under examination, or who is guilty of any contemptuous conduct during any of the proceedings of the fire marshal in the matter of said investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation as aforesaid, shall be deemed guilty of a misdemeanor; and it shall be the duty of the fire marshal in conjunction with the Criminal Investigation Division of the Copperas Cove Police Department to cause all such offenders to be prosecuted.

Section 7-26 is hereby amended to read as follows:

All investigations held by or under the directions of the fire marshal or the criminal investigation division of the police department may, in such officers discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be prohibited from communicating with each other until they have been examined.

Section 7-27 is hereby amended to read as follows:

The fire marshal, upon complaint of any person having an interest in any building or property adjacent, and without any complaint, shall have a right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings, and premises within the city, and it shall be such officer's duty, annually or more often, to enter upon and make or cause to be entered upon and made, a thorough examination of all mercantile, manufacturing and public buildings together with the premises belonging thereto. Whenever the fire marshal shall find any building or other structure which, for want of repair, or by reason of age or dilapidated condition, or for any cause, is especially liable to fire, and which is so situated as to endanger other buildings or property, or so occupied that fire would endanger persons or property therein, and whenever such officer shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flue pipes with which the same may be connected or a dangerous arrangement of lighting devices or system, or a dangerous or unlawful storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials, or other conditions which may be dangerous in character or liable to cause or promote fire or create conditions dangerous to the firefighters or occupants, the fire marshal shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said building or premises. However, if the owner or occupant deems himself or herself aggrieved by such order, such person may, within fifteen (15) days, appeal to the Fire Chief, which shall investigate the cause of the complaint and unless by the Fire Chief's authority the order is revoked, such order shall remain in force and be forthwith complied with by said owner or occupant.

Articles 7-28, 7-29, and 7-30 are hereby repealed and reserved.

## **SECTION 2.**

That any ordinances or resolutions or part of ordinance or resolutions in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

## **SECTION 3.**

That should any section, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

**SECTION 4.**

That this ordinance shall go into effect immediately upon its adoption and approval by City Council.

**PASSED, APPROVED, AND ADOPTED** on this 1st day of November 2011 at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

\_\_\_\_\_  
John Hull, Mayor

**ATTEST:**

\_\_\_\_\_  
Jane Lees, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Denton, Navarro, Rocha  
& Bernal, P.C., City Attorney

**Meeting Date:** 11/01/2011

**Contact:** Wesley Wright, Div. Head of Public Works/City Engineer

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**Information**

**SUBJECT**

Consideration and action on an ordinance amending Section 18-16.2, Same - North FM 116 (South Main Street, Avenue F, and 1st Street), of the Code of Ordinances, establishing speed limits on FM 116. **Wesley Wright, P.E., Public Works Division Head/City Engineer**

**BACKGROUND/HISTORY**

As a result of the recent installation of a traffic signal at the intersection of FM 116 and Lutheran Church Road, recent accidents, and recent roadway improvements on FM 116, the Texas Department of Transportation (TxDOT) has conducted a detailed engineering study to determine the maximum safe speed on FM 116 from Highway 190 to the city's northern boundary.

**FINDINGS/CURRENT ACTIVITY**

TxDOT's study has determine that the maximum safe speed for FM 116 be set as follows:

- From mile post 21.139 (north of Lutheran Church Road) to mile post 23.272 (north of Anderson Avenue) - 55 MPH
- From mile post 23.272 (north of Anderson Avenue) to mile post 23.472 (south of Bonnie Street) - 50 MPH
- From mile post 23.472 (south of Bonnie Street) to mile post 23.864 (north of FM 1113/Ave B) - 40 MPH (except 25 MPH as posted for school zone)
- From mile post 23.864 (north of FM 1113/Ave B) to mile post 24.484 (at Clements Avenue) - 30 MPH
- From mile post 24.484 (at Clements Avenue) to mile post 24.784 (at US Hwy 190) - 35 MPH

TxDOT will replace speed limit signs, at no cost to the city, as necessary upon approval of th attached ordinance.

**ACTION OPTIONS/RECOMMENDATION**

City staff recommends that Council adopt Ordinance No. 2011-60, establishing speed limits for FM 116.

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**Fiscal Impact**

**FINANCIAL IMPACT:**

None

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**Attachments**

- Ordinance
- TxDOT FM 116 Speed Limit Change Request Letter
- FM 116 Speed Zone
- Existing Ordinance Section 18-16.2

**ORDINANCE NO. 2011-60**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS MODIFYING SECTION 18-16.2 IN ITS ENTIRETY; REPEALING ALL ORDINANCES IN CONFLICT WITH THIS AMENDMENT; PROVIDING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, an engineering and traffic investigation has been made to determine the reasonable and safe prima facie maximum speed of motor vehicles on a certain section of FM 116; and

**WHEREAS**, it has been determined by the engineering studies and traffic investigation that the reasonable and safe prima facie maximum speed for motor vehicles on FM 116 should be set out hereinafter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:**

**SECTION 1.**

That the City's Code of Ordinances is hereby amended by modifying Sec. 18-16.2 in its entirety to read as follows:

Sec. 18-16.2 – Same – FM 116.

The speed zones (both northerly and southerly directions) for the operation of motor vehicles upon FM 116 within the city limits shall be as follows:

- (1) Starting at mile post 21.139, the speed limit shall be 55 miles per hour for a distance of 2.133 miles to mile post 23.272.
- (2) The speed limit shall then be 50 miles per hour for a distance of 0.200 miles to mile post 23.472..
- (3) The speed limit shall then be 40 miles per hour for a distance of 0.392 miles to mile post 23.864, except in times of ingress and egress, the speed limit shall then be 25 miles per hour for a distance of 0.095 miles (mile post 23.672 to mile post 23.717), when flashing for school crossing.
- (4) The speed limit shall then be 30 miles per hour for a distance of 0.620 miles to mile post 24.484.
- (5) The speed limit shall then be 35 miles per hour for a distance of 0.300 miles ending at mile post 24.784.

**SECTION 2.**

Any person violating any provision of this ordinance shall upon conviction be fine in any sum not exceeding Two Hundred and no/100 Dollars (\$200.00).

**SECTION 3.**

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

**SECTION 4.**

That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

**SECTION 5.**

That this ordinance shall go into effect upon passage of the ordinance.

**PASSED, APPROVED AND ADOPTED** this 1st day of November 2011, at a regular meeting of the City Council of the City of Copperas Cove, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't. Code* §551.001, et.seq., at which meeting a quorum was present and voting.

\_\_\_\_\_  
John Hull, Mayor

**ATTEST:**

\_\_\_\_\_  
Jane Lees, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Denton, Navarro, Rocha  
& Bernal, P.C., City Attorney



# Texas Department of Transportation

100 SOUTH LOOP DRIVE • WACO, TEXAS 76704-2858 • (254) 867-2700

September 6, 2011



Honorable John Hull  
City of Copperas Cove  
P.O. Box 1449  
Copperas Cove, TX 76522

Dear Mayor Hull,

Attached are two copies of the Speed Zone Strip Map for FM 116. This is an update of existing zones. We would appreciate your assistance in updating these ordinances. The recommended zones are based on results of a traffic engineering study that was recently conducted.

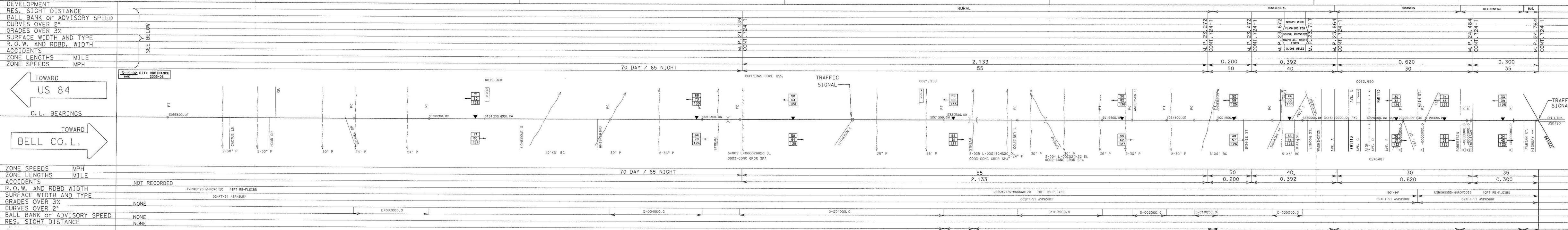
Included in this transmittal is a sample ordinance that may be used, along with two (2) copies of the strip map, to establish the zones. Please return a copy of your completed ordinance to this office. The replacement and/or relocation of signs reflecting the new speed zones will be done by State maintenance forces upon receipt of the ordinance. The strip maps are to be retained in your files for enforcement purposes.

Please feel free to contact me at (254) 867-2800 if you have any questions or need additional information.

Sincerely,

Larry J. Colclasure, P.E.  
Director of Transportation Operations

Attachments  
LJC



|   |             |          |
|---|-------------|----------|
| DIST. WACO COUNTY CORYELL               | MINUTE NO.  | DATE / / |
| HIGHWAY FM 116 CITY COPPERAS COVE       | REPLACES    | DATE / / |
| DATE OF SURVEY 8/ 11/11 SCALE 1" = 800' | REPLACED BY | DATE / / |
|   | CANCELED BY | DATE / / |

| LIMITS OF ZONE |              |               |         |             |              |               |         |
|----------------|--------------|---------------|---------|-------------|--------------|---------------|---------|
| SECTION ONE    |              |               |         | SECTION TWO |              |               |         |
| BEGINS         | STA. OR M.P. | CONT. & SECT. | PROJECT | BEGINS      | STA. OR M.P. | CONT. & SECT. | PROJECT |
| ENDS           | STA. OR M.P. | CONT. & SECT. | PROJECT | ENDS        | STA. OR M.P. | CONT. & SECT. | PROJECT |

- 42 85 PERCENTILE SPEED
- 62 TOP SPEED MEASURED
- 125 NUMBER OF CARS CHECKED
- FATAL ACCIDENT
- PERSONAL INJURY ACCIDENT
- PROPERTY DAMAGE ACCIDENT
- INDICATES SECTION ZONED BY COMMISSION MINUTE

# SPEED ZONE

**Sec. 18-16.2. - Same—North FM 116 (South Main Street, Avenue F, and 1st Street).**

The speed zones (both northerly and southerly directions) for the operations of motor vehicles upon FM 116 (South Main Street, Avenue F, and 1st Street) within the city limits shall be as follows:

- (1) From the intersection of FM 116 (South Main Street) with Highway 190 being mile post 24.784, measuring northward along FM 116 (South Main Street) for a distance of 0.300 miles to mile post 24.484 at Clement Avenue herein called Point A, a maximum speed of thirty-five (35) miles per hour.
- (2) From Point A measuring northward along FM 116 (South Main Street) for a distance of 0.219 miles to mile post 24.265 at Avenue F herein called Point B, a maximum speed of thirty (30) miles per hour.
- (3) From Point B measuring eastward along FM 116 (Avenue F) for a distance of 0.100 miles to mile post 24.165 at the intersection of Avenue F and 1st Street herein called Point C, a maximum speed of thirty (30) miles per hour.
- (4) From Point C measuring northward along FM 116 (1st Street) for a distance of 0.301 miles to mile post 23.864 just north of Avenue A herein called Point D, a maximum speed of thirty (30) miles per hour.
- (5) From Point D measuring northward along FM 116 (1st Street) for a distance of 0.392 miles to mile post 23.472 south of Bonnie Lane herein called Point E, a maximum speed of forty (40) miles per hour.
- (6) From Point E measuring northward along FM 116 (1st Street) for a distance of 0.200 miles to mile post 23.272 north of Anderson Avenue herein called Point F, a maximum speed of fifty (50) miles per hour.
- (7) From Point F measuring northward along FM 116 (1st Street) for a distance of 1.204 miles to mile post 22.068 north of Public Works Drive herein called Point G, a maximum speed of fifty-five (55) miles per hour.
- (8) From Point G measuring northward along FM 116 (1st Street) for a distance of 0.929 miles to mile post 21.139 at the north city limit line herein called Point H, a maximum speed of sixty (60) miles per hour.

*(Ord. No. 1986-26, 7-15-86; Ord. No. 1987-10, 3-17-87; Ord. No. 2002-03, § 3, 4-2-02)*

### Information

#### SUBJECT

Consideration and approval of a resolution electing not to require the remittance of a PEG fee by holders of a state issued certificate of franchise authority. **Ryan D. Haverlah, Assistant Director of Financial Services/Budget Director**

#### BACKGROUND/HISTORY

The City of Copperas Cove has a current agreement with Time Warner Cable to provide cable services within Copperas Cove until January 6, 2018. Our franchise agreement with Time Warner Cable requires a 5% franchise fee payment, a government-access channel or public, education, and government (PEG) channel, and several other provisions. Time Warner Cable does not pay the City a PEG fee or a per-subscriber fee to contribute to the capital costs for our PEG channel.

The Texas Legislation passed SB 1087 this year and it became effective on September 1, 2011. The bill has seven sections amending the Texas Utilities Code, Chapter 66 regulating State-Issued Cable and Video Franchises:

1. Allows cable or video service providers to apply for a state-issued certificate of franchise authority (SICFA) when the local agreement is terminated, not just when the agreement expires.
2. Allows cable or video service providers to terminate all their local franchise agreements and seek/apply for a SICFA before January 1, 2012. The terms of the local agreement will remain in full effect until the SICFA is granted to the provider.
3. Limits the time period to review a providers business records to a 48-month period preceding the last franchise payment date.
4. Requires a cable or video service provide to pay the city an additional 1% PEG fee as in-kind contributions to support a PEG channel.
  - a. If a city receives the fee, the revenue must be keep in a separate account, not commingled with other funds, must keep disbursement records and only make disbursements from the separate account.
  - b. Providers must continue to provide institutional network (I-NET) capacity if required by the local franchise agreement as long as the city agrees to pay the incremental network maintenance cost to the provider.
  - c. Providers who are granted a SICFA are no longer required to provide complimentary services to cities.
5. Requires cable or video service providers to furnish at the city's request up to two (2) PEG channels (population less than 50,000) and prohibits providers from withholding interconnection of PEG channels.
6. Requires cities to transfer PEG or subscriber based fees to a separate account as required by #4 above as of September 1, 2011. This does not apply to us since we do not currently receive the fee.
7. The bill is effective September 1, 2011.

#### FINDINGS/CURRENT ACTIVITY

Time Warner Cable (TWC) will file an application for a State-Issued Certificate of Franchise Authority (SICFA) on December 7, 2011, and will become effective on January 1, 2012. Time Warner Cable has also stated a plan to continue providing existing courtesy video service at no charge for now.

The financial impact of the senate bill is neutral for the City. Our franchise agreement with TWC is 5% and the SICFA will be 5%. The City does not currently receive the Public, Education and Government (PEG) fee of 1%. The outstanding question is: Do we want to accept the 1% PEG fee?

The PEG fee will generate approximately \$66,000 annually. The PEG fee may be used for all capital and infrastructure cost relating to the PEG access channel. The City would be required to account for the revenue and expense in a separate fund. Additionally, TWC may request expense documentation and, if the funds have not been fully expended in a timely manner, may reduce the franchise payment by the unexpended amount. Such would then require staff to closely monitor the franchise payments and execute the appropriate transactions within the City's accounting system.

The City of Copperas Cove may elect to waive the PEG fee prior to TWC filing for a SICFA or may waive the fee at any time after TWC has received their SICFA. Like most for-profit organizations, TWC will list the additional fee separately on the customers' invoices.

### **ACTION OPTIONS/RECOMMENDATION**

City staff recommends City Council not waive the PEG fee at this time. City staff will develop a long-term plan as part of the Capital Outlay Plan on the use of these funds. Depending on the funding requirements of the long-term plan, waiver of the fee at a later date may be recommended.

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### **Fiscal Impact**

**Funds available Y/N?: Y**

#### **FINANCIAL IMPACT:**

The City's current franchise agreement is 5% of gross sales. The City received approximately \$330,000 from Time Warner Cable in FY 2010-2011. The SICFA will not impact this revenue.

The PEG fee will would equate to approximately \$66,000 if received. The City does not currently receive a PEG fee from Time Warner Cable.

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### **Attachments**

Resolution

TWC Notification Letter

2003 Franchise Agreement

**RESOLUTION NO. 2011-46**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, ELECTING NOT TO REQUIRE THE REMITTANCE OF A PEG FEE BY HOLDERS OF A STATE ISSUED CERTIFICATE OF FRANCHISE AUTHORITY.**

**WHEREAS,** Section 66.005 of the Public Utility and Regulatory Act requires the holder of a certificate of franchise authority to pay a franchise fee of five percent (5%) of gross revenues; and

**WHEREAS,** Section 66.006(b) of the Public Utility and Regulatory Act provides that, to fund capital expenses associated with Public, Educational and Governmental facilities, and in lieu of in-kind contributions and grants, a municipality may elect to receive one percent (1%) of a cable service provider's gross revenues or the per subscriber fee that was paid to it under the incumbent cable service provider's agreement; and

**WHEREAS,** the holder of a state-issued certificate is entitled to recover any fee imposed by the state and paid to the municipality from the cable service provider's customers; and

**WHEREAS,** the City does not wish to further burden its citizens with the additional fee authorized by Section 66.006(b) of the Public Utility and Regulatory Act.

**NOW THEREFORE, BE IT RESOLVED,** by the City Council of the City of Copperas Cove, Texas that:

1. The holder of a state-issued certificate of franchise authority shall not remit a percentage or per subscriber fee to the City under Section 66.006(b) of the Public Utility and Regulatory Act.
2. The City Manager shall send a certified copy of this Resolution to the Company.
3. This Resolution takes effect immediately upon its adoption.

**PASSED, APPROVED, AND ADOPTED** on this 1st day of November 2011, at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

---

John Hull, Mayor

**ATTEST:**

---

Jane Lees, City Secretary

**APPROVED AS TO FORM:**

---

Denton, Navarro, Rocha  
& Bernal, P.C., City Attorney

Ryan

RECEIVED  
BY OP | DATE 7 28 11

Department of Government Relations  
750 Canyon Dr., Ste 500 E  
Coppell, TX 75019  
Phone: 469-464-4772  
Fax: 469-464-4021



July 22, 2011

Ms. Andrea Gardner  
City Manager, City of Copperas Cove  
507 S. Main St.  
Copperas Cove, TX 76522

RE: State-Issued Certificate of Franchise Authority

Dear Ms. Gardner,

This letter constitutes notice pursuant to the Public Utility Regulatory Act (PURA) that Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable, will soon file with the Texas Public Utility Commission its Application for a State-Issued Certificate of Franchise Authority (SICFA) to provide cable service to your community. Effective September 1, 2011, pursuant to SB 1087 approved by the 82<sup>nd</sup> Texas Legislature, Time Warner Cable is allowed to transition your municipal franchise to a SICFA. In order to give cities and our company adequate time to prepare, and to align the effective date with the start of TWC's 2012 fiscal year, we expect to file the Application on or about November 23, 2011. Allowing for the PUC's 17-day approval process, the anticipated effective date of the state-issued franchise is **December 19, 2011.**

As a courtesy, we'd like to let you know that the transition to a SICFA affects the City in four primary ways. This letter does not constitute legal advice; it merely communicates the major issues surrounding the transition.

1. The City will continue to receive Franchise Fees, although the percentage paid and the revenues on which the fees are paid may be different (usually higher) than in the municipal franchise.
2. The City may receive an additional 1% of Gross Revenues, labeled a "PEG Capital Fee" on customer bills, to fund capital expenditures associated with Public, Educational and Government programming.
3. Complimentary services to municipal buildings are not required under a SICFA.
4. The City is obligated to pay the actual incremental costs to maintain the City's I-NET.

#### 1. FRANCHISE FEES

Upon the effective date of the SICFA, franchise fee payments will be made quarterly. In some cases, a City's franchise fee payments increase under a SICFA. Under PURA a City receives 5% of gross revenues, defined broadly and encompassing the franchise fee itself along with non-subscriber revenues such as home shopping and local advertising.

We encourage the City to receive payments electronically. Information regarding the process and a form authorizing such is attached for your convenience. While not a requirement, electronic deposit benefits the City with convenient, timely and secure payments.

## **2. STATE FEE for PEG CAPITAL**

The Act provides that, to fund capital expenditures associated with Public, Educational and Government ("PEG") facilities, and in lieu of in-kind compensation and grants, municipalities have the authority to elect to receive 1% of cable service revenues or the per-subscriber fee that was paid to the City, if any, under our agreement.

Time Warner Cable is not currently paying compensation, grants or a per-subscriber fee under our locally issued franchise, so the City may want to consider whether capital funds are required for its PEG channel.

The City may elect to waive the collection of the 1% PEG capital fee from its constituents. For your convenience, we have enclosed a sample letter from an authorized City official and a sample council resolution. The form of waiver is at the City's discretion, so long as it is in writing. To ensure adequate time to process the City's decision, we ask that you provide us the waiver documentation by **September 16, 2011**. Should the City's PEG capital facility needs change at some point in the future, the City may rescind this waiver and establish the collection and remittance of the fee at that time.

*PLEASE NOTE:* SB 1087 amends PURA to impose accountability requirements on cities regarding the 1% fee. Specifically, cities must maintain revenue from the fees in a separate account established for that purpose; may not commingle revenue from the fees with any other money; shall maintain a record of each deposit to and disbursement from the separate account, including a record of the payee and purpose of each disbursement; and may not spend revenue from the fees except directly from the separate account.

Under state law, all holders of SICFAs for service in your community are subject to the same fees, so the decision to waive or collect the 1% fee or the per-sub fee is applicable to all certificate holders providing services in your City.

## **3. COMPLIMENTARY VIDEO SERVICES**

The Act establishes the rules regarding complimentary services. If your municipality requests the continued provision of complimentary services to City buildings, we are entitled to deduct the actual incremental cost of such service from your franchise fee payment. However, we will continue to provide existing courtesy video services at no charge for now.

Accompanying this letter is a list of existing complimentary service to municipal locations in your area, as captured in our database. The list only reflects complimentary accounts. There may be additional digital or premium video services or high-speed internet or digital phone services being purchased by some departments and locations; those additional services will continue to be subject to their contractual terms. Please notify us immediately if this list is not consistent with your records of complimentary service locations or if you decline to continue to receive these services.

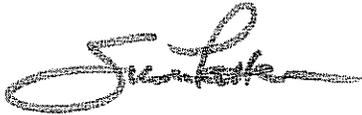
Upon the effective date of the SICFA, any additional or relocated services requested by the city will be accommodated through our commercial services department at applicable commercial rates for installation and monthly service.

#### **INSTITUTIONAL NETWORK**

Under the Act we are required to maintain the I-NET in existence at the time of transition, but the City must pay the actual incremental cost of that maintenance. To help the City in its deliberations, we will follow up with you soon with an estimate of the annual costs to the City for the actual incremental cost. We will need to know if the City intends to continue use of the I-NET and commits to pay the costs.

Feel free to contact me at 512-906-2111 with any question or concerns regarding this correspondence. Thank you for the opportunity to be a part of the future in our community.

Sincerely,



Susan Patten, Vice President of Government Relations

Enclosures:    Sample 1% Fee forms of waiver  
                    SICFA Application  
                    Complimentary Services List  
                    Authorization Agreement for Automatic Deposits for Vendor Payments

## SAMPLE LETTER

ATTN: All Holders of a State Issued Certificate of Franchising Authority

We understand that Section 66.005 of the Public Utility and Regulatory Act requires the holder of a certificate of franchise authority to pay a franchise fee of five percent of gross revenues. We also understand that Section 66.006(b) of the Public Utility and Regulatory Act provides that, to fund capital expenses associated with Public, Educational and Governmental facilities, and in lieu of in-kind contributions and grants, a municipality may elect to receive one percent of a cable service provider's gross revenues or the per subscriber fee that was paid to it under the incumbent cable service provider's agreement.

Knowing that the holder of a state-issued certificate is entitled to recover any fee imposed by the state and paid to the municipality from the cable service provider's customers, and wishing not to further burden its citizens with the additional fee authorized by Section 66.006(b) of the Public Utility and Regulatory Act, the City of Copperas Cove wishes not to receive the fee authorized under Section 66.006(b) of the Public Utility and Regulatory Act.

**SAMPLE RESOLUTION**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPERAS COVE, ELECTING NOT TO REQUIRE THE REMITTANCE OF A PEG FEE BY HOLDERS OF A STATE ISSUED CERTIFICATE OF FRANCHISE AUTHORITY.**

WHEREAS, Section 66.005 of the Public Utility and Regulatory Act requires the holder of a certificate of franchise authority to pay a franchise fee of five percent of gross revenues; and

WHEREAS, Section 66.006(b) of the Public Utility and Regulatory Act provides that, to fund capital expenses associated with Public, Educational and Governmental facilities, and in lieu of in-kind contributions and grants, a municipality may elect to receive one percent of a cable service provider's gross revenues or the per subscriber fee that was paid to it under the incumbent cable service provider's agreement; and

WHEREAS, the holder of a state-issued certificate is entitled to recover any fee imposed by the state and paid to the municipality from the cable service provider's customers; and

WHEREAS, the City does not wish to further burden its citizens with the additional fee authorized by Section 66.006(b) of the Public Utility and Regulatory Act;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:

1. The holder of a state-issued certificate of franchise authority shall not remit a percentage or per subscriber fee to the City under Section 66.006(b) of the Public Utility and Regulatory Act.
2. The City Manager shall send a certified copy of this Resolution to the Company.
3. This Resolution takes effect immediately upon its adoption.

ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

CITY OF COPPERAS COVE

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

| Account Nbr      | Resident Name               | Address Line          | Address City  | Address St | Address Zip |
|------------------|-----------------------------|-----------------------|---------------|------------|-------------|
| 8260160880233721 | CITY OF COPPERAS COVE FI, * | FM 1113 RD            | COPPERAS COVE | TX         | 76522-0000  |
| 8260160880371778 | CITY OF COPPERAS COVE WA, * | 914 TANK ST           | COPPERAS COVE | TX         | 76522-3305  |
| 8260160880372677 | CITY OF COPPERAS COVE PO, * | 202 S 4TH ST          | COPPERAS COVE | TX         | 76522-2207  |
| 8260160880383914 | CITY OF COPPERAS COVE FI, * | 1050 W HIGHWAY 190    | COPPERAS COVE | TX         | 76522-3883  |
| 8260160880177902 | CITY OF COPPERAS COVE FI, * | 415 S MAIN ST         | COPPERAS COVE | TX         | 76522-2239  |
| 8260160880320049 | CITY OF COPPERAS COVE MU, * | 602 S MAIN ST         | COPPERAS COVE | TX         | 76522-2917  |
| 8260160880292925 | CITY OF COPPERAS COVE, *    | 507 S MAIN ST # SNBAR | COPPERAS COVE | TX         | 76522-2241  |
| 8260160880386578 | CITY OF CC UTILITY ADMIN, * | 305 S MAIN ST         | COPPERAS COVE | TX         | 76522-2237  |
| 8260160880326509 | FT HOOD DAMC FAMILY CARE, * | 819 E HIGHWAY 190     | COPPERAS COVE | TX         | 76522-2259  |
| 8260160880395512 | CITY OF COPPERAS COVE FI, * | 1208 W AVENUE B       | COPPERAS COVE | TX         | 76522-1438  |
| 8260160880372727 | CITY OF COPPERAS COVE GO, * | 1408 GOLF COURSE RD   | COPPERAS COVE | TX         | 76522-1971  |
| 8260160880426044 | COPPERAS COVE POLICE DEP, * | 302 E AVENUE E        | COPPERAS COVE | TX         | 76522-2221  |
| 8260160880366877 | CITY OF COPPERAS PARKS &, * | 1206 W AVENUE B       | COPPERAS COVE | TX         | 76522-1438  |
| 8260160880373808 | CITY OF COPPERAS COVE SO, * | 2605 S FM 116         | COPPERAS COVE | TX         | 76522-4250  |
| 8260160880375928 | CITY OF COPPERAS COVE LI, * | 501 S MAIN ST         | COPPERAS COVE | TX         | 76522-2241  |



## **Receive your payments faster - and help the environment too!**

Time Warner Cable is pleased to offer you the option of electronically receiving payments by Automated Clearing House (ACH) rather than via the traditional check you currently receive.

ACH is a highly reliable form of transferring funds electronically directly into your bank account rather than issuing a hard copy check which then needs to be physically deposited. You will continue to receive any supporting documentation by mail. This feature is completely free and offers the following benefits:

- ✓ Payments are electronically deposited directly into your bank account
- ✓ Our bank will provide notification to a designee of your choice as soon as the ACH payment transaction has been processed.
- ✓ The ACH process consumes less paper and is carbon-neutral, which is good for the environment.
- ✓ Eliminates mail delays to holidays, inclement weather, etc.

If you are interested in receiving your payments via ACH please complete the attached Authorization Agreement and return it to the Transaction Accounting Services team via fax @ (704-731-1197). Should you have any questions regarding the ACH process, please e-mail [css.cashdisbursement@twcable.com](mailto:css.cashdisbursement@twcable.com).

*Please note that no change has been made regarding your local Government Relations contact. Please continue to reach out to your local contacts for any franchise related matters.*

We look forward to your ACH participation!

Gayle Rozzelle  
Transactional Accounting Services  
Time Warner Cable



**TIME WARNER CABLE**  
**AUTHORIZATION AGREEMENT FOR ACH PAYMENTS**  
**(ACH DEBITS/CREDITS)**



Please complete the entire form. We will return the form to you for any omissions. *Time Warner Cable Shared Services Accounts Payable Department will complete those areas shaded in gray.* It is recommended that you verify your ABA routing number and account number with your bank before completing the boxes below.

Send completed form to:                    Attn: Transactional Accounting Services  
Time Warner Cable Shared Services  
7800 Crescent Executive Drive, 2nd Fl  
Charlotte, NC 28217  
Fax – 704-731-1197

Vendor Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Name (please print): \_\_\_\_\_

\*required field

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail (please print): \_\_\_\_\_

\*required field

Federal TIN # \_\_\_\_\_

|                       |                                  |   |                                   |
|-----------------------|----------------------------------|---|-----------------------------------|
| Circle One:           | <input type="checkbox"/> New ACH | <input type="checkbox"/> Change to Existing ACH | <input type="checkbox"/> Stop ACH |
| ABA Routing Number    | Account Number                   | Type (Circle one)                               |                                   |
|                       |                                  | <input type="checkbox"/> Checking               | <input type="checkbox"/> Savings  |
| Bank Name             | Branch Phone Number              | Branch Address                                  |                                   |
|                       |                                  |   |                                   |
| New TAS Vendor Number | Cent Test Date                   | Set-up Date/Initials                            | Date Completed                    |
|                       |                                  |   |                                   |

After Time Warner Cable receives this completed agreement and when the initial setup of your direct deposit has been completed, a confirmation letter of the \$0.01 test will be sent to the vendor address and contact. Please check the appropriate box on the confirmation letter and return it to Shared Services Accounts Payable as soon as possible. The completed confirmation letter should be faxed to 704-973-6133. For changes to existing ACH, please allow five business days for changes to be effective.

I hereby authorize Time Warner Cable to transmit payments to the account indicated above. I also understand that Time Warner Cable has the right to recall invalid or incorrect payments within five business days of the payment being made. This authority is to remain in full force and effect until Time Warner Cable has received written notification from us of its termination in such time and in such manner as to afford Time Warner Cable and the Depository reasonable time to act on it.

I certify that I have the authority to approve ACH transactions and sign this agreement.

Name \_\_\_\_\_

Title \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_



*Public Utility Commission of Texas*

1701 N. Congress Avenue  
P. O. Box 13326  
Austin, Texas 78711-3326  
512 / 936-7000 • (Fax) 936-7003  
Web Site: www.puc.state.tx.us

Barry Smitherman  
Chairman

Donna L. Nelson  
Commissioner

Kenneth W. Anderson, Jr.  
Commissioner

**TITLE PAGE**

**APPLICATION FOR OR AMENDMENT TO A  
STATE-ISSUED CERTIFICATE OF FRANCHISE AUTHORITY (SICFA)**

PROJECT NO. \_\_\_\_\_

CERTIFICATE NO. 90008 (If an Amendment)

APPLICANT: Time Warner Cable

**Authorized Company Representative:**

NAME: Ron McMillan

TITLE: Regional Vice President of Government Relations - Texas Region

ADDRESS: 3040 Post Oak Boulevard, Suite 500 Houston, Texas 77056

TELEPHONE: (713) 358-1556 FAX: (713) 353-1560

EMAIL ADDRESS: ron.mcmillan@twcable.com

**Regulatory Contact:**

NAME: Betty Milligan

TITLE: Regulatory Specialist

ADDRESS: 750 Canyon Dr., Ste 500 E, Coppell, TX 75019

TELEPHONE: (469) 464-4772 FAX: (469) 464-4021

EMAIL ADDRESS: twctx.puc@twcable.com

**Emergency Contact:**

NAME: Ron McMillan

TITLE: Regional Vice President of Government Relations - Texas Region

ADDRESS: 3040 Post Oak Boulevard, Suite 500 Houston, Texas 77056

TELEPHONE: O: (713) 358-1556 C: (713) 504-3968 FAX: (713) 353-1560

EMAIL ADDRESS: ron.mcmillan@twcable.com



1. a. Check applicable category:

- Cable Service Provider  
 Video Service Provider  
 Cable and Video Service Provider
- Amendment to SICFA Certification – SICFA No. 90008

b. If you are filing an amendment to an existing SICFA, please check one or more of the following amendment categories requested in this filing:

- Change in Type of Provider (Cable, Video, or Cable and Video)  
 Name Change (Additional d/b/as or New Name)  
 Expansion of Service Area Footprint  
 Transfer in Ownership/Control  
 Other (Explain below)

c. Provide a description of the amendment(s) requested in Question 1(b) above.

The Applicant requests that the Commission amend its SICFA to add: Agua Dulce, Alice, Alton, Archer City, Asherton, Bastrop, Beeville, Bishop, Copperas Cove, Cuero, Donna, Driscoll, Eagle Lake, Eagle Pass, Edcouch, Edinburg, El Cenizo, Elsa, Falfurrias, George West, Harlingen, Hutto, Indian Lake, Jonestown, Kyle, La Feria, La Grulla, La Joya, Laguna Vista, Lake City, Lakeside, Lakeway, Lorena, Los Fresnos, Luling, Manor, Martindale, McAllen, McGregor, Mercedes, Mission, Nolanville, Odem, Orange Grove, Palmhurst, Penitas, Pine Forest, Pinehurst, Point Venture, Port Arthur, Port Isabel, Premont, Primera, Raymondville, Refugio, Rio Grande City, Rio Hondo, Robstown, Roma, San Benito, Santa Rosa, Seadrift, Silsbee, Sullivan City, Sunset Valley, Taylor, Uhlend, Vinton, Volente, Wimberley, Woodcreek, Woodsboro, Woodway to its service area footprint (“SAF”).

2. Provide the following information:

a. Principal business address; (street address, city, state and zip code):

Time Warner Cable  
ATTN: General Counsel  
One Time Warner Center  
North Tower, 17<sup>th</sup> Floor  
New York, New York 10019

b. Main business telephone number: (469) 464-4100

c. Toll-free customer service telephone number: (800) 222-5355

- d. **Fax number:** (469) 464-4021
- e. **Email address:** twctx.puc@twcable.com
- f. **Mailing address, if different from principal business address (street address, city, state and zip code):**

Time Warner Cable  
Suite 500 E  
750 Canyon Dr.  
Coppell, Texas 75019

- g. **Name and title of Applicant's principal executive officers.**

|                    |  |
|--------------------|--|
| Gordon Harp        | Regional Vice President, Residential Services, Texas |
| Ronald N. McMillan | Regional Vice President, Government Relations, Texas |
| Michael Petty      | Regional Vice President, Commercial Services, Texas  |
| Corky Roth         | Regional Vice President, Marketing, Texas            |
| Marie T. Grumbles  | Vice President, Customer Care & IT, Texas            |
| Jon Gary Herrera   | Vice President, Communications, Texas                |
| Joseph Morris      | Vice President, Community Solutions, Texas           |
| Juan L. Munoz      | Vice President, Human Resources, Texas               |

- 3. **State one principal name and any d/b/as in which the Applicant requests the Commission to issue the SICFA in or in which the Applicant currently holds a Cable and/or Video service provider certification.**

(NOTE: The certificated name can be the Applicant's legal name, a d/b/a, or an assumed name as long as the requested name(s) is properly registered to do business within the State of Texas. The SICFA holder MUST use ONLY the name(s) and/or d/b/a(s) granted in its SICFA on all bills, advertisements or communications with the public and the Commission. Name changes require an amendment to an existing SICFA.)

Time Warner Cable.

- 4. **As stated in PURA Sec. §66.004(a), an applicant is not eligible to seek a SICFA until the expiration date of an existing municipal franchise agreement for a requested Service Area Footprint. To meet this eligibility requirement, Commission Staff has determined that an Applicant may file an application for a SICFA within 17 business days of the expiration date of its existing municipal franchise agreement. To determine eligibility, the Commission Staff requires the following information:**

- a. **Is the Service Area Footprint requested in this application currently or previously under a municipal franchise agreement entered into by this applicant or an affiliate of this applicant? If yes, answer question (b).**  
YES – see below
- b. **What is or was the expiration date of the municipal franchise agreement for the requested Service Area Footprint?**

State-Issued Certificate of Franchise Authority (SICFA) Application – Time Warner Cable

|               |                    |                 |                    |
|---------------|--------------------|-----------------|--------------------|
| Agua Dulce    | February 6, 2023   | Mcallen         | November 25, 2016  |
| Alice         | August 25, 2012    | Mcgregor        | February 12, 2014  |
| Alton         | October 17, 2020   | Mercedes        | December 1, 2019   |
| Archer City   | January 14, 2015   | Mission         | March 30, 2015     |
| Asherton      | October 26, 2019   | Nolanville      | July 10, 2012      |
| Bastrop       | December 1, 2012   | Odem            | March 29, 2013     |
| Beeville      | March 31, 2017     | Orange Grove    | February 20, 2014  |
| Bishop        | December 2, 2015   | Palmhurst       | April 23, 2018     |
| Copperas Cove | January 6, 2018    | Penitas         | July 24, 2020      |
| Cuero         | June 3, 2014       | Pine Forest     | December 3, 2015   |
| Donna         | June 7, 2012       | Pinehurst       | October 1, 2012    |
| Driscoll      | August 12, 2022    | Point Venture   | May 7, 2016        |
| Eagle Lake    | January 8, 2016    | Port Arthur     | October 31, 2029   |
| Eagle Pass    | October 4, 2015    | Port Isabel     | May 25, 2012       |
| Edcouch       | September 7, 2020  | Premont         | September 12, 2019 |
| Edinburg      | March 1, 2012      | Primera         | December 21, 2024  |
| El Cenizo     | July 9, 2024       | Raymondville    | August 13, 2015    |
| Elsa          | October 17, 2021   | Refugio         | August 22, 2013    |
| Falfurrias    | April 28, 2016     | Rio Grande City | January 12, 2019   |
| George West   | December 31, 2019  | Rio Hondo       | October 23, 2023   |
| Harlingen     | November 1, 2027   | Robstown        | September 12, 2016 |
| Hutto         | July 16, 2018      | Roma            | August 16, 2020    |
| Indian Lake   | September 27, 2029 | San Benito      | July 15, 2017      |
| Jonestown     | March 4, 2018      | Santa Rosa      | December 14, 2024  |
| Kyle          | August 10, 2014    | Seadrift        | March 5, 2014      |
| La Feria      | December 9, 2012   | Silsbee         | December 17, 2015  |
| La Grulla     | February 11, 2021  | Sullivan City   | April 1, 2021      |

|              |                    |               |                    |
|--------------|--------------------|---------------|--------------------|
| La Joya      | July 11, 2020      | Sunset Valley | N/A                |
| Laguna Vista | August 9, 2017     | Taylor        | June 18, 2014      |
| Lake City    | February 6, 2014   | Uhland        | May 4, 2014        |
| Lakeside     | June 15, 2013      | Vinton        | February 13, 2015  |
| Lakeway      | August 10, 2018    | Volente       | September 15, 2018 |
| Lorena       | August 3, 2016     | Wimberley     | March 14, 2016     |
| Los Fresnos  | July 24, 2017      | Woodcreek     | September 8, 2014  |
| Luling       | October 26, 2015   | Woodsboro     | September 14, 2012 |
| Manor        | September 16, 2017 | Woodway       | September 27, 2015 |
| Martindale   | June 22, 2013      |               |                    |

5. Provide a clear, complete and definitive description of the requested Service Area Footprint (SAF) for any municipality(ies) and/or unincorporated area(s) within the State of Texas. *[SAF descriptions shall include one or more of the following descriptions: state line, county line(s), municipalities/city limit(s), subdivision(s), roadway(s), street(s), block(s), street address(s), metes and bounds, or a detailed map(s) properly highlighted and labeled.]* Expansions to SAFs shall be made by filing an amendment to an existing SICFA. The amendment application shall require a clear, complete and definitive description of the expansion of the SAF. *(For SAF amendments indicate the existing certificated SAF as well as any requested revisions to that existing SAF.)*

**The Applicant requests that the Commission amend its SICFA to add the municipalities of Agua Dulce, Alice, Alton, Archer City, Asherton, Bastrop, Beeville, Bishop, Copperas Cove, Cuero, Donna, Driscoll, Eagle Lake, Eagle Pass, Edcouch, Edinburg, El Cenizo, Elsa, Falfurrias, George West, Harlingen, Hutto, Indian Lake, Jonestown, Kyle, La Feria, La Grulla, La Joya, Laguna Vista, Lake City, Lakeside, Lakeway, Lorena, Los Fresnos, Luling, Manor, Martindale, McAllen, McGregor, Mercedes, Mission, Nolanville, Odem, Orange Grove, Palmhurst, Penitas, Pine Forest, Pinehurst, Point Venture, Port Arthur, Port Isabel, Premont, Primera, Raymondville, Refugio, Rio Grande City, Rio Hondo, Robstown, Roma, San Benito, Santa Rosa, Seadrift, Silsbee, Sullivan City, Sunset Valley, Taylor, Uhland, Vinton, Volente, Wimberley, Woodcreek, Woodsboro, Woodway, TEXAS to its service area footprint (“SAF”).**

The Applicant's SAF will continue to include the following municipalities:

|                  |               |                    |
|------------------|---------------|--------------------|
| Alamo            | Hays          | Pflugerville       |
| Austin           | Hewitt        | Pharr              |
| Beaumont         | Hidalgo       | Port Neches        |
| Bee Cave         | Holliday      | Rancho Viejo       |
| Bellmead         | Holland       | Rio Bravo          |
| Belton           | Horizon City  | Robinson           |
| Bertram          | Kerrville     | Rollingwood        |
| Benavides        | Horseshoe Bay | Rose Hill Acres    |
| Beverly Hills    | Kempner       | Round Rock         |
| Briarcliff       | Killeen       | San Diego          |
| Bridge City      | Kountze       | San Juan           |
| Brownsville      | La Villa      | San Leanna         |
| Bruceville-Eddy  | Lacy Lakeview | San Marcos         |
| Buda             | Lakeside City | Smithville         |
| Burnet           | Lago Vista    | Socorro            |
| Carrizo Springs  | Laredo        | South Padre Island |
| Cedar Park       | Leander       | Staples            |
| Clint            | Liberty Hill  | Temple             |
| Columbus         | Lockhart      | The Hills          |
| Combes           | Lumberton     | Thorndale          |
| Cotulla          | Lyford        | Thrall             |
| Crystal City     | Marble Falls  | Uvalde             |
| Del Rio          | Mathis        | Vidor              |
| Dilley           | Mountain City | Waco               |
| Dripping Springs | Mustang Ridge | Weslaco            |
| El Paso          | Nederland     | West Lake Hills    |
| Elgin            | Niederwald    | West Orange        |
| Escobares        | Orange        | Wichita Falls      |
| Fredericksburg   | Palmview      | Yoakum             |
| Gonzales         | Palm Valley   |                    |
| Groves           | Pearsall      |                    |
| Harker Heights   |               |                    |

The Applicant's SAF will continue to include the following unincorporated areas of the following counties, excluding federal properties:

|          |          |           |
|----------|----------|-----------|
| Archer   | Cameron  | Gonzales  |
| Atascosa | Chambers | Hardin    |
| Bastrop  | Clay     | Hayes     |
| Bee      | Colorado | Hidalgo   |
| Bell     | Dewitt   | Jefferson |
| Brooks   | Dimmit   | Jim Wells |
| Burnet   | Duval    | Kerr      |
| Caldwell | El Paso  | La Salle  |
| Calhoun  | Frio     | Lavaca    |

State-Issued Certificate of Franchise Authority (SICFA) Application  
Time Warner Cable

|          |              |            |
|----------|--------------|------------|
| Live Oak | San Patricio | Wichita    |
| Maverick | Starr        | Willacy    |
| McLennan | Travis       | Williamson |
| Nueces   | Uvalde       | Zapata     |
| Orange   | Val Verde    | Zavala     |
| Refugio  | Webb         |            |

6. **The Applicant shall agree to provide the Commission with written notification when terminating its SICFA. The Applicant shall also agree to provide the Commission with a copy of any order or ruling issued by a court of competent jurisdiction or the Federal Communications Commission (FCC) that either modifies or revokes its SICFA or makes it ineligible to hold a SICFA pursuant to the standards laid out in PURA § 66.003(b). (Commission Staff shall establish a project number to submit all written notices and copies of orders or rulings concerning SICFAs.) The Applicant shall make an affirmative statement that it agrees to provide written notification of termination and copies of orders or rulings issued by a court of competent jurisdiction or the FCC concerning its SICFA.**

The Applicant agrees to provide the Commission with a written notification of termination of its State-Issued Certificate of Franchise Authority, and further agrees to provide the Commission a copy of any Court Order in which the Applicant's State-Issued Certificate of Franchise Authority has been revoked or modified by any court of competent jurisdiction.



City of Copperas Cove  
P.O. Box 1449  
Copperas Cove, TX 76522  
Ms. Andrea Gardner, City Manager

Due Date: 12/30/10

VENDOR 76263-4  
Franchise Area 880

Q4 2010

|               |    |              |
|---------------|----|--------------|
| Net Ad Sales  | \$ | 150,968.35   |
| Other Revenue | \$ | 14,055.42    |
| Cable         | \$ | 1,018,243.60 |

|                     |  |                       |
|---------------------|--|-----------------------|
| Total Revenue Basis |  | <u>\$1,183,267.37</u> |
|---------------------|--|-----------------------|

|                  |    |           |
|------------------|----|-----------|
| Franchise Fee 5% | \$ | 59,163.37 |
|------------------|----|-----------|

|                                |           |                         |
|--------------------------------|-----------|-------------------------|
| <b>Total Franchise Fee Due</b> | <b>\$</b> | <b><u>59,163.37</u></b> |
|--------------------------------|-----------|-------------------------|

|                                 |    |           |
|---------------------------------|----|-----------|
| Total Franchise Fees - Ad Sales | \$ | 7,925.84  |
| Total Franchise Fees - Cable    | \$ | 51,237.53 |

|                           |         |
|---------------------------|---------|
| Basic Subscribers:        | 6,798   |
| Total Subscribers:        | 398,291 |
| Percentage of Subscribers | 1.707%  |

Other Cable Related Revenue

|                                   |               |             |
|-----------------------------------|---------------|-------------|
| 49030 Home Shopping               | \$ 483,159.47 | \$ 8,246.53 |
| 49037 Retail Store - Sales Cable  | \$ 12,930.00  | \$ 220.69   |
| 49040 Magazine Sales              | \$ -          | \$ -        |
| 49050 Leased Access - Other Cable | \$ 4,792.36   | \$ 81.80    |
| 49075 Channel Use                 | \$ -          | \$ -        |
| 49101 Other Revenue Cable         | \$ 304,428.27 | \$ 5,195.96 |
| 49106 Other Revenue Local News    | \$ -          | \$ -        |
| 49127 Fiber Lease Cable           | \$ 18,188.91  | \$ 310.45   |

|                            |                      |                     |
|----------------------------|----------------------|---------------------|
| <b>Other Revenue Total</b> | <b>\$ 823,499.01</b> | <b>\$ 14,055.42</b> |
|----------------------------|----------------------|---------------------|

Original in  
2003 Ordinance 5

**ORDINANCE NO. 2002-21**

**AN ORDINANCE OF THE CITY OF COPPERAS COVE, TEXAS, GRANTING A FRANCHISE TO TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP FOR THE TERM OF 15 YEARS, TO BUILD, CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF COPPERAS COVE; TO ERECT, MAINTAIN, AND OPERATE ITS POLES, TOWERS, ANCHORS, WIRES, CABLES, ELECTRONIC CONDUCTORS, CONDUITS, MANHOLES, AND OTHER STRUCTURES AND APPURTENANCES IN, OVER, UNDER, ALONG, AND ACROSS THE PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY IN THE CITY; PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER; PRESCRIBING THE CONDITIONS GOVERNING THE OPERATION OF THE BUSINESS INsofar AS IT AFFECTS THE USE OF PUBLIC PROPERTY FOR THE PURPOSE OF SUCH BUSINESS; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** by Ordinance No. 86-48 passed, approved, and effective on November 19, 1986, the City of Copperas Cove, Texas ("City"), granted to KBC Corporation, the right, privilege, and franchise to erect, maintain, and operate for a term of fifteen (15) years a cable system in said City; and

**WHEREAS,** by Ordinance passed and approved on December 6, 1994, the City approved the transfer of the franchise to Time Warner Entertainment-Advance/Newhouse Partnership (Grantee); and

**WHEREAS,** by Ordinance No. 2001-43 passed and approved on November 20, 2001, the City approved an extension of the franchise until February 16, 2002; and

**WHEREAS,** by Ordinance No. 2002-04 passed and approved on March 5, 2002, the City approved a second extension of the franchise until July, 03, 2002; and

**WHEREAS,** Grantee has provided cable services within the City under such franchise; and

**WHEREAS,** Grantee has requested renewal of its franchise to allow continued operation of its cable system in the City; and

**WHEREAS,** the public interest will be served by the granting of a non-exclusive franchise to Time Warner Entertainment-Advance/Newhouse Partnership to erect, install,

construct, reconstruct, maintain, operate, dismantle, test, repair, replace, retain, and use a Cable System in, upon, along, across, over, under, or in any manner connected with the streets, lanes, avenues, sidewalks, alleys, bridges, and highways, and other public places in the City of Copperas Cove as the same now or in the future may exist, for the purpose of transmission and distribution of Cable Services serving the inhabitants of said City, and other purposes, for a period of fifteen years, and regulating same.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COPPERAS COVE:**

**SECTION 1  
SHORT TITLE**

This Ordinance shall be known and cited as the "Time Warner Entertainment-Advance/Newhouse Partnership Cable Franchise Ordinance." Within this document, it shall also be referred to as the "Franchise."

**SECTION 2  
DEFINITIONS**

The following terms, phrases, words, abbreviations, and their derivatives shall have the meaning given herein. Terms, phrases, words, and abbreviations not defined herein shall be construed in accordance with the Cable Act, and if not therein defined, then in accordance with the ordinances of the City or their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall," "will," and "must" are mandatory, and the word "may" is permissive or directory.

A. Basic Service means the service tier, which includes the retransmission of local television broadcast signals as well as any EG channels required by this Franchise.

B. Cable Act means the Cable Communications Policy Act of 1984 as amended and as may be amended from time to time during the term of this Franchise (47 U.S.C. § 521 *et seq.*, as amended).

C. Cable Service means (1) the one-way transmission to subscribers of video programming (i.e., programming provided by, or generally comparable to programming provided by, a television broadcast station) and other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

D. Cable System or System means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide

cable services which includes, video programming and which is provided to multiple subscribers within the City. Such term does not include facilities that qualify under the exceptions put forth in 47 U.S.C. §522(7). Unless otherwise specified, "Cable System" is used in this Franchise to refer to the particular cable system authorized under the Franchise and operated by the Grantee or any affiliate who is a cable operator within the Franchise area.

E. City means the City of Copperas Cove, Texas, a municipal corporation under the laws of the State of Texas. Actions taken by the City are understood to be at the direction of the City Council through its City Manager.

F. Converter means an electronic device, which converts signals to a frequency not susceptible to interference with the television receiver of a subscriber, and which, by an appropriate channel selector, also permits a subscriber to view all signals delivered at designated dial locations.

G. Days means calendar days unless otherwise specified.

H. Franchise Area means the incorporated area of the City and such additional areas as may be included in the corporate limits of the City during the term of this Franchise.

I. Grantee or Franchisee means Time Warner Entertainment-Advance/Newhouse Partnership or any person who succeeds Time Warner Entertainment-Advance/Newhouse Partnership in accordance with the provisions of this Franchise.

J. Gross Revenue means any and all revenue, as determined in accordance with generally accepted accounting principles, received by Grantee, its affiliates who are cable operators of the cable system, or other persons who are cable operators of the cable system (regardless of who bills for the cable services), which is derived from or attributable to the operation of the Cable System to provide Cable Services. By way of illustration and not limitation, Gross Revenue includes all fees charged subscribers for any and all cable services provided by Grantee over the cable system such as Basic Service revenues, Expanded Basic Service revenues, Pay Cable Service revenues, revenues resulting from connection or reconnection to the Cable System in order to receive Cable Services, revenues resulting from the lease, rental, or use of Cable System equipment used to provide Cable Service, revenues from late, delinquent, or other administrative fees applied to Cable Services and cable internet or modem service if the same is determined to be a cable service under applicable law. Gross Revenues shall further include advertising revenues attributable to Cable Services delivered over the Cable System in the City, revenues resulting from the lease, use or rental of Channels or Channel capacity to provide Cable Services, and revenues received from programmers for carriage of programming on the Cable System. Except that gross revenues shall not include converter box deposits, an amount equal to refunds to subscribers by the Grantee, an amount equal to subscriber credit or bad debts, or receipts from sales or use taxes or any other tax that the Grantee collects on behalf of any taxing authority. Gross Revenues, however, shall also

include amounts collected from subscribers for franchise fees in accordance with the Court of Appeals decision resolving the case commonly known as the Dallas or Baltimore case, In re: United Artists Cable of Baltimore, 11 FCC Rcd 18, 158 (FCC 96-188, April 26, 1996); reversed by the United States Court of Appeals for the 5th Circuit *sub nom.* City of Dallas v. FCC, 118 F.3d 393 (5th Cir. 1997). The parties intend for the definition of Gross Revenue to be as inclusive as possible consistent with existing applicable law.

K. Person means any corporation, partnership, proprietorship or organization authorized to do business in the State or any natural person.

L. Public Rights-of-Way means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, alley, sidewalk, boulevard, drive, bridge, tunnel, public utility easement, or similar property in which the City now or hereafter holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of a Cable System.

M. State of the Art means equipment that:

1. is readily available with reasonable delivery schedules from two (2) or more sources of supply;
2. has the capability to perform the intended functions demonstrated within communities with similar characteristics within the Waco Division (including, but not necessarily limited to population, density, subscriber penetration, etc.) under actual operating conditions for purposes other than test or experimentation; and
3. can be implemented by the Grantee in an economically feasible manner taking into account economic waste (i.e., early retirement of assets) and the reasonable likelihood of generating a reasonable return on the Grantee's investment when measured over the then remaining term of the Franchise.

The term a "State of the Art" does not include equipment and/or facilities associated with public, educational or governmental (PEG) access or institutional networks.

N. Subscriber means a member of the general public who legally receives cable service distributed by a cable system and does not further distribute it.

### SECTION 3 GRANT OF AUTHORITY

A. Grant of Authority. For the purposes of constructing, operating and maintaining a cable system in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across, and along the streets, including over public

rights-of-way, within the City such lines, cables, conductors, ducts, confluent, vaults, manholes, amplifiers, appliances, pedestals, attachments and other operating equipment as are necessary and pertinent to the operation of the cable system. Grantee or affiliates shall not install or construct facilities within the City's public rights-of-way or easements, which are not authorized by this Franchise or lawfully, allowed by applicable state or federal law. Nothing herein shall be construed as to exempt Grantee from complying with the generally applicable Streets, Sidewalks, and Public Grounds Ordinance or other generally applicable ordinances of the City.

B. Grant Non-exclusive and does not Establish Priority. In accordance with the City Charter, this franchise and the grant of right to use and occupy the City streets, sidewalks, and other public easements for the purposes herein set forth and any renewal or extension of same are non-exclusive and do not establish priority for use over other franchise holders, permit holders and the City's own use of public property. The City hereby expressly reserves the right to grant a similar franchise, permit, or license for use of said streets, sidewalks, and other public easements or property to any person at any time during the period of this franchise in accordance with Section 24 herein. Additionally, Franchisee shall respect rights and property of the City and other authorized users of streets, sidewalks, and other public easements or property. Disputes between Franchisee and other parties over the use of the streets, sidewalks, and other public easements shall be submitted to the City Engineer for a resolution who shall review and resolve the same in a non-discriminatory manner.

#### **SECTION 4 TERM, EVALUATION, AND RENEWAL**

A. Term This Franchise shall take effect and be in full force and effect from and after acceptance by the Grantee, and the same shall continue in full force and effect for a term of fifteen years, unless terminated earlier pursuant to the terms of this Franchise.

B. Scheduled Evaluations. In order to assure that Grantee is complying with the terms of this Franchise and with the character, quality, and efficiency of service to be rendered, given, performed, and furnished under this Franchise, on or within thirty (30) days of the 5<sup>th</sup> and 10<sup>th</sup> Anniversary Date of this Franchise City Council may hold a public hearing or hearings for the purpose of reviewing the performance of the Grantee under the Franchise. Unless specifically waived by City Council, attendance of Grantee's duly authorized representative at these public hearings is mandatory. The subject of the hearings shall include, but not be limited to, Grantee's performance under the franchise, the development of new services, the utilization of new technologies, the level of performance or services compared to systems of similar description in other similar cities, and any federal or state rulings relevant to the franchise. Grantee shall make available to the City Council, if requested, any reasonable records, documents, or other information as may be relevant in City's judgment to assist City Council's review. At least ninety (90) days prior to the performance evaluation hearing, the City Secretary shall notify Grantee of the day, time and location of such hearing. Such notice shall

identify the subjects to be considered at the performance evaluation hearing. If requested, at least 45 days prior to the performance evaluation hearing, Grantee shall file a report with the City specifically addressing Grantee's performance under the franchise and any other subject identified in the notice. At the hearing, Grantee shall be entitled to all the rights of due process, including, but not limited to, the right to present evidence, the right to cross-examine and the right to be represented by counsel. All records and minutes of each of the performance evaluation hearings shall be retained by the City Secretary and be available for inspection throughout the term of the Franchise. At the conclusion of each performance evaluation session, the City and Grantee may schedule further meetings to discuss the findings of the performance evaluation.

C. Additional Evaluations. The City Council may also initiate and conduct such additional performance evaluations no more than once during any calendar year period regarding Grantee's performance under this Franchise as the City Council, in its sole discretion, may deem justified or necessary under the circumstances. Grantee shall be given reasonable notice of the date, time, and location of any such additional performance evaluations, and to discuss inefficiencies and outline a schedule for correction.

D. Renewal. Grantee and City agree that franchise renewal proceedings shall be governed by the Cable Act, or other law applicable at the time of renewal.

## **SECTION 5 COMPLIANCE WITH CITY, STATE, AND FEDERAL LAWS**

A. Compliance with State and Local Laws. This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules and regulations.

B. Subject to Police Powers. Grantee's rights are subject to the police power of the City to adopt and enforce ordinances of general applicability necessary to the health, safety, and welfare of the public. Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to that power. City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor or any other structure or facility that is dangerous to life and property. In the event Grantee, after written notice, fails or refuses to act, City shall have the power to remove or abate the same at the expense of the Grantee, all without compensation or liability for damages to Grantee.

## **SECTION 6 TERRITORIAL AREA INVOLVED**

This Franchise is granted for the territorial boundary of the City. In the event of annexation by the City, any new territory shall become part of the area covered by this franchise upon sixty (60) days written notice by the City to the Grantee, including a list of affected addresses.

**SECTION 7**  
**CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY**

A. Use. Subject to City's current or future generally applicable permitting procedures, the grantee shall have the right to erect and maintain its own poles at locations as it may find necessary for the proper construction and maintenance of the cable system to provide cable service in accordance with this Franchise. Approval shall be procured by the Grantee from the proper City department providing for the erection of these poles. The City agrees that such prior approval shall be granted on a timely basis and will not be unreasonably withheld. The Grantee's cable system, including its poles, wires, appurtenances, shall be located, erected, and maintained, so as not to endanger or interfere with the lives of persons or to interfere with any improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, sidewalks, or other public property. Removal or relocation of poles or equipment when necessary to avoid such interference shall be at the Grantee's expense. However, if any user of the street or right of way is compensated for such removal or relocation, Grantee shall be similarly compensated. Grantee agrees to comply with all other generally applicable City laws, rules, or ordinances that govern the use of Public Rights-of-Way that currently exist or may be applicable during the term of this Franchise, provided that such are promulgated under the City's lawful police powers. In the event that there is conflict between requirements of this Franchise and other lawful and generally applicable City ordinances governing users' ability to use the Public Rights-of-Way, the more strict provisions shall apply.

B. Relocation. The Grantee shall maintain its System so that its facilities shall conform to the pattern of the existing public utility facilities, subject to the right of the city to require relocation, either overhead or underground, of all such utility facilities when the City determines that such relocation is necessary and in the public interest but not for arbitrary and capricious reasons. Moreover, whenever by reason of the construction, repair, maintenance, relocation, widening, raising, lowering of the grade, or vacation of any street by the City for rehabilitating any section of the City, it shall be deemed necessary by the City for the Grantee to move, relocate, change, alter or modify any of its facilities or structures, such change, relocation, alteration or modification shall be promptly made by the Grantee, provided, however, all other users in the same location have a similar obligation. Any change, relocation, alteration or modification under this section shall be at the Grantee's expense unless any other user of the street or public right of way is compensated for such relocation in which case the Grantee shall be similarly compensated. In the event the Grantee, after such notice, fails or refuses to commence, pursue or complete such relocation work within a reasonable time, the City shall have the authority, but not the obligation, to remove or abate such structures or facilities and to require the Grantee to pay to the City the cost of such relocation, alteration, or modification. If the Grantee fails to complete in a timely manner, any relocation requested by the City and the City incurs any costs resulting from such delay, the Grantee shall be liable to the City for such costs.

C. Excavation. Grantee may excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its facilities used to provide Cable Service under this Franchise. Except in the case of emergency maintenance, Grantee shall provide the City written notice within seven (7) business days of any proposed disturbance to any Public Rights-of-Way prior to the commencement thereof. Grantee shall provide the City with notice following any emergency maintenance, which disturbed the Public Right-of-Way. Property owners or occupants of adjoining property shall be given reasonable notice. No Public Rights-of-Way shall be encumbered by construction, maintenance, removal, restoration, or repair work by Grantee for a longer period than shall be necessary to execute such work. When the Grantee shall make or cause to be made excavations or shall place obstructions in any Public Rights-of-Way, the public shall be protected by barriers and lights placed, erected, and maintained by the Grantee in accordance with any existing or future City, state, or federal requirements.

D. Standards. Construction and maintenance of the System shall be performed in an orderly and workmanlike manner. Grantee shall at all times comply with the National Electrical Safety Code and such generally applicable ordinances and regulations of the City affecting electrical and structural installations which may be in effect or as may be amended. The Cable System shall be installed in accordance with good engineering practice, so as not to unreasonably interfere with the right of the public or individual property owner and shall not interfere unduly with the travel and use of public places by the public during the construction, repair, or removal thereof, and shall not unduly obstruct or impede traffic. Grantee shall not place poles, towers, or similar fixtures where the same will interfere with any gas, electric, telecommunications, water hydrant, water main, drainage, sanitary sewer or other facilities located within the City's Public Rights of Way as authorized by the City, and all such poles, towers, and similar facilities shall be placed as directed by the City in accordance with its generally applicable procedures and code. The Grantee shall maintain its System so that poles and other structures of public utilities which are available shall be used to the extent practicable and subject to Grantee's ability to obtain such use on reasonable terms and conditions. Before placing or setting new poles, the Grantee shall file any requested notice of such intention with the City. All work undertaken in connection with the construction, reconstruction, maintenance, operation or repair of the Grantee's System shall be subject to and governed by all State and Federal laws, rules and regulations including those of the FCC and any other federal agency having jurisdiction. For all new residential structures in which under-grounding is required by the City, the builder, sub-divider, or developer of such structure, at his sole cost and expense shall provide, in accordance with Grantee's current specifications, all conduits, trenches to buildings point of entry, from the boundary of the development, back fill and restoration of the trench area.

E. Restoration. Any and all Streets or Public Property or private property which are disturbed or damaged by the Grantee during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee at its cost and expense to a condition as good as that prevailing prior to Grantee's work. Restoration shall take place as soon as is reasonably possible, but in no instance more than thirty (30) days after the completion of the work, under normal operating conditions. The

thirty (30) day period shall be extended for days that the Grantee is unable to perform the work due to unfavorable weather conditions. In the event restoration is scheduled to take longer than thirty (30) days for any other reason, Grantee shall provide the City with written notice as to the reason(s) for the delay. If there is an unreasonable delay by Grantee in restoring and maintaining Public Rights-of-Way after such excavations or repairs have been made, City shall have the right, following written notice to Grantee to which Grantee has forty-eight (48) hours in which to respond, to restore or repair the same and to require Grantee to pay to the City the reasonable cost of such restoration or repair, all without compensation or liability for damages to the Grantee unless such damage was caused by the negligence or willful misconduct of the City or its agents. In the event City determines that Grantee's use of any of City's Public Rights-of-Way as set forth in this Franchise pose an immediate danger to the health, safety or general welfare of the public, City shall have the right to restore or repair same and shall require Grantee to pay to the City the reasonable costs incurred regarding same, all without compensation or liability for damages to the Grantee unless such damage was caused by the negligence or willful misconduct of the City or its agents.

F. Temporary Removal. The Grantee shall, upon request of any person holding building moving permit or permit to move oversize loads issued by the City, temporarily raise or lower its wires to permit the moving of buildings or oversize loads. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same and Grantee shall have authority to require such payment in advance. The Grantee shall be given not less than three business days advance notice to arrange for such temporary changes.

G. Tree Trimming. The Grantee shall have the authority to trim trees upon and overhanging the streets, public utility easements or rights-of-way of the City as to prevent the branches of such trees from coming in contact with the Grantee's wires and cables. From time to time, the City Council may pass ordinances regulating the trimming or removal of trees on or along City property, and Grantee shall comply with these ordinances.

H. Facilities Location. With the exception of installation of individual drops, routine maintenance, upgrades, and/or emergency repairs, Grantee shall provide plans and specifications for all major construction within Public Rights-of-Way to the City certified by a professional engineer or employee of Grantee familiar with the location of the Cable System in the City for its review in accordance with applicable City ordinances and permit application procedures. Approval of plans and specifications shall not be unreasonably delayed or denied. In the event of rejection, Grantee shall submit revised plans and specifications for approval. This provision shall apply to each construction sequence if the construction is accomplished in phases. The City shall have the right to be informed as to matters in connection with or affecting the construction, reconstruction, maintenance, operations, and repair of the Cable System facilities of the Grantee within the Public Rights-of-Way including, but not necessarily limited to, the identification and location of the Grantee's Cable System facilities within the Public Rights-of-Way and to updates of such information as changes regarding same occur. Upon request by the City, the Grantee shall furnish the City information relevant to such matters which is prepared, maintained, and available in the ordinary course of business.

## SECTION 8 INDEMNIFICATION AND LIABILITY

A. Indemnification. It is the intent of this Section and by its acceptance of this Franchise, Grantee specifically agrees, that Grantee, for itself and its agents, employees, subcontractors, and the agents and employees of said subcontractors, shall, at its sole cost and expense, indemnify, defend, and hold the City, its officers, agents, employees, contractors, elected officials, successors and assigns harmless from any and all liability actions, causes of action, lawsuits, judgments, claims, demands, damages, penalties, liens, costs or fees, including attorney's fees and costs of defense, for any injury to or the death of any person or damage to or destruction of any property arising out of, resulting from or based upon, in whole or in part, any act or omission of Grantee, its officers, employees, contractors, subcontractors, and agents under this Franchise, including without limitation the construction, operation, or maintenance of its Cable System. In the event that any action, suit or proceeding is brought or claim is made against the City based upon or arising out of any such act or omission of the Grantee under this Franchise, the City shall give notice in writing of such action, suit, proceeding or claim to the Grantee. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section and has not been compromised in any substantial manner by the failure of the City to provide such notice. The City shall not and does not by reason of this granting of this Franchise, assume any liability of Grantee whatsoever for injury or death to persons, damage to property, or penalties caused by Grantee. City shall not at any time be liable for injury or damage, occurring to any person or property from any cause whatsoever arising out of Grantee's construction, maintenance, repair, use, operation, condition or dismantling of Grantee's cable system or the Grantee's provision of cable service, unless such injury or damage directly results from the negligence or misconduct of the City. The provisions of this Section shall survive the expiration or earlier termination of this Franchise.

B. Defense of Indemnities. The Grantee shall, at the sole risk and expense of the Grantee, upon demand of the City, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commission, agents, or employees, arising out of or due to the Grantee's construction, operation, or maintenance of the cable system in the City. If any action or proceeding is brought against the City or any of its officers, agents, employees, or contractors with respect to which payment may be sought for claims for damages or penalties described in this Section, the Grantee, upon written notice from the City, shall assume the investigation of defense and fully control any resolution or compromise thereof (provided, however, that Grantee shall not admit liability in any such matter on behalf of the City without the prior written consent of such City, which consent shall not be unreasonably withheld), including the employment of counsel and the payment of all out-of-pocket expenses. The City shall fully cooperate with the Grantee.

C. Notice, Cooperation, and Expenses. Grantee shall pay, and by acceptance of this Franchise specifically agrees that it will pay, all liabilities, obligations, damages, penalties, claims, liens, out-of-pocket costs, charges, losses, and expenses, which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of Grantee's or its agents' installation, maintenance, or operation of the Cable System whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise. Grantee shall pay and satisfy and shall cause to be paid and satisfied any final judgment, decree, order, directive, or demand, rendered, made, or issued, against the Grantee, the City, its officers, boards, commissions, agents, or employees, for the foregoing. Upon the written request of the City, Grantee shall cause such claim or lien covering City's property to be discharged or bonded within 30 days following such final decision. Indemnification shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance hereunder or otherwise.

D. Separate Counsel. The City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and the Grantee shall pay the reasonable fees and expenses of such separate counsel if employed with the approval and consent of the Grantee or if representation of both the Grantee and the City by the same attorney would be inconsistent with accepted canons of professional ethics. Nothing herein shall be deemed to prevent the City from cooperating with the Grantee and participating in the defense of any litigation by their own counsel at City expense.

## SECTION 9 INSURANCE REQUIREMENTS

A. Insurance. Grantee shall maintain, throughout the term of this Franchise, liability insurance insuring the City and the Grantee with regard to any and all damages mentioned in Section 8 above in the following minimum amount:

1. One Million Dollars (\$1,000,000) for bodily injury or death to any one person;
2. One Million Dollars (\$1,000,000) for bodily injury or death resulting from any one accident or occurrence; and
3. One Million Dollars (\$1,000,000) for all other types of liability.

The insurance required by this section shall be kept in full force and effect by Grantee during the existence of this Franchise and thereafter until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of Grantee's Cable System, should such removal be required by City Council or undertaken by Grantee.

B. Required Provisions. Grantee agrees that with respect to the insurance requirements contained above, all insurance certificates will contain the following required provisions:

1. Name the City of Copperas Cove and its officers, employees, and elected representatives as additional insured.
2. Provide for thirty (30) days notice to the City for cancellation, non-renewal or material change, or ten (10) days notice to the City in the event of non-payment of the premium.

3. Shall be on an occurrence basis and shall be primary coverage of all losses resulting from Grantee's operations covered by the policies.

C. Other Insurance. The Grantee shall maintain throughout the term of this Franchise workers' compensation and employers liability insurance in the amount required by all applicable federal and state laws.

D. Deductibles. Companies issuing the insurance policies shall have no recourse against the City for payment of any retainage or deductibles and from the payment of any premiums or assessments on any insurance policy which all are set at the sole risk of the Grantee. Insurance policies obtained by Grantee shall provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with any damage caused by Grantee.

E. Evidence of Insurance. Within thirty (30) days after the effective date of this Franchise, Grantee shall provide to the City and maintain on file throughout the term of the Franchise a certificate of insurance evidencing coverage as required by this section. Upon request of the City, Grantee shall furnish to the City satisfactory evidence that an insurance policy has been obtained and is in full force and effect. Grantee shall immediately advise the City of any claim or litigation that may result in liability to it.

## SECTION 10 CABLE SYSTEM CHARACTERISTICS

A. Service Provided. Cable service shall be provided in the City and at all times shall include at least eighty (80) activated channels of programming. Grantee agrees to complete an upgrade of the system to 750 Mhz. Grantee shall keep the City fully informed on the progress of the upgrade and shall inform the City as to its implementation of the cable system upgrade requirement in its Annual Report.

B. State-of-the-Art Review

1. Subject to the provisions of this Section 10.B, the City may amend the Ordinance so as to require the Grantee to upgrade the Cable System to incorporate the State of the Art (the State of the Art Option).
2. The City may not initiate the State of the Art Option at a time when the Grantee is subject to effective competition as defined from time to time by federal law.
3. In order to initiate the State of the Art Option, the City shall first commence a review of the Cable System. There shall not be more than one (1) such review every two (2) calendar years. A review may not commence prior to the seventh (7th) or after the twelfth (12th) anniversary of the Effective Date.

- a) The review described in this paragraph (B) shall, at a minimum, take into account the following:
  - a. characteristics of the existing Cable System;
  - b. the State of the Art;
  - c. the additional benefits provided to customers by the State of the Art;
  - d. the marketplace demand for the State of the Art taking into account any associated rate increase; and
  - e. any additional factors deemed relevant by the Grantee)
- b) If, after conducting such a review, the City determines that the exercise of the State of the Art Option may be warranted, the City shall hold at least two (2) public hearings to enable the general public and the Grantee to comment and present additional evidence.

4. If, following such hearings, the City determines that the exercise of the State of Art Option is warranted; it may order the State of the Art be implemented (the Order). The Order shall be in writing and shall set forth the basis for the City's decision. Upon agreement, the parties may amend this Franchise accordingly. If, however, the Grantee is not willing to comply with such Order, the Grantee may, within sixty (60) days after the City's Order:

- a) Appeal the City's Order to any court of competent jurisdiction; or
- b) Notify the City pursuant to Section 626 of the Cable Act that it wishes to commence proceedings to review the Franchise. Such notice shall be deemed to shorten the term of the Franchise such that the Franchise will expire thirty-six (36) months from the date of the Grantee's notice. The Grantee shall not be deemed to be in violation of the Order or of the Franchise if such renewal proceedings are commenced.

5. If the court finds that the Grantee has demonstrated the City's Order is not supported by a preponderance of the evidence based on the record of the proceedings from (B) above, the court shall grant appropriate relief.

C. Future Upgrades. In the event Grantee either voluntarily or under the terms of the above subsection undertakes an upgrade or rebuild of the Cable System during the term of this Franchise, at least thirty (30) days prior to the implementation of any upgrade and/or replacement activities, Grantee shall provide to the City a written plan which shall include general information as to the construction necessary for the project, and the procedure or method Grantee will employ to ensure minimal interruption of Cable Service. All construction and technical specifications included in the plan(s) submitted by Grantee shall be in conformity with the provisions of this Franchise, including any lawful and generally

applicable City permitting process. Grantee shall meet with the City to discuss the status and progress of the construction upon request.

D. Performance Standards. Grantee shall construct, operate and maintain its cable system according to the specifications of the FCC. The Grantee shall at all times employ a reasonable standard of care to prevent failures or accidents which are likely to cause damages, injuries, or nuisances to the public. Subject to the requirements of the FCC, the Grantee shall provide a parental control device capability for a reasonable charge, upon request, to any subscriber.

E. System Design. The Grantee shall make available upon request by the City within thirty (30) business days a full, detailed statement, which contains the following information:

1. The location of the cable system's head end facilities, location of local originated studio facilities, receiving and transmitting station for the sending and receiving of programming by way of satellite, and its central business office.
2. The location of all designated points within the system wherein the electronic signals (video and radio) may be transmitted into the system other than the central head end area, and other than schools.
3. A description of the general cable casting equipment to be utilized in the local origination studio facility.
4. A description of any mobile unit or facilities to be utilized by the Grantee in a production or transmission of programming.

Franchise shall make such information or maps available for examination by the City at all times during the term of this Franchise upon thirty (30) business days notice by the City of a request for examination.

F. Backup Emergency Power. Grantee shall provide sufficient backup power for two hours, which starts automatically in the event of a loss of conventional power, to provide electric service to the cable system head-end and associated equipment in the event of a power failure.

G. Service for the Hearing Impaired. Grantee shall comply with any FCC or other Federal or State requirements regarding altering or adapting programming for the hearing impaired.

H. Dark Fiber Facilities. Within six (6) months of the effective date of the franchise, the Grantee shall at no cost to the City run fiber optic cable and terminate said Fiber Optic Cable (1) between the City's Police Department building and City Hall (2) between the Municipal Court building and City Hall, (3) between the City Hall and Utility Administration Building and, (4) between the City Hall and the Golf Course Pro Shop. Grantee shall be responsible for the maintenance of exterior fiber that is installed in accordance with this agreement.

**SECTION 11**  
**ACCESS CHANNELS AND INFORMATIONAL PROGRAMMING**

- A. Access Channels. The Grantee shall provide, when requested by the City through its City Manager, and within ninety (90) days after receiving such request:
1. Government Channel: One channel shall be made available for use by the City of Copperas Cove at no cost to the City, which channel shall be used for authorized governmental, non-profit, civic and non-commercial, public purposes only.

Moreover, Grantee and City agree that all City Hall cable equipment and facilities on the City side of the Time Warner cable interface, which are associated with the Government channel provided for by the prior franchise, shall be and are City property for all intents and purposes. The City through its City Manager or other authorized access agency shall be responsible for administration of any access channels.

- B. Additional Government Channels. If the foregoing access channel is programmed at least 80% of any 24 hour consecutive time block with unduplicated locally produced programming, Monday through Friday for six (6) consecutive weeks, Grantee, at the request of the City, shall designate one additional channel in the digital spectrum for access use. The City shall be responsible for one half of the Grantee's costs associated with activation of the digital channel.
- C. Government Channels Generally. The Grantee shall provide on the cable system a government channel as specified herein. The government channel shall be placed on the basic tier of service (and in the lowest tier of service, if different) and shall be available to all subscribers. Such channels shall be available twenty-four (24) hours per day throughout the term of the Franchise. Grantee shall not exercise any editorial control over any educational or governmental use of channel capacity consistent with federal law. The Grantee hereby agrees that it shall encourage the development and utilization of those channels herein described as access channels.
- D. EG Capital Support. In order to provide for the greatest possible diversity of users of the access channels, the Grantee shall contribute within thirty (30) days after the effective date of this Franchise a one-time technology grant of twenty thousand dollars (\$20,000). Parties agree that these support payments are not part of the City's franchise fee payments.
- E. Additional EG Capital Support. During the years following the initial grant of EG Capital support, the Grantee shall provide additional sums of EG support. In order to provide for this additional capital for EG programming, the Grantee agrees to contribute the sums hereinafter set forth:
1. The sum of five thousand dollars (\$5,000.00) in the year following the effective date of the franchise;

2. The sum of seven thousand, five hundred dollars (\$7,500.00) in the fifth year of the franchise term;
3. The sum of seven thousand, five hundred dollars (\$7,500.00) in the tenth year of the franchise term.

Additionally the Grantee shall provide within thirty (30) days after the effective date of this franchise, a character generator and software capable of substantially improving the City's existing programming capabilities, and also provide ten thousand dollars (\$10,000.00) in programming equipment to be utilized in televising Council meetings.

Grantee shall provide these additional capital support payments no later than ten (10) days after the applicable anniversary of the effective date of this Ordinance. The City shall account for these funds and track such funds in a separate Special Revenue Fund Account. Upon request, the City shall give the Grantee supporting documentation on use of these capital support funds. Additional capital support payments may be carried over to later years under this schedule at the City's option. Parties agree that these support payments are not part of the City's franchise fee payments.

F. Signal Input Points. Grantee shall continue to provide return feed capability from City Hall to the Grantee's hub sites for purposes of transmitting government access programming.

G. Technical Assistance. Within two (2) hours of a request from the City an/or its designee, identifying a problem and requesting assistance from Grantee regarding an EG Channel, Grantee will respond by telephone to address the problem. Within four (4) hours of a request, Grantee shall provide technical assistance or diagnostic services to determine whether or not a problem with an EG Channel is the result of matters for which Grantee is responsible and, if so, Grantee will take prompt corrective action. Such assistance will be a no charge to the City. Parties agree that such technical assistance is not part of the City's franchise fee payments and shall not be recovered from subscribers within the City.

H. Advertising- The Grantee shall provide advertising programming during each year of the franchise agreement. The advertising programming will be provided as follows:

1. The City will be provided advertising and thirty (30) second marketing spots valued at forty thousand dollars (\$40,000.00) per year.
2. Additionally, the Grantee will produce up to seven (7) different spots at no charge to the City. These spots include one (1) spot for the Ogletree (aka, Heritage) Festival and one (1) spot for the Festival of Five Hills (formerly the Rabbit Fest). Franchisee shall produce additional spots at City's request, at Franchisee's cost.
3. City shall not be restricted to the use of the forty thousand dollars (\$40,000.00) per year in marketing and advertising spots shall not be sold.

Parties agree that the advertising support is not part of the City's Franchise payments, and shall not be recovered from the subscribers.

## SECTION 12 OPERATIONAL STANDARDS

- A. Compliance with FCC Rules. At a minimum, Grantee shall comply with present and future rules and regulations of the FCC, including but not limited to, technical standards, testing requirements, consumer protection standards and consumer electronics compatibility regulations and all other present and future rules and regulations of the FCC in connection with and relating to the operation of Grantee's Cable System. Such compliance will not negate or replace any additional requirements identified in this Franchise.
- B. Technical Performance. Grantee's Cable System within the City shall meet or exceed all FCC technical and signal quality standards for cable systems, including any such standards or regulations as hereinafter may be amended or adopted to the extent that compliance with such amended standards is mandated by law or regulation. In the event that such amended standards are not mandated by law or regulation, and provide for a less strict performance standard, and/or less frequent testing requirements, such modifications will not be included as a part of this Franchise unless the City chooses to incorporate by means of a resolution or amendment hereto.
- C. FCC Testing and Correspondence. If the City contacts Grantee prior to the next FCC required test period (*i.e.*, before December 15 and June 15 of each year), a City representative may be present during the testing. Upon request, Grantee shall provide summary written reports of the results of such tests to the City. Upon request, Grantee shall provide the City copies of all correspondence with the FCC related to technical performance of the Cable System in the City. In the event that any complaints are filed with the FCC related to the Cable System operations in the City, Grantee shall provide copies of such complaints as well as the resolution thereof to the City upon request. A copy of any annual performance test report required by the FCC shall be submitted to the City within sixty (60) days of its completion to the Office of the City Manager.
- D. Customer Service. The Grantee shall provide customer service in accordance with the FCC customer service standards and City regulations where permitted by federal law.
- E. Quality of Service. Throughout the term of this Franchise, the Grantee shall maintain the quality of service and meet operational standards in the maintenance and operation of its Cable System as are required herein. In the event that the City elects to do so, the City may monitor the Grantee's quality of service by means of surveying selected test sites on a regular basis. Such test sites, as well as the intervals in which the surveys may be conducted will be at the sole discretion of the City. The City shall give the Grantee thirty (30) days written notice of the selection of test site (s) prior to beginning the surveys. In addition, the City may delete and /or add any test site provided that the Grantee is given

the thirty (30) day written notice prior to such action. Should the City find that the Grantee has failed to maintain such quality of service or operational standards, the City may notify the Grantee in writing and specifically set forth therein the improvements required to rectify such deficiencies.

- F. City's Right to Evaluate Technical Performance. The City shall have the right to conduct detailed evaluations of the technical performance of the Cable System during the term of the Franchise.

### **SECTION 13 EMERGENCY ALERT SYSTEM**

- A. Emergency Alert System. Grantee shall provide without charge to City an Emergency Alert System ("EAS") consistent with applicable federal and state law. Grantee shall install as part of its Cable System, and shall operate throughout the term hereof, an EAS or successor to that system in accordance with all requirements imposed from time to time by the FCC. including without limitation the requirement currently set forth in the FCC regulations that a cable television system transmit an audio only EAS message on its analog channels. In establishing its EAS system, the Grantee shall, in accordance with FCC regulations, cooperate with the City and duly authorized regional emergency management officials on the use and operation by area governmental authorities of the EAS.

- B. EAS System Activation. Grantee shall provide the City with the ability to activate the EAS from at least two (2) locations (one for the City Fire Department and the other for the City Police Department) and shall be accessible at any time by persons designated by the City. This access to the cable system shall be provided upon the effective date of this franchise. EAS System activation shall override the audio of all programming during a period of emergency or disaster to include warnings of impending and immediate natural disasters; all acts of war; and any other un-described occurrence that may threaten the health and/or welfare of the residents in the immediate viewing area. The emergency alert capability shall be operational throughout the term of this Franchise. The City shall notify the cable system each and every time the City tests all equipment outlined in this section of the contract. The City also promises to test the equipment within reason, and will notify the Grantee 24 hours in advance of said testing of emergency equipment outlined in this section. Grantee shall provide the appropriate training to City personnel as may be necessary to operate the equipment and facilities necessary to satisfy this provision of the Franchise.

### **SECTION 14 EQUAL OPPORTUNITY**

The Grantee shall afford equal opportunity in employment to all qualified persons. No person shall be discriminated against in employment because of race, color, religion, national origin, or gender.

**SECTION 15**  
**PAYMENT TO CITY**

- A. Amount and Time. In consideration of the terms of this Franchise, Grantee shall pay the City throughout the term of this Franchise a franchise fee in an amount equal to five percent (5%) of the Grantee's actual annual Gross Revenues for the operation of a cable system to provide cable service in the City. The Franchise Fee shall be due quarterly within 45 days of the quarter's end (example: payment for the three month period ending March 31 would be due by May 15). This payment shall be in addition to any other generally applicable tax or payment owed to the government or other taxing jurisdiction by the Grantee. Accompanying the payment, Grantee shall file a statement prepared according to generally accepted accounting principles that shall provide Gross Revenues separated by significant category and provide a computation of said payment. Such statement shall be signed by an officer or certified public accountant of the Grantee. The Franchise Fee and any other cost or penalties assessed shall be payable to the Finance Officer of the City.
- B. Federal Regulations. Should federal regulations or federal statutes be amended in the future to allow the City to receive a greater franchise fee from its franchisee, for the provision of cable service in the City, then, subject to the prior approval by the City Council and, following a public hearing affording Grantee and the public opportunity for full comment, the Franchise shall immediately commence making such additional payments to the City as are authorized, to the full extent of such authorization. In the event of such amendment, franchisee, if applicable law permits, shall be authorized to pass through to its subscribers any such increased costs.
- C. Annual Financial Report. Grantee shall file with the City within sixty (60) days following the end of each calendar year, or portion thereof during which the Franchise is in effect, an annual statement prepared according to generally accepted accounting principles showing Gross Revenues by significant category used in the computation of the Franchise fee payment for the previous year. Such statement shall be signed by an officer or certified public accountant of the Grantee.
- D. Right of Inspection of Records. The City shall have the right to inspect Grantee's records showing the Gross Revenues from which payments to the City are computed and to audit and re-compute any and all amounts paid under this Franchise. All records reasonably necessary for such audit shall be made available by the Grantee at a location in the City, or if outside the City, at Grantee's expense. The City's right to audit and the Grantee's obligation to retain records related to a Franchise fee audit shall expire three (3) years after each Franchise fee payment has been made to the City. Any undisputed additional amount due the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report. In the event that any audit results in an underpayment of greater than five percent (5%) (prior to the late charge) for the audit

period, Grantee shall reimburse the City for its costs to conduct the audit or re-computation.

- E. Late Payment. All sums not paid when due shall bear interest at the annual rate equal to the interest amount of a six month Treasury bill on the due date.
- F. Acceptance by the City. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Franchise or for the performance of any other obligation of the Grantee.
- G. Prior Fees. It is understood that Grantee will pay Franchise Fees during any expired term of the previous Franchise.

**SECTION 16  
NOTICE, RECORDS AND REPORTS**

- A. Notice. Except where otherwise provided herein or expressly agreed to between the parties, all notices or demands required to be given under this Franchise shall be deemed to be given when delivered personally to the persons designated below or upon the date actually received as evidenced by registered or certified mail receipt addressed as follows:

If to the City: Office of City Manager  
City of Copperas Cove  
P. O. Box 1449  
Copperas Cove, Texas 76522

If to Grantee:  
Johnny Mankin, Division President  
Time Warner Cable  
215 Factory Drive  
Waco, Texas 76710

Either party may change its addresses or personnel upon notice to the other party given as provided in this Section. Any notice given by a party hereunder must be signed by an authorized representative of such party.

- B. Agency pleadings and Correspondence. A copy of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission or any other Federal or State regulatory agency having jurisdiction over any matter affecting the cable system operations authorized

pursuant to the Franchise shall be submitted to the City Manager or his designated representative upon request.

- C. Business Office/Phones. The Grantee shall establish, operate and maintain in the City of Copperas Cove one or more locations to receive payments for as long as it continues to operate its cable system or any portion thereof in the City. The Grantee shall have a listed, local, toll free telephone number for service calls and such telephone service shall be available twenty-four (24) hours a day, seven (7) days a week. Said number shall be made available to the subscribers and the general public in a phone directory of wide circulation. The Grantee shall provide an unlisted local toll free telephone number to the City and utility companies to enable the city to reach the Grantee in case of emergency on a 24-hour, 7 days-a-week basis.
- D. Books and Records. Grantee shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books of accounts and records related to enforcement of the Franchise shall be made available for inspection by the City at Grantee's office within the City during normal business hours upon advance notice. In the alternative and at Grantee's discretion, Grantee may make books and records available in other locations, but must pay the travel costs for a City representative to visit this site if such review is requested by the City. Grantee shall maintain the books and records for Franchise compliance purposes for a period of at least three (3) years. If Grantee maintains books and records related to enforcement of the Franchise for a period greater than three (3) years, City shall have access to those records.
- E. Confidential Treatment Permitted. The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, including the Texas Open Records Act, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, including the Texas Open Records Act, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any person.
- F. Annual Report. Upon request, an annual report shall be filed by Grantee with the City within sixty (60) days following the end of each calendar year, or portion thereof

during which the Franchise is in effect. The material substance of the report shall be in a form reasonably acceptable to the City. The information contained within the annual report shall include, but not be limited to:

1. Information related to the number of Subscribers;
2. Compliance with applicable customer service standards included in this Franchise;
3. Statement of Gross Revenues and computation of the Franchise Fee;
4. Activities related to development and upgrade of the cable system;
5. Signal Quality proof of performance reports;
6. List of Grantee's officers, board of directors;
7. Parent Corporation's publicly available annual reports.

Such report shall be certified by a representative of the Grantee knowledgeable of the operations of the Grantee within the City. Upon request, Grantee shall also provide the City a copy of the publicly-available annual report of the Grantee's parent company, when available.

- G. Service Disconnect Reporting. If the City receives a trend of complaints from Subscribers indicating that they are disconnecting Cable Service due to dissatisfaction with the Grantee, or if the City notes a downtrend in Gross Revenues, which may be caused by disconnecting Subscribers, the City may request that Grantee provide a report indicating the reason for recent Subscriber disconnects. Grantee shall prepare such report for the most recent calendar quarter of information available, within thirty (30) days of receiving a written request from the City. Such report will be requested no more often than quarterly.
- H. False Entries Prohibited. Any false entry in the books or accounts or records of Grantee or false statement in the reports to the City as to a material fact, knowingly made by Grantee, shall constitute a violation of a material provision of this Franchise.

## SECTION 17 REGULATION OF RATES

- A. Rate Regulation. The City Council shall be empowered to regulate, by ordinance, the rates for any and all Cable Services, installations, and equipment of Grantee subject to regulation by the City, to the extent consistent with federal law and any FCC rules governing rate regulation.

## SECTION 18 SERVICE CONNECTIONS IN PUBLIC BUILDINGS

- A. Public Service Connections. As a community service, the Grantee will voluntarily provide, within sixty days of a request of the City through its City Manager, one basic cable service connection at each of the following locations:
1. All governmental buildings or facilities as may be now or hereafter designated by the City Manager or his designated agent which shall include the City Hall, each fire station, police station, library, and each public State accredited school

and at least two other City buildings within the franchise area as may be determined by the City through its City Manager.

- B. No Charge. No charge will be made by the Grantee for the installation, disconnection, or reconnection, monthly service and/or maintenance of equipment on any service connection authorized by subsection A above when requested, provided, however, each such facility is located within 125' feet of Grantee's existing distribution system and capable of an aerial drop. Two digital converters or other equipment necessary to provide digital service, which will provide the capability of receiving all service except premium or pay television, shall be provided when requested to two (2) locations at no cost. Parties agree that these connections are voluntary, are not part of the City's franchise fee payments and shall not be recovered from subscribers within the City.

## **SECTION 19 SERVICE AREA**

- A. Standard Installation Charge. Residents in those areas with an average density of at least thirty (30) homes per aerial mile or forty (40) homes per underground mile, as measured from the nearest point of usable trunk, shall be provided service upon payment of the standard installation charge and applicable monthly fees; except that installations requiring aerial drops in excess of one hundred and twenty five (125) feet or underground installations shall be considered a non-standard installation to be charged to the subscriber at Grantee's cost of installation. Service to homes not meeting these density requirements shall be provided on a time plus material basis.
- B. Commercial Establishments. Grantee shall, upon request, make service available to all commercial establishments located within three hundred feet (300') of its useable trunk at the expense of such commercial establishment.
- C. Private Rights-of-Way. Grantee is not required to extend its system or construct plant within private rights-of-way for which Grantee is unable to secure easements or other rights of access on reasonable terms and conditions.
- D. New Construction or Property Development. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee written notice of such construction or development and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. The Grantee shall also be provided specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner, except that, if the Grantee fails to install its conduit, pedestals and/or vaults and laterals within ten (10) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the ten-day period, the costs of new

trenching is to be borne by the Grantee. Except for the notice of the particular date on which trenching will be available to the Grantee, any notice provided to the Grantee by the City of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or System engineer of the Grantee prior to approval of the preliminary plat request.

## SECTION 20 ADDITIONAL SERVICES

The Grantee shall provide at least, and in addition to all other sections of this agreement, the following services:

- A. Standard Installations. The desire of the subscriber as to the point of entry into the residence shall be as unobtrusive as reasonably possible. The Grantee shall use due care for the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred and shall be completed as soon as possible thereafter.
- B. Transfers. When a current subscriber moves from one address within the franchise area to a second address within the franchise area and there is no lapse in services Grantee shall transfer service at a rate according to the rate schedule.
- C. Reconnection. Grantee shall restore service to subscribers wishing restoration of service according to the rate schedule provided subscriber shall first satisfy any previous obligations owed.
- D. Relocation of extension of cable. When a current subscriber requests that an extension or relocation of said subscriber cable service be made, the Grantee shall do so according to the rate schedule.
- E. Customer Complaints. The Grantee shall respond to and resolve subscribers' complaints or request for service in connection with repairs and maintenance and malfunctions of the System Facilities. The Grantee shall respond as quickly as possible to such complaints and requests, but shall in any case respond within twenty-four (24) hours during the regular work week and in no case later than the next business day following a weekend or holiday. Complaints or requests that may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the Grantee shall respond within seven (7) business days.

## SECTION 21 PROTECTION OF SUBSCRIBER PRIVACY

- A. Prohibition of Disclosure of Subscriber Information. Except as provided below, the privacy of information regarding subscribers, potential subscribers, or former

subscribers to the Cable System, which said information is in the possession of or accessible to Grantee shall be protected and safeguarded in the manner provided by Section 631 of the Cable Communications Policy Act of 1984, as amended [47 U.S.C. § 551], as said law shall provide at the time of final passage of this Ordinance, or any successor or other legislation thereafter may provide.

- B. Limited Audit Use Permitted. Grantee, during the term of the franchise granted by this Ordinance, shall not, whether through any of its corporate officers, employees or any other organization or individual, invoke the provisions of this Section to avoid, resist, or refuse a demand for information requested by the City in the course of auditing Grantee's activities, when the information requested does not involve the disclosure of the identity of any particular subscriber to the cable system or does not otherwise violate the subscriber privacy provisions under applicable laws.

## SECTION 22 CONTINUATION OF SERVICE

It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to over-build, rebuild, modify or sell the System, or the City gives notice of intent to terminate in accordance with the provision of Section 25 hereof or fails to renew its franchise in accordance with the procedures outlined under federal law, the Grantee shall act so as to ensure that all subscribers receive continuous service regardless of the circumstances for a period of three (3) months following actual termination or sale. In the event of a change of Grantee, or in the event a new operator acquires the System, the Grantee shall cooperate with the City and the new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the System.

## SECTION 23 MISCELLANEOUS PROVISIONS

- A. Local Employment and Procurement Practices. Whenever reasonably possible, service, personnel, hardware and supplies for the construction, maintenance and operation of the System shall be procured locally.
- B. Unauthorized Connections or Modifications. It shall be unlawful for any person, without the express consent of the Grantee, to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of the cable system for any purpose whatsoever. It shall be unlawful for any person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the cable system for any purpose whatsoever. It shall be unlawful for any person to construct, operate or maintain a cable system without having first applied for and received a franchise from the city. Any person convicted of a violation of this Section shall be subject to all federal, state and local penalty provisions which penalty provisions are incorporated herein by reference.

- C. Forum. Any claim, cause of action, lawsuit, demand, injunction, complaint or other litigation arising between the Grantee, its successors or assignees and the City over this franchise shall be initiated and/or conducted in Coryell County provided a court with subject matter jurisdiction is located in said County.

## SECTION 24 NON-EXCLUSIVE FRANCHISE

- A. Franchise Non-Exclusive. The rights, privileges, and Franchise granted hereby are not exclusive. The City shall not authorize or permit any person providing Video Programming and/or Cable Services to enter into the Public Rights-of-Way in any part of the City on terms or conditions more favorable or less burdensome to such person than those applied to the Grantee pursuant to this Franchise, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.
- B. Disputes. In the event that the City is considering the grant of a franchise to another person to provide Video Programming and/or Cable Services in the City, and the City provides a copy of the final negotiated franchise to Grantee, Grantee shall have forty-five (45) days to notify the City, in writing, of any alleged discrimination between this Franchise and the burdens and rights provided in such other franchise. If the City does not provide a copy of the franchise to Grantee, Grantee shall have three (3) months from the date Grantee receives a copy of the final negotiated franchise to notify the City, in writing, of any alleged discrimination between this Franchise and the burdens and rights provided in such other franchise. In either event, failure to notify the City shall estop Grantee from any further action related to allegations of discrimination regarding the granting of such franchise. This subsection is not intended to prevent Grantee from any action related to the City's actual administration of such franchise that the Grantee believes is discriminatory.

## SECTION 25 REVOCATION OF FRANCHISE

- A. General. In addition to all rights and powers of the City by virtue of this Franchise or otherwise, the City reserves, as an additional and as a separate and distinct power, the right to revoke, terminate, or cancel this Franchise and all rights and privileges hereunder, in accordance with the procedures specified herein, if any of the following events occur or for any of the following reasons:
1. Grantee shall by act or omissions violate any material term, condition, or provision of this Franchise and shall fail or refuse to effect compliance within thirty (30) days following written demand by the City to do so;
  2. Grantee becomes insolvent, unable, or unwilling to pay its debts, or is adjudged bankrupt or all or any part of Grantee's facilities are sold under an instrument to secure debt and are not redeemed by Grantee within thirty (30) days from the

date of such sale; provided, however, this shall not be an event or termination or cancellation in the event of bankruptcy proceeding and the trustee, receiver or debtor in possession agrees in writing to be bound by the terms of this Franchise;

3. Grantee attempts to or does practice any fraud or deceit in its relations under this Franchise with the City, Subscribers, or potential Subscribers;
4. Grantee knowingly makes a false entry or statement regarding any material provision under this Franchise in any reports or records provided to the City;
5. Recurrent failures to restore service on the entire or a substantial portion of the cable system after ninety-six (96) consecutive hours of interrupted service except upon prior written notice of such interruption to the City Council, for good cause shown;
6. Recurrent service outage of the entire cable system or a substantial portion thereof, which, in the aggregate, exceed ten (10) days on any thirty (30) day period, except as, excused by the City Council upon a showing of good cause based on circumstances beyond the control of the Grantee;
7. Recurrent failures after notice by the City Manager, or a designee, to provide service to any part of the Grantee's service area, except as excused by the City Council upon a showing of good cause based on circumstances beyond the control of the Grantee.

B. Material Provisions. Material terms of this Franchise include, but are not limited to:

1. The indemnification required by Section 8.
2. The insurance required by Section 9.
3. The channel capacity required by Section 10.
4. The emergency backup power required by Section 10.
  - a. The EG Channels as required by Section 11.
  - b. The EG Capital Fee required by Section 11.
7. The EAS required by Section 13.
8. Payment of Franchise fees as required by Section 15.
9. Nondiscrimination in rates and services as required by Section 17.
10. City approval of transfers and changes of control as required by Section 27.

C. Revocation Procedures. The City shall notify the Grantee of its intention to revoke, terminate, or cancel this Franchise. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation.

1. Grantee shall have ninety (90) days subsequent to receipt of the notice in which to correct the violation before the City may formally, revoke, terminate, or cancel this Franchise. Grantee may, within thirty (30) days of receipt of the notice, notify the City that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the City shall stay the ninety (90) day period described above, pending a determination by the City as set forth below.
2. In the event Grantee fails to make an undisputed Franchise fee payment as required by Section 15, fails to make the EG payments as required by Section 11, or fails to maintain insurance in accordance with Section 9, the City is not

required to conduct the public hearing identified in Subsection C.3, below, it may proceed directly to Subsection C.5, and follow the revocation procedures provided.

3. Upon receipt of the Grantee's notification of a dispute as to whether a violation has, in fact, occurred pursuant to the above paragraph, the City shall hear Grantee's dispute and shall determine whether a default or violation by Grantee has occurred. In the event the City shall determine that a default or violation has occurred, the City shall supplement the decision with written findings of fact.
4. If, after hearing the dispute, Grantee has been found to be in default, Grantee shall then have ninety (90) days (or such longer period of time as the City may determine to be reasonably necessary) from such a determination to remedy the violation or failure.
5. Should Grantee further continue to violate or fail to comply with the same after that ninety (90) day period, or extended period, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided that such forfeiture shall be declared by written decision of the City Council after an appropriate public proceeding before the City Council. Grantee shall be afforded reasonable notice and opportunity to be heard. City Council may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances.
6. Any such final decision of the City may be appealed to any court of competent jurisdiction, which filing may stay any such revocation, termination, or cancellation of this Franchise.
7. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey the cable system to a qualified purchaser, approved by the City, at a fair market value. During this six-month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate the cable system pursuant to the provisions of this franchise.

D. Additional City Remedies. In addition to any right of the City to revoke, terminate, or cancel the franchise, in the event that grounds exist which give the City reason to believe that the Grantee failed to comply with a material provision of this Franchise, then the City may, at any time during the term of this Franchise, to the extent lawful: (1) seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; (2) commence an action at law for monetary damages from the Grantee as compensation for such breach; or (3) seek liquidated damages.

E. Removal. Upon final revocation, termination or cancellation of this Franchise as herein provided, Grantee shall, upon request of the City, remove all of its attachments and wires from poles used as authorized herein

F. Reservation of Rights. The rights reserved to the City under this Franchise are in addition to all other rights of the City whether reserved elsewhere in this Franchise or authorized by law, and no action, proceeding or exercise of a right shall affect any other right the City may have.

## SECTION 26 LIQUIDATED DAMAGES AND SECURITY FUND

A. Liquidated Damages. The parties agree that actual damages that might be sustained by the City by reason of the breach by Grantee of the provisions of this Franchise set forth below, are uncertain and difficult of ascertainment, and that the sums set forth below would be reasonable compensation for such breach, and Grantee promises to pay, and the City agrees to accept, such sums as liquidated damages, and not as a penalty, in the event of such breach. Additionally such sums of money shall be considered liquidated damages due the City by Grantee by reason of inconvenience to the public and because of public works supervision and maintenance and other City administrative time and involvement which resulted in the expenditure of public funds due to Grantee's failure to comply with certain provisions in this Franchise.

1. For failure of Grantee to provide any material report, certificate or map to the City as required by this Franchise, fifty dollars (\$50) per day.
2. For failure of Grantee to respond, restore or repair the Public Rights-of-Way within forty-eight (48) hours of notice by City under Section 7, two hundred and fifty dollars (\$250.00) per day for every day following forty-eight (48) hours after Grantee's receipt of the notice.
3. If City is required to relocate Grantee's facilities under subsection 7.B, Grantee shall pay five hundred dollars (\$500.00) in addition to the costs incurred by the City in relocating the facilities.
4. For failure to comply with any material provision of this ordinance or of a franchise agreement within fifteen (15) calendar days of receipt of notice of such non-compliance, the Franchisee shall pay six hundred dollars (\$600.00) per day for each day, or part thereof, that such non-compliance continues.
5. For failure of Grantee to provide the EAS as required by Section 12, two hundred and fifty dollars (\$250.00) per day.
6. For failure to comply with the service extension requirements set forth in Section 19, A and B, the greater of two hundred and fifty dollars (\$250.00) per day or one dollar (\$1.00) per day per impacted Subscriber.

Liquidated Damages Procedures. In the event the City's selected course of action is to impose liquidated damages, the City shall give Grantee written notice of its intent, and a reasonable period of time following receipt of the notice, not less than thirty (30) days and not more than ninety (90) days unless a longer period is approved by City Council, to cure the alleged violation. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. If Grantee remains in violation of the Franchise following this cure period, the City may charge to and collect from the Grantee the liquidated damages set forth below, with the liquidated damages beginning to accrue no earlier

than the day following the end of the cure period set forth above. Grantee may, within thirty (30) days of receipt of the notice, notify City that there is a dispute as to whether the violation has, in fact, occurred. Such notice by Grantee to City shall stay the ninety (90) day period described above. City shall hear Grantee's dispute and shall determine whether a default or violation by Grantee has occurred. City shall supplement the decision with written findings of fact. If after hearing the dispute, Grantee has been found to be in default, Grantee shall have ninety (90) days for such a determination to remedy the violation or failure. At any time after the ninety (90) day period City may, by formal action at a public hearing affording reasonable notice and opportunity of Grantee to be heard, assess liquidated damages.

Security Fund. Grantee shall furnish City, no later than thirty (30) days after the Effective Date, as security for the faithful performance by Grantee of the provisions of this Franchise Agreement and compliance with all generally applicable orders, permits, and directions of any agency of City and the payment of all claims, liens, generally applicable fees, penalties and generally applicable taxes to City, a performance bond in the amount of Ten Thousand Dollars (\$10,000.00). Failure to furnish or maintain said performance bond in a timely fashion, in the full amount required hereby, in effect during the entire term of this Franchise Agreement, and of any renewal or extension thereof, or Grantee's fulfillment of its obligations under Section 7.B, shall constitute a material breach of this Franchise Agreement.

Procedures for Draws upon the Security Fund. If Grantee fails to make timely payment to City or its designee of any amount due as a result of this Franchise Agreement, or of other agreements between Grantee and City; or fails to make timely payment to City of any generally applicable taxes due; or fails to repay City for damages and costs in accordance with the terms of this Agreement; or fails to comply with any material provision of this Franchise Agreement which City reasonably determines can be remedied by an expenditure of monies, City may draw upon the performance bond an amount sufficient to repay City with interest and any penalties. Prior to drawing upon the performance bond, City shall follow the Liquidated Damages procedures outlined above to provide Grantee with due process. Thereafter, City may send written notification of the amount, date and purpose of such drawing to Grantee by certified mail, return receipt requested. If at a time of a drawing by City, the aggregate amount realized from the performance bond is insufficient to provide the total payment toward which the drawing is directed, the balance of such payment shall constitute an obligation of Grantee to City until paid, with interest. No later than thirty (30) days after mailing of notification to Grantee of a drawing from the Security Fund, Grantee shall cause the Security Fund to be restored to the full amount required hereby. Failure to timely restore the Security Fund shall constitute a material breach of this Franchise Agreement.

Remedies not Exclusive. The rights reserved to City by exercise of liquidated damages or with respect to this Security Fund are in addition to all other rights of City, whether reserved by this Franchise Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such bond or letter of credit shall affect any other rights City may have.

**SECTION 27**  
**ASSIGNMENT OF FRANCHISE**

A. City Approval of Assignment Required. All the rights and privileges and all of the obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successors of the City and the successor and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment of the franchise by Grantee as security for debt without such approval; and provided that transfers or assignment of this franchise between any parent and subsidiary corporation or between affiliated entities of which fifty percent (50%) of the beneficial ownership is held by the same person, persons, or affiliated entities either alone or in combination shall be permitted without prior approval of the City Council. No assignment to any person shall be effective before the transferee has filed with the City an instrument in writing, duly executed, reciting the fact of such assignment, accepting the terms of this Franchise, and agreeing to comply with all of the provisions hereof, subject to applicable law.

B. Notification Required. The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or disposition or acquisition by any other person in control of the Grantee.

**SECTION 28**  
**FAILURE OF CITY TO ENFORCE FRANCHISE**

The Grantee shall not be excused from complying with each and all of the terms, conditions, and provisions of this Franchise even though the City should upon one or more occasions fail to insist upon, to require, or to seek compliance with any such term, condition, or provision.

**SECTION 29**  
**VALUATION**

If the Franchise is revoked for cause or the Grantee declares bankruptcy and the parties agree that the City may purchase the Cable System, the City may purchase the Cable System at an equitable price. If renewal of the Franchise is lawfully denied and the parties agree that the City may purchase the Cable System, the City may purchase the Cable System at fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Franchise itself. Should the parties fail to agree upon the equitable price or the fair market value of the Cable System, the same shall be determined in an appropriate proceeding filed in any court having jurisdiction.

**SECTION 30**  
**RECOURSE, UNDERSTANDING, AND CONSTRUCTION**

A. Requirements and Enforcement. Except as expressly provided herein by applicable law, Grantee shall have no monetary recourse whatsoever against City of any loss, cost, expense, or damage arising out of the provisions or requirements of this Franchise or because of the enforcement thereof by City or because of the lack of City's authority to grant all or any part of this Franchise.

B. Grantee's Understanding. Grantee expressly acknowledges that in accepting this Franchise, Grantee was not induced to accept this Franchise by any understanding, promise, or other statement, verbal or written, by or on behalf of City or by any third person concerning any term or condition not expressed herein.

C. Construction of Franchise. By acceptance of this Franchise, Grantee acknowledges that it has carefully read the provisions hereof and is willing to and does accept all of the risks of the meanings of such provisions.

### **SECTION 31 RESTORATION OF PREMISES**

Within six (6) months from the date of the expiration and non renewal in accordance with applicable law, or forfeiture of this Franchise, the Grantee shall remove all properties belonging to it from the public ground and restore the grounds and the surface of the streets and other public property to their original condition, if so required by the City through its City Council, unless, following the expiration of the grant or within ninety (90) days thereafter, a new franchise or extension of the old franchise is granted under the same rules governing granting of new franchises, or unless the City leases or purchases the system as herein provided.

### **SECTION 32 EFFECTIVE DATE**

This franchise shall become effective upon acceptance by the Grantee. By filing the acceptance Grantee agrees to be bound by all terms and conditions contained herein. The effective date shall be the date upon which the ordinance is received by the City Secretary.

### **SECTION 33 FORCE MAJEURE**

Notwithstanding any other provisions of this Ordinance, the Company shall not be liable for delay in performance or, or failure to perform, in whole or in part, its obligations pursuant to this Ordinance due to strike, unavailability of materials, or equipment, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, civil disturbance, sabotage or vandalism, customer tampering or interference, act of public enemy, accident, fire, flood, or other events, to the extent that such causes or other events are beyond the control of the Company.

**SECTION 34  
SEVERABILITY**

If any term, condition, or section of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, unenforceable, or unconstitutional, the remainder hereof and the application of such term, condition, or section to persons or circumstances other than those as to whom it shall be held to be invalid, unenforceable, or unconstitutional shall not be affected thereby, and this Franchise and all the terms, conditions, and sections hereof shall, in all respects, continue to be effective and to be complied with. It is the intent of City in adopting this Franchise that no portion or provision thereof shall become inoperative or fail by reason of any invalidity, unenforceability, or unconstitutionality of any other portion or provision, and to this end all provisions of this Franchise are declared to be severable.

**SECTION 35  
REPEAL OF ORDINANCES**

Ordinance 86-48 is hereby repealed.

**SECTION 36  
CONSENT/APPROVALS**

Where in this document consent and/or approval of the City is required, such consent or approval shall be timely delivered and not unreasonably withheld.

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of Copperas Cove, Texas, this 7th day of January, 2003, held in compliance with the Open Meetings Act (Tex. Gov't Code § 551.001 *et seq.*), at which meeting a quorum was present and voting.

  
\_\_\_\_\_  
Rodney G. Nauert, Mayor

ATTEST:

  
\_\_\_\_\_  
Pamela J. Russell, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
James, R. Thompson, City Attorney

ACCEPTANCE

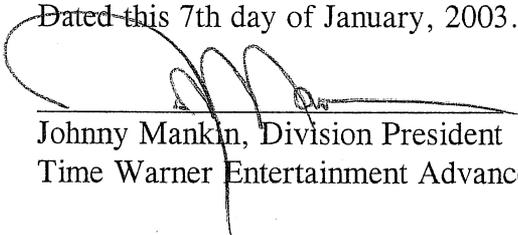
WHEREAS, the City Council of the City of Copperas Cove, Texas, did on the 7th day of January, 2003, enact and Ordinance entitled

**“AN ORDINANCE OF THE CITY OF COPPERAS COVE, TEXAS, GRANTING A FRANCHISE TO TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP FOR THE TERM OF FIFTEEN YEARS, TO BUILD, CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY; TO ERECT, MAINTAIN, AND OPERATE ITS POLES, TOWERS, ANCHORS, WIRES, CABLES, ELECTRONIC CONDUCTORS, CONDUITS, MANHOLES, AND OTHER STRUCTURES AND APPURTENANCES IN, OVER, UNDER, ALONG, AND ACROSS THE PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY IN THE CITY; PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER; PRESCRIBING THE CONDITIONS GOVERNING THE OPERATION OF THE BUSINESS INsofar AS IT AFFECTS THE USE OF PUBLIC PROPERTY FOR THE PURPOSE OF SUCH BUSINESS; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.”**

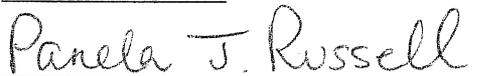
WHEREAS, said Ordinance was on the 7th day of January, 2003, duly approved by the Mayor of said City and the seal of said City was thereto affixed and attested by the City Secretary,

NOW THEREFORE, in compliance with the terms of said Ordinance as enacted, approved, and attested, the undersigned hereby accepts said Ordinance and the Franchise created thereby, and files this written acceptance with the City Secretary of the City of Copperas Cove, Texas, in that office.

~~Dated this 7th day of January, 2003.~~

  
\_\_\_\_\_  
Johnny Mankin, Division President  
Time Warner Entertainment Advance/Newhouse Partnership

Acceptance filed in the office of the City Secretary of Copperas Cove, Texas, this 12<sup>th</sup> day of March, 2003.

  
\_\_\_\_\_  
Pamela J. Russell  
City Secretary

Meeting Date: 11/01/2011

Contact: Ryan Haverlah, Asst Dir Finance/Budget Dir, Finance

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### Information

#### **SUBJECT**

Consideration and approval of a resolution opposing action taken by the Coryell Central Appraisal District on October 6, 2011, regarding voting members to elect the Board of Directors. **Ryan D. Haverlah, Assistant Director of Financial Services/Budget Director**

#### **BACKGROUND/HISTORY**

The Texas Property Tax Code Section 6.031 currently allows for only the County, School Districts and Cities to participate in the election process of the Board of Directors for Central Appraisal Districts. During the process of preparing for the 2012 - 2013 Coryell Central Appraisal District Board of Directors election process, Chief Appraiser Mitch Fast learned that the Central Texas College (CTC) had been participating in the election process from the inception of the CTC District.

The Texas Property Tax Code allows the Board of Directors to include the CTC as a voting member in the selection of the Board of Directors. Any governing body of a taxing unit that is entitled to vote on the appointment of board members may oppose the inclusion of CTC and not allow CTC to vote during the election of the Board of Directors.

#### **FINDINGS/CURRENT ACTIVITY**

In accordance with the Texas Property Tax Code, the CCAD Board of Directors at their meeting on October 6, 2011 took official action to include the Central Texas College (CTC) as voting member in the selection of the Board of Directors. The Board felt that since the CTC had been participating in the selection process from the inception of the district and contributes to the budget of the district, it should be able to continue to participate in the selection process. This change was effective immediately for the 2012 - 2013 Board of Directors election.

The inclusion of the CTC as voting member will also change the voting allocation of the taxing units. The attached letter from CCAD identifies all the changes. The votes entitled to Copperas Cove will reduce from 1,050 to 1,005.

Any governing body of a taxing unit that is entitled to vote on the appointment of board members may adopt a resolution opposing the change. If such a resolution is passed, the resolution must be filed with the CCAD Board of Directors before November 4, 2011.

#### **ACTION OPTIONS/RECOMMENDATION**

City staff recommends City Council take action on Resolution No. 2011-47. If City Council does not wish to oppose the change implemented by the CCAD Board of Directors, no action is required.

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### Attachments

Resolution

Letter from CCAD

**RESOLUTION NO. 2011-47**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, OPPOSING THE CHANGE OF VOTING MEMBERS TO INCLUDE CENTRAL TEXAS COLLEGE ENACTED BY THE CORYELL CENTRAL APPRAISAL DISTRICT ON OCTOBER 6, 2011.**

**WHEREAS,** The Texas Property Tax Code, Section 6.031 allows the Board of Directors of a Central Appraisal District to authorize an entity other than a county, school district, or city to voting during the election of board members; and

**WHEREAS,** The Board of Directors of the Coryell Central Appraisal District on October 6, 2011, approved Central Texas College to vote during the election of the Board of Directors for 2012-2013; and

**WHEREAS,** The City Council of the City of Copperas Cove, Texas may oppose the action of the Board of Directors by resolution.

**NOW, THEREFORE, BE IT RESOLVED,** that the City Council of the City of Copperas Cove, Texas opposes the inclusion of Central Texas College as a voting member of the Coryell Central Appraisal District Board of Directors election process as enacted by the Coryell Central Appraisal District Board of Directors on October 6, 2011.

**PASSED, APPROVED, AND ADOPTED** on this 1st day of November 2011, at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

\_\_\_\_\_  
John Hull, Mayor

**ATTEST:**

\_\_\_\_\_  
Jane Lees, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Denton, Navarro, Rocha  
& Bernal, P.C., City Attorney



CORYELL CENTRAL APPRAISAL DISTRICT  
705 E. MAIN STREET  
GATESVILLE, TX 76528



October 7, 2011

Ms. Andrea Gardner, City Manager  
City of Copperas Cove  
PO Box 1449  
Copperas Cove, TX 76522

Dear Ms. Andrea Gardner,

Re: CCAD Board of Directors Election Process

This letter is to inform the taxing jurisdictions within the Coryell Central Appraisal District (CCAD) of the CCAD Board of Director's change to the method of selection of the members of the board of directors in accordance with section 6.031 of the Texas Property Tax Code. The change made by the Board of Directors was to continue to allow the Central Texas College to participate in the selection of the Board of Directors.

The Texas Property Tax Code currently allows for only the County, School Districts and Cities to participate in the election process. However, during the process of preparing for the 2012 – 2013 CCAD Board of Directors election process it was discovered that the Central Texas College had been participating in the election process for several years. The Board felt that since the Central Texas College had been participating in the selection process from the inception of the district and contributes to the budget of the district, it should be able to continue to participate in the selection process. Therefore in accordance with the Texas Property Tax Code, the Board of Directors at their meeting on October 6, 2011 took official action to include the Central Texas College as voting member in the selection of the board of directors.

This change will be effective immediately for the 2012 – 2013 Board of Directors election unless any governing body of a taxing unit that is entitled to vote on the appointment of board members adopts a resolution opposing the change, and files it the CCAD Board of Directors before November 4, 2011. The inclusion of the Central Texas College as voting member will also change the voting allocation of the taxing units. Included with this letter is the new voting entitlement of the taxing units that now includes the Central Texas College.

The Coryell Central Appraisal District strives to provide professional and efficient services to the taxing jurisdictions and taxpayers of Coryell County. Please don't hesitate to contact me at (254) 865-6593 or [mfast@corvellcad.org](mailto:mfast@corvellcad.org) with any questions or comments.

Regards,

Mitch Fast  
Chief Appraiser  
Coryell Central Appraisal District

GATESVILLE OFFICE  
705 E MAIN ST  
254-865-6593 PHONE  
254-865-1280 FAX

COPPERAS COVE OFFICE  
207 S 3<sup>RD</sup> ST #200  
254-542-6960 PHONE  
254-542-7586 FAX

received  
10-12-11  
JR

| Jurisdiction Name                  | 2010 Property Taxes/Unit | 2010 Property Taxes/District | Voting Entitlement | Original Voting Entitlement |
|------------------------------------|--------------------------|------------------------------|--------------------|-----------------------------|
| <b>050 - Coryell County</b>        | \$8,630,454              | \$41,209,392                 | 1045               | 1095                        |
| <b>CCC - City of Copperas Cove</b> | \$8,291,351              | \$41,209,392                 | 1005               | 1050                        |
| <b>COP - Copperas Cove ISD</b>     | \$13,591,453             | \$41,209,392                 | 1650               | 1720                        |
| <b>CTC - Central Texas College</b> | \$1,731,927              | \$41,209,392                 | 210                | 0                           |
| <b>EVC - Evant City</b>            | \$40,394                 | \$41,209,392                 | 5                  | 5                           |
| <b>EVT - Evant ISD</b>             | \$499,712                | \$41,209,392                 | 60                 | 65                          |
| <b>GV - Gatesville ISD</b>         | \$6,287,001              | \$41,209,392                 | 765                | 795                         |
| <b>GVC - City of Gatesville</b>    | \$1,074,526              | \$41,209,392                 | 130                | 135                         |
| <b>JB - Jonesboro ISD</b>          | \$410,249                | \$41,209,392                 | 50                 | 50                          |
| <b>MDY - Moody ISD</b>             | \$149,628                | \$41,209,392                 | 20                 | 20                          |
| <b>OG - Oglesby ISD</b>            | \$366,670                | \$41,209,392                 | 45                 | 45                          |
| <b>OGC - City of Oglesby</b>       | \$15,991                 | \$41,209,392                 | 1                  | 1                           |
| <b>VLM - Valley Mills ISD</b>      | \$10,122                 | \$41,209,392                 | 1                  | 1                           |
| <b>CLF - Clifton ISD</b>           | \$45,050                 | \$41,209,392                 | 5                  | 5                           |
| <b>CRA - Crawford ISD</b>          | \$46,831                 | \$41,209,392                 | 5                  | 5                           |
| <b>LAM - Lampasas ISD</b>          | \$17,748                 | \$41,209,392                 | 1                  | 1                           |
| <b>MCG - City of McGregor</b>      | \$285                    | \$41,209,392                 | 1                  | 1                           |
| <b>Totals</b>                      | \$41,209,392             |                              | 4999               | 4994                        |

**Meeting Date:** 11/01/2011

**Contact:** Kelli Sames, Division Head of Human Resources, Human Resources

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**Information**

**SUBJECT**

Consideration and action on an ordinance updating Personnel Policy No. 312, Holidays. **Kelli Sames, Human Resources Division Head.**

**BACKGROUND/HISTORY**

The City of Copperas Cove currently has in effect Personnel Policy No. 312, Holidays. This policy establishes the City paid holidays and guidelines for holiday pay. From time to time City staff makes recommendations to update this policy. In cases where changes are required to this policy, City Council's approval is required.

**FINDINGS/CURRENT ACTIVITY**

All regular full-time and regular part-time employees are eligible for official City recognized holidays. When a holiday is observed a majority of employees are provided that day off from work. However, many employees are scheduled to work on holidays, are called in for emergency situations or have a regularly scheduled day off the same day as the holiday. In that situation employees may be paid for the holiday or may receive compensatory time for the holiday.

The current policy provides for the City of Copperas Cove to track holiday earned compensatory time hours. It also establishes a time frame, currently by September 1st of each year, in which the holiday earned time must be used. The policy has been updated and language added that will allow employees 1 year from the day the holiday leave is earned in which to take the holiday.

If the employee has not used the earned holiday within that year, the Department Head/Director shall request approval from the City Manager to pay the employee for the holiday earned time or request an extension.

**ACTION OPTIONS/RECOMMENDATION**

City staff recommends approval of Ordinance No. 2011-61, updating Personnel Policy No. 312, Holidays.

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**Attachments**

Ordinance

Policy 312

**ORDINANCE NO. 2011-61**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, APPROVING THE ATTACHED PERSONNEL POLICIES AND PROCEDURES OF THE CITY OF COPPERAS COVE BY REPEALING THE CURRENT PERSONNEL POLICY, NO. 312, (HOLIDAYS), AND REPLACING THE EXISTING POLICY WITH A REVISED PERSONNEL POLICY, NO. 312, (HOLIDAYS) AND RATIFYING THE REMAINING SECTIONS OF THE PERSONNEL POLICIES AND PROCEDURES MANUAL; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS,** The City of Copperas Cove has not updated this ordinance since September 1, 2009.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:**

**Section 1.**

That the Personnel Policies and Procedures Manual dated September 1, 2006, hereinafter set forth and included with this Ordinance as Exhibit "A" is hereby amended by repealing the current personnel policy, No. 312, (Holidays) and replacing the existing policy with a revised personnel policy, No. 312, (Holidays) correctly shown by the attached Exhibit "A";

**Section 2.**

That the remaining sections of the said Personnel Policies and Procedures Manual are hereby ratified, and shall remain in full force and effect;

**Section 3.**

That any outstanding Personnel Policies and Procedures Manuals other than Exhibit "A" either in the form of a manual or otherwise written or oral in nature, are hereby rescinded and are no longer of any force and effect;

**Section 4.**

That any additions, deletions or other amendments to the Personnel Policies and Procedures Manual shall be made in a manner similar to process by which this manual is originally approved and only after compliance with the Texas Open Meetings Act and approved by the City Council of the City of Copperas Cove.

**Section 5.**

That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

**Section 6.**

That this ordinance shall be effective November 1, 2011.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE. TEXAS**, this 1st day of November 2011, such meeting held in compliance with the Open Meeting Act (Texas Government Code, Chapter 551.001 et.seq.), at which a quorum was present and voting.

\_\_\_\_\_  
John Hull, Mayor

**ATTEST:**

\_\_\_\_\_  
Jane Lees, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Denton, Navarro, Rocha  
& Bernal, P.C., City Attorney

**HOLIDAYS**  
**Policy #312**

November 2011

The City of Copperas Cove provides paid holidays to all regular full-time and regular part-time employees. Every other employee is extended the official holiday, but without pay.

The following official holidays will be observed by employees with the exception of Police Officers and Firefighters:

|                             |             |
|-----------------------------|-------------|
| New Year's Day              | January     |
| Martin Luther King, Jr. Day | January     |
| Presidents Day              | February    |
| Good Friday                 | March/April |
| Memorial Day                | May         |
| Independence Day            | July        |
| Labor Day                   | September   |
| Columbus Day                | October     |
| Veterans Day                | November    |
| Thanksgiving Day            | November    |
| Day after Thanksgiving Day  | November    |
| Christmas Eve               | December    |
| Christmas Day               | December    |

The following official holidays will be observed by Police Officers and Firefighters:

|  |             |
|--|-------------|
| New Year's Day                           | January     |
| Martin Luther King, Jr. Day              | January     |
| Presidents Day                           | February    |
| Good Friday                              | March/April |
| Memorial Day                             | May         |
| Independence Day                         | July        |
| Labor Day                                | September   |
| 911 Remembrance Day (substitute holiday) | September * |
| * See section below                      |             |
| Columbus Day                             | October     |
| Veterans Day                             | November    |
| Thanksgiving Day                         | November    |
| Day after Thanksgiving Day               | November    |
| Christmas Eve                            | December    |
| Christmas Day                            | December    |

**Holidays** – Depending on the employee’s schedule a holiday shall be defined as a period of eight (8) hours or (10) hours for full time or up to (6) hours for part time except in the case of 24-hour shift employees in the uniformed fire service where the holiday shall be the equivalent of 12 work hours.

**HOLIDAYS**  
**Policy #312**

November 2011

**Scheduling of Holidays** - Holidays occurring on Saturday will normally be observed on the preceding Friday and holidays occurring on Sunday will normally be observed on the following Monday.

**Calculation of Holiday Hours** - Holiday pay or hours are normally calculated on an hour for hour basis, except for 24-hour fire shift personnel, where the holiday shall be the equivalent of 12 work hours.

**Eligibility for Holidays** - Regular full time and regular part-time employees that are currently in a paid status, excluding workers' compensation are eligible after the completion of one day of work.

**Regular Part-Time Employees Eligible for Holiday Pay** - Regular part-time employees are eligible for holiday pay for the number of hours he/she would ordinarily have been scheduled to work. Should a holiday fall on Saturday or Sunday and be observed on the preceding Friday or the following Monday, regular part-time employees shall be compensated if the rescheduled holiday is a day they would ordinarily have been scheduled to work.

**Temporary and Seasonal Employees** - Temporary and seasonal employees (either full-time or part-time) are not paid for holidays except for holiday hours actually worked.

**Employees Required to Work on a Holiday** – When the holiday occurs on a regularly scheduled workday, employees who are required to work shall receive “holiday earned leave” at straight time or will be “paid” for the holiday at their regular rate of pay in addition to payment for the hours worked. The decision to accrue a paid holiday as “holiday earned leave” or to receive holiday pay must be made at the time the holiday is worked and must be approved by the Department Head/Director. In no event will double pay be authorized (i.e. Holiday pay plus Personal Leave) for any day not actually worked.

**Holiday Earned Leave** – Employees will have one year from the date they earned the holiday in which to use the accrued “holiday earned” leave time. If the employee has not used their earned holiday within the year, the Department Head/Director shall request approval from the City Manager to pay the employee for the holiday earned time or to grant an extension.

Any “Holiday Earned” Leave on the books at the time of employee separation from the City will be paid to the employee at their current rate of pay.

**Non-Exempt Emergency Personnel Called Back on a Holiday**- Employees who are called in on an emergency basis to work a holiday for which they are not scheduled, will be paid for all hours worked on the holiday.

**Employees Scheduled Off Duty on a Holiday**- When the holiday and the regularly scheduled day off occur on the same day, employees scheduled off duty for the holiday

## **HOLIDAYS** **Policy #312**

November 2011

will accrue one day of “holiday earned” leave (depending on their normal work schedule - 8, 10, or 12 hours) to be taken at a later date or can be paid for the holiday at the discretion of the Department Head/Director.

**Ineligibility for Holiday Pay** – Employees on unpaid leave are not eligible for holiday pay. Likewise, non-exempt employees who are absent without authorized leave on the day immediately preceding or following a scheduled holiday will not be paid for the holiday.

**Holiday Occurring During Vacation Leave** - A holiday that falls within an employee's approved vacation period will be counted as a holiday in lieu of a day of vacation.

**Separating Employees** - Separating employees will not be allowed to use a holiday as their final day of employment unless scheduled and approved in advance by the City Manager.

**Other Religious Holidays** - Employees may request an approved absence to celebrate a holiday, that is not a scheduled City holiday, but any such request is subject to the approval of the supervisor after consulting with the Human Resources Department. If approved, the employee must charge the time to their vacation leave, compensatory time, or an excused absence without pay.

**911 Remembrance Day** – Per House Bill No. 2113 effective 9-1-2009 police officers and firefighters are entitled to and may request a paid day off from working on September 11<sup>th</sup> of each year. This day may be requested as a vacation day, an accumulated compensatory time day, or as a holiday. If taken as a holiday, it would replace (substitute) the Columbus Day holiday. Provided that minimum staffing is met for the department, police officers and firefighters would follow normal leave procedures for requesting this day off.

The City of Copperas Cove City Manager may alter the holiday schedule for the best interest of the public.

### **Definition of Holiday Earned Leave -**

Employee that earns compensatory time for a holiday will accrue the compensatory time in a “Holiday Earned” pay code. This will allow the City to track Holiday compensatory time separate from regular compensatory time.

**City Council Regular**

**I. 6.**

**Meeting Date:** 11/01/2011

**Contact:** Kelli Sames, Division Head of Human Resources, Human Resources

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### **Information**

#### **SUBJECT**

Consideration and action on an ordinance updating Personnel Policy No. 120, Salary Program Administration. **Kelli Sames, Human Resources Division Head**

#### **BACKGROUND/HISTORY**

The City of Copperas Cove currently has in effect an Employee Personnel Policies and Procedures Manual that was adopted by City Council August 15, 2006 with an effective date of September 1, 2006. Many revisions to the personnel policies and procedures have taken place since the original adoption.

#### **FINDINGS/CURRENT ACTIVITY**

Included in the manual is Personnel Policy No. 120, Salary Program Administration. The policy establishes the standards and guidelines for the City of Copperas Cove's employee pay plan.

The following language is currently included in the policy - Across the Board Raises or Cola Allowances. An "Across the Board" or "COLA Allowance" may be recommended by the City Manager and approved by the City Council for employees. If this occurs then the salary ranges on the pay scale will be adjusted accordingly.

The 2011-12 FY Budget provided for a 1% COLA Allowance for current City employees. For employees hired after October 1, 2011 a 1% COLA was not included in the budget. Therefore, the following language has been removed from the policy:

"If this occurs then the salary ranges on the pay scale will be adjusted accordingly."

In addition, the policy has also been updated to include accurate employee titles.

#### **ACTION OPTIONS/RECOMMENDATION**

City staff recommends approval of an Ordinance updating Personnel Policy No. 120, Salary Program Administration.

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### **Attachments**

Ordinance

Policy 120

**ORDINANCE NO. 2011-62**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, APPROVING THE ATTACHED PERSONNEL POLICIES AND PROCEDURES OF THE CITY OF COPPERAS COVE BY REPEALING THE CURRENT PERSONNEL POLICY, NO. 120, (SALARY PROGRAM ADMINISTRATION) AND REPLACING THE EXISTING POLICY WITH A REVISED PERSONNEL POLICY, NO. 120, (SALARY PROGRAM ADMINISTRATION) AND RATIFYING THE REMAINING SECTIONS OF THE PERSONNEL POLICIES AND PROCEDURES MANUAL; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS,** The City of Copperas Cove has not updated this ordinance since October 1, 2009.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:**

**Section 1.**

That the Personnel Policies and Procedures Manual dated September 1, 2006, hereinafter set forth and included with this Ordinance as Exhibit "A" is hereby amended by repealing the current personnel policy, No. 120, (Salary Program Administration) and replacing the existing policy with a revised personnel policy, No. 120, (Salary Program Administration) correctly shown by the attached Exhibit "A";

**Section 2.**

That the remaining sections of the said Personnel Policies and Procedures Manual are hereby ratified, and shall remain in full force and effect;

**Section 3.**

That any outstanding Personnel Polices and Procedures Manuals other than Exhibit "A" either in the form of a manual or otherwise written or oral in nature, are hereby rescinded and are no longer of any force and effect;

**Section 4.**

That any additions, deletions or other amendments to the Personnel Polices and Procedures Manual shall be made in a manner similar to process by which this manual is originally approved and only after compliance with the Texas Open Meetings Act and approved by the City Council of the City of Copperas Cove.

**Section 5.**

That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

**Section 6.**

That this ordinance shall be effective November 1, 2011.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE. TEXAS**, this 1st day of November 2011, such meeting held in compliance with the Open Meeting Act (Texas Government Code, Chapter 551.001 et.seq.), at which a quorum was present and voting.

\_\_\_\_\_  
John Hull, Mayor

**ATTEST:**

\_\_\_\_\_  
Jane Lees, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Denton, Navarro, Rocha  
& Bernal, P.C., City Attorney

# SALARY PROGRAM ADMINISTRATION

## Policy #120

November 2011

This policy applies to regular, salaried positions, full-time and part-time, exempt and non-exempt personnel.

The City strives to pay salaries competitive with those in our community, recognizing individual effort and contribution to the City's success. Determination of salary policy is the responsibility of the City Manager, Human Resources Division Head, Director of Financial Services, and the Assistant Director of Financial Services/Budget Director and must be approved by the City Council. The Human Resources Department handles the administration.

### SALARY PROGRAM ELEMENTS

A. Salary Ranges. Each position, with the exception of the City Manager and Director level positions, has been assigned a salary range. Within this framework, an employee's salary will be related to demonstrated performance. Employees will receive a salary that is within the range limits of the applicable position.

1. Range Minimum. In most cases, the minimum of the appropriate salary range will be paid to all qualified new employees. No person is to be offered a salary that is below the minimum, or above the midpoint, of the salary range for the job. Salary offers may be made, with City Manager approval, up to midpoint of the salary range. Salary offers are to be based on the required qualifications of the position. In addition they must be consistent in relation to other offers made and to the salaries paid to current employees in that same position.

2. Range Maximum. The maximum of a salary range normally provides an upper limit of what employees may be paid. However, it is not an absolute limit, and the condition described in Section A.3 may allow an employee to be paid above the maximum.

3. Red Circle Salary. If an employee is paid over the maximum of the range for the classification, the salary will not be reduced. Rather, the employee will ordinarily be considered ineligible for an increase in pay (red circled) until an adjustment in the salary structure or a promotion to a higher position brings the rate within the established range for the position.

B. Salary Review Frequency.

Merit Salary Increases. If approved in the annual City budget, reviews for merit salary increases are conducted once a year, normally during the budget process. They will range in percentages of base salary as determined through the merit budgeting process. Salary increases are not

## SALARY PROGRAM ADMINISTRATION

### Policy #120

November 2011

granted automatically, but only as a result of demonstrated performance, documented by a job-related performance appraisal.

Across the Board Raises or Cola Allowances. An "Across the Board" or "COLA Allowance" may be recommended by the City Manager and approved by the City Council for employees.

C. Promotion Increases: A promotion is a change in status for an employee to a higher paid position. Salary increases generally are granted immediately upon promotion. Employees promoted into a higher paying position will begin at the minimum of the salary range for the new position. If their current salary is above the minimum for the new position, the employee's salary will be evaluated for an increase, at a minimum of 5% of prior base salary. A lesser amount may be justified if the employee has received a substantial increase within the last six months or a significant learning period is involved.

#### MAINTENANCE OF SALARY STRUCTURE

Positions included in the City pay structure may be reviewed by the Human Resources Department each year to determine if a recommendation needs to be made to the City Manager for change. Adjustments will be made to the structure, as required, after approval from the City Manager and City Council.

**City Council Regular**

I. 7.

**Meeting Date:** 11/01/2011

**Contact:** Andrea Gardner, City Manager

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### **Information**

#### **SUBJECT**

Consideration and action on authorizing the City Manager to execute a 380 Economic Development Agreement between the City of Copperas Cove, Texas and Endeavor Real Estate Group or its Affiliates.  
**Andrea M. Gardner, City Manager**

#### **BACKGROUND/HISTORY**

On May 20, 2011, a Chapter 380 Economic Development Agreement was submitted by Mr. Gary Davis on behalf of First Advisors, Inc. for consideration by the governing body. The 380 Agreement requests a rebate for both property and sales tax revenues over the period of 25 years for the development known as the Shops at Five Hills.

#### **FINDINGS/CURRENT ACTIVITY**

City Council met in closed session on a number of occasions since the submittal. The Developer has submitted what is considered to be the final proposal for incentives under a Chapter 380 Economic Development Agreement. The final proposal will be provided on Tuesday evening during the closed session for Council consideration.

#### **ACTION OPTIONS/RECOMMENDATION**

City staff recommends the City Council take action on the matter of authorizing the City Manager to execute a Chapter 380 Economic Development Agreement between the City of Copperas Cove, Texas and Endeavor Real Estate Group or its Affiliates.

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### **Fiscal Impact**

**Funds available Y/N?:** Y

#### **FINANCIAL IMPACT:**

The impact depends on the final negotiated agreement. Prior financial data has been provided to the City Council during the various closed sessions.

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**Information**

**SUBJECT**

Chamber of Commerce 3rd Quarter Financial Report for 2011. **Marty Smith-Cook, President, Copperas Cove Chamber of Commerce**

**BACKGROUND/HISTORY**

The Chamber of Commerce has an agreement with the City of Copperas Cove to promote the city and bring visitors, tourists, and new families into our city. The city in return funds part of the Chamber's Tourism Budget from the City's Hotel Motel Tax Fund. The Chamber is responsible at the end of each quarter to report to the City Council on how these funds have been used.

**FINDINGS/CURRENT ACTIVITY**

The Chamber of Commerce report shows the increase in visitors, dollars spent in our city, and the increase in people moving into our city to live, work, and play. The Chamber has done an outstanding job in promoting our city above and behind the funds that it receives.

The Chamber's Tourism Programs, active interaction with other organizations and chambers, and wide distribution of our brochures bring more dollars into our community each year.

**ACTION OPTIONS/RECOMMENDATION**

The Copperas Cove Chamber of Commerce recommends the City Council accept the Quarterly Financial Report for the third quarter of the Chamber's fiscal year.

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**Attachments**

[Quarterly Report](#)

[Events 3rd Quarter](#)

## Copperas Cove Chamber of Commerce Hotel Motel Tax 2011 Budget vs. Actual

|   | 2011 Estimated<br>Tourism Budget | 2011<br>1st Quarter<br>Actual | 2011<br>2nd Quarter<br>Actual | 2011<br>3rd Quarter<br>Actual | 2011<br>4th Quarter<br>Actual | Year to<br>Date |
|---|----------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-----------------|
| Advertising   | 56,252.00                        | 11,348.01                     | 10,757.00                     |                               |                               |                 |
| General & Administrative                              | 130,768.00                       | 43,543.32                     | 38,238.00                     |                               |                               |                 |
| Promotional   | 17,654.00                        | 5,143.37                      | 350.00                        |                               |                               |                 |
| Supplies/Printing/Postage                             | 13,678.00                        | 1,705.77                      | 2,182.00                      |                               |                               |                 |
| Tourism Event Entertainment                           | 16,654.00                        | 0.00                          | 4,400.00                      |                               |                               |                 |
| Tourism Events  | 92,841.00                        | 2,120.17                      | 35,515.00                     |                               |                               |                 |
| <b>Chamber 2011 Est. Tourism Budget</b>               | <b>327,847.00</b>                | <b>63,860.64</b>              | <b>91,442.00</b>              | <b>0.00</b>                   | <b>\$ -</b>                   | <b>0.00</b>     |
| <b>2011 City Hotel/Motel Tax Funds<br/>Commitment</b> | <b>177,800.00</b>                | <b>44,450.00</b>              | <b>46,362.50</b>              |                               |                               |                 |
| <b>Difference in Budgets</b>                          | <b>\$ (150,047.00)</b>           | <b>\$ (19,410.64)</b>         | <b>(45,079.50)</b>            | <b>0.00</b>                   | <b>0.00</b>                   | <b>0.00</b>     |

**The overage in the budget is paid out of the Chamber "Operating Fund".**

| <b>Tourism Event Performance Indicators</b> |              |                |             |             |             |              |
|---|--------------|----------------|-------------|-------------|-------------|--------------|
|   | 2010 Actual  | 2010 Actual    |             |             |             | 2011 Actual  |
|   | Participants | Hotel Rooms    |             |             |             | Participants |
| Rabbit Fest                                 | 44,779       | 57             |             |             |             | 35,000       |
| Bike/Run Central Texas                      | 2173         | 721            |             |             |             | 1394         |
| Other Events                                | 4,132        | 141            |             |             |             | 2000         |
|   |              |                |             |             |             |              |
|   |              |                |             |             |             |              |
|   | 2010 Actual  | 2011 Projected | 2011 Actual | 2011 Actual | 2011 Actual | 2011 Actual  |
|   |              |                | 1st Qtr     | 2nd Qtr     | 3rd Qtr     | 4th Qtr      |
| Website Hits                                | 1,715,280    | 1,715,280      | 387,946     |             |             |              |
| Relocation Requests                         | 359          |                | 56          | 16          |             |              |
| Welcome Bags                                | 2,730        | 2,730          | 1094        | 850         |             |              |
| Visitors Bureau                             | 2,484        | 2,484          | 186         | 525         |             |              |



# **TOURISM EVENTS HOSTED BY CHAMBER OF COMMERCE**

**3rd QUARTER 2011**

**July**

**August**

**September**

**COMMUNITY ACTIVITIES AND EVENTS**  
**HOSTED/CO-SPONSORED BY CHAMBER OF COMMERCE**  
**3<sup>rd</sup> QUARTER 2011**

**MONTHLY MILITARY AFFAIRS DINNERS**

**RIBBON CUTTINGS**

**MIXERS**

**City Council Regular**

**L. 1.**

**Meeting Date:** 11/01/2011

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**Information**

**SUBJECT**

Pursuant to §551.087, Deliberation Regarding Economic Development Negotiations, of the Open Meetings Act, Tex. Gov't Code, Council will meet in Executive Session to deliberate the offer of a financial or other incentive to a business prospect - First Advisors, Inc.

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