

Personnel Manual - Civil Service Board April 10, 2008

RULE 10 - DISCIPLINARY ACTIONS, APPEALS AND HEARINGS

Section 10.01- Disciplinary Action. All persons holding positions in the Classified Civil Service shall be subject to suspension, fine and also removal from office or employment by the City Administrator, or, in case of persons employed in the office of the Auditor-Controller or Board, for misconduct, incompetence, or failure to perform their duties under or observe the rules and regulations of the department, office, or Board; but subject to the appeal of the aggrieved party to the Civil Service Board as herein provided.

Any chief official, any subordinate officer, and any superintendent or foreman in charge of municipal work may temporarily suspend any subordinate then under her/his discretion for in-competency, neglect of duty or disobedience of orders, but shall within twenty-four (24) hours thereafter report the fact in writing to the City Administrator, Auditor-Controller, as the case may be, and furnish a copy of the report to the subordinate suspended, upon her/his request therefore. The City Administrator, Auditor-Controller or Board shall thereupon, if demanded by the subordinate suspended, hear evidence for and against her/him, and shall thereupon affirm or revoke such suspension according as he/she or it finds the facts to warrant. Employees in the competitive civil service may be dismissed, demoted, fined, or suspended without pay for just cause.

When an employee in the competitive civil service has failed or fails to perform the duties of her/his position in a satisfactory manner, or has committed any act or acts to the prejudice of the public service, or has failed to perform any act or acts it was her/his duty to perform, or whose service rendered is below satisfactory standards, or who otherwise has become subject to disciplinary or other corrective measures, the appointing authority or her/his designated department heads shall have the power and it shall be their duty to take action, subject to the provisions of the Charter and these rules, in one of the following ways:

- (a) To reprimand the employee and record such reprimand in her/his personnel file.
- (b) To suspend the employee without pay.
- (c) To demote the employee to a lower class of position than that currently filled by her/him.
- (d) To fine the employee.
- (e) To discharge the employee from the public service.

Section 10.02 - Procedure in Disciplinary Actions. The department head shall notify the Personnel Director, in the manner and form prescribed by her/him, whenever any employee is suspended without pay, indicating the reasons therefore and the duration of the suspension. In case of any suspension, the employee shall have the right of hearing or investigation by the appointing authority or the Board, in accordance with the procedures described in the Charter and these rules.

Section 10.03 - Appeal of Disciplinary Action. Permanent employees shall have the right to appeal from the final notice of discipline involving suspension, fine, demotion or discharge. The notice of appeal must be received by the Secretary to the Board within ten (10) working days from the date the final notice of discipline was served upon the appellant, or the right to proceed to the next appeal level under these Rules shall be forfeited and the discipline shall become final. The appeal shall address each of the reasons for the disciplinary action enumerated in the written notice and may provide any relevant additional information.

The appeal shall be submitted to the Secretary to the Board. The Board shall decide whether it shall hear the appeal itself or whether the appeal shall be heard by an independent Hearing Officer. In cases in which the appellant has requested a public hearing, the Board shall hear the appeal.

Section 10.04 - Procedures for Hearings by the Board. In the event that the Board decides to hear the appeal itself, the following procedures shall apply:

A hearing date will be set after the appeal is initially received by the Secretary to the Board. The request for appeal must contain the following items: (1) Cover sheet, including appellant's name, address, and telephone number; name, title, address, telephone number of appellant's representative, if any (Representative's telephone number will suffice in the absence of appellant's number); (2) A list of available days for hearing dates; (3) An estimate of the number of hours required for case presentation.

Appellant representatives and the City Attorney must provide two (2) complete hearing packets to the Board's secretary by at least one week prior to the scheduled hearing. Appellant's failure to provide such information may, at the Board's discretion, result in the rescheduling of the hearing. Packets must include the following items: (1) A chronology of events; (2) An agreed upon Statement of Facts; and (3) Statement of Facts in Dispute.

The City Attorney shall also present to the Board a copy of the Notice of Intent to Impose Discipline, and Notice of Discipline with accompanying materials. In the event the City Attorney and the Appellant's representative are unable to meet on the above items, the Appellant's representative must submit their version of the facts at least one week prior to the hearing.

The City Attorney and the Appellant's representative are required to meet at least one hour prior to the hearing to finalize exhibit packets which must include the following: (1) A list of exhibits, if any; (2) Pre-marked exhibits (if any exhibits are to be submitted). Additional exhibits may be submitted during the hearing, if they were not available to a party prior to the hearing. No documents submitted to the Board for

consideration shall be considered public records, unless consented to by all parties or otherwise required by law.

The hearing may be continued for good reason beyond the date originally scheduled or recessed to a future date agreeable to the Board and the parties. However, if a continuance is requested by the appellant or her/his representative, and the Board shall later sustain the appeal, the Board may rule that the appellant shall receive no back pay for the period of time during which such continuance was granted.

Hearings shall be closed to the public unless the appellant requests a public hearing in writing. In the event that a hearing is public, upon motion of a directly interested party, the Board may exclude from the hearing room any witnesses not at the time under examination, except that a party to the proceeding and her/his counsel cannot be excluded.

Hearings shall be tape-recorded. Copies of the tape will be available to the appellant, if desired, for no charge. Transcripts of the taped proceedings will be available upon request at the requesting parties' expense. Board subpoenas will be issued upon the request of either party. Subpoenas may be secured by contacting the Secretary to the Board.

The Board shall convene the hearing, receive evidence through testimony and documents and make findings of fact and conclusions about the discipline. Technical rules of evidence shall not apply. However, all testimony and exhibits must be relevant to the issues in contention, and the Board may exclude any evidence which it deems to be irrelevant. The Board shall consider and rule on any objection by either party. Closing arguments shall be oral; provided, however that either party may elect to submit a closing brief. Briefs are to be submitted to the Board within a time set by the Board. Briefs submitted after the deadline shall not be considered by the Board.

The Board will make no assumptions of innocence or guilt. The Board will be guided in its decision by the weight of the evidence as it appears to it at the hearing.

The Board has the power to sustain, overrule, reduce or, consistent with due process, modify the discipline, award back pay and determine the extent of back pay to be awarded, if any, based on the circumstances, and take any other appropriate action. The Board's determination will be issued in writing, within thirty (30) working days of the conclusion of the hearing, unless post-hearing briefs are to be submitted, in which case the Board's determination will be issued within thirty (30) working days of timely receipt of the post-hearing briefs. Copies of the Board's determination shall be forwarded to the appellant and her/his representative, City Attorney's Officer and the affected City department. The Board may request that either or both parties present proposed findings of fact and conclusions of law within ten (10) working days of the Board's determination. The opposing party shall have the right to agree or object to the proposed findings. The Board's decision shall be the final decision of the City but is reviewable by writ of mandamus in accordance with applicable law.

Section 10.05 - Procedures for Hearing by a Hearing Officer. In the event that an appeal is to be heard by a Hearing Officer, the following procedures shall apply:

(a) Hearing Officer Selection and Authority.

The Hearing Officer shall be selected by the Board in accordance with selection procedures established by the Board which ensure that the Hearing Officer is independent, neutral and un-biased.

Hearings shall be closed to the public. The costs of the Hearing Officer shall be borne by the City. Hearings shall be tape-recorded. Copies of the tape will be available to the appellant, if desired, for no charge. Transcripts of the taped proceedings will be available upon request at the requesting parties' expense.

The Hearing Officer shall have the authority to convene the hearing, receive evidence through testimony and documents and to make findings of fact and conclusions about the discipline. Closing arguments shall be oral; provided, however that either party may elect to submit a closing brief following the presentation of closing arguments. Briefs are to be submitted to the Hearing Officer within twenty (20) calendar days of the close of the hearing. Briefs submitted after the deadline shall not be considered by the Hearing Officer.

The Hearing Officer shall render written findings and recommendations to the Board within thirty (30) calendar days of the close of the hearing. If post-hearing briefs are submitted, the recommendation shall be submitted to the Board within thirty (30) calendar days after timely receipt of the brief(s).

The Hearing Officer shall provide the Board the following documents, which shall constitute the official hearing record: (1) A summation page delineating the case name; issue; brief summary of the case; and her/his recommendation; (2) a complete written report documenting the findings; (3) any documentary evidence, written motions and briefs submitted; (4) the cassette tape(s) of the hearing.

(b) Civil Service Board Responsibilities.

After receiving a Hearing Officer's recommendation, the Board Secretary shall schedule the case for the next available Board meeting. The Board will make every effort to schedule a case within thirty (30) days of receiving the Hearing Officer's recommendation.

In reviewing a decision, the Board shall review the hearing record and may review the recording of the hearing. The Board may accept or reject the Hearing Officer's recommendation. The Board has the power to sustain, overrule, reduce or, consistent with due process, modify the original discipline, award back pay and determine the extent of back pay to be awarded, if any, based on the circumstances, and take any other appropriate action.

The Board's determination will be issued in writing, within ten (10) working days of the conclusion of the Board's review of the Hearing Officer's recommendation. Copies of the Board's determination and the recommendation of the Hearing Officer shall be forwarded to the appellant and her/his representative, the City Attorney's Office and the affected City department. The Board's determination shall be the final decision of the City but is reviewable by writ of mandamus in accordance with applicable law.