

## **Attachment A**

PURPOSE – The proposed rule changes were developed over several years by the Civil Service Board members, with input by both City and Labor stakeholders. The proposed rule amendments are designed to provide more guidance and structure to the Civil Service Appeal Procedures and improving current City practices.

New language to be included in the Personnel Rules is identified in all capital letters. Deletions are indicated by strikethrough. For convenience all amendments, including formatting changes, are highlighted.

Proposed language accomplishes the following:

## RULE 22

### HEARING PROCEDURES

#### **REPEAL AND REPLACE RULE 22**

**22a. Request for Hearing:**

The employee shall have fourteen calendar days after date of service of notice of the order of suspension, demotion or dismissal on them personally, or twenty one calendar days from the date of mailing by certified mail the notice of the order of suspension, demotion or dismissal, to request a hearing before the Board. The request for hearing must be in writing and must state the specific allegations in the discipline notice with which the employee disagrees. The request for hearing must be personally delivered to the Board or deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed to the office of the Civil Service Board, within the above-stated time.

The employee shall also immediately thereafter file copies thereof with the complainant department head and the City Attorney. At the time the employee files the request for hearing, the employee shall set forth whether they desire a public or a private hearing.

Failure on the part of a suspended, demoted or dismissed employee to file a request for hearing within the time allowed in this Rule shall terminate the employee's right to a hearing and the order of suspension, demotion or dismissal made by the appointing authority shall be deemed final.

**22b. Time for Hearing:**

The Board shall determine if the hearing will be public or private, set the date of the hearing and shall, when possible within thirty days, hear and determine the matter and either affirm, modify, or revoke such order.

**22c. Conduct of Hearing:**

The appellant shall be entitled to appear personally, produce evidence, and to have counsel and a public or private hearing. The appointing authority may also be represented by counsel. All hearings and investigations before the Board shall be governed by these rules of practice and procedure; and in the conduct thereof, the Board shall not be bound by technical rules of evidence, nor shall informality in any of the proceedings or in the matter of taking testimony invalidate any order, decision, rule or regulation made or approved by the Board.

The Board may appoint a paid hearing officer to conduct the hearing. The conduct of the hearing and procedures shall be the same as if the Board were holding the meeting, and shall serve as the hearing provided in these Rules. It shall be the duty of the hearing officer, within two weeks of the conclusion of the hearing, to forward all records and the recommendation concerning the appeal to the Board for appropriate action.

**22d. Hearing Procedure:**

A record of the charges shall be included in the minutes of the Board, and a time and place set for a hearing. The Board shall have the power to subpoena and require the attendance of witnesses and the production of pertinent documents, and to administer oaths and, if necessary, to continue the hearing from time to time. Subpoenas issued by the Board must be served by personal service. If a Board subpoena is issued at least seven calendar days prior to the hearing date, a party seeking service on a City employee may contact the employee's department head for purposes of prearranging a specific date, time and place during the employee's shift where service can be completed. Upon receiving such request, it shall be the duty of the department head to establish a date, time and place reasonably convenient to the employee and the party seeking to serve the subpoena, unless said employee is on leave or vacation. The order of proof in any hearing of complaint shall be as follows:

22d1. The appointing authority, or the complainant, shall present evidence in support of the charges.

22d2. The defendant shall then produce such evidence as they may wish to offer in their defense.

22d3. The parties in interest may then offer rebuttal evidence.

22d4. No employee shall be disciplined or retaliated against for appealing a disciplinary action to the Civil Service Board, or for testifying at a Civil Service Board hearing.

If a private hearing has been approved by the Board, the Chairman of the Board or the Hearing Officer shall clear the hearing room of all persons not directly involved in the hearing.

If the hearing is open to the public, the Chairman of the Board or the Hearing Officer may order that no cameras or tape recorders be operated in the hearing room while the hearing is in progress, if in the judgment of the Chairman or Hearing Officer, the use of such devices would be disruptive to the hearing.

At the request of either party, the Chairman of the Board or the Hearing Officer shall order that witnesses who will testify during the hearing be excluded from the hearing room until such time as they testify. The City may exclude from the operation of this provision one representative of the appointing authority.

**22e. Disposition of Appeal:**

Following the hearing and such investigations as the Civil Service Board may see fit to make, the Board shall report its finding and decision to the appointing authority responsible for the removal, suspension, demotion, or reduction in compensation, as specified in the notice. Thereupon the

appointing authority shall make such final disposition of the matter as has been determined by the Civil Service Board. The Board may at its discretion:

22e1. Order the restoration of the employee to their position with or without loss of pay during the period between the filing of the charges and the making of the order.

22e2. Uphold or modify the order of suspension, demotion, or dismissal.

22e3. When an employee's competency is questioned upon charges filed by the appointing authority, the Board may require an examination of fitness, the result of which may be taken into consideration in determining such fact.

22f. **Finding and Decision:**

The finding and decision of the Board shall be final, and shall be certified to the official from whose order the appeal is taken, and shall forthwith be enforced and followed. If the finding and decision of the Board orders the reinstatement of a dismissed employee without back pay, time off in excess of thirty working days caused by the Board's hearing procedure shall not be considered a suspension in violation of Rule 19, and shall not be compensated.

22g. **Record Filed:**

A copy of the order in writing and the request for hearing, together with a copy of the finding and decision of the Board, shall be filed as a public record in the office of the Board.

22h. **Rule Interpretation:**

If a dispute arises over the interpretation of a Personnel Rule, an aggrieved party shall file in writing a request for Rule interpretation by the Human Resources Director. This request shall be filed within fifteen calendar days of the date that the dispute arose. Within ten calendar days of the receipt of the request, the Human Resources Director shall respond to the aggrieved party. If the party is still dissatisfied with the interpretation, they may submit a request in writing for a review by the Civil Service Board. This appeal shall be submitted within ten days of the receipt of the Human Resources Director's reply.

The Civil Service Board may assign a hearing officer to investigate the complaints and the hearing officer shall submit findings to the Board within two weeks of the completion of the investigation. The decision of the Board shall be final.

## **RULE 22**

### **HEARING PROCEDURES**

#### **22A – DEFINITIONS APPLICABLE TO THIS RULE:**

#### **22B – ENFORCEMENT OF THIS RULE:**

#### **22C – COMPUTATION OF TIME UNDER THIS RULE:**

#### **22D – HEARING RIGHTS:**

#### **22E – REQUEST FOR HEARING:**

#### **22F – HEARING SCHEDULE:**

#### **22G – HEARING OFFICER ROLE AND RESPONSIBILITIES:**

#### **22H – HEARING PROCEDURE:**

#### **22I – BOARD DISPOSITION OF APPEALS:**

#### **22J – RECORD FILED:**

#### **22K – CALL TO THE PUBLIC:**

#### **22L – RULE INTERPRETATION:**

#### **22A – DEFINITIONS APPLICABLE TO THIS RULE:**

DEFINITIONS FOUND IN THE CITY OF PHOENIX PERSONNEL RULES REMAIN APPLICABLE TO THIS RULE 22. THE FOLLOWING DEFINITIONS ARE APPLICABLE TO RULE 22 ONLY.

THE SINGULAR OF A WORD INCLUDES THE PLURAL AND THE PLURAL INCLUDES THE SINGULAR.

“APPEAL” MEANS A WRITTEN REQUEST FILED WITH THE BOARD BY AN ELIGIBLE EMPLOYEE TO CHALLENGE A QUALIFIED DISCIPLINARY ACTION THAT HAS BEEN TIMELY FILED AND MEETS THE REQUIREMENTS OF THIS RULE.

“CERTIFIED POLICE OFFICER” MEANS AN EMPLOYEE OF A LAW ENFORCEMENT AGENCY WHO HAS MET THE QUALIFICATIONS, TRAINING REQUIREMENTS AND HAS BEEN APPROVED FOR CERTIFICATION BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD.

“FOR CAUSE” MEANS THE EMPLOYEE’S FAILURE TO MEET THE STANDARDS OF CONDUCT, DUTIES, OR WORK PERFORMANCE FOR THE REASONS LISTED IN RULE 21 OF THE CITY OF PHOENIX PERSONNEL RULES.

“HEARING” MEANS A PROCEEDING CONDUCTED BY A HEARING OFFICER TO HEAR AND EVALUATE EVIDENCE PRESENTED BY THE PARTIES AS PART OF A CHALLENGE TO A QUALIFIED DISCIPLINARY ACTION FROM WHICH A REPORT AND RECOMMENDATION IS MADE TO THE BOARD.

“HEARING OFFICER” MEANS AN ARBITRATOR, FACT FINDER, OR OTHER ADMINISTRATIVE HEARING OFFICER HIRED BY THE BOARD TO PRESIDE OVER A HEARING OF AN APPEAL.

"HIRING AUTHORITY" MEANS THE DEPARTMENT DIRECTOR OR FUNCTION HEAD WITHIN THE CITY OF PHOENIX FOR THE EMPLOYEE FILING AN APPEAL.

"JUST CAUSE (FOR A CERTIFIED POLICE OFFICER)" HAS THE SAME DEFINITIONS AS PROVIDED IN A.R.S. § 38-1101(7).

"POLICE DEPARTMENT OPERATIONS ORDERS" MEANS THE POLICIES AND PROCEDURES ADOPTED BY THE CHIEF OF POLICE THAT APPLY TO THE EMPLOYEES WITHIN THE CITY OF PHOENIX POLICE DEPARTMENT.

"PREPONDERANCE OF THE EVIDENCE" MEANS THAT THE EVIDENCE AS A WHOLE SHOWS THE FACT SOUGHT TO BE PROVED IS MORE PROBABLE THAN NOT.

"QUALIFIED DISCIPLINARY ACTION" MEANS A SUSPENSION, DEMOTION, OR DISMISSAL OF AN EMPLOYEE IN THE CLASSIFIED SERVICE WHO IS ELIGIBLE TO PURSUE AN APPEAL.

## **22B ENFORCEMENT OF THIS RULE:**

ANY ALLEGED VIOLATION OF THESE RULES SHALL FIRST BE BROUGHT TO THE ATTENTION OF THE HEARING OFFICER ASSIGNED TO THE APPEAL FOR CONSIDERATION. SUCH ALLEGED RULE VIOLATIONS SHALL BE RULED ON BY THE ASSIGNED HEARING OFFICER. THESE ALLEGED VIOLATIONS OR ISSUES MAY ARISE PRIOR TO THE COMMENCEMENT OF THE HEARING, OR DURING THE HEARING. HEARING OFFICER RULINGS ON ALLEGED VIOLATIONS OF THESE RULES CAN BE APPEALED IMMEDIATELY TO THE BOARD ONLY (1) IF BOTH PARTIES CERTIFY TO THE HEARING OFFICER THAT THE RULING IS OF SUCH SIGNIFICANCE THAT IT HAS THE POTENTIAL TO MATERIALLY PREJUDICE THE RIGHTS OF ONE OR BOTH OF THE PARTIES, OR (2) THE HEARING OFFICER CERTIFIES TO THE BOARD THAT THE RULING HAS THE POTENTIAL TO MATERIALLY PREJUDICE THE RIGHTS OF ONE OR BOTH OF THE PARTIES. IF SUCH A CERTIFICATION IS MADE TO THE BOARD, THE HEARING SHOULD BE SUSPENDED PENDING THE OUTCOME OF THE BOARD'S DECISION ON THE ISSUE. ALL OTHER RULINGS BY THE HEARING OFFICER RELATED TO ALLEGED VIOLATIONS OF THESE RULES WILL BE ADDRESSED BY THE BOARD AFTER THE HEARING OFFICER HAS PROVIDED THE BOARD WITH THE REPORT AND RECOMMENDATION FOR THE APPEAL. THE BOARD AND THE HEARING OFFICER HAVE THE AUTHORITY TO IMPOSE SUCH SANCTIONS AS THEY DEEM APPROPRIATE GIVEN THE NATURE OF THE ALLEGED VIOLATION AND THE POTENTIAL PREJUDICE TO THE OPPOSING PARTY. THE BOARD MAY ISSUE SANCTIONS UP TO AND INCLUDING DISMISSAL OF THE APPEAL, VACATING THE DISCIPLINE, OR IMPOSING MONETARY SANCTIONS ON A PARTY, OR COUNSEL.

## **22C COMPUTATION OF TIME UNDER THIS RULE:**

IN COMPUTING ANY PERIOD OF TIME PRESCRIBED OR ALLOWED BY THESE RULES, THE DAY OF THE ACT OR EVENT FROM WHICH THE

DESIGNATED PERIOD OF TIME BEGINS TO RUN WILL NOT BE INCLUDED. THE LAST DAY OF THE PERIOD SO COMPUTED WILL BE INCLUDED UNLESS IT IS A SATURDAY OR SUNDAY, OR A CITY OF PHOENIX HOLIDAY, IN WHICH EVENT, THE PERIOD RUNS UNTIL 5:00 P.M. OF THE NEXT DAY THAT IS NOT A SATURDAY, SUNDAY, OR CITY OF PHOENIX HOLIDAY. ALL DAYS ARE CALENDAR DAYS.

## **22D HEARING RIGHTS:**

THE EMPLOYEE PURSUING AN APPEAL SHALL BE ENTITLED TO APPEAR PERSONALLY, TO HAVE COUNSEL OR A REPRESENTATIVE OF THEIR CHOOSING AT THEIR OWN EXPENSE, PRODUCE RELEVANT EVIDENCE, AND TO HAVE A PUBLIC OR PRIVATE HEARING. THE HIRING AUTHORITY MAY ALSO BE REPRESENTED BY COUNSEL. ALL HEARINGS AND INVESTIGATIONS BEFORE THE BOARD SHALL BE GOVERNED BY THESE RULES OF PRACTICE AND PROCEDURE; AND IN THE CONDUCT THEREOF, THE BOARD SHALL NOT BE BOUND BY TECHNICAL RULES OF EVIDENCE, NOR SHALL INFORMALITY IN ANY OF THE PROCEEDINGS OR IN THE MATTER OF TAKING TESTIMONY INVALIDATE ANY ORDER, DECISION, RULE OR REGULATION MADE OR APPROVED BY THE BOARD.

THE BOARD MAY APPOINT A PAID HEARING OFFICER TO CONDUCT THE HEARING.

## **22E REQUEST FOR HEARING:**

- 1. APPEAL PROCEDURES.** AN EMPLOYEE IN THE CLASSIFIED SERVICE MUST FOLLOW THESE PROCEDURES TO APPEAL A QUALIFIED DISCIPLINARY ACTION TO THE BOARD.
- 2. FILING OF APPEAL.** A NOTICE OF QUALIFIED DISCIPLINARY ACTION, GENERALLY REFERRED TO AS A DISCIPLINE NOTICE OR A LETTER OF DISCIPLINE, MUST BE DELIVERED TO THE EMPLOYEE BY HAND OR SENT BY CERTIFIED MAIL. IF NOTICE OF QUALIFIED DISCIPLINARY ACTION IS HAND DELIVERED TO THE EMPLOYEE, THE EMPLOYEE MUST FILE AN APPEAL OF DISCIPLINE IN WRITING WITHIN 14 DAYS OF RECEIPT OF THE NOTICE OF DISCIPLINE. IF NOTICE OF QUALIFIED DISCIPLINARY ACTION IS DELIVERED BY CERTIFIED MAIL, AN EMPLOYEE MUST FILE AN APPEAL OF DISCIPLINE IN WRITING WITHIN 21 DAYS OF THE DATE THE NOTICE OF DISCIPLINE WAS MAILED. AN APPEAL OF QUALIFIED DISCIPLINE MUST BE IN WRITING AND MAY BE HAND DELIVERED TO THE EXECUTIVE SECRETARY, OR SENT BY E-MAIL, OR SENT BY FIRST CLASS U.S. MAIL POSTMARKED BY THE APPLICABLE DEADLINE. THE EXECUTIVE SECRETARY WILL PROVIDE A COPY OF THE APPEAL TO THE HIRING AUTHORITY AND CITY ATTORNEY.
- 3. APPEAL REQUIREMENTS.** A WRITTEN APPEAL MUST INCLUDE THE FOLLOWING INFORMATION:

- A. THE NAME, ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF THE EMPLOYEE WHO REQUESTS THE APPEAL, AND THE NAME, ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF THE EMPLOYEE'S REPRESENTATIVE IF THE EMPLOYEE IS REPRESENTED.
  - B. THE EMPLOYEE SHALL SPECIFY IN THE WRITTEN APPEAL WHETHER THEY ARE ASSERTING THAT THEY DID NOT COMMIT THE ALLEGED VIOLATION(S), OR THAT THE DISCIPLINE IMPOSED IS TOO SEVERE, OR BOTH. A FORM THAT CAN BE USED TO SUBMIT AN APPEAL WILL BE PROVIDED TO AN EMPLOYEE WHO IS ELIGIBLE TO PURSUE AN APPEAL WITH THE DISCIPLINE NOTICE.
  - C. THE EMPLOYEE'S PREFERENCE FOR A PUBLIC OR PRIVATE HEARING.
  - D. IF THERE ARE SPECIAL CONDITIONS THAT MAY WARRANT AN EXPEDITED HEARING, A REQUEST FOR EXPEDITED HEARING MUST BE MADE AT THE TIME THE WRITTEN APPEAL IS FIRST FILED, AND THE APPEAL MUST INCLUDE THE LEGAL AND FACTUAL GROUNDS FOR AN EXPEDITED HEARING. ANY REQUEST FOR AN EXPEDITED HEARING WILL BE CONSIDERED BY THE RECORDING SECRETARY AS PART OF THE HEARING OFFICER ASSIGNMENT PROCESS.
4. **FAILURE TO TIMELY APPEAL.** FAILURE ON THE PART OF A SUSPENDED, DEMOTED OR DISMISSED EMPLOYEE TO FILE A REQUEST FOR HEARING WITHIN THE TIME ALLOWED IN THIS RULE SHALL TERMINATE THE EMPLOYEE'S RIGHT TO A HEARING AND THE ORDER OF SUSPENSION, DEMOTION OR DISMISSAL MADE BY THE HIRING AUTHORITY SHALL BE DEEMED FINAL.

**22F HEARING SCHEDULE:**

1. **SCHEDULING OF HEARING.** UPON RECEIPT OF A TIMELY AND PROPERLY SUBMITTED APPEAL, THE RECORDING SECRETARY WILL ASSIGN EACH APPEAL A DOCKET CONTROL NUMBER. THE RECORDING SECRETARY WILL REQUEST FIVE AVAILABLE DATES DURING A SPECIFIED TIMEFRAME FOR THE HEARING FROM THE PARTIES. THE PARTIES SHALL RESPOND AS SOON AS REASONABLY POSSIBLE, HOWEVER, THE HEARING OFFICER AND THE HEARING DATE WILL BE ASSIGNED AT THE EXPIRATION OF 14 DAYS. HEARING OFFICERS WILL BE ASSIGNED TO THE GREATEST EXTENT POSSIBLE ON A ROTATING BASIS, BUT ALSO CONSISTENT WITH THEIR AVAILABILITY ON THE DATE(S) PROPOSED BY THE PARTIES. THE RECORDING SECRETARY WILL INFORM THE PARTIES ABOUT THE ASSIGNED HEARING OFFICER AND HEARING DATE. THE RECORDING SECRETARY WILL MAINTAIN THE APPEAL DOCKET, ALL LEGAL PAPERS, DOCUMENTS AND



OTHER INFORMATION SUBMITTED BY THE PARTIES AS PART OF THE APPEAL, AND THE RECORD ON APPEAL.

2. **CITY DISCLOSURE.** WITHIN 14 DAYS OF RECEIPT OF AN APPEAL, THE CITY SHALL PROVIDE TO THE APPELLANT A COPY OF THE DISCIPLINARY FILE MAINTAINED BY THE HIRING AUTHORITY IN ISSUING THE DISCIPLINE THAT IS THE SUBJECT OF THE APPEAL. PRODUCTION OF THESE DOCUMENTS DOES NOT LIMIT THE EXHIBITS THAT CAN BE USED AT THE HEARING.
3. **LENGTH OF HEARING.** THE PRESUMED LENGTH OF THE HEARING FOR AN APPEAL IS ONE DAY, OR LESS. IF EITHER OF THE PARTIES REASONABLY BELIEVES THAT THE HEARING WILL TAKE MORE THAN ONE DAY, THE PARTY SEEKING THE LONGER HEARING WILL INFORM THE RECORDING SECRETARY NOT LATER THAN 14 DAYS AFTER THE HEARING OFFICER IS ASSIGNED. THE PARTIES SHALL THEN PARTICIPATE IN A SCHEDULING CONFERENCE WITH THE HEARING OFFICER AS DIRECTED IN RULE 22F4.
4. **SCHEDULING CONFERENCE.** FOR HEARINGS PREDICTED TO TAKE MORE THAN ONE DAY, THE HEARING OFFICER AND THE PARTIES' REPRESENTATIVES, OR THE EMPLOYEE IF THEY ARE NOT REPRESENTED, SHALL PARTICIPATE IN A TELEPHONIC, OR IN PERSON, SCHEDULING CONFERENCE. THE PURPOSE OF THE SCHEDULING CONFERENCE IS TO CONFIRM THE TIME, DATE, AND PLACE OF THE HEARING, RESOLVE ANY CONCERNS ABOUT THE DEADLINES ESTABLISHED IN THE STANDARD SCHEDULING ORDER REQUIRED BY RULE 22F6, RULE ON ANY REQUEST FOR AN EXPEDITED HEARING, AND DISCUSS THE EXCHANGE OF DOCUMENTS, WITNESS INFORMATION, AND POTENTIAL EXHIBITS.
5. **SUBPOENAS DUCES TECUM.** EXCEPT FOR GOOD CAUSE SHOWN, OR AGREEMENT OF THE PARTIES, NO LATER THAN 45 DAYS BEFORE A SCHEDULED HEARING, EITHER PARTY MAY REQUEST THAT THE RECORDING SECRETARY ISSUE A SUBPOENA DUCES TECUM REQUIRING THE PRODUCTION OF DOCUMENTS OR OTHER MATERIALS. THE DOCUMENTS OR ITEMS REQUESTED THROUGH THE SUBPOENA DUCES TECUM WILL BE PRODUCED NO LATER THAN 21 DAYS AFTER SERVICE OF THE SUBPOENA.
  - A. ANY PARTY REQUESTING A SUBPOENA DUCES TECUM MUST PROVIDE A COPY OF THE REQUEST TO THE OTHER PARTY AT THE TIME THE REQUEST FOR THE ISSUANCE OF THE SUBPOENA IS MADE.
  - B. THE PARTY WHO WOULD BE RESPONDING TO THE SUBPOENA DUCES TECUM HAS 7 DAYS FROM RECEIPT OF THE REQUEST FOR THE SUBPOENA, OR SERVICE OF THE

SUBPOENA , WHICHEVER IS SOONER, TO SUBMIT WRITTEN OBJECTIONS TO THE HEARING OFFICER. THE PARTY REQUESTING THE SUBPOENA IS NOT ENTITLED TO SUBMIT A WRITTEN RESPONSE TO THE OBJECTIONS. THE HEARING OFFICER SHALL RULE ON THE OBJECTIONS AS SOON AS PRACTICAL AND MAY SET A TELEPHONIC CONFERENCE WITH THE PARTIES TO DISCUSS THE OBJECTIONS. THE HEARING OFFICER HAS THE AUTHORITY TO UPHOLD THE OBJECTIONS AND REFUSE TO ISSUE, OR WITHDRAW THE SUBPOENA, MODIFY THE SCOPE OF THE SUBPOENA, OR OVERRULE THE OBJECTIONS AND ISSUE THE SUBPOENA DUCES TECUM AS SUBMITTED.

C. SERVICE OF THE SUBPOENA DUCES TECUM MAY BE BY CERTIFIED MAIL, OR EMAIL TO THE PARTY, OR THE PARTY'S REPRESENTATIVE.

**6. STANDARD SCHEDULING ORDER.** WITHIN 3 DAYS AFTER THE HEARING DATE HAS BEEN SET, THE RECORDING SECRETARY WILL PROVIDE TO THE PARTIES A STANDARD SCHEDULING ORDER. THE STANDARD SCHEDULING ORDER WILL SET OUT THE FOLLOWING:

A. THE DATE, TIME, AND PLACE FOR THE HEARING.

B. EXCHANGE OF WITNESSES AND EXHIBITS. NO LATER THAN 14 DAYS BEFORE A SCHEDULED HEARING, THE PARTIES WILL EXCHANGE THE NAMES AND CONTACT INFORMATION FOR ALL WITNESSES, A BRIEF SUMMARY OF EACH WITNESS' PROPOSED TESTIMONY, AND COPIES OF ALL DOCUMENTS OR EXHIBITS THE PARTY ANTICIPATES OFFERING INTO EVIDENCE AT THE HEARING.

C. SUPPLEMENTAL INFORMATION. ANY SUPPLEMENTAL HEARING INFORMATION MUST BE EXCHANGED BY THE PARTIES NO LATER THAN 7 DAYS BEFORE A SCHEDULED HEARING.

D. EXCEPT FOR GOOD CAUSE AS DETERMINED BY THE HEARING OFFICER, A PARTY IS PROHIBITED FROM PRESENTING ANY WITNESS OR EXHIBIT THAT WAS NOT TIMELY DISCLOSED AND EXCHANGED.

E. FILING OF WRITTEN MOTIONS. IF ANY PARTY ANTICIPATES FILING A WRITTEN MOTION PRIOR TO THE HEARING, THE HEARING OFFICER WILL SPECIFY A SCHEDULE FOR FILING ANY WRITTEN MOTIONS. ALL PRE-HEARING MOTIONS MUST BE FILED 10 DAYS PRIOR TO THE SCHEDULED HEARING TO ALLOW AT LEAST 5 DAYS FOR THE OPPOSING PARTY TO RESPOND. THIS PROVISION IS NOT INTENDED TO PRECLUDE ORAL

MOTIONS, OR OBJECTIONS TO EVIDENCE, THAT MAY ARISE AT THE START OF, OR DURING, THE HEARING.

F. REQUEST FOR SUBPOENAS. NO LATER THAN 5 DAYS BEFORE A SCHEDULED HEARING, A PARTY SHALL SUBMIT ALL REQUESTS FOR SUBPOENAS FOR THE APPEARANCE OF WITNESSES TO THE RECORDING SECRETARY. ANY PARTY REQUESTING A SUBPOENA MUST PROVIDE A COPY OF THE REQUEST TO THE OTHER PARTY AT THE SAME TIME THE REQUEST IS MADE. THE RECORDING SECRETARY WILL NOT ISSUE THE SUBPOENA ABSENT CONFIRMATION THAT THE OTHER PARTY HAS RECEIVED NOTICE OF THE REQUEST.

7. **OBJECTION TO PROPOSED HEARING OFFICER.** ANY OBJECTION TO AN ASSIGNED HEARING OFFICER FOR AN APPEAL MUST BE FILED WITH THE RECORDING SECRETARY NO LATER THAN 14 DAYS FROM THE DATE OF NOTICE THAT IDENTIFIES THE ASSIGNED HEARING OFFICER, OR SUCH OBJECTION SHALL BE DEEMED WAIVED. IF AN OBJECTION IS MADE, THE RECORDING SECRETARY WILL ASSIGN A NEW HEARING OFFICER. AFTER THE NEW HEARING OFFICER IS ASSIGNED, THE PARTY THAT DID NOT OBJECT TO THE ORIGINAL HEARING OFFICER MAY OBJECT TO THE NEW HEARING OFFICER WITHIN 5 DAYS OF THE NOTICE OF THE NEW HEARING OFFICER. IF ANY OBJECTION IS MADE, THE RECORDING SECRETARY WILL ASSIGN A DIFFERENT HEARING OFFICER. EACH SIDE MAY SUBMIT ONLY ONE OBJECTION TO AN ASSIGNED HEARING OFFICER FOR EACH APPEAL. THERE SHALL BE NO ADMINISTRATIVE CHANGE OF THE ASSIGNED HEARING OFFICER WITHOUT THE CONSENT OF BOTH PARTIES.

8. **REQUEST FOR EXPEDITED HEARING.** AFTER THE ASSIGNMENT OF THE HEARING OFFICER, THE HEARING OFFICER WILL RULE ON ANY REQUEST FOR AN EXPEDITED HEARING. IF THE REQUEST IS GRANTED, TO THE EXTENT ALL PARTIES AND A HEARING OFFICER ARE AVAILABLE AND AGREE, AND GOOD CAUSE APPEARING, THE EXPEDITED HEARING WILL BE PLACED IN PRIORITY ORDER FOR SCHEDULING AND TO THE EXTENT NECESSARY, THE OTHER TIME LIMITS SET FORTH IN THIS RULE MAY BE MODIFIED.

9. **REQUEST TO CONTINUE HEARING.** EACH PARTY MAY REQUEST TO CONTINUE A SCHEDULED HEARING FOR GOOD CAUSE BY PROVIDING A WRITTEN MOTION. SAID MOTION IS TO BE PROVIDED TO THE ASSIGNED HEARING OFFICER, THE RECORDING SECRETARY, AND TO THE OPPOSING PARTY. IF THE REQUEST TO CONTINUE IS BASED ON THE LACK OF AVAILABILITY OF A MATERIAL WITNESS DUE TO VACATION OR OTHER IDENTIFIED SCHEDULE CONFLICT, THE WRITTEN REQUEST MUST BE MADE WITHIN 14 DAYS AFTER THE RECORDING SECRETARY OR THE HEARING OFFICER SETS THE HEARING DATE. EACH

WRITTEN REQUEST MUST INCLUDE DETAILED INFORMATION TO SUPPORT THE CONTINUANCE, CONFIRM THE OPPOSING PARTY HAS BEEN NOTIFIED OF THE REQUEST, AND LIST ALTERNATIVE HEARING DATE(S). THE OPPOSING PARTY SHALL HAVE AN OPPORTUNITY TO AGREE TO THE REQUEST TO CONTINUE THE HEARING, OR OBJECT. THE ASSIGNED HEARING OFFICER MAY GRANT OR DENY THE REQUEST WITH OR WITHOUT ARGUMENT. ORAL ARGUMENT MAY BE CONDUCTED BY TELEPHONE CONFERENCE. EMERGENCY REQUESTS MADE LESS THAN 28 DAYS BEFORE THE HEARING MAY BE HANDLED BY A CONFERENCE CALL BEFORE A WRITTEN MOTION IS FILED AND SHOULD ONLY BE GRANTED FOR GOOD CAUSE SHOWN. THE PARTY MAKING THE EMERGENCY REQUEST SHOULD SUBMIT THE REQUEST IN WRITING AFTER THE EMERGENCY CALL, AND INCLUDE THE SAME INFORMATION REQUIRED FOR ALL OTHER MOTIONS. IF THE GRANTING, OR FAILURE TO GRANT, AN EMERGENCY REQUEST FOR A CONTINUANCE IS OF SUCH SIGNIFICANCE THAT IT HAS THE POTENTIAL TO MATERIALLY PREJUDICE THE RIGHTS OF ONE, OR BOTH, OF THE PARTIES, THE AGGRIEVED PARTY MAY APPEAL THAT RULING TO THE CHAIRMAN OF THE BOARD, OR IN THEIR ABSENCE, THE VICE CHAIRMAN, WHO SHALL HAVE THE AUTHORITY ON THEIR OWN TO AFFIRM OR MODIFY THE DECISION OF THE HEARING OFFICER ON THE EMERGENCY REQUEST FOR A CONTINUANCE. A DELAY IN A RESPONSE TO A FREEDOM OF INFORMATION ACT, OR PUBLIC RECORDS REQUEST, SHALL NOT BE CONSIDERED GOOD CAUSE FOR A CONTINUANCE.

- 10. SERVICE OF SUBPOENAS.** SUBPOENAS ISSUED BY THE BOARD FOR THE ATTENDANCE OF WITNESSES MUST BE SERVED BY PERSONAL SERVICE, UNLESS ALTERNATIVE MEANS HAVE BEEN AGREED TO BY THE WITNESS OR A PARTY. IF A BOARD SUBPOENA IS ISSUED AT LEAST 5 CALENDAR DAYS PRIOR TO THE HEARING DATE, A PARTY SEEKING SERVICE ON A CITY EMPLOYEE MAY CONTACT THE HUMAN RESOURCES REPRESENTATIVE FOR THE EMPLOYEE'S DEPARTMENT FOR PURPOSES OF PRE-ARRANGING A SPECIFIC DATE, TIME AND PLACE DURING THE EMPLOYEE'S SHIFT WHERE SERVICE CAN BE COMPLETED. UPON RECEIVING SUCH REQUEST, IT SHALL BE THE DUTY OF THE DEPARTMENT TO ESTABLISH A DATE, TIME AND PLACE REASONABLY CONVENIENT TO THE EMPLOYEE AND THE PARTY SEEKING TO SERVE THE SUBPOENA, UNLESS SAID EMPLOYEE IS ON LEAVE OR VACATION.

## **22G HEARING OFFICER ROLE AND RESPONSIBILITIES:**

- 1. HEARING OFFICER RESPONSIBILITIES.** THE HEARING OFFICER SHALL HEAR AND REVIEW ALL EVIDENCE PRESENTED AT THE HEARING, HEAR ALL ARGUMENTS BY THE PARTIES, MAKE FINDINGS OF FACT, AND RECOMMEND WHETHER TO SUSTAIN,

MODIFY, OR RESCIND THE DISCIPLINE. THE HEARING OFFICER PRESIDING OVER A HEARING SHALL POSSESS ALL POWER NECESSARY AND APPROPRIATE TO CONDUCT A FULL, FAIR, AND IMPARTIAL HEARING, INCLUDING THE POWER TO EXCLUDE IRRELEVANT, IMMATERIAL, OR UNDULY REPETITIVE EVIDENCE, WITNESSES, OR EXHIBITS. THIS POWER INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING:

- A. TO ADMINISTER OATHS AND AFFIRMATIONS;
- B. TO RECEIVE RELEVANT EVIDENCE;
- C. TO RULE UPON EVIDENTIARY OBJECTIONS AND CONSIDER OFFERS OF PROOF;
- D. TO REGULATE THE COURSE OF THE HEARING AND THE CONDUCT OF THE PARTIES AND THEIR REPRESENTATIVES;
- E. SET REASONABLE TIME LIMITS FOR THE PRESENTATION OF EVIDENCE BASED ON THE NATURE AND CIRCUMSTANCES OF THE APPEAL.
- F. TO RULE ON REQUESTS FOR TELEPHONIC TESTIMONY WHERE WITNESSES CANNOT ATTEND AS A RESULT OF UNDUE HARDSHIP, PROVIDING THAT THE TELEPHONIC TESTIMONY WILL NOT CAUSE UNDUE PREJUDICE TO ANY PARTY AND THE PROPONENT OF THE TELEPHONIC TESTIMONY ASSUMES RESPONSIBILITY FOR COSTS;
- G. TO CONSIDER AND RULE UPON PROCEDURAL REQUESTS;
- H. TO SANCTION PARTIES FOR VIOLATIONS OF THESE RULES, INCLUDING BUT NOT LIMITED TO, EXCLUDING UNDISCLOSED WITNESSES OR EXHIBITS, LIMITING TESTIMONY OR LIMITING CLAIMS OR DEFENSES, OR ISSUING MONETARY SANCTIONS. SEE RULE 22B.
- I. TO EXAMINE WITNESSES AND DIRECT WITNESSES TO TESTIFY, LIMIT REPETITIVE OR CUMULATIVE TESTIMONY, AND SET REASONABLE LIMITS ON THE AMOUNT OF TIME EACH WITNESS MAY TESTIFY BASED ON THE NATURE AND CIRCUMSTANCES OF THE APPEAL;
- J. TO CONCLUDE THE HEARING AT SUCH TIME AS ALL RELEVANT TESTIMONY HAS BEEN PRESENTED; AND,
- K. TO RULE ON OBJECTIONS TO SUBPOENAS DUCES TECUM IN ORDER TO KEEP DISCOVERY WITHIN REASONABLE LIMITS.

- 2. HEARING OFFICER REPORT AND RECOMMENDATION.** THE HEARING OFFICER SHALL PROVIDE ALL RECORDS AND A WRITTEN REPORT AND RECOMMENDATION TO THE RECORDING SECRETARY WITHIN 14 DAYS OF THE CONCLUSION OF THE HEARING. THE RECORDING SECRETARY WILL DELIVER A COPY OF THE RECOMMENDATION TO EACH PARTY AND THEIR REPRESENTATIVE WITHIN 2 DAYS OF RECEIPT OF THE HEARING OFFICER'S REPORT.
- 3. CONTENTS OF HEARING OFFICER REPORT AND RECOMMENDATION.** THE HEARING OFFICER'S WRITTEN REPORT AND RECOMMENDATION SHALL CONTAIN:
- A. DATE OR DATES OF THE HEARING.
  - B. NAME OF EMPLOYEE WHO IS APPEALING THE DISCIPLINE.
  - C. DISCIPLINE BEING APPEALED.
  - D. NAME OF EMPLOYEE'S REPRESENTATIVE, IF ANY.
  - E. NAME OF CITY'S REPRESENTATIVE.
  - F. ADMINISTRATIVE AND/OR PERSONNEL RULES CITED.
  - G. WHETHER THE HEARING WAS PRIVATE OR PUBLIC.
  - H. LIST OF ALL WITNESSES (CITY AND APPELLANT).
  - I. LIST OF ALL EXHIBITS ADMITTED (CITY AND APPELLANT).
  - J. BRIEF DESCRIPTION OF THE ISSUE/DISCIPLINE BEING PRESENTED.
  - K. A SUMMARY OF THE RELEVANT EVIDENCE PRESENTED.
  - L. SUMMARY OF FINDINGS OF FACT BASED ON THE EVIDENCE SUBMITTED DURING THE HEARING.
  - M. POSITIONS OF THE PARTIES.
  - N. HEARING OFFICER'S CONCLUSIONS.
  - O. FOR CAUSE FINDING OR A FAILURE TO FIND CAUSE (JUST CAUSE FOR A POLICE OFFICER).
  - P. FINAL RECOMMENDATION, INCLUDING WHETHER THE DISCIPLINE IMPOSED WAS APPROPRIATE, OR SHOULD BE MODIFIED OR RESCINDED.

## **22H HEARING PROCEDURE:**

- 1. EX PARTE COMMUNICATION PROHIBITED.** A PARTY SHALL NOT COMMUNICATE WITH THE HEARING OFFICER REGARDING THE MERITS OF A CASE EXCEPT: 1) IN THE PRESENCE OF ALL PARTIES TO THE HEARING INCLUDING A TELEPHONIC CONFERENCE; OR 2) UNLESS ALL PARTIES TO THE HEARING ARE NOTIFIED OF THE COMMUNICATION IN ADVANCE. THE HEARING OFFICER SHALL NOT INITIATE EX PARTE COMMUNICATIONS WITH ANY INTERESTED PERSON OR PARTY, DIRECTLY OR INDIRECTLY, IN REFERENCE TO ANY SUBSTANTIVE ISSUE ON THE APPEAL.
- 2. ROUTINE MATTERS.** NOTHING SHALL PREVENT THE HEARING OFFICER FROM COMMUNICATING ABOUT ROUTINE MATTERS SUCH AS REQUESTS FOR CONTINUANCES OR MOTIONS, AS LONG AS ALL PARTIES ARE INFORMED OF THE SUBSTANCE OF THE COMMUNICATION. THE DATE AND TYPE OF COMMUNICATION, THE PERSONS INVOLVED AND THE RESULTS OF SUCH ROUTINE COMMUNICATIONS SHALL BE MADE PART OF THE RECORD.
- 3. ORDER OF HEARING.** THE HEARING OFFICER SHALL MANAGE THE ORDER OF THE HEARING AS EFFICIENTLY AS POSSIBLE INCLUDING TAKING WITNESSES OUT OF ORDER. AS A GENERAL MATTER, THE ORDER OF THE HEARING SHALL BE:
  - A.** HEARING OFFICER TO IDENTIFY THE APPEAL, IDENTIFY PARTIES PRESENT, AND WITNESSES FOR THE RECORD.
  - B.** STIPULATIONS WILL BE ENTERED INTO THE RECORD.
  - C.** PRESENTATION, ARGUMENT, AND DISPOSITION OF MOTIONS PRELIMINARY TO THE HEARING.
  - D.** OPENING STATEMENT BY THE CITY, UNLESS WAIVED.
  - E.** OPENING STATEMENT BY THE EMPLOYEE, UNLESS WAIVED OR RESERVED UNTIL AFTER THE CITY HAS PRESENTED ITS CASE.
  - F.** PRESENTATION OF THE CITY'S CASE.
  - G.** PRESENTATION OF THE EMPLOYEE'S CASE.
  - H.** REBUTTAL TESTIMONY BY THE CITY.
  - I.** ALL WITNESSES SHALL BE SUBJECT TO CROSS EXAMINATION AT THE TIME THEY TESTIFY, SCHEDULES PERMITTING. THE PARTY CALLING THE WITNESS IS ALLOWED TO QUESTION THE WITNESS ON REDIRECT AFTER CROSS EXAMINATION, BUT

REDIRECT TESTIMONY SHALL BE LIMITED TO MATTERS RAISED DURING CROSS EXAMINATION.

J. CLOSING ARGUMENTS BY THE CITY.

K. CLOSING ARGUMENTS BY THE EMPLOYEE.

L. REBUTTAL CLOSING ARGUMENTS BY THE CITY.

**4. PUBLIC AND PRIVATE HEARINGS.** HEARINGS SHALL BE OPEN TO THE PUBLIC UNLESS THE EMPLOYEE REQUESTS A PRIVATE HEARING. ANY EMPLOYEE REQUEST THAT THE HEARING BE PRIVATE MUST BE MADE NO LATER THAN 14 DAYS PRIOR TO THE HEARING DATE. ONCE THE PRIVATE HEARING OPTION IS SELECTED, IT CANNOT BE CHANGED BY THE APPELLANT LESS THAN 14 DAYS BEFORE THE HEARING. IN THE EVENT OF A PRIVATE HEARING, THE HEARING OFFICER SHALL CLEAR THE ROOM OF ALL PERSONS NOT DIRECTLY INVOLVED IN THE HEARING. IF THE HEARING IS OPEN TO THE PUBLIC, THE HEARING OFFICER OR BOARD CHAIRPERSON MAY ORDER THAT NO CAMERAS OR RECORDING TAKE PLACE IF IT IS DEEMED TO BE DISRUPTIVE TO A FAIR HEARING PROCESS. THE HEARING OFFICER HAS THE AUTHORITY TO LIMIT, OR PROHIBIT, THE USE OF CELL PHONES WHILE TESTIMONY IS BEING TAKEN.

**5. RECORDING OF HEARINGS.** ALL HEARINGS, AND TO THE GREATEST EXTENT POSSIBLE, CONFERENCES BETWEEN THE HEARING OFFICER AND THE PARTIES, SHALL BE RECORDED BY AN AUDIO RECORDING DEVICE. IF EITHER PARTY DESIRES, A COURT REPORTER MAY TAKE DOWN THE PROCEEDINGS. THE PARTY REQUESTING A COURT REPORTER MUST MAKE ARRANGEMENTS FOR AND PAY THE COURT REPORTER. IF A CONFERENCE WITH THE HEARING OFFICER HAS NOT BEEN RECORDED, THE HEARING OFFICER WILL CREATE A WRITTEN RECORD OF THE ISSUES DISCUSSED AND THE OUTCOME OF THE CONFERENCE FOR THE RECORD.

**6. EXCLUSION OF WITNESSES.** WITNESSES SHALL BE EXCLUDED FROM THE HEARING ROOM AT THE REQUEST OF EITHER PARTY, OR BY THE HEARING OFFICER. WHEN EXCLUSION OF WITNESSES HAS BEEN REQUESTED, THE CITY MAY HAVE COUNSEL AND A REPRESENTATIVE OF THE HIRING AUTHORITY PRESENT AND THE APPEALING EMPLOYEE MAY HAVE COUNSEL AND A UNION REPRESENTATIVE PRESENT.

**7. BURDEN OF PROOF.** THE CITY MUST SUSTAIN THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE PRESENTED. THE RULE AND POLICY VIOLATIONS ALLEGED IN THE DISCIPLINE NOTICE, AND ONLY THOSE RULES AND POLICY VIOLATIONS, SHALL BE CONSIDERED BY THE HEARING OFFICER AND THE BOARD.



8. **EXCHANGE OF LEGAL PAPERS.** IN ACCORDANCE WITH THESE RULES, PARTIES TO AN APPEAL SHALL FURNISH COPIES OF ANY PLEADINGS, DOCUMENTS, OR WRITTEN MOTIONS TO THE OTHER PARTY. THE HEARING OFFICER MAY REFUSE TO ADMIT ANY DOCUMENT, PLEADING, OR MOTION THAT IS NOT TIMELY SUBMITTED, THAT IS NOT DISCLOSED TO THE OTHER PARTY, OR THAT DOES NOT OTHERWISE COMPLY WITH THESE RULES. A DOCUMENT OR PIECE OF PHYSICAL EVIDENCE SOUGHT TO BE ADMITTED INTO EVIDENCE DURING THE HEARING MUST FIRST BE IDENTIFIED FOR THE RECORD AND PRODUCED TO EACH PARTY AND THE HEARING OFFICER FOR REVIEW. THE HEARING OFFICER RETAINS THE DISCRETION TO ADMIT OR EXCLUDE EVIDENCE AS NECESSARY.
9. **RECORDED INFORMATION.** IT IS THE RESPONSIBILITY OF THE OFFERING PARTY TO PROVIDE THE MEANS FOR PRESENTING ANY AUDIO OR VIDEO EVIDENCE BEING OFFERED.
10. **CONDUCT OF PARTIES AND WITNESSES.** AT ALL TIMES DURING A HEARING, THE PARTIES TO THE APPEAL ARE EXPECTED TO OBSERVE PROFESSIONAL AND RESPECTFUL CONDUCT. EACH PARTY MUST TREAT ALL OTHER PARTIES AND WITNESSES WITH COURTESY, RESPECT AND DIGNITY.
11. **RETALIATION PROHIBITED.** NO EMPLOYEE SHALL BE DISCIPLINED OR RETALIATED AGAINST FOR APPEALING A DISCIPLINARY ACTION TO THE CIVIL SERVICE BOARD, OR FOR PARTICIPATING IN A CIVIL SERVICE BOARD PROCEEDING.

## **22I BOARD DISPOSITION OF APPEALS:**

1. **BOARD CONSIDERATION OF HEARING OFFICER REPORT AND RECOMMENDATION.** THE BOARD SHALL CONSIDER AND RULE UPON THE APPEAL AT EITHER A REGULARLY SCHEDULED, OR SPECIAL MEETING, OF THE BOARD FOLLOWING THE PROCEDURES OUTLINED IN THIS RULE.
2. **HEARING OFFICER'S REPORT.** THE HEARING OFFICER'S REPORT AND RECOMMENDATION WILL BE FORWARDED TO THE PARTIES OR THEIR REPRESENTATIVES WITHIN TWO DAYS AFTER THE RECORDING SECRETARY RECEIVES THE REPORT AND RECOMMENDATION FROM THE HEARING OFFICER. THE HEARING OFFICER'S REPORT AND RECOMMENDATION WILL BE PROVIDED TO THE BOARD MEMBERS PRIOR TO THE BOARD MEETING DURING WHICH THE APPEAL WILL BE HEARD AND DECIDED.
3. **EXHIBITS.** THE RECORDING SECRETARY WILL HAVE AVAILABLE AT THE PROCEEDING BEFORE THE BOARD ALL EXHIBITS THAT WERE ADMITTED INTO EVIDENCE BY THE HEARING OFFICER. EXCEPT FOR AUDIO RECORDINGS OR VIDEO EXHIBITS, EITHER

PARTY MAY PRESENT TO THE BOARD COPIES OF EXHIBITS ADMITTED INTO EVIDENCE BY THE HEARING OFFICER.

4. **USE OF RECORDED INFORMATION BEFORE THE BOARD.** IF EITHER PARTY WISHES TO PRESENT AN AUDIO OR VIDEO RECORDING TO THE BOARD THAT WAS ADMITTED AS EVIDENCE BY THE HEARING OFFICER, THE PARTY PROPOSING TO USE THE RECORDING OR VIDEO MUST INFORM THE OTHER PARTIES NO LESS THAN 7 DAYS BEFORE THE BOARD MEETING. IF ANY PARTY OBJECTS TO THE USE OF THE AUDIO OR VIDEO, THE PARTIES ARE REQUIRED TO ATTEMPT TO RESOLVE THEIR OBJECTIONS. IF THERE HAS BEEN TIMELY DISCLOSURE, BUT THERE ARE UNRESOLVED OBJECTIONS, THOSE OBJECTIONS ARE TO BE SUBMITTED TO THE BOARD FOR ITS DETERMINATION. IF THE OFFERING PARTY FAILS TO TIMELY DISCLOSE ITS INTENTION TO USE THE AUDIO OR VIDEO AT THE BOARD MEETING, THE BOARD SHALL NOT HEAR THE AUDIO RECORDING, OR ALLOW THE VIDEO TO BE USED, IN THE ABSENCE OF GOOD CAUSE.
5. **PRESENTATION BY PARTIES.** EACH PARTY TO THE APPEAL WILL HAVE 15 MINUTES TO PRESENT THE REASONS WHY THE BOARD SHOULD ACCEPT, MODIFY OR REJECT THE HEARING OFFICER'S REPORT AND RECOMMENDATION AND ADDRESS ANY PERCEIVED ERRORS OF FACT IN THE REPORT. THE PARTY WHO DISAGREES WITH THE HEARING OFFICER'S RECOMMENDATION SHALL PRESENT FIRST. THE EMPLOYEE OR EMPLOYEE'S REPRESENTATIVE, BUT NOT BOTH, MAY ADDRESS THE BOARD. THE CHAIRPERSON MAY PERMIT MORE TIME FOR EACH OF THE PARTIES IF A MAJORITY OF THE BOARD MEMBERS DEEM IT BENEFICIAL. NO PARTY, INCLUDING THE EMPLOYEE, MAY PRESENT EVIDENCE THAT WAS NOT ADMITTED INTO EVIDENCE AT THE HEARING. NOTHING IN THIS RULE PRECLUDES EITHER PARTY FROM SUBMITTING TO THE BOARD ANY ISSUE RELATED TO A DECISION MADE BY THE HEARING OFFICER TO EXCLUDE THE TESTIMONY OF A WITNESS, OR TO FAIL TO ADMIT AN EXHIBIT OFFERED DURING THE HEARING.
6. **PRESENCE OF PARTIES.** THE APPEALING EMPLOYEE AND/OR HIS OR HER REPRESENTATIVE, AND A CITY REPRESENTATIVE, ARE EXPECTED TO BE PRESENT AT THE BOARD MEETING WHEN THE APPEAL IS SCHEDULED TO BE CONSIDERED. IF EITHER PARTY OR A REPRESENTATIVE IS NOT PRESENT AT THE BOARD HEARING, AND NO REQUEST FOR A CONTINUANCE HAS BEEN RECEIVED BY THE RECORDING SECRETARY, OR THE BOARD, THE BOARD CAN, ON ITS OWN MOTION POSTPONE DECIDING THE APPEAL, OR MOVE FORWARD AND DECIDE THE APPEAL. IF A REQUEST FOR A CONTINUANCE HAS BEEN MADE, FOR GOOD CAUSE SHOWN, THE BOARD MAY GRANT A POSTPONEMENT.

- 7. OPEN MEETING LAW.** IF THE HEARING FOR THE APPEAL WAS CONDUCTED AS A PRIVATE HEARING, UNLESS WAIVED BY THE PARTIES, THE BOARD SHALL VOTE TO GO INTO EXECUTIVE SESSION IN COMPLIANCE WITH ARIZONA LAW TO HEAR THE PRESENTATION OF THE PARTIES. ALL VOTES TO RESOLVE AN APPEAL WILL BE HELD IN OPEN SESSION. THE BOARD MAY GO INTO EXECUTIVE SESSION FOR ANY REASON PERMITTED BY LAW AND AS INDICATED IN THE MEETING AGENDA.
- 8. BOARD CONSIDERATION OF EVIDENCE.** THE BOARD WILL CONSIDER THE HEARING OFFICER'S REPORT AND RECOMMENDATION, THE PRESENTATION OF THE PARTIES, AND ANY OF THE ADMITTED EXHIBITS THAT IT WANTS TO REVIEW IN RENDERING ITS DECISION. EACH BOARD MEMBER MAY ASK QUESTIONS OF THE PARTIES, OR OF THE HEARING OFFICER, TO CLARIFY ANY ASPECT OF THE PRESENTATION, OR THE REPORT AND RECOMMENDATION. THE BOARD WILL NOT REQUIRE THE HEARING OFFICER TO DEFEND THE RECOMMENDATION.
- 9. BOARD DISCRETION.** THE BOARD MAY IN ITS DISCRETION:
- A. UPHOLD, MODIFY, OR REJECT THE RECOMMENDATION OF THE HEARING OFFICER.
  - B. DIRECT THE PREPARATION OF A TRANSCRIPT OF THE HEARING AND REVIEW THE TRANSCRIPT AND EXHIBITS BEFORE MAKING A DETERMINATION OF AN APPEAL.
  - C. MAKE A DETERMINATION OF BACK PAY FOR TERMINATIONS AND DEMOTIONS. THE BOARD MAY ORDER RESTORATION OF THE EMPLOYEE TO THEIR PREVIOUS POSITION WITH OR WITHOUT BACK PAY FOR THE PERIOD OF TIME BETWEEN THE BEGINNING OF THE DISMISSAL OR DEMOTION AND THE DECISION ON THE APPEAL. LAW ENFORCEMENT OFFICERS WHO PREVAIL ON THEIR APPEAL SHALL BE AWARDED BACK PAY CONSISTENT WITH THE PROVISIONS OF A.R.S. §38-1106.J. (2016), OR THE THEN CURRENT VERSION OF THAT STATUTE AS AMENDED. IN MAKING A BACK PAY DETERMINATION, THE BOARD MAY CONSIDER (A) AMOUNTS EARNED DURING THE TIME THE EMPLOYEE WAS SEPARATED FROM THE CITY, (B) DELAYS IN RESOLVING THE APPEAL, AND (C) ANY OTHER RELEVANT CONSIDERATIONS. IF THE DECISION OF THE BOARD ORDERS REINSTATEMENT WITHOUT BACK PAY, TIME OFF IN EXCESS OF 30 WORKING DAYS CAUSED BY THE BOARD'S HEARING PROCEDURE SHALL NOT BE CONSIDERED A SUSPENSION IN VIOLATION OF PERSONNEL RULE 19 AND SHALL NOT BE COMPENSATED. UNPAID TIME OFF IN EXCESS OF 30 DAYS WILL BE NOTED AS UNPAID LEAVE IN THE EMPLOYEE'S RECORD.

- 10. VOTING REQUIRED.** BOARD MEMBERS PRESENT SHALL NOT BE EXCUSED FROM VOTING. A FAILURE TO VOTE OR A VOLUNTARY ABSTENTION SHALL COUNT AS AN "AYE" VOTE UNLESS EXCUSED BY AN ANNOUNCED CONFLICT OF INTEREST. IF A BOARD MEMBER FAILS TO VOTE, OR VOLUNTARILY ABSTAINS, THE BOARD MEMBER SHALL EXPLAIN THE REASON(S) FOR NOT VOTING.
- 11. CONFLICT OF INTEREST.** EACH BOARD MEMBER MUST COMPLY WITH PHOENIX CHARTER CHAPTER XI AND PROVISIONS OF STATE LAW GOVERNING CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES (ARIZONA REVISED STATUTES SECTIONS 38-501 AND FOLLOWING). CONSISTENT WITH ARIZONA LAW, A BOARD MEMBER MUST MAKE KNOWN A SUBSTANTIAL CONFLICT OF INTEREST AND MUST NOT PARTICIPATE IN ANY FORM OR MANNER IN THE DISPOSITION OF THE MATTER.
- 12. CITY OF PHOENIX ETHICS POLICY.** EACH BOARD MEMBER MUST COMPLY WITH THE CITY OF PHOENIX ETHICS POLICY, PHOENIX CITY CODE SECTION 2-52. ACCORDINGLY, A BOARD MEMBER SHOULD MAINTAIN THE UTMOST STANDARDS OF PERSONAL INTEGRITY, TRUTHFULNESS, HONESTY AND FAIRNESS IN CARRYING OUT THEIR PUBLIC DUTIES, AVOID ANY IMPROPRIETIES IN THEIR ROLE AS PUBLIC SERVANTS, AND NEVER USE A BOARD POSITION OR POWER FOR IMPROPER PERSONAL GAIN.
- 13. TIE VOTE.** IF THERE IS A TIE VOTE OF THE BOARD ON ANY MOTION PENDING BEFORE IT, THAT MOTION SHALL BE CONSIDERED DEFEATED. AN INITIAL TIE VOTE ON A MOTION RELATED TO AN APPEAL DOES NOT BRING CONSIDERATION OF THE APPEAL TO A CONCLUSION. IF THERE HAS BEEN A TIE VOTE, THE BOARD WILL FIRST CONDUCT A VOTE ON WHETHER THE CITY MET ITS BURDEN OF PROOF THAT CAUSE EXISTS FOR DISCIPLINE. IF THE BOARD CONTINUES TO BE TIED, OR VOTES NO, THEN THE EMPLOYEE PREVAILS ON THE APPEAL. IF THE BOARD VOTES YES, IT WILL THEN VOTE TO DETERMINE THE APPROPRIATE LEVEL OF DISCIPLINE.
- 14. BOARD DECISION FINAL.** THE FINDINGS AND DECISION OF THE BOARD SHALL BE FINAL AND SHALL BE CERTIFIED TO THE HIRING AUTHORITY FOR ACTION.

**22J RECORD FILED:**

FOR APPEALS CONDUCTED AS PUBLIC HEARINGS, THE RECORDING SECRETARY WILL RETAIN AS THE PUBLIC RECORD THE NOTICE OF DISCIPLINE, THE HEARING OFFICER'S REPORT AND RECOMMENDATION, THE EXHIBITS ADMITTED BY THE HEARING OFFICER, ANY MOTIONS FILED DURING THE COURSE OF THE APPEAL, THE AUDIO RECORDINGS OF BOTH THE HEARING AND THE BOARD MEETING WHERE ACTION WAS TAKEN, AND A RECORD OF THE FINAL ACTION OF THE BOARD. FOR APPEALS CONDUCTED

AS PRIVATE HEARINGS, THE RECORDING SECRETARY WILL RETAIN THE ENTIRE RECORD, BUT THE ONLY RECORDS TO BE MADE AVAILABLE TO THE PUBLIC FOR INSPECTION AND COPYING WILL CONSIST OF ONLY THE CONCLUSIONS AND RECOMMENDATION OF THE HEARING OFFICER ADOPTED BY THE BOARD AND A RECORD OF THE FINAL ACTION BY THE BOARD.

## **22K CALL TO THE PUBLIC:**

- 1. OPEN MEETING LAW.** BOARD PROCEEDINGS ARE SUBJECT TO THE ARIZONA OPEN MEETING LAW, A.R.S. § 38-431, *ET SEQ.*, ("OPEN MEETING LAW"). FOR BOARD PROCEEDINGS THAT SATISFY THE DEFINITION OF MEETING UNDER THE OPEN MEETING LAW, THE BOARD MAY DISCUSS, CONSIDER, OR TAKE ACTION ONLY THOSE MATTERS PROPERLY POSTED AND LISTED ON AN AGENDA. EACH MEETING AGENDA MAY INCLUDE A CALL TO THE PUBLIC WHERE MEMBERS OF THE PUBLIC MAY PRESENT INFORMATION TO THE BOARD. DURING CALL TO THE PUBLIC, BOARD MEMBERS MAY LISTEN TO THE INFORMATION, BUT MAY NOT DISCUSS OR TAKE ACTION ON THE INFORMATION RECEIVED.
- 2. PUBLIC SPEAKERS.** MEMBERS OF THE PUBLIC WHO WISH TO SPEAK DURING CALL TO THE PUBLIC MUST COMPLETE A PUBLIC COMMENT CARD, WHICH WILL BE MADE AVAILABLE AT EACH MEETING. A PUBLIC COMMENT CARD MUST BE SUBMITTED TO THE RECORDING SECRETARY AS SOON AS POSSIBLE, BUT NO LATER THAN BEFORE THE CALL TO THE PUBLIC BEGINS.
- 3. GENERAL GUIDELINES FOR ALL SPEAKERS.** THE BOARD ADOPTS THE FOLLOWING GUIDELINES FOR ALL SPEAKERS. THESE GUIDELINES WILL BE AVAILABLE IN PRINT AT EACH BOARD MEETING.
  - A.** WHEN SPEAKING, A SPEAKER SHOULD FIRST STATE THEIR NAME FOR THE RECORD.
  - B.** NO PROFANITY OR THREATS WILL BE TOLERATED. EACH SPEAKER SHOULD PRESENT COMMENTS IN A RESPECTFUL AND COURTEOUS MANNER.
  - C.** EACH SPEAKER WILL BE CALLED IN THE ORDER RECOGNIZED BY THE CHAIRPERSON.
  - D.** MEMBERS OF THE PUBLIC ATTENDING THE MEETING SHOULD REFRAIN FROM CLAPPING OR OTHERWISE CREATING DISTRACTIONS THAT PREVENT THE BOARD FROM THE ORDERLY CONDUCT OF BUSINESS.
  - E.** COMMENTS DURING CALL TO THE PUBLIC ARE HEARD AT THE DISCRETION OF THE CHAIRPERSON. A SPEAKER

SHALL RECEIVE ONE OPPORTUNITY TO MAKE COMMENTS TO THE BOARD DURING CALL TO THE PUBLIC.

F. A SPEAKER MAY SPEAK FOR UP TO THREE MINUTES TO MAKE COMMENTS TO THE BOARD DURING THE CALL TO THE PUBLIC. THE NUMBER OF SPEAKERS PERMITTED TO SPEAK AT ANY MEETING WILL BE DETERMINED BY THE CHAIRPERSON AND MAY BE LIMITED BY THE TIME OF DAY AND ANY REMAINING AGENDA ITEMS THAT MUST BE ADDRESSED AT THE MEETING.

G. A SPEAKER MUST ADDRESS THE BOARD AND NOT STAFF OR MEMBERS OF THE PUBLIC.

H. WHEN THE TIME FOR A SPEAKER HAS EXPIRED, THE CHAIRPERSON MAY ASK THE SPEAKER TO CONCLUDE ANY COMMENTS.

## **22L RULE INTERPRETATION:**

IF A DISPUTE ARISES OVER THE INTERPRETATION OF A PERSONNEL RULE, AN AGGRIEVED PARTY SHALL FILE IN WRITING A REQUEST FOR RULE INTERPRETATION BY THE HUMAN RESOURCES DIRECTOR. THIS REQUEST SHALL BE FILED WITHIN FIFTEEN CALENDAR DAYS OF THE DATE THAT THE DISPUTE AROSE.

WITHIN TEN CALENDAR DAYS OF THE RECEIPT OF THE REQUEST, THE HUMAN RESOURCES DIRECTOR SHALL RESPOND TO THE AGGRIEVED PARTY. IF THE PARTY IS STILL DISSATISFIED WITH THE INTERPRETATION, HE MAY SUBMIT A REQUEST IN WRITING FOR A REVIEW BY THE CIVIL SERVICE BOARD. THIS APPEAL SHALL BE SUBMITTED WITHIN TEN DAYS OF THE RECEIPT OF THE HUMAN RESOURCES DIRECTOR'S REPLY.

THE CIVIL SERVICE BOARD MAY ASSIGN A HEARING OFFICER TO INVESTIGATE THE COMPLAINTS AND THE HEARING OFFICER SHALL SUBMIT FINDINGS TO THE BOARD WITHIN TWO WEEKS OF THE COMPLETION OF THE INVESTIGATION. THE DECISION OF THE BOARD SHALL BE FINAL.