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**CITY OF SEATTLE
CIVIL SERVICE COMMISSION**

**RULES OF PRACTICE AND
PROCEDURE**

ADOPTED: MAY 21, 2014

**Commissioners
Eric de los Santos, Chair
Angelique M. Davis
Steven A. Jewell**

ORIGINAL

Civil Service Commission

Rules of Practice and Procedure

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Rules of Practice and Procedure

City of Seattle
CIVIL SERVICE COMMISSION
Adopted *May 21*, 2014

I. GENERAL PROVISIONS

1.01 AUTHORITY AND APPLICATION- These rules are promulgated under the authority granted by Article XVI of the Charter of the City of Seattle, the 1978 City of Seattle Personnel Ordinance (Ordinance 107790 and, Chapter 4.04 of the Seattle Municipal Code, as amended) and the Administrative Code of the City of Seattle, (SMC Chapter 3.02).

1.02 SCOPE AND PURPOSE- These rules govern the administration of the Civil Service Commission ("Commission") and all appeals within the jurisdiction of the Commission.

1.03 WAIVER- The Commission may waive the requirements of any of these rules by a majority vote.

II. ADMINISTRATION AND OPERATIONS

2.01 MEETINGS - QUORUM

- A. The Commission shall meet monthly unless there is no pending business requiring Commission action. Members may attend by electronic means. Parts of the meetings that are open to the public shall be voice recorded. The Commission may schedule special meetings.
- B. Two members of the Commission shall constitute a quorum. Unless otherwise provided for in these Rules, no action of the Commission shall be effective unless two members concur.

2.02 DISQUALIFICATION OF A COMMISSIONER, HEARING OFFICER, OR HEARING EXAMINER

- A. An interested party may challenge the participation of one or more Commissioners, Hearing Officer, or a Hearing Examiner in a matter. The challenge must be presented in writing as a "Motion to Dismiss" or "Motion to Disqualify."
- B. Any motion to disqualify a Commissioner from participating in an appeal must be filed within fourteen days after the notice of appeal is timely filed, or in the case of a new Commissioner, within fourteen days of when the Commissioner assumes office. The motion must set forth the reasons that the Commissioner cannot remain objective due to personal bias, prejudice, financial interest or other substantial reason. The fact that the Commissioner has participated in a decision or vote adverse to the party is not a basis for disqualification.
- C. Any motion to disqualify a Hearing Officer or Hearing Examiner from participating in an appeal must be filed within fourteen days of the date of the first notice identifying that the challenged Hearing Officer or Hearing Examiner will participate in the appeal. The motion must set forth the reasons the party reasonably believes that the Hearing Officer or Hearing Examiner cannot remain objective due to personal bias, prejudice, financial interest or other substantial reason. The fact that

the Hearing Officer or Hearing Examiner has participated in a decision or vote adverse to the party is not a basis for disqualification.

- D. Any motion to disqualify a Commissioner from participating in any other matter must be filed prior to the Commission's meeting for which the item appears on the agenda, or if the item does not appear on the agenda, prior to the time the issue is presented to the Commission.
- E. A party's failure to timely raise a challenge shall constitute a waiver of the challenge.
- F. In the event of an actual or apparent personal bias, prejudice, financial interest or other reason substantially affecting a Commissioner's, Hearing Officer's or Hearing Examiner's objectivity the challenged Commissioner, Hearing Officer or Hearing Examiner may recuse him or herself, or the Commission may, by majority vote, disqualify a Hearing Officer or Hearing Examiner.

2.03 SELECTION OF TEMPORARY COMMISSIONER

- A. If a Commission seat is vacant by a Commissioner's recusal or disqualification, or because a Commissioner is otherwise unable to serve, the Commission may appoint a Commissioner as provided in SMC 4.04.265.
- B. The Executive Director or Commission may select a past Commissioner to serve as a temporary Commissioner. The appointee must meet the eligibility requirements established in SMC 4.04.250
- C. The Executive Director may propose and the Commission may adopt a roster of qualified individuals willing to serve as temporary Commissioners, from which the Commission may select a temporary Commissioner.
- D. If the Commission decides to appoint a temporary Commissioner pursuant to SMC 4.04.265, the Commission shall select the temporary Commissioner by motion and vote consistent with SMC 4.04.265.
- E. If a temporary Commissioner is not appointed by one of the above methods, the Commission may select any other qualified individual in any manner consistent with SMC 4.04.265.

2.04 SELECTION OF CHAIR

The Chair shall be elected from among the Commissioners by majority vote for a one year term. A Commissioner may serve two consecutive terms as chair.

2.05 DUTIES OF THE CHAIR - The Chair:

- A. Shall preside over Commission meetings.
- B. Shall rule on matters of parliamentary procedure.
- C. Shall act as primary supervisor for the Executive Director.
- D. May sign correspondence on behalf of the Commission.

2.05.1 ACTIONS OF THE CHAIR

The Chair's actions are subject to review and modification by a majority vote of the full Commission.

2.05.2 DELEGATION OF CHAIR'S DUTIES

In the absence of the Chair, the Chair's authority shall be delegated to another member of the Commission.

2.06 DUTIES OF THE EXECUTIVE DIRECTOR

The Executive Director shall:

- A.** Be the general manager and executive officer of the Civil Service Commission, responsible to and as directed by the Commission. Implement Commission administered ordinances, rules, and policies.
- B.** Appoint and remove staff, delegate duties where necessary and supervise and direct their work.
- C.** Make and enforce contracts.
- D.** Prepare and draft the budget for the department, approve accounts, and administer generally the expenditure of funds appropriated for the operation of the department. Disburse Commission funds as authorized by its budget and by law; and deposit funds received into the City Treasury.
- E.** Coordinate with other City agencies.
- F.** Conduct education, assistance and information programs and propose policy related matters for the Commission's review.
- G.** Assign appeals to a Hearing Officer or Hearing Examiner. Request a Commissioner to act as Reviewing Officer on final decisions of the Hearing Officer or Hearing Examiner. Generally assign appeals to Commissioners to act as Reviewing Officers on a rotating basis unless circumstances warrant assignment to a specific Commissioner.
- H.** Prepare subpoenas for documents and witnesses.
- I.** Issue orders on preliminary matters, such as hearing dates and times, dismissals in accordance with Rule 5.03 and continuances for the Commission.
- J.** Sign orders, correspondence, and other documents as authorized by the Commission, the Commission chair, or a Presiding Officer.
- K.** Conduct pre-hearing conferences to identify and simplify issues of appeals and encourage resolution of contested matters.

- L. Prepare the record of proceedings for review by the Commission.
- M. If needed, the Executive Director shall schedule a special meeting in order for the Commission to decide who shall hear an appeal or how to proceed with an appeal.
- N. Perform all other functions necessary for the proper carrying out of these rules and such additional duties as assigned by ordinance or by the Commission.

2.07 OFFICE LOCATION - The office and post office address of the Civil Service Commission is Seattle Municipal Tower (SMT), 700 Fifth Avenue, Suite 1670 P.O. Box 94729 Seattle, Washington 98124-4729, or such other office as the commission designates. The Commission offices will be open Monday through Friday, excluding legal City holidays, as staffing permits.

2.08 PUBLIC RECORDS- Public records of the Commission shall be available for inspection and copying, by written request as provided in RCW Chapter 42.56. No fee will be charged for inspection of public records. Inspection will be during office hours in a space provided by the Commission staff, under its supervision, and accomplished without excessive interference with the essential functions of the Commission. Copies of records will be made available at actual cost or as provided by City ordinance.

In accordance with RCW 42.56.070(4) the Commission has determined that it is unduly burdensome to maintain an index of the Commission's records.

2.08.1 RESPONSE TO PUBLIC RECORDS REQUESTS

1. The Commission office shall respond promptly to requests for disclosure in accordance with applicable statutes.
2. Washington State or other applicable law may prohibit the release of some Commission records.
3. The Commission may provide third party notification to individuals to whom the requested records pertain.

2.08.2 REVIEW OF DENIAL OF PUBLIC RECORDS REQUEST

Any person who objects to a denial of a request for a record should within **five (5) days** of the date of receiving the written notice of denial, ask for a review of such decision by submitting a written request for a review to the Commission.

III. DEFINITIONS

Appellant shall mean the person or entity that filed the appeal with the Civil Service Commission.

City shall mean the City of Seattle.

Code shall mean the Seattle Municipal Code

Commission shall mean the Civil Service Commission.

Days shall mean calendar days.

Hearing Examiner shall mean the Office of the City's Hearing Examiner

Hearing Officer shall mean a Hearing Examiner Pro-Tem hired by the Commission to whom the Commission delegates the authority to preside over an appeal

Party shall mean the Appellant or Respondent for the appeal.

Presiding Officer shall mean the person to whom the Commission has delegated the authority to preside over an appeal in accordance with Article XVI of the Seattle City Charter or the member of the Commission assigned to preside over an appeal.

Representative shall mean the attorney or other individual chosen by the Appellant or Respondent to represent them in the appeal process.

Respondent shall mean the person or entity that the appeal is filed against. Generally this is a City department or office.

Reviewing Officer shall mean the member of the Commission assigned to review and make a recommendation on a matter that the Commission has delegated to a Hearing Officer or to the Office of the Hearing Examiner of the City of Seattle.

IV. POLITICAL PATRONAGE PROCEEDINGS

4.01 POLITICAL PATRONAGE – SCOPE- Commission staff shall investigate any complaints alleging that the Mayor, a City Councilmember, or member of their immediate staff has initiated a recommendation regarding a candidate for City employment, or that such person has used inappropriate pressure to effect the hiring of any candidate for City employment.

4.02 POLITICAL PATRONAGE - INAPPROPRIATE PRESSURE- Inappropriate pressure includes any suggestion (either by oral or written communication) to a City employee, the effect of which would:

- A.** Preclude job advertising for, or open consideration of, qualified applicants; or
- B.** Result in the selection of an employee for reasons other than relative ability, knowledge, and skill.

4.03 POLITICAL PATRONAGE HEARING- Commission staff shall report the results of its investigation to the Commission. The Commission, upon review of the report, may dismiss the complaint or set the matter for a full hearing.

V. HEARINGS AND APPEALS

5.01 APPEALS

- A. Any regular employee who is demoted, suspended, or terminated may appeal such action to the Commission.
- B. Any employee alleged to be probationary by the disciplining department may appeal to the Commission the question of the employee's probationary status and whether the procedures for discharge of probationers, as found in the Personnel Rules, were properly followed.
- C. Any individual or department adversely affected by an alleged violation of Article XVI of the Charter of the City of Seattle, the Personnel Ordinance or the administration of the personnel system may appeal such violation to the Commission.

5.02 APPEALS - TIME – FORM

An employee must first exhaust the Employee Grievance Procedure as described in SMC 4.04.240 and Personnel Rule 1.4 before filing an appeal with the Civil Service Commission. If the employee exhausts the grievance procedure and remains dissatisfied with the outcome of an action that falls within the jurisdiction of the Civil Service Commission, he or she may file an appeal. The Notice of Appeal must be filed within **twenty (20) calendar days** of the Step 3 grievance response.

The Notice of Appeal shall be in writing and include the mailing address and street address where process and other papers may be served upon the appellant. The Notice of Appeal shall also contain a brief description of the facts giving rise to the appeal, and a concise statement of the reason for the appeal. Forms provided by the Commission may be used for such notice but are not required.

5.03 APPEALS - INITIAL REVIEW- The Executive Director shall review all appeals to determine whether the employee has timely filed an appeal, whether the employee has exhausted the Employee Grievance Procedure, and if the appeal falls within the Commission's jurisdiction. If the Executive Director determines that an appeal is untimely, premature, or not within the Commission's jurisdiction, the Executive Director shall dismiss the appeal by a dismissal order stating the reasons for the dismissal. Decisions by the Executive Director may be appealed to the Commission within **twenty calendar (20) days** after the date of the order.

5.04 ARBITRATION - EFFECT- An appeal shall be dismissed if the subject of the appeal has previously been the subject of binding arbitration.

5.05 REFERRAL- An appeal or petition alleging a violation of a rule or ordinance related to employment enforced by another City agency, shall be referred by the Commission to the agency of the City having jurisdiction over such alleged violation.

If the issue of an appeal falls under the jurisdiction of the Commission and another City agency and can be clearly separated, the Commission shall process the portions of the matter that are within the Commission's jurisdiction.

5.06 NOTIFICATION- If the appeal meets initial jurisdictional requirements and has not been dismissed or referred, the Executive Director shall send a letter of receipt and a copy of the Notice of Appeal to the Parties with a copy to the City of Seattle Personnel Director.

5.07 APPEALS, REPRESENTATION OF APPELLANT- Individuals representing a party shall serve the Presiding Officer and the other party with a Notice of Appearance as early as possible in the proceedings after representation is retained.

When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Presiding Officer of the name, address, and telephone number of that designated representative. The person designated as the party representative shall exercise the rights of such appellants. Notice or other communication to the party representative, is notice or communication to the party.

5.08 HEARINGS

The Commission may itself hear an appeal, or may delegate its powers to hear an appeal, in whole or in part, to a Hearing Officer or to the Office of the Hearing Examiner of the City of Seattle, subject to review by the Commission. Hearings shall be conducted and concluded in a timely manner and at all stages of the appeal process parties shall make a good faith effort to avoid delays.

5.08.1 WHEN THE COMMISSION CONDUCTS THE HEARING

The Commission may designate one member to serve as the Presiding Officer for the case. The Presiding Officer shall rule on all pre-hearing matters. If the Commission does not designate a Presiding Officer for a case, the Chair shall serve as Presiding Officer.

5.08.2 WHEN A HEARING OFFICER OR THE OFFICE OF THE HEARING EXAMINER CONDUCTS THE HEARING

A Commissioner will serve as the Reviewing Officer to review and make a recommendation on all final decisions of the Presiding Officer. The Commission may affirm, modify, or remand a decision of a Presiding Officer.

5.09 COMPUTATION OF TIME- Except as otherwise provided by the Code, computation of any period of time prescribed or allowed for all matters before the Commission or a Presiding Officer shall begin with the first day following the day on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or a legal City holiday, the period shall extend to the end of the next day the office is open for business.

5.10 FILING AND SERVICE OF DOCUMENTS

- A.** Documents shall be deemed filed with the Presiding Officer on the date received at the location and in the manner specified by the Presiding Officer.
- B.** Documents due to the Commission or a Commission Hearing Officer may be filed electronically during regular business hours. Documents sent electronically before 5:00 PM will be deemed filed on that business day. Documents received after 5:00 PM will be deemed received on the next business day.

- C. Documents shall be served personally or, unless otherwise provided by applicable ordinance, by first-class, registered, or certified mail, or by facsimile (fax) transmission, electronically or, in the case of service to City agencies, by the City's regular interoffice mail, with written acknowledgment of such mailing attached to the papers so served. A written signed statement for the purpose of confirming the date of mailing shall be provided by the person who mailed the papers, or by certificate of any attorney, or Commission staff in the case of Commission papers. Service shall be regarded as complete upon deposit in the regular facilities of the U.S. Mail of a properly stamped and addressed letter or packet, or at the time personally delivered, or transmitted by fax.
- D. In the event staff is not present in the Commission office during regular business hours, the Commission will make available a written statement for Parties to sign for the purpose of confirming the date and time when filing papers.

5.11 PREHEARING CONFERENCE (Presiding Officer)- The Presiding Officer may on his or her own order, or at the request of a party, hold a conference prior to the hearing to consider:

- A. Identification, clarification, and simplification of the issues;
- B. Disclosure of witnesses and exhibits;
- C. Motions; Other matters deemed by the Presiding Officer appropriate for the orderly and expeditious disposition the proceedings.

5.11.1 PREHEARING CONFERENCE (Commission)- If the Commission is hearing the case, the Executive Director shall schedule all pre-hearing conferences.

- A. Pre-hearing conferences may be held by telephone conference call or other electronic means as specified by the Presiding Officer.
- B. The Presiding Officer shall give notice orally or in writing to all parties of any pre-hearing conference.
- C. All parties shall be present at any pre-hearing conference unless they waive the right to be present or are represented and granted permission by the Presiding Officer not to attend.
- D. Following the pre-hearing conference, the Presiding Officer may issue an order reciting the actions taken or ruling on motions made at the conference.

5.12 OATH OR AFFIRMATION

- A. All testimony before the Presiding Officer at hearing shall be taken under oath or affirmation to tell the truth.
- B. Every interpreter, before beginning to interpret, shall take an oath that a true interpretation shall be made that is understandable for the person needing the interpreter and that the interpreter shall repeat statements in English to the Presiding Officer, to the best of the interpreter's ability.

5.13 WITNESSES

- A. All witnesses are subject to cross-examination by the other party(s).
- B. The rules of privilege shall be effective to the extent recognized by law.
- C. Hearings are open to the public. However, in appeal hearings, persons who are not parties are generally not permitted to testify unless called as witnesses.
- D. The Presiding Officer may limit the length of testimony to expedite the proceedings and avoid the necessity to continue the hearing. Maximum practicable advance notice will be provided if such time limitations are to be imposed. If parties are unable to complete their arguments and testimony within the allotted time, an opportunity will be granted to submit written materials after the close of the hearing; other parties will be allowed an opportunity to offer written rebuttal to any such materials.
- E. At the discretion of the Presiding Officer, or where the parties agree and the rights of the parties will not be prejudiced, the Presiding Officer may allow testimony via electronic means. Each party to the proceeding shall have the opportunity to hear (or, if available, to both hear and see) testimony given in this manner and to question the person giving such testimony.

5.14 MOTIONS

- A. All motions, other than those made during a hearing, shall be in writing and state the order or relief requested and the grounds for the motion. Each party representative shall receive every motion, answering statement and accompanying papers on the day it is filed with the Presiding Officer.
- B. Within **seven calendar (7) days** after service of any written motion, or such longer or shorter period as may be designated by the Presiding Officer, the other party(s) shall file a written answer. When the Presiding Officer has received the answering statement(s), or the **seven calendar (7) days** or other period designated by the Presiding Officer has elapsed, the Presiding Officer shall rule on the motion. Failure of a party to file a timely response may be considered by the Presiding Officer as evidence of that party's consent to the motion.
- C. The Presiding Officer may call for oral or written argument prior to ruling.
- D. For motions made at hearing or for motions made for the extension of time or the expedition of hearings, the Presiding Officer may waive the requirements of this section and may also rule upon such motions orally.

5.15 EVIDENCE

- A. Evidence, including hearsay, may be admitted if, in the judgment of the Presiding Officer, it is relevant to the issue(s) on appeal, comes from a reliable source, and has probative (proving) value. Such evidence is that which responsible persons would commonly rely upon in the conduct of their important affairs.

- B. The Presiding Officer may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.
- C. Documentary evidence may be received in the form of copies or excerpts. The Presiding Officer may require that the parties are given an opportunity to compare the copy with the original, and all parties must make the complete document from which an excerpt is taken available for inspection.
- D. If the Commission is hearing the appeal, each party shall provide four (4) copies of all filings. If a Hearing Officer or the Hearing Examiner is hearing the appeal, then each party shall provide three (3) copies of all filings.

5.16 OFFICIAL NOTICE

- A. The Presiding Officer may take official notice of judicially cognizable facts. In addition, the Presiding Officer may take notice of general, technical, or scientific facts within his or her specialized knowledge.
- B. Parties must be notified during the hearing, or before issuance of the decision, of the specified facts or material noticed and the source thereof, and afforded an opportunity to contest or rebut the facts or material so noticed. The Presiding Officer shall not take such notice of disputed adjudicative facts that are at the center of an appeal.
- C. A Presiding Officer ruling, decision, or recommendation may refer to and utilize any part of the Code and any issued Commission decision.

5.17 CONTINUING OR REOPENING HEARING

- A. A scheduled hearing may be continued for good cause as determined by the Presiding Officer. Written notice of the date, time, and place of the continued hearing shall be provided to each party. The notice of a rescheduled hearing need not observe the time requirements to which the original notice was subject.
- B. Prior to the issuance of the subject decision, the Presiding Officer may continue or reopen proceedings for good cause and may permit or require written briefs or oral argument.
- C. If the Presiding Officer determines at hearing that there is good cause to continue such proceeding and then and there specifies the date, time, and place of the new hearing, no further notice is required.
- D. If a matter is reopened after conclusion of the hearing, parties shall be provided at least **ten calendar (10) days** notice of the reopened hearing.

5.18 LEAVING THE RECORD OPEN

- A. The Presiding Officer may leave the record of a hearing open at the conclusion of the hearing in order to receive argument, briefing, or for other good cause. Parties shall be provided notice of the consideration of any evidence received

after the hearing and shall have an opportunity to review such evidence and to file rebuttal evidence or argument.

- B. Unless the Presiding Officer has left the record open, information submitted after the close of the record shall not be included in the hearing record or considered by the Presiding Officer.

5.19 PROCEEDINGS RECORDED

All proceedings before the Presiding Officer, except deliberations, shall be electronically recorded. The recordings of hearings shall be part of the official case record. Copies of the recordings shall be made available to the public upon request, subject to payment of a reasonable fee for copying.

Note: Third party notification may be required for some records.

5.20 CLARIFICATION

The appellant shall provide clarification, additional information, or other submittal(s), as the Presiding Officer deems necessary in order that the appeal be made complete and understandable. The Presiding Officer shall rule on the request of any party for clarification of an appeal. Request for clarification must be made in a timely manner as to afford reasonable opportunity for other parties to prepare response(s) for hearing.

5.21 AMENDMENT

The Presiding Officer may allow an appeal to be amended **within thirty (30) days** after it has been filed for shown good cause. In deciding whether to allow such an amendment, the Presiding Officer shall consider whether the fair hearing opportunity of other parties is prejudiced by the amendment.

5.22 WITHDRAWAL OF AN APPEAL

- A. Only the appellant or counsel of record may withdraw an appeal.
- B. Where several persons, a group, organization, or other entity files an appeal, the person who has been designated the party representative shall file the withdrawal.
- C. An appellant's request to withdraw shall be granted as a matter of right and the appeal shall be dismissed.
- D. If the appellant withdraws an appeal, and the City's Hearing Examiner is the Presiding Officer, the Hearing Examiner shall issue a dismissal order. This order will serve as the dismissal order from the Commission.
- E. If an appeal is withdrawn after parties decide on a settlement and there is a signed settlement agreement, a copy of the agreement may be submitted to the Commission, to be included in the record.

In any subsequent proceeding, the Commission shall consider the following factors in determining whether to give legal effect to the settlement agreement:

1. The agreement is written and easily understood without legal assistance;
2. There is a clause that encourages the employee to seek review of the agreement prior to signing;
3. It is clear, what, if any, appeal rights the employee is giving up by signing the agreement.

5.23 INTERVENTION

- A. Upon a showing of a substantial or significant interest that is not otherwise adequately represented, the Presiding Officer may permit an interested person, group, organization, corporation, or other entity, who has not filed an appeal, to participate in that appeal.
- B. Except as provided in subsection (d), a written request for intervention must be submitted to the Presiding Officer at least **five (5) days** prior to the day on which the hearing begins. The intervention request must state the basis for the intervention and how the person, group, organization, corporation, or other entity making the request is affected by or interested in the matter appealed. In considering the requested intervention, the Presiding Officer shall seek to ensure that intervention will not unduly delay the hearing process, will not expand the issues beyond those within the appeal, and will not prejudice the rights of any of the original parties. In granting intervention, the Presiding Officer may limit the nature and scope of the intervention.
- C. Intervention is not a substitute means of appealing a decision for those who could have appealed but failed to do so.

5.24 NOTICE OF HEARING- The notice of hearing shall include:

- A. The time, place, and nature of the hearing;
- B. The legal authority and jurisdiction for the hearing;
- C. The file number, address, or other identifying information for the underlying decision or action being appealed;
- D. A brief statement as to the issue(s) to be considered;
- E. Reference to the applicable Code section(s).

5.24.1 TIME- Notice of the hearing shall be given within the time required by applicable ordinance(s).

5.24.2 RECORD OF NOTICE- A copy of the notice of hearing shall be made part of each official case record.

5.25 DISCOVERY

- A. Appropriate pre-hearing discovery is permitted. The Presiding Officer may prohibit or limit discovery where the Presiding Officer determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal.
- B. Parties shall exchange, review, discuss and agree upon documents and witness' lists no less than two (2) weeks prior to any scheduled pre-hearing conference or hearing, unless another time period is specified in the hearing or pre-hearing order. Disagreements that cannot be resolved shall be brought to the attention of the Presiding Officer.
- C. Witness lists shall include a list of each witness, a summary of each witness' testimony and a statement establishing how the testimony will contribute to the issue of the appeal.

5.26 SUBPOENAS

- A. A request or motion may be made in writing for a subpoena to require a person to appear and testify at a hearing, or for a person to produce specified documents or other physical exhibits at a pre-hearing conference or at hearing.
- B. A request for a subpoena for a person shall: include the person's name and address; show the relevance of that person's testimony; and, demonstrate the reasonableness of the scope of subpoena sought.
- C. A request for a subpoena for documents or other physical exhibits shall: include the name and address of the person who is to produce the documents or other physical exhibit; specify the materials to be produced; indicate the relevance of the materials subpoenaed to the issues on appeal; and, demonstrate the reasonableness of the scope of the subpoena sought.
- D. The party requesting the subpoena shall be responsible for serving the subpoena. An affidavit or declaration of personal service or of mailing shall be submitted to the Presiding Officer as proof of that service.
- E. Except as otherwise allowed by the Presiding Officer, subpoenas shall be served no less than **seven calendar (7) days** prior to the appearance or production ordered.
- F. Any motion to limit or quash (i.e., vacate or void) a subpoena shall be filed with the Presiding Officer within **three calendar (3) days** of receipt of the subpoenas or such other time as specified by the Presiding Officer.
- G. Requests for subpoenas and the rulings upon such requests may be made ex parte unless otherwise ordered by the Presiding Officer.

5.27 PARTIES' RIGHTS AND RESPONSIBILITIES

- A. Each party in an appeal proceeding shall have the right to: due notice of hearing, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights determined by the Presiding Officer as necessary for the full disclosure of facts and a fair hearing.

- B. Parties have the right to be represented by a person of his/her choosing at his/her own expense. Representation is not required.
- C. Where a party has designated a representative, the representative shall exercise the rights of the party.
- D. All parties, witnesses, and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

5.28 DEFAULT-The Presiding Officer may dismiss an appeal by an order of default where the appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

5.29 HEARING FORMAT

- A. Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Presiding Officer to make the relevant evidence most readily and efficiently available to the Presiding Officer and to provide the parties a fair opportunity for hearing.
- B. The order of hearing is generally as follows:
 1. Presiding Officer's introductory statement (including type of appeal and CSC file number);
 2. Introduction of Parties;
 3. Parties' opening statements ;
 4. Department's presentation of evidence;
 5. Appellant's presentation of evidence;
 6. Rebuttal;
 7. Closing argument of parties.
- C. The order of hearing may be modified or a different order established, as the Presiding Officer deems necessary for the efficient, clear, and fair presentation of evidence. The order of the hearing may also be modified as agreed upon by the parties with approval of the Presiding Officer.
- D. The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

5.30 COMMUNICATIONS FROM NON-PARTIES

- A. Written communications received from non-parties regarding a pending matter shall be disclosed by the Presiding Officer at hearing for the review of all parties.
- B. The Presiding Officer, after considering the objections of the parties and determining that undue delay or prejudice will not result, may permit relevant oral or written statements or both, by persons who are not parties or called by parties as witnesses. Limitations may be imposed on the length of such

statements and cross-examination by the parties may be permitted for oral statements.

5.31 BURDEN OF PROOF

- A. In cases of termination, demotion, or suspension, the Department must show by the applicable standard of proof that the Department's decision or action was with justifiable cause. In other cases, the Appellant bears the burden of proof.
- B. Unless otherwise provided by applicable ordinance(s), statute, or case law, the standard of proof is a preponderance of the evidence.

5.32 PRESIDING OFFICER'S DECISION

- A. **ISSUANCE:** The Presiding Officer shall issue a written decision and provide a copy of that decision to each party representative and to the Commission within **thirty calendar (30) days** from the close of the record. (See Section VII, Rule 7.01, "Commission's Decision," for exception.)
- B. **JUDGMENT ON RELIEF REQUESTED:** Unless proscribed by applicable ordinance(s), the Presiding Officer's decision may affirm, reverse, modify, or remand the Department's decision or other action that is the subject of the appeal.
- C. **CONTENTS:** Decisions of the Presiding Officer on appeals shall include, but not be limited to, a statement regarding the following:
 - 1. **Background or Introduction.** The introduction shall include the nature and background of the proceeding, including identification of party representatives participating in the hearing, pre-hearing determinations, and other similar information.
 - 2. **Finding.** The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and those matters officially noticed. This may include recitation of relevant provisions of ordinance, other regulation, or case law.
 - 3. **Conclusion.** Legal and factual conclusions based upon specific provisions of law and the findings of fact.
 - 4. **Decision.** The Presiding Officer's decision as to the outcome of the appeal (affirms, modify, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record.
 - 5. **Postscript.** Information regarding subsequent procedural step(s), if any, for appealing the Presiding Officer's decision.

The decision may also include an order disposing of contested issues and/or directing parties to take actions consistent with the decision.

5.33 PETITION FOR REVIEW NOT FILED

If neither party files a timely petition for review, and the Commission does not, upon its own initiative, decide to review the matter within the time for filing a petition for review, the decision of the Presiding Officer shall be adopted as the order of the Commission.

5.34 RECORD--The record of an appeal shall include:

A. The Commission's file:

1. Department's decision or action being appealed;
2. Appeal statement (Notice of Appeal);
3. Evidence received or considered;
4. Pleadings, procedural rulings, and other non-evidentiary materials that are part of the Presiding Officer's file;
5. Statement of matters officially noticed, if any;
6. Findings, conclusions and decision of the Presiding Officer;
7. Tape or Digital recording of the hearing.

B. The Presiding Officer's administrative file on an appeal may include other information or materials, which are not part of the evidentiary record. The Presiding Officer shall forward the entire file to the Commission upon final decision.

VI. COMMISSION REVIEW OF PRESIDING OFFICER'S DECISION

This section applies only when the Commission did not conduct the original hearing. When the Commission conducts the original hearing, a party may seek judicial review only pursuant to applicable law.

6.01 REVIEW ON MOTION OF COMMISSION

- A.** The Reviewing Officer shall review decisions issued by a Presiding Officer and recommend an action to the Commission at its next scheduled meeting, following the review.
- B.** The Reviewing Officer or any Commissioner may move to review, affirm or modify all or any part of a Presiding Officer's decision or remand for further proceedings.
- C.** The Commission shall vote on the Commissioner's motion no later than the next regularly scheduled Commission meeting following the review.

6.02 PETITION FOR REVIEW OF PRESIDING OFFICER DECISION- Any party may file a petition for review with the Commission of all or any part of the Presiding Officer's final decision. The petition must be filed at the Commission's office, and served on all other parties, no later than **ten calendar (10) days** following the date of the issuance of the Presiding Officer's final decision. The party seeking review must file an original and four copies of the petition and any related briefs submitted if not filed electronically.

6.03 CONTENTS OF PETITION- The petition for review shall contain statements of the specific findings of fact, conclusions of law, orders or rulings on which the party filing the petition seeks review by the Commission. Any brief or written argument that the party filing the petition for review desires to have considered by the Commission must be served and filed with the petition. If the record is then available, a petition shall cite the pages in the record or the exhibits supporting the review. If the Commission decides to review the decision, it will issue an

order setting forth the issues it will review, and whether the Commission requires additional briefing by the parties.

6.04 PREPARATION OF THE RECORD FOR REVIEW- The party filing a petition for review is responsible for the initial cost of the preparation of a transcript.

- A.** The record shall include testimony designated by the parties as necessary to resolve disputed issues and a copy of the relevant papers and exhibits in cases involving dismissals. A party at their own expense may submit a transcript by a certified court reporter or other non-interested person approved by the Executive Director. The Presiding Officer shall forward a tape recording of the proceedings to the Commission together with an index showing the names of the witnesses and the location on the tape recording where the testimony may be found and a list of the exhibits and an identification of the tape or witness, where the exhibit is identified, offered for admission, and a ruling made. If all or part of a tape recording is not audible, the Presiding Officer may prepare and certify a summary of that portion of the testimony in the proceedings based on his or her notes and memory.
- B.** Where the parties agree that the testimony or facts are not in dispute, the Presiding Officer may prepare a narrative report of the evidence or a summary of the testimony in order to reduce the amount of material transcribed and to make a more compact record. A party may substitute a verbatim transcript for all or part of narrative report or summary at his or her own expense.
- C.** When the Presiding Officer believes that the tape of proceedings adds an extra dimension to the testimony, the Presiding Officer may supplement the transcript with the tape recording. For example, the tone of voice of a witness may be expressive, or the manner of speaking may be informative.
- D.** The Presiding Officer may order post-hearing conferences for the purpose of preparing the record for review.

6.05 RESPONSE TO PETITION FOR REVIEW

Responding parties shall serve and file their response and accompanying brief or written argument within **seven calendar (7) days** following the date on which they are served with a copy of such petition for review. The Commission Chair may grant any party an extension of time for the filing of its brief or written argument.

6.06 TRANSFER OF CASE FILE- Upon certification of the record, the Presiding Officer shall transfer the case records to the Commission for its use during review.

6.07 ORDER TO APPEAR

The Commission may order the parties to appear before it and present oral argument or additional evidence as to any of the issues in the matter. Unless the Commission requests oral argument or presentation of evidence, the matter shall be decided on the record and written materials submitted.

6.08 STANDARD FOR COMMISSION REVIEW OF PRESIDING OFFICER DECISION

The Commission reviews questions of law de novo, and reviews factual findings to see if they are supported by substantial evidence in the record. The Commission shall reverse or modify a decision of the Presiding Officer where the decision is not supported by substantial evidence, or misapplies the Personnel Ordinance or rules or law; or fails to do substantial justice. The party seeking review of the decision of the Presiding Officer shall have the burden of showing error of fact or law.

6.09 DELIBERATION- When considering a petition for review, the Commission may deliberate in closed session. No person other than necessary Commission staff and the Commission's legal counsel shall be present during deliberation.

6.10 COMMISSION DECISION- If the Commission reverses or modifies the Presiding Officer's decision, it will issue findings of facts and conclusions of law. The Commission's decision on review is the final administrative decision of the City.

VII. WHEN THE COMMISSION HEARS AN APPEAL

7.01 COMMISSION'S DECISION- If the Commission decides to hear an appeal, the Commission shall issue its decision within **ninety calendar (90) days** of the close of record. The Commissioners may sign the decision or authorize the Presiding Officer or the Executive Director to sign the decision.

7.02 DELIBERATION- The Commission may deliberate on an appeal in closed session. No person other than necessary Commission staff and legal counsel shall be present.

7.03 SANCTIONS- In the interest of justice, to reduce injury to a disadvantaged party, or to secure obedience to its orders, the Commission, in its discretion and for good cause, may impose sanctions as authorized by Charter and Ordinance.

7.04 RECONSIDERATION OF COMMISSION DECISION- A party may move for reconsideration of a Commission decision only on the basis of fraud, mistake or in the event that new evidence comes to light that would justify reconsideration. Such motion shall be filed with the Commission within **fifteen calendar (15) days** of the Commission's final decision.

7.05 JUDICIAL REVIEW- In order to seek judicial review of a Commission decision, a party must timely file an appropriate action in Superior Court of the State of Washington for King County as provided by applicable law.

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