



OPERATIONAL GUIDELINES

ALTERNATIVE DISPUTE RESOLUTION FOR MUNICIPAL CIVIL SERVICE APPEALS

ISSUED BY
CITY OF AUSTIN – OMBUDSPERSON

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1 – OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION

1.01 ALTERNATIVE DISPUTE RESOLUTION DEFINED

In conjunction with Municipal Civil Service, the City of Austin has authorized a voluntary Alternative Dispute Resolution Process (ADR). Alternative Dispute Resolution is an informal process conducted by an impartial Third-Party Facilitator to assist in the voluntary resolution of Disciplinary Probations, Disciplinary Suspensions, Demotions, Discharges, or Denials of Promotion.

Alternative Dispute Resolution includes the following methods of dispute resolution:

A. MEDIATION

Mediation is a forum in which an impartial person, the Ombudsperson or other neutral Facilitator, assists in communication between the parties to promote reconciliation, settlement, or understanding among them. The Ombudsperson / Facilitator may not impose his or her own judgment regarding the issues upon the parties.

B. MEDIATED COMMUNICATION

In some conflicts, direct communication between the parties is unlikely to resolve the issue. In mediated communication, the parties do not meet each other face to face, but communicate only via the Ombudsperson / Facilitator who conveys information back and forth between the parties. The Ombudsperson / Facilitator serve not only as a relay for questions and answers, but can also provide suggestions for moving the conflict toward resolution in private discussions with each party. If trust and a level of mutual understanding are developed, face-to-face communications may be started.

C. FACILITATION AND INFORMATION SHARING

In some cases, the Employee's appeal will raise questions of fact regarding the Department's action. The ADR process may provide information or clarification which resolves the Employee's issue(s).

1.02 COORDINATION OF THE ADR PROCESS

The City of Austin Ombudsperson is responsible for coordination of the ADR Process. The Ombudsperson strives to be an impartial, accessible, and equitable resource that provides a fair ADR Process. The Ombudsperson is not an advocate on behalf of any individual, group or administrator within the City of Austin.

1.03 WHO MAY USE THE ADR PROCESS

The ADR Process described in these Guidelines is available to a Municipal Civil Service Employee (Employee) who is appealing a Disciplinary Probation, Disciplinary Suspension, Demotion, Discharge, or Denial of Promotion to the Municipal Civil Service

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Commission. These Guidelines are not intended to and do not apply to employees of the City who are covered by Texas Local Government Code Chapter 143, including all sworn personnel and cadets.

The City of Austin Ombudsperson may also assist City employees and Departments in addressing other HR related issues.

1.04 ROLE OF THE FACILITATOR IN ADR

A person who serves as a Facilitator under these Guidelines:

- A. Shall encourage and assist the parties in reaching a settlement of their dispute, but may not compel or coerce the parties to enter into a settlement agreement.
- B. Unless expressly authorized by the disclosing party or required by law, shall not disclose to either party information given in confidence by the other.
- C. Unless expressly authorized by the disclosing party or required by law, shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.
- D. When applicable, shall comply the duty to report abuse or neglect under Subchapter B, Chapter 261, Family Code, and abuse, exploitation, or neglect under Subchapter C, Chapter 48, Human Resources Code.

1.05 CONFIDENTIALITY OF RECORDS AND COMMUNICATIONS

Confidentiality of the ADR Process described in these Guidelines is intended to be governed by the provisions of the Texas Civil Practice and Remedies Code, Section 154.073. *Unless otherwise compelled by law*, it is intended that:

- A. Except as provided by Subsections (C), (D), (E), (F) and (G), a communication relating to the subject matter of a dispute made by a participant in the ADR process is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any administrative proceeding.
- B. Any record made at the ADR proceeding is confidential, and the participants or the Ombudsperson / Facilitator may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be required to disclose confidential information relating to or arising out of the matter in dispute.
- C. An oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable if it is admissible or discoverable independent of the ADR procedure.

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- D. *Participants in an ADR Process, except the Ombudsperson / Facilitator, are not prohibited from disclosing matters discussed in the ADR Process.* By participating in an ADR Process, the parties expressly agree that Texas Civil Practice and Remedies Code, Section 154.053(c) shall only apply to the Ombudsperson / Facilitator participating in the process. No participant shall disclose information made confidential by other law, e.g. certain medical information; certain addresses, telephone numbers, social security numbers, and personal family information; and certain personnel information if disclosure would be a clearly unwarranted invasion of personal privacy.
- E. A final written agreement reached as a result of the ADR Process may be subject to public disclosure in accordance with the Texas Public Information Act, Chapter 552, Texas Government Code.
- F. These Guidelines do not affect the duty to report abuse or neglect under Subchapter B, Chapter 261, Texas Family Code, and abuse, exploitation, or neglect under Subchapter C, Chapter 48, Texas Human Resources Code.
- G. All persons involved in the ADR Process should note that a court or other legal authority may find the confidentiality provisions of these Guidelines conflict with other legal requirements for public disclosure of communications or records relating to the ADR Process. In that event, public disclosure of certain communications and records may be required.

1.06 CIVIL SERVICE RIGHTS RETAINED

An election to use ADR does not waive the Employee's right to a Municipal Civil Service Hearing if a voluntary agreement is not reached.

1.07 AUTHORIZATION TO REVIEW PERSONNEL INFORMATION

By filing an election to participate in an ADR Process, the Employee authorizes the City to provide the Ombudsperson / Facilitator a copy of the Employee's disciplinary and personnel files to the extent necessary to conduct Alternative Dispute Resolution. The Employee agrees that in the course of the ADR Process, the Ombudsperson / Facilitator may have access to all records ordinarily available to supervisors, Department Heads, and other City Administrators in connection with an employee disciplinary or personnel action.

1.08 OMBUDSPERSON NOT AGENT FOR NOTICE

The Ombudsperson / Facilitator do not serve as an agent for notice to the City of Austin, and communication with the Ombudsperson / Facilitator is not notice to the City. Informing the Ombudsperson / Facilitator of a dispute or concern in the workplace (including harassment or discrimination) is not notice to the City, and does not constitute the filing of a formal complaint.

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2 – THE ALTERNATIVE DISPUTE RESOLUTION PROCESS

2.01 HOW TO PARTICIPATE IN THE ADR PROCESS

A. Written ADR Election Required

To participate in the ADR Process, an Employee shall file an election to participate in the Alternative Dispute Resolution Process. The election to participate in ADR shall be made in writing on a form specified by the Ombudsperson. An election made in substantial compliance with these Guidelines, as determined by the Ombudsperson, will be accepted. An election not in writing shall not be accepted unless agreed to by the Municipal Civil Service Director (MCS Director) and the Department Head.

B. ADR Election Filed With MCS Director

The written election to participate in ADR shall be filed with the MCS Director. The MCS Director shall make the form for election to participate in ADR available to all Employees.

C. Time to File ADR Election

The written election to participate in ADR shall be filed at the time the Employee files his or her Notice of Appeal to the Municipal Civil Service Commission from a Disciplinary Probation, Disciplinary Suspension, Demotion, Discharge, or Denial of Promotion.

D. Election Forwarded to Ombudsperson

Upon receipt of an election to participate in ADR, the office of the MCS Director shall forward to the Ombudsperson:

1. The Employee's Election to Participate in the ADR Process form, and
2. A copy of the Employee's Notice of Appeal to the Civil Service Commission.

E. Ombudsperson's Notice of ADR

Within three (3) Business Days of receipt of an Employee's election to participate in ADR, as authorized by these Guidelines, the Ombudsperson shall notify the Employee, the Department Head or designee, and the MCS Director or designee, that the Employee's Election has been accepted.

2.02 SUBMISSION OF INFORMATION FOR OMBUDSPERSON REVIEW

A. Required Information

Within five (5) Business Days of receipt of the Ombudsperson's Notice of ADR, each party shall submit the following information to the Ombudsperson:

1. Employee's Information
 - a) A brief description of the issue(s).

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- b) Documents relevant to the issue(s), including but not limited to copies of written statements or other documents the Employee believes would be useful in resolving the issue(s).
 - c) A statement of the outcome requested.
2. Department's Information – Disciplinary Actions
In cases involving a Disciplinary Action, the Department's submission shall include:
- a) A brief description of the issue(s).
 - b) A copy of the Pre-disciplinary Notice.
 - c) A copy of the Notice of Disciplinary Action.
 - d) A copy of the Department's investigatory file, including but not limited to investigation notes, findings of facts and/or conclusions, witness statements/interviews, statements from or interviews conducted with the Employee, and all other information or documents relied upon by the Department in support of the disciplinary action.
 - e) Performance appraisals and disciplinary actions concerning the Employee for the three (3) years immediately preceding the disciplinary action.
3. Department's Information – Denial of Promotion
In cases involving a Denial of Promotion, the Department's submission shall include:
- a) A brief description of the issue(s).
 - b) All information or documents relied upon by the Department in support of the denial of promotion.
 - c) Performance appraisals and disciplinary actions concerning the Employee for the three (3) years immediately preceding the denial of promotion.

2.03 SELECTION OF ADR PROCEDURE

After review of the information provided by the parties, the Ombudsperson will determine the most appropriate alternative dispute resolution procedure.

2.04 EMPLOYEE REPRESENTATION

An Employee may designate any individual or entity as the Employee's representative in the ADR Process. No employee is required to be represented in the ADR Process.

2.05 CONCLUSION OF THE ADR PROCESS

A. TIMELINE FOR ADR

The ADR Process shall conclude at the earliest of:

- 1. Execution of a written agreement by the parties resolving all or part of the Employee's appeal;

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2. A declaration by the Ombudsperson that the parties have reached an impasse and that further ADR procedures are not likely to result in a resolution of the appeal;
or
3. Five (5) Business Days prior to the date scheduled for the Municipal Civil Service Commission Appeal Hearing.

B. NOTICE TO MCS DIRECTOR

The Ombudsperson shall notify the MCS Director when the ADR Process has concluded.

2.06 WRITTEN SETTLEMENT AGREEMENT

If the parties reach a voluntary settlement, the Ombudsperson / Facilitator, in consultation with the City of Austin Law Department, shall prepare a written agreement to be signed by the parties.

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GLOSSARY

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

Alternative Dispute Resolution Process

An informal process conducted by an impartial Third-Party Facilitator to assist in the voluntary resolution of Disciplinary Probations, Disciplinary Suspensions, Demotions, Discharges, or Denials of Promotion.

Appeal

The procedures established by the Municipal Civil Service Commission through which an Employee may contest a Disciplinary Probation, Disciplinary Suspension, Demotion, Discharge, and Denial of Promotion.

Business Day

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.

Classified Municipal Civil Service

Any or all of the Positions included in the classified civil service system established by Art. IX §1 of the City Charter.

Commission

The Municipal Civil Service Commission established by Art. IX §2 of the City Charter.

Denial of Promotion

The Appeal of a non-Selection by an Employee who is a Candidate for a Promotion because of the Selection of another individual for that Position.

Department Head

The head of a City department or office, regardless of the name or title used.

Discharge

The involuntary termination of employment of an Employee.

Disciplinary Action

A Disciplinary Probation, Disciplinary Suspension, Demotion, or Discharge.

Disciplinary Probation

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.

Disciplinary Suspension

The temporary suspension of an Employee without pay from the Employee's Position for a disciplinary reason.

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Employee

An individual who has been Selected or Directly Appointed to a Position in the Classified Municipal Civil Service.

Facilitator

The Ombudsperson or other impartial person assigned to conduct an ADR Process.

Municipal Civil Service (MCS) Director

The Human Resources Director, serving as the Director of the Municipal Civil Service Commission, or the MCS Director's designee.

Municipal Civil Service Hearing and Hearing

The procedures established by the Municipal Civil Service Commission through which the Commission considers evidence and decides the outcome of any Appeal.

Ombudsperson

The City of Austin Ombudsperson, serving as the coordinator of the ADR Process, or the Ombudsperson's designee.

These Operational Guidelines set forth how the City of Austin Ombudsperson will coordinate the Alternative Dispute Resolution Process for Municipal Civil Service Appeals. These Operational Guidelines were first issued July 7, 2014, and are periodically updated.

For more information about the ADR Process or to obtain copies of these *Operational Guidelines for ADR* or the *Election to Participate in the ADR Process* form, contact the Ombuds Office at:

www.austintexas.gov/page/ombuds

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