

MEETING DATE: 06/22/2015

AGENDA ITEM: Adoption of a Resolution Approving Amendments to the Civil Service Rules as Recommended by the Civil Service Commission

ATTACHMENTS

	<u>Pages</u>
1. Resolution	1-2
2. Exhibit "A"	3-10
3. Exhibit "A" with Markups	11-20

1. **RESOLUTION NO. 2015-R**

2
3 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
4 CULVER CITY, CALIFORNIA, APPROVING AND ADOPTING
5 REVISED CIVIL SERVICE RULES OF THE CITY OF CULVER
6 CITY AFTER PUBLIC HEARINGS HELD THEREON BEFORE
7 THE CIVIL SERVICE COMMISSION

8 WHEREAS, pursuant to Culver City Municipal Code Section 3.03.100.D, the
9 Civil Service Commission conducted a duly noticed public hearing to consider proposed
10 amendments to the Civil Service Rules; and

11 WHEREAS, following the conclusion of the public hearing and the
12 Commission's thorough deliberation of the matter, including full consideration of the
13 proposed amendments, staff report, related information and all comments from the
14 employee organizations and the public, the proposed amendments were approved by the
15 Civil Service Commission for recommendation to the City Council.

16 NOW, THEREFORE, the City Council of the City of Culver City, California,
17 DOES HEREBY RESOLVE as follows:

18 1. The proposed amendments to the Civil Service Rules, attached
19 hereto as Exhibit "A" and incorporated herein by this reference, are hereby approved and
20 adopted. All other Civil Service Rules adopted by Resolution No. 2006-R068 and
21 amended by Resolution Nos. 2011-R076 and 2012-R096, which are not specifically
22 amended by this Resolution, shall remain in full force and effect.
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2. This Resolution shall take effect immediately upon its adoption

APPROVED and ADOPTED this _____ day of _____ 2015.

MICHEÁL O'LEARY, Mayor
City of Culver City, California

ATTEST:

APPROVED AS TO FORM:

MARTIN R. COLE, City Clerk

A15-00397

Carol A. Schwab

CAROL A. SCHWAB, City Attorney

for

6.4 Commission Approval: Where an examination is required, the Human Resources Director shall prepare a Job Bulletin and forward it to the Commission for approval. It shall not be necessary to obtain additional Commission approval of a Job Bulletin if there have been no changes in the minimum requirements, or examination components.

6.9 Promotional Examinations: Insofar as practical, consistent with these Rules and consistent with the best interests of the City, vacancies in the Classified Service shall be filled by promotion from within the City. When a position is vacant and there is no current eligible list, the appointing authority may submit a requisition for either an open or a promotional examination to establish an eligible list.

6.10 Unassembled Examinations: The Human Resources Director may approve an unassembled examination process when the City receives fewer than six (6) qualified applications for a recruitment. An unassembled examination may consist of an appraisal of training, experience, work history, or any other means of evaluating job-related qualifications without requiring the applicant's personal attendance.

6.11 Contractual Services: The Human Resources Director or Commission may approve the use of materials from a public or private agency, or the coordination of an examination with other public agencies. In addition, or as an alternative, the Human Resources Director or Commission may recommend the City Council contract with the legislative body or governing board of any other municipality or county, with any State department, or with any private agency, for the conduct of competitive examinations to ascertain the fitness of applicants for positions and employment in the Classified Service, and for the performance of any other service in connection with personnel recruitment, selection, classification or administration.

6.12 Use of Outside Examination Agents: Upon the recommendation of the Human Resources Director, the City may contract with a person or agency for the purpose of conducting examinations. The outside examination person or agency must be professionally qualified to examine persons for employment in governmental jurisdictions. The Human Resources Director shall ensure that examinations are conducted pursuant to the Rules. For the purpose of establishing an Eligible List, every effort shall be taken to ensure objectivity and neutrality of raters, examiners, proctors and observers. The Human Resources Director shall determine if and when City employees, electors or elected officials may participate in the examination process. The decision of the Human Resources Director is final.

7.5 Duration of Eligible Lists: Each certified Eligible List shall be valid for use for a period of one (1) year, unless exhausted sooner. The Eligible List may be extended for up to one (1) additional year with the Commission's approval. The extended eligible list shall be valid until a new list is established for the same classification or the current Certification of Eligible List is exhausted, whichever occurs first, except as set forth below.

Rule 8.3 (b) Filing of Vacancies, Transfer Opportunity

- b. **Transfer Opportunity:** Permanent employees who are already in a position within the classification or an equivalent classification in which there is a vacancy or an equivalent classification are eligible for a transfer opportunity. Said employees shall express the desire to transfer to such vacancy in accordance with the Transfers provisions provided herein.

Rule 8.4 (b) (4) Types of Appointment, Probationary Appointments

- (4) Probationary employees are entitled to know whether or not they are being recommended for permanent status. The City Manager or designee may admonish any appointing authority who fails to provide performance evaluations and notice to a probationary employee.

11.8 Right to Appeal:

a. **Final Determination:**

- (1) **Written Reprimand - City Manager:** An employee may appeal a Written Reprimand by filing a written appeal with his or her Department Head no later than ten (10) working days following the date of receipt of the Written Reprimand. The Department Head shall meet with the employee and the employee's supervisor within five (5) working days of receiving the appeal. The Department Head shall render a written decision within ten (10) working days following the joint meeting.

If the employee disagrees with the Department Head's decision, the employee may forward the appeal to the City Manager through the Human Resources Director within five (5) working days of receiving the Department Head's decision. The City Manager shall meet with the employee

and the employee's Department Head within ten (10) working days of receiving the employee's appeal. The City Manager shall notify the employee of his or her decision within fifteen (15) working days of the joint meeting. The City Manager's decision shall be final.

In cases where the employee's supervisor is also the Department Head, the employee may file the appeal with the City Manager through the Human Resources Director.

Any of the aforementioned timeframes may be extended by mutual consent of the parties.

- (2) **Commission - Disciplinary Actions (Excluding Written Reprimands)**: Any employee in the Classified Service who is subject to Suspension without pay, Reduction in Step within a Range, Demotion, or Dismissal shall have the right to appeal to the Commission from that disciplinary action.

b. **Appeal Procedures:**

- (1) **Employee**: An employee wishing to file an appeal shall do the following:

- i. The employee shall file with the Human Resources Director, no later than ten (10) working days (five (5) shifts in Fire Suppression) following the date of receipt of the notice of final discipline, a written answer to the charges and an appeal requesting the Commission, hearing officer or board review the disciplinary action.
- ii. The answer to the charges shall contain a written statement of the issues being appealed.
- iii. The appeal shall contain a request for either an open or closed hearing before the Commission.
- iv. If an employee fails to file a timely appeal in compliance with this Rule, the employee shall forfeit all appeal rights.

- (2) **Human Resources Director**:

- i. Regardless of the request in the appeal for an open or closed hearing, if the hearing is to occur before the Commission, the Commission will cause notice to be served on the employee, pursuant to State law, at least twenty-four (24) hours prior to the hearing, of the employee's right to have the Commission hear the appeal in public.

- ii. If the employee has made no request to have an open hearing, the hearing shall be closed.
- iii. A copy of the Notice of Intent, Final Notice, and the employee's appeal shall be placed in the employee's personnel file as a matter of record.

11.10 Hearings: Upon the scheduling of a hearing by the Commission, the Human Resources Director shall notify the affected parties of the date, time, and place set by the Commission and shall publicly post a notice of the date, time and place of the hearing together with the names of the affected parties. If the employee elects a closed hearing, the name of the employee shall not be included on the public posting.

Unless otherwise approved in advance by the Commission, the employee shall appear personally before the Commission at the hearing, and may select up to two (2) additional persons to be present at the hearing, in addition to legal counsel or other designated representative, to represent the employee at the hearing. If the employee or the employee's representative fails to appear on the scheduled date, the Commission may require a showing of good cause for the employee's or representative's failure to appear before the hearing is permitted to be continued. If the Commission finds that there was not good cause for the failure to appear, the appeal shall be deemed denied and the disciplinary action sustained.

The Commission may, in its discretion, grant continuances for valid reasons (e.g., incapacity of the employee, unavailability of counsel, or documented emergency circumstances, among others).

11.13 Use of Hearing Officer: A hearing officer, composed of person(s) qualified to so act, may be appointed to conduct an appeal hearing.

a. **Commission:** The Commission, upon a majority vote, may decide that the use of a hearing officer would benefit the City and the employee to ensure the expeditious completion of the hearing process. In such event, the Commission shall appoint a hearing officer to conduct a hearing as follows:

- (1) The hearing officer shall not be an employee or elected or appointed official of the City.
- (2) Unless granted an extension by the Commission, the hearing officer shall submit written findings and recommendations to the Commission for review and final decision within thirty (30) calendar days after the closing date of the hearing, which will be either the conclusion of closing arguments or the hearing officer's receipt of the parties' closing brief, whichever is later.

b. **Employee:** The employee may submit with the appeal a written request that the matter be heard before a hearing officer, on the basis that it would not be possible to receive a fair and impartial hearing before the Commission as a result of bias of more than two (2) Commissioners. If such request is not made with the appeal, the employee's option to request a hearing officer shall be waived. If the Commission grants such request, the Commission shall appoint a hearing officer to conduct the hearing as follows :

- (1) The hearing officer shall not be an employee or elected or appointed official of the City.
- (2) Unless granted an extension by the Commission, the hearing officer shall report written findings and decision to the Human Resources Director, the parties, and parties representatives within thirty (30) calendar days after the closing date of the hearing, which will be either the conclusion of closing arguments or the hearing officer's receipt of the parties' closing brief, whichever is later.. The Human Resources Director shall disseminate the decision to the Civil Service Commission.

11.14 Hearing Procedure: The Commission, through its chair, or hearing officer, shall conduct a hearing in the following manner:

a. Prior to the start of the hearing, the parties shall comply with the following:

- (1) Informal Pre-hearing conference procedures: Upon acceptance of an appeal, the Commission, or hearing officer may require the parties to attend a pre-hearing conference at a date and time specified by the Commission, or hearing officer. The pre-hearing conference shall be no less than 15 days prior to the first hearing date set for the appeal.
- (2) Unless otherwise determined by the Commission, the pre-hearing conference shall be chaired by the Commission chair, or the hearing officer. The Commission chair, may designate another member as co-chair of the pre-hearing conference.
- (3) The purpose of the pre-hearing conference shall be to develop the following:
 - i. A joint statement of facts, including any stipulated facts
 - ii. A joint witness list, including a summary of expected testimony

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AMENDMENTS TO RULES 6, 7, 8, 11, AND 14

- iii. A joint exhibit list
 - iv. A statement of evidentiary issues
 - v. Identification of affirmative defenses
 - vi. Identification of potential legal issues
 - vii. A time estimate for the appeal hearing
 - viii. Dates of unavailability of the parties, counsel, and witnesses
- (4) Not later than five (5) business days prior to the pre-hearing conference, each party to the appeal shall prepare, serve on the other party and file with the Commission or hearing officer a pre-hearing conference statement setting out that party's information or positions for items one (1) through eight (8), above. The chair of the pre-hearing conference may, at his/her sole discretion, continue the pre-hearing conference from time to time to require additional information as may be deemed appropriate. Upon a showing of good cause, a party may amend his or her pre-hearing conference statement.
- (5) At the pre-hearing conference, the parties shall endeavor to stipulate to facts, resolve evidentiary matters, and develop joint witness and exhibit lists. The chair may set a time estimate for the hearing and set a schedule for briefing and argument before the Commission or hearing officer on unresolved legal issues.
- (6) The Commission or hearing officer may impose appropriate sanctions against any party who fails to appear or participate in good faith at the pre-hearing conference. Those sanctions may include, but are not limited to, evidentiary rulings against that party.
- b. The hearing shall be called to order at the scheduled time.
- c. The hearing shall be conducted informally, and the rules of evidence shall not apply.
- d. Except for good cause including evidence presented for impeachment purposes, at the discretion of the Commission or hearing officer no witness or exhibit not identified or presented at the pre-hearing conference will be allowed or admitted.
- e. The Commission or hearing officer shall maintain order at the hearing and may enforce its orders through the following mechanisms:
- (1) Exclusion or expulsion of witnesses;

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AMENDMENTS TO RULES 6, 7, 8, 11, AND 14

- (2) Expulsion of anyone who disturbs or disrupts the hearing or fails to follow any lawful directives of the Commission or hearing officer.
- f. The Commission or hearing officer may establish reasonable time limits for examination and cross-examination of witnesses.
- g. Each party may present an opening statement, with the City going first. Appellant may reserve an opening statement until the beginning of the appellant's case in chief.
- h. The appointing authority or department representative shall, by a preponderance of the evidence, prove the conduct upon which the charges are based. The employee may present witnesses and evidence in defense of the charges and may raise any affirmative defense. All witnesses shall be subject to cross examination by the parties or the parties' representatives and by the Commission or hearing officer.
- i. Closing arguments shall then be presented, with the appointing authority or departmental representative preceding the employee or his/her representative in presentation. The appointing authority shall be provided final rebuttal following appellant's closing arguments.
- j. At the discretion of the Commission or hearing officer, closing briefs rather than closing arguments may be permitted. If closing briefs are permitted, the Commission or hearing officer shall establish a reasonable schedule for briefings.
- k. Upon completion of the hearing, the chair shall recess the proceedings to deliberate in closed session

11.15 Deliberations:

- a. **Commission:** The Commission shall deliberate in closed session and make a decision on the case. The Commission shall have no authority to substitute his/her judgment as to the propriety of the discipline other than for the reasons set forth herein. Upon conclusion of deliberations, the Commission shall report out in open session its decision and formally close the hearing.

The decision of the Commission shall be binding.

- b. **Hearing officer:** In cases where the Commission has been recused in accordance with Rule 11.13 (b) the hearing officer shall deliberate and make a final decision on the case. The hearing officer shall have no

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AMENDMENTS TO RULES 6, 7, 8, 11, AND 14

authority to substitute his/her judgment as to the propriety of the discipline other than for the reasons set forth in Rule 11.16.

The hearing officer or board shall submit the findings and decision to the Human Resources Director, parties and the parties' representative.

11.18 Execution of Decision: It shall be the duty of the Human Resources Director to keep the Commission fully informed of the final execution of its decision, and to assist the appointing authority in such execution when requested.

In the event the employee is reinstated after Dismissal by the Civil Service Commission following a hearing, the employee shall be reinstated to duty with such salary and other accrued benefits as would have been payable for the period reinstated, less amounts the employee earned or could reasonably have earned during that period, and any other payments required by federal or state law.

14.3 Decision to Lay off: The decision to reduce the number of budgeted positions may be made by an appointing authority, subject to the approval or direction of the City Council and City Manager.

14.12 Displacement Rights: An employee who is impacted by a lay off may be placed in another position within the same Classification or bumped to another Classification for which the employee is qualified without examination. An employee whose position is eliminated as a result of the reduction in work force shall be eligible for appointment to any of the following:

- a. Another vacant position within the same or equivalent classification;
- b. Another vacant position within a Classification with a lower salary range.

The final decision as to which positions will be affected by displacement shall be made by the City Manager. A displaced employee, who previously obtained permanent status, shall retain such status if displaced to a position within the Classified Service and shall not be required to serve an additional probationary period.

Rule 6.4 Commission Approval

6.4 Commission Approval: ~~When required, Commission approval of the request for an examination shall stipulate the components of the examination, the categories of persons eligible to take the examination, and the Job Bulletin. Where an examination is necessary required, the Personnel & Employee Relations Human Resources Director shall prepare a Job Bulletin pursuant to the Job Bulletin provisions and forward it to the Commission for approval. It shall not be necessary to obtain additional Commission approval of a Job bBulletin if there have been no changes in the minimum requirements, or examination components, Commission has previously approved the specification, and bulletin for the classification and there has been no change in the minimum requirements, the weight of the examination components, or the open or promotional nature of the recruitment.~~

Rule 6.9 Promotional Examinations

6.9 Promotional Examinations: Insofar as practical, consistent with these Rules and consistent with the best interests of the City, vacancies in the Classified Service shall be filled by promotion from within the City. When a position is vacant and there is no current eligible list, the appointing authority may ~~request~~ submit a requisition for either an open or a promotional examination to establish an eligible list. ~~The Personnel & Employee Relations Director shall then recommend the appropriate examination category to the Commission for approval.~~

NEW Rule 6.10 Unassembled Examinations

6.10 Unassembled Examinations:

The Human Resources Director may approve an unassembled examination process when the City receives fewer than six (6) qualified applicants for a recruitment. An unassembled examination may consists of an appraisal of training, experience, work history, or any other means of evaluating job-related qualifications of applicants without the necessity of requiring the applicant's personal attendance.

Rule 6.10 Contractual Services

NEW Rule 6.11 6.10 Contractual Services: The Human Resources Director and/or Commission may approve the use of materials from a public or private agency, or the coordination of an examination with other public agencies, In addition, or as an alternative, the Human Resources Director or Commission may or recommend the City Council contract with the legislative body or governing board of any other municipality or county within this State, with any State department, or with any private agency, for the conduct of competitive examinations to ascertain the fitness of applicants for positions and employment in the Classified Service, and for the performance of any other

service in connection with personnel recruitment, selection, classification or administration.

Rule 6.11 Use of Outside Examination Agents

NEW Rule 6.12 ~~6.11~~ Use of Outside Examination Agents: Upon the recommendation of the Human Resources Director, ~~tThe City Council,~~ upon the recommendation of the Personnel & Employee Relations Director and Commission, may contract with a person or agency for the purpose of conducting examinations. The outside examination, ~~which person or agency shall must~~ be professionally qualified to examine persons for employment in governmental jurisdictions. The Human Resources Director ~~Personnel & Employee Relations Director~~ shall ensure that examinations are conducted pursuant to the Rules. For the purposes of establishing an Eligible List, every effort shall be taken to ensure objectivity and neutrality of raters, examiners, proctors and observers. The Personnel & Employee Relations ~~Human Resources~~ Director shall determine if and when City employees, electors or elected officials may participate in the examination process. The decision of the ~~Personnel & Employee Relations~~ Human Resources Director is final.

Rule 7.5 Eligible Lists

7.5 Duration of Eligible Lists: Each certified Eligible List shall be valid for use for a period of one (1) year, unless exhausted sooner. The Eligible List may be extended for up to one (1) additional year ~~by with the Commission's~~ approval. The extended eligible list shall be valid until establishment of a new list is established for in the same classification or the current Certification of Eligible List is exhausted, whichever occurs first, except as set forth below.

Rule 8.3 (b) Filing of Vacancies, Transfer Opportunity

- b. **Transfer Opportunity:** Permanent or ~~probationary~~ employees who are already in a position within the classification or an equivalent classification in which there is a vacancy or an equivalent classification are eligible for a transfer opportunity. Said employees shall express the desire to transfer to such vacancy in accordance with the Transfers provisions provided herein.

Included for Reference Purposes only

Rule 9.1 (b) Transfer, Transfer Eligibility Requirements

- b. **Transfer Eligibility Requirements:** The only employees eligible for a transfer opportunity are those who have already been appointed to the classification for which a transfer opportunity exists and who have already achieved permanent status in said classification. Employees

with permanent status in a similar or equivalent classification may be considered for the transfer opportunity, with the approval of the ~~Personnel & Employee Relations~~ Human Resources Director.

Rule 8.4 (b) (4) Types of Appointment, Probationary Appointments

- (4) ~~The Probationary employees are~~ is entitled to know whether or not they are being recommended for permanent status. The ~~Commission City Manager or designee~~ may admonish any appointing authority who fails to provide performance evaluations and notice to ~~the~~ a probationary employee.

11.8 Right to Appeal:

a. Final Determination:

- (1) **Written Reprimand - City Manager:** ~~An employee may appeal a written Reprimand may be appealed by filing a written appeal with his or her Department Head no later than ten (10) working days following the date of receipt of the Written Reprimand. The Department Head shall meet with the employee and the employee's supervisor within five (5) working days of receiving the appeal. The Department Head shall render a written decision within ten (10) working days following the joint meeting. The Department Head's determination shall be final. a grievance pursuant to the Grievance provisions, except that such appeal shall not proceed beyond review by the City Manager.~~

If the employee disagrees with the Department Head's decision, the employee may forward the appeal to the City Manager through the Human Resources Director within five (5) working days of receiving the Department Head's decision. The City Manager shall meet with the employee and the employee's Department Head within ten (10) working days of receiving the employee's appeal. The City Manager shall notify the employee of his or her decision within fifteen (15) working days of the joint meeting. The City Manager's decision shall be final.

In cases where the employee's supervisor is also the Department Head, the employee may file the appeal with the City Manager through the Human Resources Director.

Any of the aforementioned timeframes may be extended by mutual consent of the parties.

(2) **Commission - Disciplinary Actions (Excluding Written Reprimands):** Any employee in the Classified Service, who is subject to ~~s~~Suspension without pay, ~~R~~reduction in ~~S~~step ~~W~~within a ~~R~~range, ~~D~~demotion, or ~~D~~dismissal, shall have the right to appeal to the Commission from that disciplinary action.

b. **Appeal Procedures:**

(1) **Employee:** An employee wishing to file an appeal shall do the following:

- i. The employee shall file with the Human Resources Personnel & Employee Relations Director, no later than ten (10) working days (five (5) shifts in Fire Suppression) following the date of receipt of the notice of final discipline, a written answer to the charges and an appeal requesting the Commission, hearing officer or board ~~to~~ review the disciplinary action, ~~or shall forfeit the employee's appeal rights.~~
- ii. The answer to the charges shall contain a written statement of the issues being appealed.
- iii. The appeal shall contain a request for either an open or closed hearing before the Commission.
- iii.iv. If an employee fails to file a timely appeal in compliance with this Rule, the employee shall forfeit all appeal rights.

(2) **Human Resources Personnel & Employee Relations Director:**

- i. Regardless of the request in the appeal for an open or closed hearing, if the hearing is to occur before the Commission, the Commission will cause notice to be served on the employee, pursuant to State law, at least twenty-four (24) hours prior to the hearing, of the employee's right to have the Commission hear the appeal in public.
- ii. If the employee has made no request to have an open hearing ~~the event no request is made at the time,~~ the hearing shall be closed.
- iii. A copy of the Notice of Intent, Final Notice, and the employee's appeal shall be placed in the employee's personnel file as a matter of record.

Rule 11.10 Hearings

11.10 Hearings: Upon the scheduling of a hearing by the Commission, the ~~Human Resources Personnel & Employee Relations Director~~ shall notify the affected parties of the date, time, and place set by the Commission and shall publicly post a notice of the date, time and place of the hearing together with the names of the affected parties. If the employee elects a closed hearing, the name of the employee shall not be included on the public posting.

~~Unless incapacitated, otherwise approved in advance by the Commission, the employee shall appear personally before the Commission at the hearing and. The employee may select up to two (2) persons, including legal counsel, to represent the employee at the hearing. be represented by any person the employee selects. If the employee or the employee's representative fails to appear on the scheduled date, the Commission may require a showing of, or fails to give notice of good cause for the employee's or representative's failure to appear before the hearing is permitted to be continued. incapacity with proof of valid cause, If the Commission finds that there was not good cause for the failure to appear, the appeal shall be deemed denied withdrawn and the disciplinary action sustained.~~

The Commission may, in its discretion, grant continuances for valid reasons (e.g., incapacity of the employee, unavailability of counsel, or documentedable emergency circumstances, among others).

~~The hearing shall be conducted informally, and the rules of evidence shall not apply.~~

Rule 11.13 Use of Hearing Officer or Board

11.13 Use of Hearing Officer or Board: ~~A hearing officer or board, composed of person(s) qualified to conduct a hearing and make findings and recommendations so act, may be appointed to conduct an appeal hearing. under the following conditions:~~

a. **Commission:** The Commission, upon a majority vote, may decide that the use of a hearing officer or board would benefit the City and the employee to ensure the expeditious completion of the hearing process. In such event, the Commission shall appoint a hearing officer or board to conduct a hearing as follows:

- (1) ~~The decision to appoint the officer or board shall be based on a reasonable determination that it would benefit the City and appellant to ensure the expeditious completion of the hearing process.~~
- (2) The hearing officer or board member shall not be an employee or elected or appointed Commissioner or elected official of the City.

- (3) Unless granted an extension by the Commission, the hearing officer or board shall submit report their written findings and recommendations to the Commission for review and final decision within thirty (30) calendar days after the closing date of the hearing, which will be either the conclusion of closing arguments or the hearing officer's or board's receipt of the parties' closing brief, whichever is later.
- b. **Employee:** The employee shall have may submit with the appeal a written request that the matter be heard before a hearing officer or board, on the basis that it would not be possible to receive a fair and impartial hearing before the Commission as a result of bias of more than two (2) Commissioners. If such request is not made with the appeal, the employee's option to request a hearing officer or board shall be waived. If the Commission grants such request, the Commission shall appoint a hearing officer or board to conduct the hearing as follows the option of having a hearing before a hearing officer or board under the following conditions:
- (1) The employee shall make a written request to the Commission for such a hearing before a hearing officer or board; such request shall include, based upon a showing it would not be possible to receive an unbiased hearing before the Commission, and the recusal of no more than two (2) Commissioners, would not alleviate the potential bias.
- (2) Neither the hearing officer nor any board members shall not be an resident, employee or elected or appointed official of the City.
- (3) Such request shall be made in writing and included with the appeal as set forth in this Rule. If such request is not made at that time, the option to request right to a hearing officer or board is deemed waived.
- (3) If a majority of the Civil Service Commission is found bias, Unless granted an extension by the Commission, the hearing officer or board shall providereport their written findings and decision to the Human Resources Director, the, parties, and parties representatives within thirty (30) calendar days after the closing date of the hearing, which will be either the conclusion of closing arguments or the hearing officer's or board's receipt of the parties' closing brief, whichever is later, unless additional time is agreed to by both parties. The Human Resources Director shall disseminate the hearing officer's or board's decision to the Civil Service Commission.

Rule 11.14 Hearing Procedure

11.14 Hearing Procedure: The Commission, ~~through its chair, or h~~Hearing ~~o~~Officer ~~or b~~Board, through its chair, shall conduct a hearing in the following manner:

a. Prior to the start of the hearing, the parties shall comply with the following:

- (1) Pre-hearing conference procedures: Upon acceptance of an appeal, the Commission, or hearing officer or board may require the parties to attend a pre-hearing conference at a date and time specified by the Commission, or hearing officer or board. The pre-hearing conference shall be no less than 15 days prior to the first hearing date set for the appeal.
- (2) Unless otherwise determined by the Commission, the pre-hearing conference shall be chaired by the Commission chair, or the hearing officer or designated board member. The Commission chair, hearing officer or designated board member may designate another member as co-chair of the pre-hearing conference.
- (3) The purpose of the pre-hearing conference shall be to develop the following:
 - i. A joint statement of facts, including any stipulated facts
 - ii. A joint witness list, including a summary of expected testimony
 - iii. A joint exhibit list
 - iv. A statement of evidentiary issues
 - v. Identification of affirmative defenses
 - vi. Identification of potential legal issues
 - vii. A time estimate for the appeal hearing
 - viii. Dates of unavailability of the parties, counsel, and witnesses
- (4) Not later than five (5) business days prior to the pre-hearing conference, each party to the appeal shall prepare, serve on the other party and file with the Commission or hearing officer, a pre-hearing conference statement setting out that party's information or positions for items one (1) through eight (8), above. The chair of the pre-hearing conference may, at his/her sole discretion, continue the pre-hearing conference from time to time to require additional information as may be deemed appropriate. Upon a showing of good cause, a party may amend his or her pre-hearing conference statement.

(5) At the pre-hearing conference, the parties shall endeavor to stipulate to facts, resolve evidentiary matters, and develop joint witness and exhibit lists. The chair may set a time estimate for the hearing and set a schedule for briefing and argument before the Commission or hearing officer on unresolved legal issues.

(6) The Commission or hearing officer, may impose appropriate sanctions against any party who fails to appear or participate in good faith at the pre-hearing conference. Those sanctions may include, but are not limited to, evidentiary rulings against that party.

b. The hearing shall be called to order at the scheduled time.

b.c. The hearing shall be conducted informally, and the rules of evidence shall not apply.

c.d. b. — Each party shall be required to identify their witnesses and to present their pre-marked exhibits at the beginning of the hearing. Except for good cause, including evidence presented for impeachment purposes, at the discretion of the Commission or, hHearing oOfficer or bBoard, no witness or exhibit not identified or presented at the start of the pre-hearing conference will be allowed or admitted.

d.e. The Commission or, hHearing oOfficer or bBoard shall maintain order at the hearing and may enforce its orders through the following mechanisms:

(1) Exclusion or expulsion of witnesses;

(2) Expulsion of anyone who disturbs or disrupts the hearing or fails to follow any lawful directives of the Commission or, hHearing oOfficer or bBoard.

e.f. The Commission, or hHearing oOfficer or bBoard may establish reasonable time limits for examination and cross-examination of witnesses, require parties to attempt to stipulate to non-controversial facts and/or to establish other rules regarding the presentation of evidence to expedite the completion of a fair and impartial hearing.

g.e. Each party may present an opening statement, with the City going first. Appellant may reserve an opening statement until the beginning of the appellant's responsecase in chief.

h.f. The appointing authority or department representative shall, by a preponderance of the evidence, prove the conduct upon which the charges are based. The employee may present witnesses and evidence in defense of the charges and may raise any affirmative defense. All witnesses shall be subject to cross examination by the

parties or the parties' representatives and by the Commission, ~~or~~
~~h~~Hearing ~~o~~Officer, ~~or~~ ~~b~~Board.

~~i. g.~~ Closing arguments shall then be presented, with the appointing authority or departmental representative preceding the employee or his/her representative in presentation. The appointing authority shall be provided final rebuttal following appellant's closing arguments.

~~i. h.~~ At the discretion of the Commission, ~~or~~ ~~h~~Hearing ~~o~~Officer, ~~or~~ ~~b~~Board, closing briefs rather than closing arguments may be permitted. If closing briefs are permitted, the Commission, ~~or~~ hearing officer ~~or~~ board shall establish a reasonable schedules for briefings.

~~k. i.~~ Upon completion of the hearing, the chair shall recess the proceedings to deliberate in closed session~~formally close the hearing~~

Rule 11.15 Deliberations

11.15 Deliberations:

a. Commission: The Commission shall deliberate in closed session and make a decision on the case. The Commission, ~~hearing officer or board~~ shall have no authority to substitute his/her judgment as to the propriety of the discipline other than for the reasons set forth herein. Upon conclusion of deliberations, the Commission shall report out in open session its decision and formally close the hearing.

The decision of the Commission shall be binding.

b. Hearing officer or board: In cases where the Commission has been recused in accordance with Rule 11.13 (b), ~~the hearing officer or board~~ shall deliberate and make a final decision on the case. The hearing officer shall have no authority to substitute his/her judgment as to the propriety of the discipline other than for the reasons set forth herein.

The hearing officer or board shall submit the findings and decision to the Human Resources Director, parties and the parties' representative.

Rule 11.17 Time Frame for Written Findings by Commission

11.17 Time Frame for Written Findings and Decision by Commission: Written findings and decision of the Commission shall be rendered within ~~fifteen (15)~~ thirty (30) calendar ~~working~~ days after the closing date of the hearing ~~or after the date of the Commission meeting at which the recommendations of the Hearing Officer or Board are filed for review, and shall thereupon be directed to the proper authorities and the affected employee, unless extended by mutual consent of both parties. The Commission's written~~

findings and decision shall be provided to the parties and the parties' representatives.

~~The decision of the Commission shall be binding, except in the case where the appointing authority is the City Council, in which case the decision may be modified or overruled by a majority vote of the City Council.~~

Rule 11.18 Execution of Decision

11.18 Execution of Decision: It shall be the duty of the Human Resources Personnel & Employee Relations Director to keep the Commission fully informed of the final execution of its decision, and to assist the appointing authority ~~and City Council~~ in such execution when requested.

In the event the employee is reinstated by the Civil Service Commission ~~or City Council~~ following a hearing, the employee shall be reinstated to duty with such salary and other accrued benefits as would have been payable for the period reinstated, less amounts the employee earned or could reasonably have earned by the employee during that period, and any other payments required by federal or state law.

Rule 14.3 Decision to Lay Off

14.3 Decision to Lay off: The decision to reduce the number of budgeted positions may be made by an appointing authority, subject to the approval or direction of the City Council ~~and City Manager~~.

Rule 14.12 Displacements Rights

14.12 Displacement Rights: An employee who is impacted by a lay off may be placed in another position within the same Classification or bumped to another Classification for which the employee is qualified without examination. An employee whose position is eliminated as a result of the reduction in work force shall be eligible for appointment to any of the following:

- a. Another vacant position within the same or equivalent classification;
- b. Another vacant position within a Classification with a lower salary range.

The final decision as to which positions will be affected by displacement shall be made by the City Manager. A displaced employee, who previously obtained permanent status, shall retain such status if displaced to a position within the Classified Service and shall not be required to serve an additional probationary period.