



**MUNICIPAL CIVIL SERVICE RULES  
OF  
THE CITY OF AUSTIN**

Approved by Council Ordinance 20140626-024  
Rule 7 Effective July 7, 2014  
Rules 1 – 6 Effective October 27, 2014

## TABLE OF CONTENTS

<b>RULE 1 - DEFINITIONS.....</b>	<b>1</b>
<b>RULE 2 – GENERAL PROVISIONS.....</b>	<b>5</b>
2.01 PURPOSE AND SCOPE OF THESE RULES.....	5
2.02 POSITIONS COVERED BY THESE RULES.....	5
2.03 WAIVER OF THESE RULES .....	5
2.04 AMENDMENTS TO THESE RULES.....	5
2.05 MANAGEMENT AUTHORITY .....	5
2.06 EFFECT OF THESE RULES.....	6
2.07 RECORDS OF THE COMMISSION.....	6
2.08 PUBLICATION OF THESE RULES.....	6
2.09 SEVERABILITY OF THESE RULES.....	6
2.10 EFFECTIVE DATE.....	6
<b>RULE 3 – ORGANIZATION OF THE COMMISSION.....</b>	<b>7</b>
3.01 POWERS AND AUTHORITY .....	7
3.02 MUNICIPAL CIVIL SERVICE DIRECTOR.....	7
3.03 COMMISSION MEETINGS.....	7
<b>RULE 4 – HIRING, PROMOTIONS, AND LATERAL TRANSFERS.....</b>	<b>9</b>
4.01 MANAGEMENT AUTHORITY .....	9
4.02 GENERAL STANDARDS.....	9
4.03 COMPETITIVE SELECTIONS.....	10
4.04 DIRECT APPOINTMENTS.....	11
4.05 SELECTION OR DIRECT APPOINTMENT CRITERIA .....	11
<b>RULE 5 –REDUCTION-IN-FORCE.....</b>	<b>13</b>
5.01 REDUCTION-IN-FORCE.....	13
5.02 NOTICE OF INTENDED REDUCTION-IN-FORCE.....	13
5.03 STATUS OF EMPLOYEES SEPARATED DUE TO REDUCTION-IN-FORCE .....	14
<b>RULE 6 – DISCIPLINARY ACTIONS.....</b>	<b>16</b>
6.01 MANAGEMENT AUTHORITY .....	16
6.02 CAUSE FOR CERTAIN DISCIPLINARY ACTIONS .....	16
6.03 ADMINISTRATION OF EMPLOYEE DISCIPLINE.....	17
<b>RULE 7 – APPEALS TO THE COMMISSION.....</b>	<b>21</b>
7.01 ACTIONS THAT MAY BE APPEALED.....	21
7.02 GENERAL RULES FOR GRIEVANCES AND APPEALS .....	21
7.03 ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCESS .....	23
7.04 SUBPOENAS .....	23
7.05 SUBMISSION OF HEARING INFORMATION .....	25
7.06 HEARINGS – GENERAL RULES .....	26
7.07 FINAL RULING.....	28
7.08 SPECIAL RULES FOR DISCIPLINARY APPEALS.....	29
7.09 SPECIAL RULES FOR DENIAL OF PROMOTION APPEALS .....	29
7.10 SPECIAL RULES FOR REDUCTION-IN-FORCE APPEALS.....	30

## **RULE 1 - DEFINITIONS**

When used in these Rules, the following terms have the meanings set out below unless expressly stated otherwise in these Rules:

- 1.01 “ADR Process” means an alternative dispute resolution process that is voluntary between the two parties as part of an Appeal process under these Rules.
- 1.02 “Appeal” and “Appeal Procedures” refer to the procedures in these Rules through which an Employee may contest Disciplinary Probation, Disciplinary Suspension, Demotion, Discharge, and Denial of Promotion.
- 1.03 “Applicant” is an individual who has submitted a timely and complete Application in a format and manner acceptable to the Human Resources Department or in compliance with the job Posting requirements for a Posted Position in the Classified Municipal Civil Service.
- 1.04 “Application” and “Apply” refer to submission by an individual through a format and manner acceptable to the Human Resources Department and in compliance with the job Posting requirements of an expression of interest in a Posted Position and required information relating to the individual’s qualifications for that Position.
- 1.05 “Business Day” means a Day on which the City of Austin (the City) conducts normal business. A Saturday, Sunday, or City holiday is not considered a Business Day.
- 1.06 “Candidate” means an Applicant who is eligible for Hire and meets the Minimum Qualifications for a Competitive Position.
- 1.07 “City Council” means the group of elected officials by the residents of Austin whose powers are defined in Art. II §7 of the City Charter.
- 1.08 “City Manager” means the City Manager or any designee of the City Manager authorized to act on behalf of the City Manager under the circumstances.
- 1.09 “Classified Municipal Civil Service” means any or all of the Positions included in the classified civil service system established by Art. IX §1 of the City Charter.
- 1.10 “Classification” means the job title of a Position in the Classified Municipal Civil Service as reflected in records maintained by the Human Resources Department.
- 1.11 “Classification Plan” means a listing of all Classifications in the Classified Municipal Civil Service showing the Positions in each Classification.
- 1.12 “Commission” means the Municipal Civil Service Commission established by Art. IX §2 of the City Charter.

- 1.13 “Competitive Position” means a Position filled through a Competitive Process for which an Employee may Appeal the Selection if the Employee was a Candidate for that Position.
- 1.14 “Competitive Process” means a method to fill a Vacancy in which a Position is Posted and Candidates are evaluated in a like manner based on Merit and Fitness.
- 1.15 “Day” means a calendar day.
- 1.16 “Denial of Promotion” means the non-Selection of an Employee who is a Candidate for a Promotion because of the Selection of another individual for that Position.
- 1.17 “Department” means a City Department or office, regardless of the name or title used.
- 1.18 “Department Head” means the head of a City Department or office, regardless of the name or title used.
- 1.19 “Demotion” means an Employee’s involuntary placement from the Employee’s current Position to another Position in a lower Salary Grade or to another Position in the same Salary Grade at a lower base salary rate.
- 1.20 “Direct Appointment” means the Selection of an individual to a Position without a Competitive Process, in accord with these Rules.
- 1.21 “Discharge” means the involuntary termination of employment of an Employee.
- 1.22 “Disciplinary Action” means Disciplinary Probation, Disciplinary Suspension, Demotion and Discharge.
- 1.23 “Disciplinary Probation” means the stated period of time for evaluation of an Employee for a disciplinary reason, during which the Employee is required to meet the defined expectations.
- 1.24 “Disciplinary Suspension” means the temporary suspension of an Employee without pay from the Employee’s Position for a disciplinary reason.
- 1.25 “Employee” means an individual who has been Selected or Directly Appointed to a Position in the Classified Municipal Civil Service.
- 1.26 “Good Standing” means an Employee who is not currently serving or placed on a Disciplinary Probation or performance improvement plan during the hiring process.
- 1.27 “Hire” refers to the Initial Selection, Promotion, or Lateral Transfer of an individual to a Position.
- 1.28 “Initial Selection” means the Selection to a Position of an individual who was not an Employee during the six months prior to the Selection.

- 1.29 “Initial Probationary Period” means a working trial period of six (6) months following Initial Selection, during which the individual is an at-will Employee and may be dismissed from employment on any basis not prohibited by law.
- 1.30 “Investigatory Interview” means an official inquiry that is led by Human Resources or City management to investigate allegations of misconduct by Employees, including potential violations of personnel policies, procedures, or rules, excluding audits or investigations conducted by the City Auditor’s Office.
- 1.31 “Job Description” means the written document maintained by the Human Resources Department of the knowledge, skills, abilities, duties, responsibilities, and Minimum Qualifications associated with a Position.
- 1.32 “Lateral Reassignment” or “Laterally Reassign” means the Reassignment of an Employee to a Position in the same Salary Grade that may have different duties and responsibilities.
- 1.33 “Lateral Transfer” means the movement of an Employee to a Position in another or the same Department in the same Salary Grade through a Competitive Process.
- 1.34 “Municipal Civil Service (MCS) Director” means the Human Resources Director, serving as the Director of the Municipal Civil Service Commission, or the MCS Director’s designee.
- 1.35 “Merit and Fitness” means demonstrated education, training, experience, performance, knowledge, skills, ability, licenses, certifications, and fitness to perform the essential functions and meet the qualifications of a Position.
- 1.36 “Minimum Qualifications” means the job-related knowledge, skills, abilities, education, training, experience, fitness, and other criteria as stated in the Job Description or Job Posting, as required for Selection to a Position.
- 1.37 “Position” means an individual group of tasks, activities, and responsibilities that is: (a) designated by a job title; (b) funded as a regular job Position for the City’s current year budget; and (c) included in the Classification Plan.
- 1.38 “Posting” or “Posted” means the announcement of a Position for the solicitation of Applications in a format and manner approved by the Human Resources Department.
- 1.39 “Preferred Interview Status” means the status assigned to an Employee affected by a Reduction-in-Force that requires a hiring manager to interview an affected Employee that has Applied for a Position at or below the Salary Grade the Employee held or currently holds, for which the Employee meets the Minimum Qualifications and for which the Employee has notified the designated recruiter for that Position of the Employee’s Preferred Interview Status.
- 1.40 “Preferred Qualifications” means any job-related education, training, experience, fitness, and other criteria that are in addition to the Minimum Qualifications.

- 1.41 “Promotion” means a change from an Employee’s current Position to a Posted Position in a higher Salary Grade.
- 1.42 “Promotion(al) Probationary Period” means a working trial period of three months following Selection or Direct Appointment into a Position that represents a Promotion as defined by these Rules, during which the individual may be removed without Cause as defined in these Rules.
- 1.43 “Reassignment” and “Reassigned” mean either: (a) a change in job duties without a change in Position title or salary; or (b) a change in Position title without a change in salary or Salary Grade.
- 1.44 “Respondent” is an Employee that is the subject of an Investigatory Interview.
- 1.45 “Rebuttal Submission” means a written response offered to contradict evidence presented by an opposing party. A Rebuttal Submission is limited to a written response to disprove or contradict issues raised in the opposing party’s written submission and may include requests for additional Subpoenaed witnesses and production of evidence that would contradict or attempt to contradict evidence previously presented.
- 1.46 “Rules” means these Municipal Civil Service Rules of the City of Austin, as recommended by the Human Resources Director, reviewed by the Municipal Civil Service Commission, and approved by the City Council, including all amendments.
- 1.47 “Salary Grade” means the numerical pay grade and the associated pay range assigned to a Position.
- 1.48 “Select,” “Selected,” and “Selection” refer to the initial hiring, Promotion, or Lateral Transfer of an individual to a Position.
- 1.49 “Subpoena” means a written direction to an individual issued under the authority of the Commission as set out in Article IX of the City Charter requiring the production of witnesses or documents at an Appeal hearing under these Rules.
- 1.50 “Vacant” and “Vacancy” refer to a Position that is not occupied.
- 1.51 “Work Day” means a day an Employee is scheduled to work.
- 1.52 “Year” means 365 consecutive calendar days, except in a leap year where there will be 366 calendar days.

## **RULE 2 – GENERAL PROVISIONS**

### **2.01 PURPOSE AND SCOPE OF THESE RULES**

The purpose of these Rules is to give effect to the provisions of Article IX of the Charter of the City of Austin (the City), which provides for a Classified Municipal Civil Service system for certain Employees of the City, defined therein.

Once effective, these Rules shall be in force and apply to all Departments and operations of the City to the full extent provided under Article IX of the City Charter. All Employees in the Classified Municipal Civil Service shall abide by these Rules and shall be accorded the benefits of these Rules, unless contrary to state or federal law.

### **2.02 POSITIONS COVERED BY THESE RULES**

These Rules apply to all job Positions that comprise the Classified Municipal Civil Service of the City established under Article IX, Section 1(B) of the Charter of the City of Austin.

With specific reference to Article IX, Section 1(B)(7) of the City Charter, these Rules do not and are not intended to apply to Employees of the City who are covered by Texas Local Government Code Chapter 143, including all sworn personnel and cadets.

### **2.03 WAIVER OF THESE RULES**

The Commission has no authority to waive any provision of these Rules, except upon the express prior approval of the City Council.

### **2.04 AMENDMENTS TO THESE RULES**

These Rules may be amended as provided in Article IX, Section 4 of the City Charter. Any such amendment shall become effective upon the Human Resources Director's preparation and recommendation to the Commission, notice and public hearing, and approval by the City Council, unless otherwise specified by the Council at the time of approval.

### **2.05 MANAGEMENT AUTHORITY**

Except as expressly stated in these Rules, the authority to Select Employees to Positions included in the Classification Plan, to schedule and direct such Employees, to organize and assign their work, to set and enforce work rules and performance standards, and to administer disciplinary action to such Employees remains with the City Manager, Department Heads, and their designated management representatives.

**2.06 EFFECT OF THESE RULES**

- A. To the extent of a conflict, these Rules supersede a personnel policy, a procedure or work rule of the Human Resources Department or another Department, or an administrative bulletin.
- B. Unless superseded by these Rules, the personnel policies, procedures or work rules, and administrative bulletins in effect on the date these Rules become effective remain in effect.

**2.07 RECORDS OF THE COMMISSION**

The Human Resources Department shall maintain all records made by, or required to be filed with, the Commission under these Rules or otherwise in accord with the City's records management policies and procedures. All such records shall be made available to the Commission upon request, and shall be available to Employees and the public in accord with the requirements of the Texas Public Information Act.

**2.08 PUBLICATION OF THESE RULES**

Upon approval of these Rules by the City Council, the Human Resources Department shall publish the Rules in a manner sufficient to provide Employees with reasonable access to, and notice of, the Employees' rights and responsibilities under these Rules. Any amendments to these Rules shall be published in a like manner.

**2.09 SEVERABILITY OF THESE RULES**

These Rules are declared to be severable. If any Rule or part of a Rule shall for any reason be determined invalid or unconstitutional, such determination shall not affect the validity of the remaining Rules or parts of Rules. It is the intent of the Commission and the City Council in approving these Rules that the Rules shall remain in force and effect, notwithstanding the invalidity of any Rule or part of a Rule.

**2.10 EFFECTIVE DATE**

These Rules shall become effective upon approval by the City Council, unless otherwise specified by Council at the time of such approval.



## **RULE 3 – ORGANIZATION OF THE COMMISSION**

### **3.01 POWERS AND AUTHORITY**

The Commission shall have such powers and authority as provided in Article IX of the Charter of the City of Austin, and such ordinances and resolutions as the City Council may approve from time to time.

### **3.02 MUNICIPAL CIVIL SERVICE DIRECTOR**

- A.** The Human Resources Director is designated as the Municipal Civil Service (MCS) Director, and shall carry out the duties and activities of the MCS Director under these Rules.
- B.** The MCS Director shall be responsible for the administrative management of the Commission and its activities, and may delegate such administrative responsibilities to Human Resources Department staff.
- C.** The MCS Director or designee shall ensure that agendas of the Commission are posted in compliance with the Texas Open Meetings Act.
- D.** The MCS Director has authority to act on behalf of the Commission in any matter related to the administration of these Rules that does not require action by the Commission.
- E.** The MCS Director shall maintain all records related to the activities of the Commission as prescribed in these Rules and in accord with the City's records management policies.

### **3.03 COMMISSION MEETINGS**

#### **A. Effect of Commission Bylaws**

Except as provided in these Rules, the Bylaws of the Commission adopted in accord with Chapter 2-1 of the City Code shall govern meetings of the Commission.

#### **B. Regular Meetings**

Regular meetings of the Commission shall be scheduled, by the MCS Director, monthly or as needed to conduct the business of the Commission.

#### **C. Special Meetings**

Special meetings of the Commission may be called at any time by the Chair or any two Members of the Commission. The call shall state the purpose of the meeting.

**D. Notice of Meetings**

Notice of any regular meeting of the Commission shall be provided by the MCS Director no less than three (3) Business Days in advance of a regular meeting. Notice of a special meeting shall be provided in accord with the call for the special meeting or at a minimum, in compliance with the Texas Open Meetings Act.

**E. Agendas for Meetings**

The MCS Director shall recommend and publish the agenda for all regular and special meetings of the Commission, and shall include items approved by the Chair or two Members of the Commission.

**F. Public Meetings**

Meetings of the Commission shall be open to the public except as provided in these Rules.

**G. Quorum for Meetings**

Three (3) members of the Commission shall constitute a quorum for meetings of the Commission, as provided in Article IX of the City Charter, and Chapter 2-1 of the City Code.

**H. Presiding Officer**

The Commissioner designated by the City Council as the chair of the Commission shall preside at all meetings when present. When the chair is not present, the vice-chair shall perform all duties as the chair, as outlined in the Commission bylaws. When the chair and vice-chair are not present, the presiding officer shall be determined by majority vote of the Commissioners present.

**I. Action by the Commission**

A Commission action must be adopted by an affirmative vote of the number of members necessary to provide a quorum.

## **RULE 4 – HIRING, PROMOTIONS, AND LATERAL TRANSFERS**

### **4.01 MANAGEMENT AUTHORITY**

City management retains authority to make Selections, which includes the Initial Selection, Promotion, Lateral Transfer, and Direct Appointments to Positions in the Classified Municipal Civil Service subject to the express requirements of these Rules.

### **4.02 GENERAL STANDARDS**

#### **A. Merit and Fitness Requirements**

All Selections and Direct Appointments to Positions in the Classified Municipal Civil Service shall be made on the basis of Merit and Fitness which includes demonstrated education, training, experience, performance, knowledge, skills, ability, licenses, certifications, and fitness to perform the essential functions and meet the qualifications of a Position, as determined by the hiring authority.

#### **B. Competitive Process**

The Human Resources Department shall develop procedures to evaluate Candidates for Competitive Positions based on Merit and Fitness. All Positions in the Classified Municipal Civil Service shall be considered Competitive Positions unless designated otherwise by the Commission or as specified in these Rules. Competitive Processes may differ depending on the level and type of Position, but shall be designed in a manner intended to identify the best Candidate for the Position.

#### **C. Probationary Status Following Selections**

Individuals who are Selected or Directly Appointed to a Position under these Rules shall be in a probationary status in accord with these Rules. On completion of the Initial Probationary Period, the Employee shall have full employment rights as provided under these Rules.

- 1. Following Initial Selections.** The probationary status following an Initial Selection shall be for a period of six (6) months beginning on the first Work Day of the Initial Selection. In the event an individual is absent from work for a consecutive period exceeding five (5) Work Days while in such probationary status, these absences shall not be counted toward the probation period. While in probationary status following Initial Selection, the individual is an at-will Employee and may be dismissed from employment at any time and on any basis, not prohibited by federal or state law, and without a right to the Appeal Procedures in these Rules.
- 2. Following Promotions.** The probationary status following Promotions shall be for a period of three (3) months beginning on the first Work Day of the Promotion. In the event an Employee is absent from work for a consecutive

period exceeding five (5) Work Days while in such probationary status, these absences shall not be counted toward the probation period. While in such probationary status, the Employee may be removed from the Position at any time and on any basis, not prohibited by federal or state law, and without a right to the Appeal Procedures in these Rules. In the event of such removal, the Employee shall be returned to the prior Position and pay rate held before the Promotion, or when necessary, placed in another Position equivalent to the prior Position in pay, benefits, and Salary Grade with the Employee's agreement and will not be subject to another probationary period in that Position.

#### **4.03 COMPETITIVE SELECTIONS**

##### **A. Competitive Selections Process**

Except as provided in these Rules, no Competitive Position in the Classified Municipal Civil Service may be filled except after Posting in a format and manner approved by the Human Resources Department, and an evaluation of Candidates through a Competitive Process is conducted in compliance with these Rules.

The Competitive Process shall use a rating matrix to determine the top Candidate, using numerical scoring to award points for relevant experience; seniority of Applicants; Preferred Qualifications; assessment scores (when applicable); and interview scores, including pre-defined factors for responses that align with the scoring system.

Only standardized assessments shall be used unless the non-standardized assessments have been pre-approved by the Human Resources Department.

##### **B. Job Qualifications in Postings**

Postings for Competitive Positions shall specify the required Minimum Qualifications for the Position, and may specify other Preferred Qualifications relevant to the Position.

##### **C. Submission of Applications**

No individual shall be Selected to a Competitive Position unless the individual has submitted an Application for that Position in a format and manner approved by the Human Resources Department and in compliance with the job Posting requirements.

##### **D. Evaluation of Candidates by Competitive Process**

Each individual who submits an Application as provided in these Rules and meets the Minimum Qualifications for a Competitive Position shall be considered a Candidate for that Position. Employees, in Good Standing, who are Candidates within the Department or division that the Position resides in and who meet the Minimum and Preferred Qualifications (if any) of the Position will be included in the initial interview.

#### **4.04 DIRECT APPOINTMENTS**

##### **A. Direct Appointments**

Positions may be filled by Direct Appointments without a Competitive Process, and in accord with these Rules. An individual appointed to a Position under this Rule must meet the Minimum Qualifications of the Position.

##### **B. Criteria for Direct Appointments**

A Position may be filled by Direct Appointment upon the following conditions:

1. The Employee being appointed has completed an Initial Probationary Period; and
2. The purpose of the Direct Appointment is limited to one of the following:
  - a) to Laterally Reassign an Employee in the same Department, or to another Department when both Department Heads are in agreement;
  - b) to accommodate an Employee returning to work under the City's:
    - i. Return-to-Work procedure;
    - ii. Family and Medical Leave Act policy (FMLA);
    - iii. legal obligations under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA);
    - iv. procedures for accommodations under Americans with Disabilities Act (ADA);
  - c) to assign an Employee who was displaced as the result of a successful Appeal to the Municipal Civil Service Commission under these Rules;
  - d) to assign an Employee removed from a Promotional Probationary Period, voluntary Demotion, or involuntary Demotion under these Rules;
  - e) to assign an Employee who may be displaced due to a Reduction-in-Force as defined in these Rules;
  - f) to comply with federal, state or local laws; or
  - g) to implement an exception approved by the Commission.

#### **4.05 SELECTION OR DIRECT APPOINTMENT CRITERIA**

As part of Merit and Fitness, the Department may require job-related criteria, such as background checks, drug and alcohol testing, and employment reference checks on any Selection or Direct Appointment. Drug and alcohol testing and criminal background investigations will be conducted when required by City policy, state, and/or federal law. Criminal background investigations may also be conducted by procedures for Employees who are in Positions directly working with or in frequent contact with vulnerable populations, and Positions with financial responsibilities to include: Employees in accounting and financial positions, cash handling, check signing authority, Pro Card users, grant fund oversight and distribution of funds to community groups, timekeepers,

Employees with privileged system approval access, and Employees who regularly access a customer billing system or AMANDA in alignment with essential job functions.

## **RULE 5 –REDUCTION-IN-FORCE**

### **5.01 REDUCTION-IN-FORCE**

A Reduction-in-Force of Employees may occur when it becomes necessary for the City to effect immediate reductions in the size of the City workforce.

### **5.02 NOTICE OF INTENDED REDUCTION-IN-FORCE**

#### **A. Notice of Intended Reduction-in-Force**

Notice of an involuntary separation from employment shall be provided to the MCS Director in a written notice from the Department Head for this Rule to be applicable. The MCS Director shall maintain any such notice received in the records of the Commission. The Human Resources Department shall coordinate all Reduction-in-Force actions with the affected Departments according to approved procedures developed to implement this Rule.

#### **B. Specification of Job Functions Subject to Elimination**

The notice of intended Reduction-in-Force shall be based upon and specify one (1) of the following three (3) approaches to be followed:

1. elimination of an entire function or program and respective Position(s) associated with the function or program consistent with the operating needs of the City;
2. reduction of the number of Positions supporting a function or program consistent with the operating needs of the City; or
3. reduction of the number of Positions supporting a function or program based upon specific and documented skill sets consistent with the operating needs of the City.

The notice of intended Reduction-in-Force shall specify each affected Employee.

#### **C. Criteria for Determining Affected Employees**

Whenever necessary to eliminate or reduce staffing levels, Employees shall be selected for separation from employment in the affected Department in accord with the following criteria:

1. First, Employees in an Initial Probationary Period following an Initial Selection shall be separated in order of Selection, with the most recent Selection separated first.
2. Second, all other Employees shall be separated based on length of service with the City as the first criterion and documented past work performance as the second criterion. The Employee last hired by the City without a break in service shall be separated first. If there is a tie in length of service, it shall be broken by ranking affected Employees according to documented performance appraisals for the previous twelve (12) months. If the documented past performance is equal, the Human Resources Director shall select by lot the Employee who will be separated.

**D. Notice of Separation to Affected Employees**

Whenever possible, with the exception of Employees funded through external sources, Employees will be provided sixty (60) Days' notice of a separation due to Reduction-in-Force. A Reduction-in-Force notice may be provided to the affected Employee by personal delivery or, if the affected Employee is not present in the workplace, via certified mail or electronic mail when possible, to the address shown for the Employee in the City's personnel records. Upon recommendation of the Director of Human Resources, the City Manager may provide up to twelve weeks of severance pay to an Employee who has been laid off.

**5.03 STATUS OF EMPLOYEES SEPARATED DUE TO REDUCTION-IN-FORCE**

**A. Reassignments**

Whenever possible, an affected Employee shall be Laterally Reassigned or placed by Direct Appointment to another Position in the Classification Plan within the same or a different Department in accord with these Rules. Lateral Reassignments and Direct Appointments shall be consistent with the procedures defined by the Human Resources Department and based on Merit and Fitness.

**B. Application for Other Open Positions**

1. Prior to the effective date of the separation from employment, an affected Employee may Apply on the following terms for any open Position within the City for which the Employee is qualified:
  - a) The affected Employee shall have Preferred Interview Status.
  - b) The affected Employee shall be considered on the same basis as any other internal Applicant for a Promotion to a Competitive Position.
  - c) When all other job-related criteria are equal for a Position at or below the Salary Grade the affected Employee currently holds, the hiring manager shall Select an affected Employee for an open Position ahead of an external Candidate or an internal Candidate not affected by the Reduction-in-Force.
2. After the effective date of the separation from employment, a previously affected Employee may Apply for any open Position within the City with a Preferred Interview Status:
  - a) The former Employee shall have Preferred Interview Status for a Competitive Position for a period of one (1) Year following the Employee's separation date.

**C. Recall and Reemployment of Affected Employees**

1. An affected Employee shall be placed on a citywide reemployment list for a period of one (1) Year following the effective date of the layoff. The recall list shall be used to fill a Vacant Position with the same Classification from which the Employee was laid off, so long as the Employee qualifies for the Position. The last Employee laid off shall be the first Employee recalled and shall continue in that order. Nothing herein shall be construed as a guarantee of reemployment.



2. The Employee will be removed from the reemployment list and further consideration if one of the following occurs:
  - a) The Employee does not respond in writing to the reinstatement notice within ten (10) Business Days;
  - b) The Employee refuses a Position with the same Classification; or
  - c) The Employee has been laid off for more than one (1) Year.
3. An affected Employee recalled to a Position shall have benefit leave accruals restored to the accrual rate and leave balances effective at the date of the layoff, excluding any payout of benefit leave at the time of separation.

**D. Appeal Rights of Affected Employees**

Affected Employees may Appeal their Discharge due to Reduction-in-Force in accord with these Rules, except that:

1. Affected Employees who accept a Lateral Reassignment or Direct Appointment under these Rules have no Appeal right under these Rules concerning the Employees' selection for separation due to Reduction-in-Force.
2. Affected Employees who were in an Initial Probationary Period status at the time of selection for separation have no Appeal right under these Rules.

## **RULE 6 – DISCIPLINARY ACTIONS**

### **6.01 MANAGEMENT AUTHORITY**

City management has the authority to administer corrective and Disciplinary Actions for Employees in the Classified Municipal Civil Service. Such authority for Disciplinary Probation, Disciplinary Suspension, Demotion and Discharge is subject to the requirements and procedures in these Rules.

### **6.02 CAUSE FOR CERTAIN DISCIPLINARY ACTIONS**

#### **A. Cause Required**

An Employee in a Position in the Classified Municipal Civil Service is subject to Disciplinary Probation, Disciplinary Suspension, Demotion, or Discharge only for Cause as defined in these Rules.

#### **B. “Cause” Defined**

“Cause” for discipline in these Rules means an objectively reasonable, good faith belief by management following an appropriate, documented inquiry that an Employee has engaged in one (1) or more of the following types of conduct while on duty or if off duty conduct is related to or relevant to the Employee’s job:

- 1. Insubordination** – intentional refusal or failure to obey a clear and lawful direction or instruction from an authorized supervisor or other authorized member of City management, except in the case of orders that impact health or safety or if the order is illegal or unethical.
- 2. Theft** – taking of property that belongs to another, including the City, without the permission of the owner and with the intent to steal or to deprive the owner of the possession or use of the property.
- 3. Dishonesty** – an intentionally false statement (verbal, written, or electronic) or an intentional failure to disclose information when required, that is related to the conduct of City business, including an Appeal under these Rules, or to the Position of the Employee.
- 4. Unacceptable Personal Conduct** – behavior by an Employee that is incompatible with the City’s values, including, but not limited to:
  - a)** conduct that violates federal, state, or local laws;
  - b)** conduct that violates the City’s Code of Ethics;
  - c)** conduct that violates the City’s equal employment opportunity, anti-harassment, anti-discrimination, or anti-retaliation policies;
  - d)** conduct that violates the City’s drug-free workplace policy;
  - e)** conduct that results in threatened or actual violence toward, or abuse of, Employees or members of the public;

- f) conduct that results in intentional damage to, destruction of, misuse or unauthorized use of, City property, records or resources;
  - g) conduct that is unprofessional or unethical towards other City Employees or members of the public.
5. **Unacceptable Job Performance** – job performance that fails to meet job requirements as set out in the relevant Job Description, work or performance plan, or as directed by management.
  6. **Ineligibility** – failure to maintain a license, certification, other qualification or job-related criteria, including failure to pass a criminal background investigation due to a relevant conviction, that results in the inability to perform an essential job function required for the Position held by the Employee.
  7. **Unacceptable Attendance** – documented failure to meet the acceptable standards of the Position for attendance, tardiness, or absence notification.
  8. **Unsafe Behavior** – intentional or repeated failure to follow established workplace safety rules, standards, and guidelines.
  9. **Refusal to Comply with Subpoena** – intentional failure or refusal to comply with a Subpoena issued under the authority of the Commission and served on the Employee
  10. **Policy Violation** – violation of City personnel policies, written work rules and procedures aligned to personnel policies, and administrative bulletins distributed to and acknowledged by the Employee.

### 6.03 ADMINISTRATION OF EMPLOYEE DISCIPLINE

#### A. Purposes of Disciplinary Action

Disciplinary Action shall be administered for the purposes of:

1. providing corrective action that helps Employees understand expectations to modify behavior or performance for success in the organization;
2. deterring the same or similar behavior or performance by the Employee in the future;
3. reinforcing the City's commitment to Municipal Civil Service Rules, applicable personnel policies, procedures, Departmental rules, and administrative bulletins; or
4. discharging an Employee from the City workforce, if management reasonably concludes the Employee's conduct was so egregious that continued employment would be incompatible with the City's values and expectations, or that lesser Disciplinary Action has been or would be ineffective.

**B. Factors Considered in Administering Disciplinary Action**

Disciplinary Actions under these Rules shall be applied for the purposes stated in Part A, above, in a manner that takes into account the following factors:

1. the nature and severity of the Employee’s conduct;
2. the Employee’s prior work history and disciplinary record;
3. the manner in which similar conduct has been addressed in the past by the City;
4. any mitigating or aggravating circumstances surrounding the conduct at issue; and
5. the impact of the action on the City’s functions, operations, and ability to maintain the public’s trust.

**C. Review Prior to Disciplinary Action.**

No Disciplinary Action referred to in these Rules shall be effective unless, prior to such action, the Employee shall have received at least three (3) Business Days advance written notice of a pre-disciplinary meeting to permit the Employee to respond to the potential action. The written notice shall state at a minimum, the date of the meeting, the potential action, and the reasons for the potential action and that the Employee may elect to respond in person or in writing to the written notice. Pre-disciplinary written notice shall be provided and shall be delivered to the Employee (and a representative if designated by the Employee) in person, or mailed to the Employee’s last known address shown in the City’s personnel records via certified mail, or electronic mail when possible, along with a copy of any final investigation report (if applicable and not prohibited by law) related to the potential action. Providing such written notice and opportunity for an Employee to respond to the notice shall constitute compliance with the requirements of this paragraph.

**D. Employee Representation**

**1. When an Employee May Bring a Representative**

- a) An Employee may bring a representative of his/her choice to the following types of meetings: a pre-disciplinary meeting, a meeting formally requested by management at which discipline will be issued, a performance improvement plan (PIP) issuance meeting, and an Investigatory Interview at which the Employee is a complainant, Respondent, or witness, excluding initial written witness statements (hereinafter referred to collectively as “meetings”).

**2. Requests for a Representative**

- a) During an Investigatory Interview, if the investigator interviewing a witness reasonably believes that the witness may become a Respondent, the investigator must immediately inform the witness of such, and shall offer the witness an opportunity to request a representative. Additionally, a complainant or Respondent may make a request for representation during an Investigatory Interview.

If the representative is not available at that time to attend the Investigatory Interview, the Respondent may request that the interview be rescheduled. If so, the Department shall reschedule the Investigatory Interview to occur

within three (3) Business Days of the original Investigatory Interview date, unless both parties agree to a longer period of time.

- b) For all other meetings where a representative is permitted,
  - i. A minimum of 24-hour's notice of the meeting date and time shall be provided to the Employee, unless otherwise stated in these Rules.
  - ii. For a meeting scheduled in advance, if the Employee informs the Department at least 24-hours prior to the meeting that the Employee will bring a representative to the meeting, but the Employee's representative is not available to attend at the scheduled meeting time, the Department will reschedule the meeting as set forth below.
  - iii. The Department shall reschedule the meeting to occur within three (3) Business Days of the original meeting date, unless both parties agree to a longer period of time.
  - iv. A good-faith effort shall be made to schedule meetings that take into consideration the representative's schedule.
  - v. If the meeting is rescheduled and the Employee's designated representative is not available to attend, it is the responsibility of the Employee to find an alternate representative and the meeting shall proceed as rescheduled with or without a representative present.
- c) During an Investigatory Interview, if the investigator interviewing a witness fails to immediately inform a witness when the witness has become a Respondent and offer the witness an opportunity to request a representative; and to reschedule the interview as set forth above, this failure shall be considered by the Commission in making a determination on an Appeal of a resulting Disciplinary Action issued under these Rules.

### **3. Role of the Employee Representative**

- a) During a meeting, a representative may participate as follows, as long as the representative does not unreasonably interfere with the proceedings as determined by the representative of the City:
  - i. Be informed of the subject matter;
  - ii. Consult privately with the Employee;
  - iii. Speak;
  - iv. Request a break;
  - v. Ask for clarification regarding a question; and
  - vi. Provide relevant information to the interviewer at the close of questioning.
- b) In an Appeal or other Employee-generated complaint/grievance, the representative has all the rights as outlined in these Rules, along with the rights to:

- i. File an Appeal or complaint/grievance on behalf of the Employee and schedule any associated meetings;
- ii. Propose remedies to resolve the Appeal or complaint/grievance;
- iii. Speak on behalf of the Employee during the meeting, although the representative may not testify as though to provide personal knowledge of the Employee;
- iv. Ask questions during the meeting or hearing; and
- v. Correspond with the supervisor/HR staff on the status of the Appeal or complaint/grievance.

**E. Written Notice of Disciplinary Action.**

No Disciplinary Action referred to in these Rules shall be effective until management has provided the Employee with a written notice of such Disciplinary Action. The written notice of Disciplinary Action shall state at a minimum, the method in which the Employee responded to the Pre-Disciplinary meeting notice (e.g., in person, in writing, or no response provided) and the final Disciplinary Action. Such notice shall be provided to the Employee as follows:

1. by delivery of the notice to the Employee in person; or
2. if the Employee is not present in the workplace, by sending the notice via certified mail, or electronic mail when possible, to the Employee's last known address as shown in the City's personnel records.

Management shall provide a copy of the notice to the MCS Director, who shall make the notice a part of the records of the Commission.

## **RULE 7 – APPEALS TO THE COMMISSION**

### **7.01 ACTIONS THAT MAY BE APPEALED**

The Commission shall hear and make final, binding decisions in accord with these Rules on Appeals by Employees resulting from the following actions:

- A.** a Disciplinary Probation, Disciplinary Suspension, Demotion and Discharge; or
- B.** a Denial of Promotion to a Candidate for a Competitive Position.

### **7.02 GENERAL RULES FOR GRIEVANCES AND APPEALS**

#### **A. Departmental Grievance Process**

Prior to initiating an Appeal regarding Disciplinary Probation, Disciplinary Suspension, Demotion, or Denial of Promotion, an Employee must exhaust the Departmental grievance process as outlined below:

1. The Employee shall file a written grievance with the Employee's next-level manager or supervisor in the Employee's chain of supervision that did not issue the Disciplinary Action or deny the Promotion within twenty (20) Business Days of the action.
2. The manager or supervisor shall respond to the Employee's written, filed grievance in writing within ten (10) Business Days of receipt of the grievance.
3. If the Employee receives no response or is not satisfied with the response from the manager or supervisor, the Employee may appeal to the Department Head within five (5) Business Days.
4. The Department Head shall respond to the Employee's written, filed grievance in writing within ten (10) Business Days of receipt of the grievance.
5. If the Employee receives no response or is not satisfied with the response from the Department Head, the Employee may file a notice of Appeal with the MCS Director within fifteen (15) Business Days of receipt of the response from the Department Head or, in the case of no response, fifteen (15) Business Days from the deadline for the response.
6. An Employee may designate any individual or entity as the Employee's representative, as described in 6.03.D, during a Departmental grievance process under these Rules.

#### **B. Written Notice of Appeal to Commission**

The Commission shall have no authority to hear or decide an Appeal of an action under these Rules unless the aggrieved Employee shall have filed a notice of Appeal with the MCS Director within fifteen (15) Business Days following the date the Employee is provided a final Departmental grievance response or notice of Discharge, or, in the case of no response, fifteen (15) Business Days from the deadline for the response. Such notice shall be made using a form as specified by the MCS Director. A notice shall be deemed filed with the MCS Director on the

Business Day that the office of the MCS Director receives a completed notice, signed by the Employee.

**C. MCS Director's Procedures on Receipt of Notice of Appeal**

After receiving a notice of Appeal, within five (5) Business Days the MCS Director shall:

1. provide notice to the Commission of the Appeal;
2. make the notice a part of the records of the Commission; and
3. provide a copy of such notice to the Department Head, or designee, of the Department named in the notice of Appeal and the Employee (the parties).

**D. Written Notice of Hearing**

Within ten (10) Business Days from receipt of the notice of Appeal, the MCS Director shall provide the Employee and the Department Head, or designee, a written notice of hearing date conforming to the requirements of these Rules.

**E. Rescheduling a Hearing**

Within five (5) Business Days of receiving the first notice of hearing, either party may elect to reschedule the hearing by providing written notice to the MCS Director. Otherwise, a hearing may be rescheduled by mutual agreement of the parties by providing the MCS Director with a written agreement to reschedule signed by both parties, with notice to the Commission. For any other request, the MCS Director shall contact the Commission Chair, and the Chair shall determine if a hearing shall be rescheduled. Upon approval of any rescheduling, the MCS Director shall issue a new notice of hearing as provided in these Rules.

**F. Employee Representation During Appeals**

An Employee may designate any individual or entity as the Employee's representative in an Appeal under these Rules. Any such designation shall be in writing in a format approved by the MCS Director and signed by the Employee. If an Employee designates a representative under this Rule, the MCS Director shall provide the Employee and the Employee's representative with all notices and other information required to be provided to the Employee under these Rules.

**G. Prohibited Contact with Commissioners**

1. The Employee, the Department, and their representatives shall direct all communications concerning an Appeal to the MCS Director, and shall not communicate directly or indirectly with a Commissioner concerning an Appeal at any time before the hearing on that Appeal, except in an open meeting of the Commission with a quorum of Commissioners present.
2. Commissioners shall not communicate with an Employee, Department, or their representatives concerning a pending Appeal, or a matter the Commissioner believes may become an Appeal, prior to a hearing on the Appeal, except in an open meeting of the Commission with a quorum of Commissioners present.



### **7.03 ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCESS**

#### **A. Availability of ADR Process**

The MCS Director shall provide information to Employees about the ADR Process and may encourage Employees to voluntarily elect to use that process.

#### **B. Employee's Election to Use ADR Process**

At the time of filing a notice of Appeal, an Employee may elect to participate in a voluntary ADR Process coordinated through the Ombuds Office.

#### **C. Confidentiality of ADR Process**

The ADR Process is intended to be separate from the hearing process and shall not stop or extend the timelines of the Appeal process under these Rules. To achieve this purpose:

1. All statements related to actual or proposed negotiations, concessions and agreements in an Appeal made as part of an ADR Process by the parties, their representatives, or others participating in an ADR Process are not admissible in a hearing under these Rules.
2. A mediator, conciliator, or other neutral individual involved in facilitating an ADR Process is prohibited from testifying or providing other evidence concerning an ADR Process in a hearing under these Rules.

### **7.04 SUBPOENAS**

#### **A. Authority to Issue Subpoenas**

The Commission shall have the full authority provided by Article IX Section 2 of the City Charter to issue Subpoenas in connection with Appeals under these Rules. The Commission makes a non-exclusive delegation of such authority to the MCS Director to issue Subpoenas on its behalf, subject to the terms and limitations of these Rules. Subpoenas for the production of witnesses or documents at an Appeal hearing shall be issued on a form as specified by the MCS Director. The MCS Director shall retain a copy of each Subpoena issued and make such copy a part of the records of the Commission.

#### **B. Requests for Subpoenas**

An Employee or a Department Head may request Subpoenas for appearance of witnesses and production of documents at an Appeal hearing. Subpoenas may be requested any time between the receipt of a notice of hearing as provided in these Rules and 5:00 p.m. fifteen (15) Business Days prior to the hearing. A request for Subpoenas shall be made on a form as specified by the MCS Director. The MCS Director shall mark all such requests received to indicate the date the request was received, and shall make all such requests a part of the records of the Commission. Once Subpoena requests have been submitted to the MCS Director, a party may pick up a copy of the other party's Subpoena list.

#### **C. Issuance of Subpoenas**

The MCS Director has authority under these Rules to issue Subpoenas upon receipt of a timely and complete request for Subpoenas. The MCS Director shall sign any

Subpoena issued. The MCS Director shall attempt to issue a Subpoena after receipt of a request for Subpoena.

**D. Service of Subpoenas**

The MCS Director may serve the Subpoena by personal delivery to the individual named in it, via certified mail or electronic mail when possible, addressed to the individual named in the Subpoena, or by any other reasonable manner designated by the MCS Director. A Subpoena addressed to a City Employee may be served by personal delivery to the Employee's workplace.

**E. Invalid Subpoena Requests**

The MCS Director or the Commission may not issue a Subpoena based on a request for Subpoena:

1. that was received fewer than fifteen (15) Business Days prior to the scheduled hearing to which the Subpoena relates, unless the Commission Chair determines good cause was shown by the party for the delay;
2. that does not contain complete or accurate information after an attempt by the MCS Director to obtain the complete or accurate information from the requestor;
3. that is directed to a Member of the City Council, City Manager, the Deputy or Assistant City Manager(s), or the MCS Director, unless in direct association with the event;
4. that does not comply with these Rules; or
5. that seeks production of documents or other items that are not within the custody or control of the City, or which are made confidential under applicable law.

**F. Compliance with Subpoenas**

1. Proper service of a Subpoena on an individual shall constitute a compulsory direction to that individual under the authority of the Commission to appear and, if applicable, produce documents, at the time and place designated in the Subpoena for the purposes stated in the Subpoena.
2. An individual receiving a Subpoena who claims to be unable to comply with any such Subpoena based on compelling personal circumstances or an unreasonable burden placed on the individual by any such Subpoena must provide a written statement in the space provided on the Subpoena setting out the factual basis for non-compliance. The Subpoena including the written statement must be filed with the MCS Director five (5) Business Days after receipt of the Subpoena for consideration by the Commission at the time of the Hearing. A copy of the Subpoena including the written statement shall be provided to the Chair in advance of the Hearing for consideration for alternative testimony.
3. The MCS Director may make any order or provision under these Rules to address issues of non-compliance with a Subpoena issued and served under this Rule.

## **7.05 SUBMISSION OF HEARING INFORMATION**

### **A. Required Pre-Hearing Submission**

No later than 5:00 p.m. ten (10) Business Days prior to an Appeal hearing, each party shall file with the MCS Director a written submission under this Rule. Seven (7) copies of the submission must be submitted on two sided, sequentially numbered pages.

#### **1. Employee's Submission**

The Employee's submission shall include information listing the reasons for Appeal, names of witnesses the Employee has Subpoenaed or intends to call at the hearing, copies of written statements the Employee intends to offer under these Rules, and copies of any documents the Employee intends to provide as evidence at the hearing. The submission shall be made using a form as specified by the MCS Director.

#### **2. Department's Submission**

The Department's submission shall include information about the issues for Appeal, names of witnesses the Department has Subpoenaed or intends to call at the hearing, copies of witness statements the Department intends to offer under these Rules, and copies of any documents the Department intends to provide as evidence at the hearing. The Department's submission shall include, at a minimum, all performance appraisals and disciplinary actions concerning the Employee for the three (3) Years immediately preceding the Disciplinary Action or Denial of Promotion under Appeal. The submission shall be made using a form as specified by the MCS Director.

### **B. Access to Hearing Information Submissions**

Once hearing information has been submitted to the MCS Director, the MCS Director will notify the parties that the submissions are available to be picked up. At the hearing, the MCS Director shall provide the Commission with any Hearing Information submissions received from either party.

### **C. Rebuttal Submissions**

A Rebuttal Submission may be submitted in writing to the MCS Director no later than 5:00 p.m., five (5) Business Days prior to the hearing. Seven (7) copies of the response must be submitted on two-sided, sequentially-numbered pages. A Rebuttal Submission shall be available to the other party as soon as it has been submitted. If either party does not provide an initial submission, that party is not permitted to submit a Rebuttal Submission unless that Submission is to provide Subpoenaed documents received after the initial submission deadline.

### **D. Objection to Witnesses and Documents**

A party may object at a hearing to the presentation of any witness or document by the other party that was not submitted to the MCS Director in compliance with this Rule. Upon such objection, the Commission may permit the presentation of the witness or document by a majority vote of the Commissioners present for good cause shown.

## **7.06 HEARINGS – GENERAL RULES**

### **A. Number of Commissioners**

Appeal hearings shall be conducted by at least three (3) Commissioners. A vote by three (3) Commissioners in agreement is needed to take action on an Appeal, unless otherwise specified in these Rules.

### **B. Manner of Conducting Hearings**

Appeal hearings shall be conducted by the Commission with the overall goal of discerning the truth in any factual dispute and applying these Rules in a fair and consistent manner. The conduct of Appeal hearings shall be respectful and professional, but not unnecessarily formal in tone or process. The Commission shall ensure that the parties in a hearing have a clear understanding of the process and a fair opportunity to present their witnesses and evidence to the Commission.

### **C. Open Proceedings**

Hearings shall be conducted under the following procedures:

#### **1. Presenting Evidence**

Presentation of testimony and other evidence in a hearing shall be conducted in open session unless the Commission elects, by a majority vote, to conduct all or part of the presentation of witnesses or evidence in closed session. If the Commission elects, by a majority vote of the Commissioners present, to conduct all or part of a hearing in closed session, the appealing Employee may request that the hearing continue in open session, and the Employee's request shall be honored, unless prohibited by law. The Commission shall consider a request by the appealing Employee to conduct the hearing in closed session.

#### **2. Deliberations**

After the close of all evidence, the Commission shall conduct deliberations on an Appeal in closed session, unless the Employee requests that deliberations be conducted in open session, the Employee's request shall be honored.

#### **3. Vote and Decision**

Commissioners shall decide the outcome of any Appeal with a vote in open session, and shall not vote on or decide the outcome of an Appeal in closed session.

### **D. Consideration of Evidence**

The Commissioners shall consider only the testimony of the witnesses and other evidence offered by the parties at the hearing and shall rule on any objections made by either party. The rules of evidence used in court proceedings shall not apply, but the Commission may elect, by a majority vote of Commissioners present, to exclude evidence that has no value in determining the truth of an issue in dispute or where the prejudicial effect of the evidence outweighs its value in determining the truth of an issue in dispute.

### **E. Use of Sworn Statements or Electronic Testimony**

1. When an individual who has been Subpoenaed is unable or unwilling to attend a hearing, or on approval by a majority vote of the Commissioners present in any

other circumstance, a party may offer testimony from the individual by sworn statement or electronic testimony.

2. Sworn statements shall be signed and dated by the individual making the statement and shall include an attestation at the end of the statement above the signature of the individual making the statement in substantially the following form:

“I swear and affirm under penalty of perjury that all of the statements made above are true and correct.”

3. Sworn statements shall be included in the Hearing Information submitted by a party under these Rules.
4. All or part of a sworn statement shall be excluded from consideration if the Commission determines by a majority vote of those present that it fails to comply with this Rule, or that it is not reliable or credible.
5. Electronic testimony can be provided by telephone, audio/visual, or other electronic means at or before the hearing.

#### **F. Recordings of Hearings**

The MCS Director shall create a video or audio recording of all hearings, and shall retain such recording as the official record of the hearing, in accordance with applicable records retention schedules. No other video or audio recording of any part of a closed hearing shall be permitted by any individual unless approved in advance by majority vote of the Commission.

#### **G. Time Limits for Presenting Evidence**

Unless otherwise permitted by the Commission, each party shall have one hundred twenty (120) minutes to present that party’s witnesses and evidence in a hearing, and to question the witnesses presented by the other party. This time period does not include any time permitted by the Commission for opening or closing statements and does not include any time expended through questioning by the Commission of either party’s witnesses or additional direct or cross-examination of witnesses by the parties based on questioning by the Commission.

#### **H. Order of Conducting Hearings**

Proceedings in a hearing shall be conducted in the following order unless otherwise determined by the Commission:

1. The hearing shall be called to order by the chair or presiding officer.
2. The Commission may address any administrative issues it determines appropriate, such as clarification of issues, sequestering of witnesses, agreements between the parties, scheduling, or other matters.
3. The Commission shall permit the parties to make an opening statement concerning the Appeal. The party with the burden of proof shall go first.
4. The party with the burden of proof shall present its witnesses and other evidence first, and then the other party shall present its witnesses and other evidence.

5. The parties may present any further rebuttal evidence permitted by the Commission.
6. The Commission shall permit the parties to make a closing statement. The order of the party's closing statement will be the same as the order of the opening statement.
7. The chair or presiding officer shall announce the close of the hearing, after which no further evidence or argument may be offered or considered.
8. The Commission shall deliberate as a group as provided in these Rules, and consider and evaluate the testimony and other evidence offered by the parties.
9. The Commission may adjourn its deliberations at any time as determined by a majority vote in open session of the Commission to the following regular Business Day. If a meeting continued to the following regular Business Day is again continued to another Day, the Commission must give notice of the meeting's continuance to the other Day.
10. The Commission shall decide the issues in the Appeal in open session and announce its decision in open session. The decision of the Commission shall be recorded using a notice of decision form as specified by the MCS Director. All Commissioners participating in the Appeal shall sign the notice.
11. The MCS Director shall make the notice a part of the records of the Commission, and provide a copy to the parties within two (2) Business Days of the Commission's decision.

**I. Other Hearing Rules**

1. All testimony during a hearing shall be sworn. The chair or other presiding officer shall administer an oath to all individuals prior to the offer of any testimony by such individual.
2. Members of the Commission may question witnesses at the conclusion of the witnesses' testimony and any cross or re-direct examination by the parties, and may recall witnesses for further examination.
3. Parties may redirect and cross-examine witnesses after questioning by the Commission to address any questions raised by the Commissioners' questions.
4. In order to vote and sign the notice of decision, a Commissioner must be present for the entire hearing of the Appeal.

**7.07 FINAL RULING**

The grant or denial of any Appeal under these Rules is a final, binding determination on whether Cause under Rule 6.02 existed for the conduct at issue, but shall not affect the rights or duties of any Employee under a state or federal law outside these Rules.

## **7.08 SPECIAL RULES FOR DISCIPLINARY APPEALS**

In addition to the provisions of Rules 7.01 – 7.07 of these Rules, the following shall apply to an Appeal hearing involving a Disciplinary Action under these Rules:

- A.** Appeal hearings for Discharges under this Rule shall be expedited, when possible.
- B.** The issue for decision in an Appeal involving a Disciplinary Action shall be: Was there Cause for the Disciplinary Action and, if not, what is the remedy.
- C.** The Department shall have the burden of proof and will present its evidence first in the hearing.
- D.** If at least three (3) Commissioners determine, based on the greater weight of the credible evidence, that there was Cause for the Disciplinary Action, then the action of the Commission shall be to deny the Appeal. In that case the Disciplinary Action shall stand.
- E.** If at least three (3) Commissioners determine, based on the greater weight of the credible evidence, that there was not Cause for the Disciplinary Action, then the action of the Commission shall be to grant the Appeal. In that case, the Disciplinary Action shall be rescinded, and the Commission may order the following actions:
  - 1.** the issuance of a lesser level of Disciplinary Action, if appropriate under the facts established; or
  - 2.** restoration of the Employee's Position (if applicable), and all or part of any pay or other benefits lost by the Employee as a result of the Disciplinary Action; or
  - 3.** both.
- F.** Unless at least three (3) Commissioners agree, the decision on the Appeal shall be determined by the majority vote of the Commissioners present.
- G.** In the event of a tie vote, the party with the burden of proof is deemed to have not met its burden and the Commission may order the actions as provided in Part E above.

## **7.09 SPECIAL RULES FOR DENIAL OF PROMOTION APPEALS**

In addition to the provisions of Rules 7.01 – 7.07 of these Rules, the following shall apply to an Appeal hearing involving a Denial of Promotion under these Rules:

- A.** Appeal hearings under this Rule shall be expedited, when possible, to allow a hearing prior to the expiration of the Initial or Promotional Probationary Period for the Promotion at issue.
- B.** The issue for decision in an Appeal involving a Denial of Promotion shall be: Did the Department have a reasonable, good faith belief that the Employee should not have received the Promotion.
- C.** The Employee shall have the burden of proof and will present his/her evidence first at the hearing.
- D.** If at least three (3) Commissioners determine, by the greater weight of the credible evidence, that the Department had a reasonable, good-faith belief that the Employee

should not have received the Promotion, then the action of the Commission shall be to deny the Appeal.

- E.** If at least three (3) Commissioners determine, by the greater weight of the credible evidence, that the Department did not have a reasonable, good-faith belief that the Employee should not have received the Promotion, then the action of the Commission shall be to grant the Appeal. In that event:
  - 1.** The Employee shall be placed in the Position at issue and may be awarded any lost pay or benefits; and
  - 2.** The individual who initially received the Promotion shall be placed by Direct Appointment under these Rules in any open Position laterally or at his/her prior Salary Grade and pay rate for which the Employee is qualified, with no right of Appeal under these Rules.
- F.** Unless at least three (3) Commissioners agree, the decision on the Appeal shall be determined by the majority vote of the Commissioners present.
- G.** In the event of a tie vote, the party with the burden of proof is deemed to have not met its burden.

#### **7.10 SPECIAL RULES FOR REDUCTION-IN-FORCE APPEALS**

In addition to the provisions of Rules 7.01 – 7.07 of these Rules, the following shall apply to an Appeal involving a separation due to Reduction-in-Force under these Rules:

- A.** The issue for decision in a Reduction-In-Force Appeal shall be: Did the Department have a reasonable, good faith belief that the Employee should have been selected for separation due to Reduction-in-Force. The decision of the Department to conduct a Reduction-in-Force and the number of Positions eliminated shall not be contested issues in the Appeal.
- B.** The Department shall have the burden of proof and will present its evidence first at the hearing.
- C.** If at least three (3) Commissioners determine, by the greater weight of the credible evidence, that the Department had a reasonable, good-faith belief that the Employee should have been selected for separation due to Reduction-in-Force, then the action of the Commission shall be to deny the Appeal.
- D.** If at least three (3) Commissioners determine, by the greater weight of the credible evidence, that the Department did not have a reasonable, good-faith belief that the Employee should have been selected for separation due to Reduction-in-Force, then the action of the Commission shall be to grant the Appeal. In that event:
  - 1.** the Employee shall be reinstated to the Employee's former Position, if that Position still exists, or the Department may place the Employee in a comparable Position if the former Position no longer exists; and
  - 2.** the Employee may be awarded any pay or other benefits lost by the Employee as a result of the separation.



- E.** Unless at least three (3) Commissioners agree, the decision on the Appeal shall be determined by the majority vote of the Commissioners present.
- F.** In the event of a tie vote, the party with the burden of proof is deemed to have not met its burden.