



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

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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 citizens 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 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.
- 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 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.
- 1.23 “Disciplinary Suspension” means the temporary suspension of an Employee without pay from the Employee’s Position for a disciplinary reason.
- 1.24 “Employee” means an individual who has been Selected or Directly Appointed to a Position in the Classified Municipal Civil Service.
- 1.25 “Hire” refers to the initial Selection, Promotion, or Lateral Transfer of an individual to a Position.
- 1.26 “Initial Selection” means the Selection to a Position of an individual who was not an Employee during the six months prior to the Selection.
- 1.27 “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.

- 1.28 “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.
- 1.29 “Lateral Reassignment” means the Reassignment of an Employee to a Position in the same Salary Grade but that may have different duties and responsibilities.
- 1.30 “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.
- 1.31 “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.
- 1.32 “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.
- 1.33 “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.
- 1.34 “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.
- 1.35 “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.
- 1.36 “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 they held or currently hold, for which they meet the Minimum Qualifications and for which the Employee has notified the designated recruiter for that Position of their Preferred Interview Status.
- 1.37 “Preferred Qualifications” means any job-related education, training, experience, fitness, and other criteria that are in addition to the Minimum Qualifications.
- 1.38 “Promotion” means a change from an Employee’s current Position to a Posted Position in a higher Salary Grade.
- 1.39 “Promotion(al) Probationary Period” means a working trial period of three months following Selection or Direct Appointment, during which the individual may be removed without Cause as defined in these Rules.
- 1.40 “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.

- 1.41 “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.
- 1.42 “Salary Grade” means the numerical pay grade and the associated pay range assigned to a Position.
- 1.43 “Select,” “Selected,” and “Selection” refer to the initial hiring, Promotion, or Lateral Transfer of an individual to a Position.
- 1.44 “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 and/or documents at an Appeal hearing under these Rules.
- 1.45 “Vacant” and “Vacancy” refer to a Position that is not occupied.
- 1.46 “Work Day” means a day an Employee is scheduled to work.
- 1.47 “Year” means 365 consecutive 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 Human Resources Director preparation, 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 delegated 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, their 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 they 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 hiring, Promotion, and 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 that 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 held before the Promotion, or when necessary, placed in another Position equivalent in pay, benefits, and Salary Grade with the Employee's agreement.

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 conducted in compliance with these Rules.

The Competitive Process shall evaluate Candidates in a like manner to include the following items: pre-defined factors for Selection; scripted questions; rating/evaluation scale; and may include work simulations, and other job-related assessments.

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.

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 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 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.

RULE 5 –REDUCTIONS-IN-FORCE

5.01 REDUCTION-IN-FORCE

A Reduction-in-Force is the elimination of a Position or job function in a Department due to lack of work, shortage or loss of funding, including external funding, or other reasons of business necessity that results in the involuntary separation of at least one (1) Employee in that Department.

5.02 PROCEDURES FOR REDUCTIONS-IN-FORCE

The Human Resources Department shall develop procedures for Department Heads to follow in order to accomplish a Reduction-in-Force due to lack of work, shortage or loss of funding, or other reasons of business necessity that result in the involuntary separation of at least one (1) Employee in the Department.

5.03 NOTICE OF INTENDED REDUCTIONS-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 management's assessment of the Employees' documented past work performance and length of service with the City beginning with the Employee last hired by the City without a break in service. When these factors are equal in the judgment of management, the Employee last hired by the City without a break in service shall be separated first.

D. Notice of Separation to Affected Employees

Whenever possible, with the exception of Employees funded through external sources, a separation due to Reduction-in-Force shall not be effective until a minimum of thirty (30) Days following the Day the affected Employee is provided written notice of 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 U.S. mail to the address shown for the Employee in the City's personnel records.

5.04 STATUS OF EMPLOYEES SEPARATED DUE TO REDUCTION-IN-FORCE

A. Reassignments

An affected Employee may be Reassigned to another Position in the Classification Plan within the same or a different Department in accord with these Rules. Reassignments 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 may

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 their separation date.

C. 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 Reassignment under these Rules have no Appeal right under these rules concerning their 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 concerning their selection for separation due to Reduction-in-Force.

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 including, but not limited to, counselings, warnings, and other disciplinary actions up to and including Discharge. Such authority 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:

- 1. Insubordination** – intentional refusal or failure to obey a clear and lawful direction or instruction from an authorized supervisor or other 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 or its policy on alcohol and drugs;
 - 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 results in conviction (including deferred adjudication or a plea of no contest) of a crime that renders the Employee unsuitable for the Position held by the Employee; or
 - h) conduct related to the Employee's Position that contradicts the City's values.
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 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** – 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. **Rules Violation** – violation of applicable City work rules or Department work rules, including City personnel policies, procedures and administrative bulletins.

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;
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 advance written notice of the potential action and a reasonable opportunity 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 (or a representative designated by the Employee) in person, or mailed to the Employee's last known address shown in the City's personnel records via U.S. mail. Providing such written notice and opportunity for an Employee to respond to the notice shall constitute compliance with the requirements of this paragraph.

D. 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. 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 U.S. mail 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 may hear and make final, binding decisions in accord with these Rules on Appeals by Employees resulting from the following actions:

- A. an action against the Employee for which Cause is required, which is limited to: 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 ALL 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 manager or supervisor 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. If the Employee receives no response or is not satisfied with the response from the Department Head, within twenty (20) Business Days, a notice of Appeal may be filed with the MCS Director.

B. Written Notice of Appeal

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 twenty (20) Business Days following the date the Employee is provided a final Departmental grievance response or notice of Discharge. 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 ten (10) 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

1. Within thirty (30) 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, if the Employee has not elected an ADR Process under these Rules.
2. If the Employee has elected an ADR Process under these Rules, within thirty (30) Business Days of the unsuccessful conclusion of that process, the MCS Director shall provide the Employee and the Department Head, or designee, a written notice of hearing conforming to the requirements of these Rules.

E. Rescheduling a Hearing

Within five (5) Business Days of receiving the notice of hearing, either party may request a rescheduling of the hearing with the approval of the MCS Director. If the hearing is scheduled in advance, a request for reschedule may be requested by either party no later than forty-five (45) Business Days prior to the hearing date with the approval of the MCS Director. 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 Representatives

An Employee may designate any individual or entity as the Employee's representative in the Departmental grievance process or 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. Effect of an Employee's Election to Use ADR Process

An Employee's election to participate in an ADR Process shall suspend all other Appeal proceedings under these Rules for a period not to exceed thirty (30) Business Days.

D. Confidentiality of ADR Process

The ADR Process is intended to be confidential and separate from the hearing process. 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 confidential, are not admissible in a hearing, and shall not be disclosed outside the ADR Process.
2. A mediator, conciliator, or other individual involved in 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 by 5:00 p.m. fifteen (15) Business Days prior to the hearing. A request for Subpoena 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 Subpoena. 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 U.S. mail addressed to the individual named in the Subpoena, or by any other reasonable manner designated by the MCS Director.

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;
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. fifteen (15) Business Days prior to an Appeal hearing, each party shall file with the MCS Director a written submission under this Rule. Four (4) copies of the submission must be submitted on two sided, sequentially numbered pages.

1. Employee's Submission

The Employee's submission shall include information about the issues for Appeal, names of witnesses the Employee intends to Subpoena or 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 intends to Subpoena or 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 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, a party may obtain a copy of the other party's submission. At the hearing, the MCS Director shall provide the Commission with any Hearing Information submissions received from either party.

C. Rebuttal Submissions

If the opposing party's submission requires a response, a rebuttal witness list, including requests for additional Subpoenaed witnesses and production of documents, may be submitted in writing to the MCS Director no later than 5:00 p.m., ten (10) Business Days prior to the hearing. Four (4) copies of the response must be submitted on two sided, sequentially numbered pages. Such rebuttal documentation shall be available to the other party as soon as it has been submitted. If either party does not provide an initial submission, but provides a rebuttal submission, the other party shall have up to five (5) Business Days to provide a response to the rebuttal documentation.

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 Commission 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.

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 for individuals who may be unfamiliar with such hearings. 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, 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.

2. Deliberations

After the close of all evidence, the Commission shall conduct deliberations on an Appeal in closed session, provided, that if 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 by three (3) commissioners in agreement 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, 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 that has been Subpoenaed is unable or unwilling to attend a hearing, or on approval by a majority vote of the Commission 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 majority vote 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 an audio recording of all hearings, and shall retain such recording in accordance with applicable records retention schedules. No other video or audio recording of any part of a 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 may permit the parties to make an opening statement concerning the Appeal.
4. 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 may permit the parties to make a closing 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 meetings' 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 any time during the witness' testimony, 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 final and binding.

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. 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.
- B. The Department shall present its evidence first in the hearing, and may make the final closing statement to the Commission.
- C. 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 all or part of any pay or other benefits lost by the Employee as a result of the disciplinary action; or
 3. both.
- D. Unless at least three (3) Commissioners determine that there was not Cause for the disciplinary action, the action of the Commission shall be to deny the Appeal.

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 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 present their evidence first at the hearing, and may make the final closing statement to the Commission.
- 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 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 their prior Salary Grade and pay rate for which the Employee is qualified, with no right of Appeal under these Rules.
- E.** Unless at least three (3) Commissioners determine that the Department did not have a reasonable, good faith belief that the Employee should not have received the Position, then the action of the Commission shall be to deny the Appeal.

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 Employee shall present their evidence first at the hearing, and may make the final closing statement to the Commission.
- C.** 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.

- D.** Unless at least three (3) Commissioners determine 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, the action of the Commission shall be to deny the Appeal.