

APPEAL OF A DISCIPLINARY ACTION

- (1) Function. In performing its purpose, the appeal process is expected to protect the Merit System and in turn protect employee and applicant rights guaranteed under that system. This protection includes protection against arbitrary and capricious recruitment and discipline.
- (2) Right to Appeal. Any regular employee in the classified service will have the right to appeal any disciplinary action by the City which involves termination, demotion, or suspension without pay for work hours that exceeds 40 hours, except in instances where the right of appeal is specifically prohibited by these policies. Matters not specifically stated in this rule cannot be appealed unless otherwise required by law.
- (3) Appeal Procedure
 - a. Appeals will be in writing, signed by the appellant, and filed with the Human Resources Department within ten (10) calendar days of the action being appealed. In the event the prescribed deadline falls on a non-working day, the deadline shall be 5:00 p.m. of the next regularly scheduled working day of the Human Resources Department. Failure to timely file an appeal will constitute a waiver, and the Hearing Officer will not hear such an appeal making the initial decision final.
 - b. The appeal will be a written statement, addressed to the Hearing Officer, setting forth the matter appealed, the reasons which the employee is asserting is justification of the appeal and a statement of the action desired by the appellant. The formality of a legal pleading is not required.
 - c. The Human Resources Department, in conjunction with the City Attorney, shall make an initial determination of whether or not the Hearing Officer has jurisdiction over the appeal under this policy.
 - i. If it is determined the Hearing Officer does not have jurisdiction, the Human Resources Director shall so notify the appellant in writing.
 - ii. If it is determined that the Hearing Officer does have jurisdiction, a hearing before the Hearing Officer shall be scheduled in accordance with this policy.
 - iii. Any party disputing this initial determination of jurisdiction must file written notification with the City Manager within ten (10) calendar days of receipt of the notice of the determination. The decision of the City Manager regarding jurisdiction of the Hearing Officer shall be final.
 - d. Within ten (10) days after receipt of the appeal, Human Resources will select a Hearing Officer and set a hearing date. Human Resources will notify all interested parties of the date, time and place of the hearing.
 - i. In any appeal, the appellant may request a change of hearing officer within five (5) days. The request must be granted the first time. Any subsequent requests may be granted only upon a showing that a fair and impartial review cannot be obtained due to the prejudice of the assigned Hearing Officer. Human Resources, with the consultation of the City Attorney, shall decide whether a showing of prejudice is adequately made. Human Resources decision regarding any requests regarding a change of hearing officer shall be final.
 - e. The appeal should be scheduled within thirty (30) days of the request by employee for an appeal unless otherwise agreed to by the parties.
 - f. All matters to be presented for consideration by the Hearing Officer shall be placed on an agenda. The agenda shall be delivered (by postal mail or electronic mail) to the Hearing Officer, the appellant and posted for public notice as required by law for public meetings.

- g. The Employee may submit a written request to withdraw the appeal at any time prior to the decision by the Hearing Officer. Such request shall be filed with the Human Resources Department.
- h. The parties shall also comply with the provisions of A.R.S., title 38, chapter 8, article 1 where applicable.
- i. The parties are individually responsible for their own attorney's fees, except that a law enforcement officer, as defined in A.R.S. §38-1001(4), may request reasonable costs and attorney's fees under the provisions of A.R.S. §38-1004(C).

(4) Hearings

- a. The appellant will appear personally, unless physically unable to do so, before the Hearing Officer at the time and place of the hearing.
- b. The Human Resource Department designee will attend all meeting of the Hearing Officer.
- c. The City Clerk or designee shall provide for the recording of the official actions of the Hearing Officer in its minutes. The time and place of each meeting of the Hearing Officer and the official acts of the Hearing Officer shall be recorded in the minutes. The minutes shall be presented to the Hearing Officer for approval or amendment .
- d. At least ten (10) business days prior to the hearing, the City and appellant will disclose to each other the witnesses each anticipates calling, a synopsis of their testimony, and any documents each anticipates presenting to the Hearing Officer. No other witnesses or documents will be considered by the Hearing Officer unless the party can show that it was newly discovered, there was prompt disclosure, and the evidence is crucial.
- e. The conduct and decorum of the hearing will be under the control of the Hearing Officer, with due regard to the Hearing Officer Chairman on the conduct and decorum of the hearing shall be final.
- f. Hearings need not be conducted according to technical rules relating to evidence and witnesses. However, the Hearing Officer will exclude any witnesses or documents not timely disclosed, and may exclude such material if irrelevant, cumulative, redundant, or overly prejudicial. The Hearing Officer may, and at the request of either party shall, exclude prospective witnesses from the hearing during the opening statements and the testimony of other witnesses and direct such witnesses not to communicate with each other until the closing arguments of both parties have concluded.
- g. Hearings will be open to the public unless the appellant and City agree the hearing qualifies for an executive session.
- h. If an employee has been granted a hearing before the Hearing Officer, the employee must disclose and present evidence to support the employees claim. If the employee does not disclose or present evidence, the Hearing Officer shall stop the proceeding and issue a recommendation to the City Manager that the employee should not move forward in the appeal process and no further appeals for the matter will be granted.
- i. Employee may be represented by an attorney, who may at the hearing produce relevant oral or documentary evidence.
- j. Each side may call disclosed witnesses that it believes are relevant. Each party is responsible for securing the attendance of their own witnesses.
 - i. Pursuant to A.R.S. §12-2212, the Hearing Officer may issue subpoenas to compel the attendance of witnesses or the production of documentary evidence. If any person fails to appear or produce documentation in response to a duly issued subpoena, the Hearing Officer may, by affidavit setting forth the facts, apply to the Superior Court for relief.
 - ii. The City will make City employees available for the hearing, if timely disclosed.

1. An employee's intentional and willful failure to appear at a hearing as directed will result in disciplinary action, up to and including termination.
 2. The supervisor or Director of a City employee directed to appear at a hearing as a witness shall allow the employee to attend the hearing as directed. A supervisor or Director who intentionally and willfully fails to allow an employee to attend a hearing pursuant to this policy shall be subject to disciplinary action, up to and including termination.
- k. The hearing shall be recorded and the record may be transcribed upon request. The party requesting transcription shall be responsible for any costs incurred.

(5) Statements and Questioning of Witnesses.

- a. The City will make an opening statement. The appealing employee or their representative may then make an opening statement or reserve the opening statement until the close of the City's evidence.
- b. The City will present its case to establish the reasons for the employment action.
- c. After the City's witness testifies, the appealing employee or representative and the Hearing Officer have had the opportunity to ask questions, and the City has had the opportunity to ask further questions limited to the areas raised by the appealing employee or Hearing Officer, the witness will be dismissed.
- d. When all witnesses of the City have been heard and all evidence has been presented, the appealing employee or representative will present its case in the same format as the City.
- e. Rebuttal witnesses may be permitted to testify as the Hearing Officer determines appropriate.
- f. After all witnesses have been questioned, the City may make a closing argument. The appealing employee or representative may then make a closing argument. Because the City has the burden of supporting its decision, the City may make a second closing argument in rebuttal to the employee's closing argument. The appealing employee or representative will not be permitted to make a second closing argument.

(6) Findings and Recommendations

- a. At the conclusion of the hearing, the Hearing Officer shall determine whether the action appealed was made in good faith for cause or if the action appealed was arbitrary or taken without reasonable cause.
- b. The Hearing Officer will, within ten (10) business days after the conclusion of the appeal hearing reduce his findings of fact and recommendations into writing which shall include whether the appealed action was made in good faith for cause. If the Hearing Officer determines the appealed action was taken for any invalid reason, the recommendation shall also include the recommended disposition, taking into account the best interest of the City and the employee. In the alternative, the Hearing Officer may request the prevailing party prepare the findings of fact and recommendations for review by the other party. Such findings of fact shall be forwarded to the Hearing Officer by the prevailing party within ten (10) business days after the conclusion of the appeal hearing. The Hearing Officer will, within five (5) business days of receiving the findings of fact and recommendations, approve or amend the findings and forward them to the City Manager.
- c. The City Manager or designee will review the evidence and testimony presented and consider the Hearing Officer's findings and recommendations in making a final and binding decision. The City Manager may then affirm, revoke, or modify the action recommended as, in his/her judgment seems warranted subject to A.R.S. §38-1006(H).

- d. The City Manager or designee will inform the appellant within twenty (20) business days of his/her decision. The action of the City Manager or designee will be final and not appealable within any City process.

(7) Conduct of Appeal Procedure

- a. The time limits specified above may be extended to a definite date by mutual agreement of the employee and the reviewer concerned.
- b. After an issue has been initially presented for review, neither party may, without good cause, add new allegations at a subsequent step.
- c. In the absence of good cause, the employee's failure to timely pursue any step in the appeal process shall result in the termination of the appeal process and the dismissal of any appeal, and the initial employment action shall stand.
- d. No discipline, retaliation, or threats of retaliation shall be taken against any employee, representative, witness or other participant, whether testifying or not, in these appeal hearings because of such participation. Such discipline, retaliation or threats of retaliation constitute grounds for disciplinary action, up to and including termination.
- e. All information obtained during the processing of an appeal will be maintained confidentially to the extent permitted by law. Information may be released pursuant to a public records request under the Arizona public records law, A.R.S. § 39-121 *et seq.*
- f. For pay and benefits purposes, time spent by employees in discussions with management or in testifying at a personnel hearing is considered time worked. In the event of an appeal of a termination, the terminated employees shall not be entitled to any pay or benefits from the City for time spent by the appellate on the appeal process after the effective termination date.
- g. Disciplinary actions subject to appeal may be resolved or settled at any step in the process. An appeal shall be processed until the employee is satisfied or a decision has been made in the final step.

GRIEVANCE PROCEDURE

- (1) For purpose of these policies and procedures, a grievance means any dispute regarding an alleged violation of City policies and procedures but shall not include a response to disciplinary actions of the employee.
- (2) Employees who have a grievance should report such grievance to their Department Director or to the Human Resources Department within ten (10) business days of the action giving rise to the grievance.