


City of Austin – Austin Police Association

143 TLGC AND HIGHLIGHTS OF SIGNIFICANT
CHANGES IN THE TA'd 4 YEAR CONTRACT

Presumptions with the Scenarios in the Presentation:

- Presuming that the APOA/Equity Action Petition passes and there is no contract in place; or
- Presuming that a 1-YR Contract can be negotiated, and terms of the current contract remain Status Quo (other than pay); or
- Assuming the 4-YR Proposed Contract is ratified by the parties.
- References to the statute are key in that 143 in that is the place City has started from, is negotiating from, and where the City would fall back to without a contract.

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- A “yes” vote to adopt the ordinance **cannot** and **will not** eliminate these state law barriers to the police oversight model the Community seeks.
 - To accomplish these things, they can be accomplished by voter initiative to repeal Chapter 143 under state law;
 - By obtaining changes to Chapter 143 in the Texas Legislature; or
 - By obtaining the agreement and consent of the APA in a labor agreement.
 - The EA Petition, and a possible extension of the agreement, will continue to limit OPO’s authority, but the proposed agreement does not.

CHAPTER 143 Tex. Loc. Gov. Code

- The City of Austin is a civil service city under Chapter 143 Texas Local Gov't Code (TLGC).
- This means that the personnel management system for its fire, police, and EMS departments are administered in accordance with the statutory provisions contained in the statute and the rules and practices of the Civil Service Commission.
- Under a civil service agency, the chief runs the police department; the council approves the budget; and the Civil Service Commission sets rules for testing, hiring, firing, promotions, and hears certain appeals.
- Counties, and other municipalities (both big and small) that are not covered by 143 are not bound by its provisions.

143.312(g) - ANONYMOUS COMPLAINTS

THE STATUTE:

- 143.312 (g) - Not less than 48 hours before an investigator begins the initial interrogation of a fire fighter or police officer who is the subject of an investigation, the investigator must inform the fire fighter or police officer in writing of the allegations in the complaint... An interrogation may be based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was anonymous.

APOA/Equity Action Petition (without a contract):

- The APOA/Equity Action Petition if passed does not and cannot change state law restricting anonymous complaints to members of the police department.

Proposed 4-YR Agreement:

- The Proposed 4 Yr. Agreement expands the 143 definition to allow for OPO to receive anonymous complaints

143.089(g) – The “g”-file

THE STATUTE:

- 143.089(g) - (g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use. Except as provided by Subsection (h), the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

APOA/Equity Action Petition (without a contract):

- The APOA/Equity Action Petition if passed does not and cannot change state law creating the confidential policy “g” file (TLGC 143.089(g)). Without an agreement there will be no CPRC with access to any investigative “g” files or non-public information to perform its role.

Proposed 4-YR Agreement:

- The TA'd 4 YR Agreement expands what can be released under 143 to the public and to the Citizen Review Panel

143.052(h) - 180 Days

THE STATUTE:

- 143.052(h)- In the original written statement and charges and in any hearing conducted under this chapter, the department head may not complain of an act that occurred earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer.

APOA/Equity Action Petition (without a contract):

- The APOA/Equity Action Petition if passed does not and cannot change state law setting the 180-day standard for police discipline.

Proposed 4-YR Agreement:

- The proposed agreement expands the period for serious misconduct as defined to 365 days after discovery at the rank of Assistant Chief or higher.

Police Oversight - Articles 16, 17, and 18

NEGOTIATIONS WITH APA

- The City's Team and APA have been in negotiations since March of 2022
- City's First Oversight Proposal was presented in March 2022
 - This included OPO becoming investigators, being able to ask questions during IA investigations, release of g-file information to the public, and to make recommendations for officer discipline to the Chief of Police
 - This was prior to the EA Petition
- Once EA Petition was circulated and eventually placed on the ballot, the City's team attempted to incorporate many of the provisions included in Petition as it was in line with the City's goals and proposals from the outset. However, as previously explained, most of what is in petition can only be done via a contract to get around state law (143 TLGC).

- The existing labor agreement resulted in an Arbitration Award in favor of the APA's position on OPO authority. It seriously limits the ability of the City to use its existing state law and City Charter authority to develop OPO actions and investigations, and that award now a part of the agreement.
- An extension of the agreement carries that terrible baggage with it, but the proposed agreement does not.
- Assuming the 4-YR Contract is ratified by the parties, APA has agreed to a new model for Oversight.



- This is a 3-part solution.
 - At the top of the triangle is the City Council Ordinance exercising the Manager's authority in conjunction with the City Charter and State Law
 - The Proposed 4-Yr Contract Itself
 - Changes in the policies by the Chief of Police



Office of Police Oversight

- The Proposed 4-YR Contract allows for the following:
- Expands 143.312(g)- Anonymous Complaints
 - OPO to accept all complaints to include anonymous complaints, even from police officers
- Expands 143.089(g) – The “g”-file
 - OPO to release information to the public as to their recommendations, which may otherwise be confidential under the g-file
 - OPO to release to the complainant in a close-out meeting, information that would otherwise be considered confidential under the g-file
 - OPO to release information regarding Independent Investigations that would otherwise be considered confidential under the g-file
 - OPO to release information regarding Critical Incidents that would otherwise be considered confidential under the g-file
 - Citizen Review Panel – Additionally has access to information, and briefings from OPO and IA that would otherwise be considered confidential under the g-file.
- Expands 143.052(h) – 180 Days
 - Additionally, the Chief has 365 days from the date of discovery to discipline an officer for serious misconduct

Provided for within the City Ordinance also includes:

- OPO to have unfettered access to IA files
- OPO to conduct a preliminary review of complaints
- OPO to become investigators
- OPO can ask questions and receive answers from officers during IA investigation interviews
- OPO to make recommendations of initial classification, recommendation of final classification, and recommendation to the Chief of Police as to possible discipline

Police Oversight

- The following slides compare the highlights from the Equity Action Petition and show what can be accomplished within the confines of the law in the following presumptions:
 - The EA Petition (without a contract);
 - The Proposed 4-YR Contract (currently TA'd by the parties); and
 - Possible 1-Yr Deal Extension (assuming Status Quo)

Definitions	EA Petition (w/out a K)	City Proposed 4-YR Contract	1-YR Extension (Status Quo)
Anonymous Complaint (expand)	✘	☑	☑
Discipline (to include reprimands)	✘	☑	☑
Investigation	✘	☑	✘
Serious Misconduct	✘	☑	✘
Complainant (expand)	✘	☑	☑
<u>OPO</u>			
Receive Anon Complaints	✘	☑	☑
Participate in Investigations	✘	☑	✘
Make Recommendations to Chief	☑	☑	☑
Conduct Preliminary Review	☑	☑	✘

OPO	EA Petition (w/out a K)	City Proposed 4-YR Contract	1-YR Extension (Status Quo)
Direct access to relevant department records	✓	✓	✗
OPO release of g-file information	✗	✓	✓
General Information about Department	✓	✓	✓
Recommendations on discipline	✗	✓	✗
Detailed info about incidents where OPO recommends discipline	✗	✓	✗

CPRC	EA Petition (w/out a K)	Proposed 4-Yr Contract	1-YR Extension (Status Quo)
Makeup	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Review of in death custody, serious misconduct after completion of investigation but prior to discipline	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Recommend Discipline to Chief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Request briefings from IA and OPO	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Advise on policies and procedures	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Post Agendas with subject matter including incident date and nature of incident	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

CPRC	EA Petition (w/out a K)	Proposed 4-YR Contract	1-YR Extension (Status Quo)
Qualifications/Eligibility of Commission Members	✓	✓	✓
Direct Access to Records in relations to investigations	✗	✓	✓
Specified Training Hours created by OPO	✓	✓	✓
Public Release of Recommendations	✗	✓	✓
Confidentiality Requirement	✓	✓	✓
Determines Training for CPRC	OPO	Determined within Contract	Determined within Contract

Additional Issues	EA Petition (w/out a K)	Proposed 4-YR Contract	Status Quo
Duties of Police Chief	✓	N/A	N/A
Eliminate “g”-file	✗	SOME	SOME
Unfettered Access by OPO	✓	✓	✗
Unfettered Access to Panel	✗	SOME	SOME
From 180 to 356 Days	✗	✓	✗
Grievances	✗	✓	✓

Negotiations with APA

- By definition “negotiation” does not obtain everything on the wish list. There has been give and take for almost a year.
- In that context, the APA has bargained for limits on what the City could do on its own legal authority, and we have made some reasonable concessions.
- We have bargained for changes in the law that we cannot make unilaterally, and they have conceded on many of our demands, far more than ever before, but not all of them.
- We have left most other issues out of the agreement, in order to avoid the old language that was the cornerstone of the Arbitration Award, just as the Petition dictated (with its internal conflicts).

Article 13 - Promotions

Promotions

- 143 Texas Local Government Code provides a mechanism for promotions within Fire and Police Departments. It consists of a written examination. Simply put, the candidate who scores the highest is the person who is promoted.
- As previously mentioned with Police Oversight, one of the ways to get around 143 and the statutory requirements within, is through a contract.
- For many years, the City of Austin and APA have had a promotional process that has varied from 143 to include examinations as well as assessment centers located in Article 13 of the Contract.
- The assessment center is a type of test that directly measures competencies such as oral communication, interpersonal skills, reasoning, application of knowledge, and management/leadership skills.
- Research demonstrates that an assessment center is a method of testing that tends to have a much lower disparate impact against minority applicants, especially when compared to other type of measures such as written tests. *Kroll Report*, p. 143
- Kroll's statistical analysis of APD Promotion from 2015 to 2020 indicate that while there are no significant gender differences in promotion outcomes, Asian and white promotion candidates are significantly more likely to be promoted than Black and Hispanic candidates. The written promotional test scores across all ranks indicate that the test may have an adverse impact on candidates of color and between younger and older candidates. *Kroll Report*, p. 148

Promotions

- The City and APA have agreed to an innovative Article 13 for Promotions in the 4-Yr Proposed Agreement
- This includes changes made to the written exam scoring process – with no minimum passing score for the written exam, but an overall combined test and assessment center passing score of 70% to be considered for promotion.
- A New Promotional Process and Probationary Period for the rank of Commander
- Mentorship Program for Lieutenants who seek to promote to Commander. While the PD has career development policies, the *Kroll* report specifically cited that mentoring programs improve employee retention (a known high priority for the PD), maximize the mentees performance and job satisfaction, communicate important situational knowledge, and share best practices and lessons learned.
- The Promotional Procedure for the rank of commander will include a written exam, assessment center, review panel, and a Leadership Development Program.
- Following promotion to the rank of Commander, the employee will serve a 6-month probationary period in which the employee will be evaluated. At the end of the 6-month period, the employee will either have successfully completed probation, have their probation extended, or be demoted to the previously held rank of Lieutenant.
- Additionally, modifications were made to the assessment center process currently used for the ranks of Sergeant, Lieutenant, and Commander in order to provide for additional training for the assessors, and will provide two opportunities for an assessment center orientation for candidates that will provide comprehensive information of the expected exercises that will be utilized in the specific assessment process

Article 15 - Drug Testing

Drug Testing

- “Illegal Drugs” definition expanded to include:
 - panel for prohibited substances listed in 49 CFR §40.87 at the time of the test;
 - and an anabolic steroid panel for all critical incidents

Article 7 - Wages



Staffing Goals

- The City's goal has been to address staffing shortages by focusing on retention and recruitment to provide stability to employees
- Retention and hiring of individuals that meet the high standards of APD and our community is one of the primary goals of this agreement
- Increases in compensation will continue to make our Department attractive to applicants
- The increases will incentivize personnel to stay longer while also increasing incentives to take on additional responsibilities and assignments
- Additionally, as detailed more in the next slide, the parties have agreed to minimum hiring goals with a percentage increase should the staffing goal not be met

Contingent Base Pay Increases

Minimum hiring* goals:

Calendar Year 2024: 200 Cadets

Calendar Year 2025: 200 Cadets

2024 goal not met - percentage increase of 1.5% added across the board to base wages¹

2025 goal not met - percentage increase of 1.5% added across the board to base wages²

** Hiring for the purposes of this Section shall mean the written acceptance of an intent to hire and appearance at the first day of the academy class to which a cadet or lateral hire cadet was offered a position*

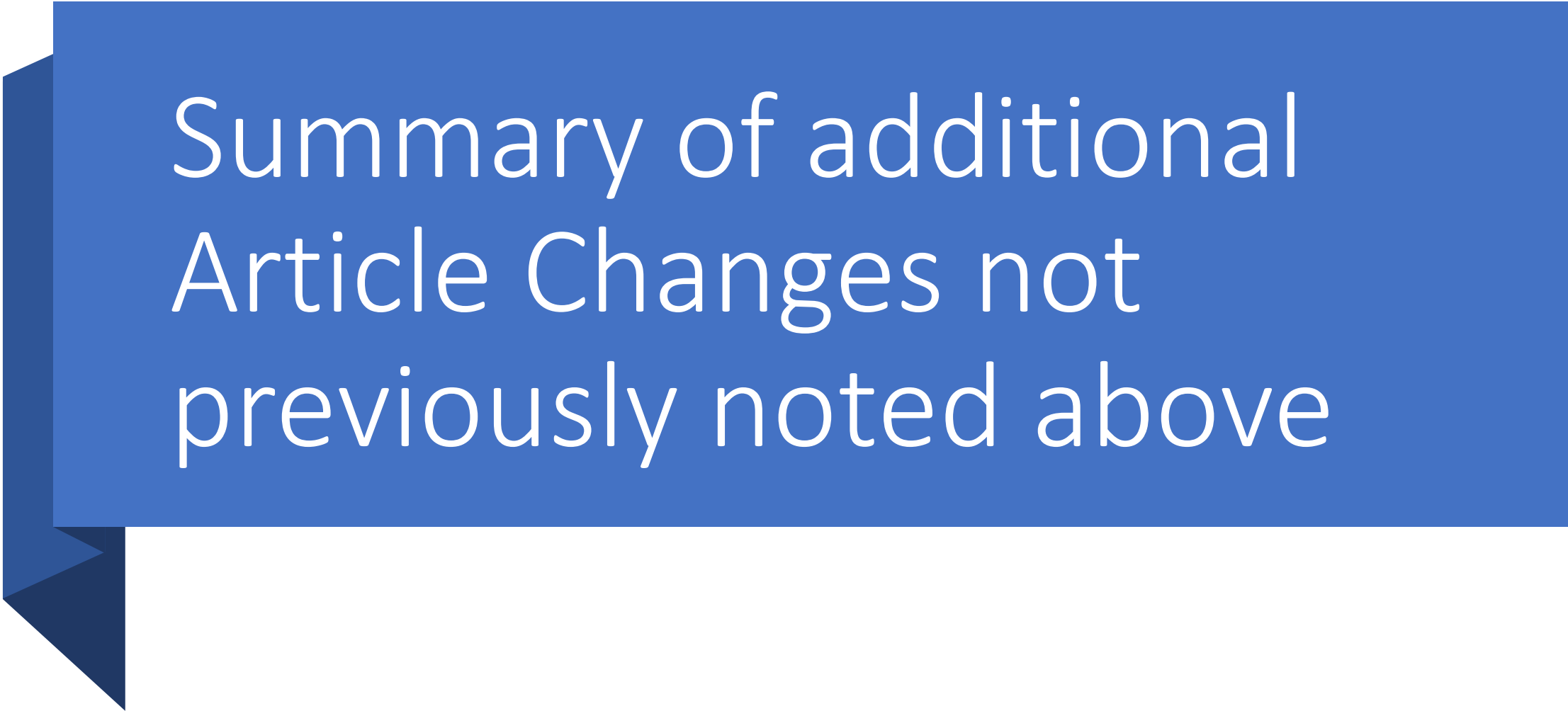
1 - Effective first full pay period after January 1, 2025, applies to those employed on or before the effective date of Agreement

2 - Effective first full pay period after January 1, 2026, applies to those employed on or before the effective date of Agreement

Base Wage Proposal	FY 23	FY 24	FY 25	FY 26
	4.0%	2.5%	3.5%	4.0%

	Description	Year 1	Year 2	Year 3	Year 4
Base Wages	4.0% start in April 2023	\$4,016,734	\$4,016,734		
	2.5% start in January 2024		\$3,911,309	\$1,303,770	
	3.5% start in January 2025			\$5,626,008	\$1,875,336
	4.0% start in January 2026				\$6,648,211
FTO Stipend	FTO increase from \$175/month to 4.5% of Police Office Step 10 or \$245/month (April 2023)	\$80,469	\$95,600	\$21,712	\$25,682
Shift Differential (5:00 PM or later)	Increase from \$300/month to \$375/month (April 2023)	\$73,633	\$73,633		
Mental Health Certification	MHC decrease Year 3 from \$175 to \$0			(\$481,518)	
Add Year 23 STEP	Adding a new 3% step at year 23 (January 2024)		\$618,404	\$206,135	
		\$4,170,836	\$8,715,679	\$6,676,105	\$8,549,229

4-Year Cumulative Cost
\$28,117,140
\$14,341,466
\$13,127,351
\$6,648,211
\$677,784
\$515,428
(\$963,037)
\$2,267,480
\$64,731,823

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Summary of additional
Article Changes not
previously noted above

- **Article 2 – Definitions**
 - Added “Calendar Day,” “TLGC,” and “Their”
- **Article 3 – Recognition**
 - Allows for Association to be part of the Policy Review Committee
- **Article 6 – Union Dues and Check Off**
 - Indemnification Clause added
- **Article 10 – Holidays Vacation and Sick Leave**
 - Temporary Increase of Vacation and Exception Vacation Accrual Caps
- **Article 11 – ABL**
 - Leave Hours Increase from 7,000 to 10,000. Consistent with EMS and Fire Contracts
- **Article 14 - Hiring**
 - Modified Hiring Process allows for Chief to determine pay rate for lateral hire officers up to 10 years experience within APD. Previously, this was limited to 2 years.
- **Article 19 – Assignment Changes**
 - Resolved an issue brought by APA regarding Job Assignment Transfers notice;
 - Revised Special Events to include stipend pay for Lieutenants and Commanders

Issues/Changes	EA Petition (w/out a contract)	Proposed 4-Yr Contract	1-Yr Extension (assuming status quo)
Anonymous Complaints (expanded from 143)	✘	☑	☑
143.089(g) file access	✘	☑	☑
365 days for discipline	✘	☑	✘
Promotions Pilot Program	✘	☑	✘
Drug Testing to include Steroids	✘	☑	✘
Hiring/Retention Pay Model	✘	☑	✘
Lateral Hires up to 10 yrs	✘	☑	✘