



City of Culver City

Staff Report

File #: 18-01342, **Version:** 1

Item #: A-4

Discussion Regarding Disciplinary Appeal Processes and Provide Direction to Staff As Deemed Appropriate.

Meeting Date: June 6, 2018

Contact Person/Dept: Serena Wright-Black/Administrative Services

Phone Number: (310) 253-5640

Fiscal Impact: Yes No

General Fund: Yes No

Public Hearing: **Action Item:** **Attachments:**

Public Notification: (Email) Meeting and Agendas - Civil Service Commission (6/1/18); (Email) All City Staff (6/1/18);

Department Approval: Serena Wright-Black, Administrative Services Director (5/31/18)

RECOMMENDATION

Staff recommends that the Civil Service Commission discuss disciplinary appeal processes and provide direction to staff as deemed appropriate.

BACKGROUND/DISCUSSION

Appeal Procedures/Processes

During the regular May 2018 Civil Service Commission meeting there was discussion regarding documents the Commission receives prior to the start of an appeal hearing.

Civil Service Rule (CSR) 11.8 b. provide the appeal procedures for classified employees wishing to appeal certain disciplinary actions. Specifically, CSR 11.8.b.1 states in part: "An employee wishing to file an appeal shall do the following: (i) The employee shall file with the *Human Resources Director* (emphasis added)...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."

To summarize, Rule 11.8.b.1 requires an employee to file with the Human Resources Director 1) an appeal request for the Commission, hearing officer or board to review the disciplinary action, 2) an answer to the charges outlined in the disciplinary action, which contain a written statement of the issues being appealed and 3) a request for the hearing to be open or closed. Historically these documents are maintained as a part of the file of record. They are not disseminated to the parties or to the Commission.

CSR 11.9 requires that the Human Resources Director “prepare a summary of the charges and imposed discipline for the Commission to review.” The summary of the charges is presented to the Commission in the staff report for the agenda item. All other relevant documents are introduced into evidence and provided to the Commission during the course of the hearing. This allows both parties to provide context to the documents prior to the documents being introduced as an exhibit. It also ensures that the Commission is not prejudging the evidence prior to the commencement of the testimony and evidence portion of the proceeding.

Additionally, if the City Council, when it adopted the Civil Service Rules, had intended the Commission to receive the “answer to the charges” prepared by the appellant, in addition to the “summary of the charges,” prepared by the Human Resources Director upon the receipt of the appeal, the rule would have so stated. The fact that it did not indicates an intent to limit the information provided to the Commission, prior to the hearing, to the summary prepared by the Human Resources Director.

Procedural Due Process

In preparation for this report to the Commission, staff reviewed the history of the language contained in Rule 11.8.b.1 and discovered that some form of this language existed in the Civil Service Rules as far back as 1967. At that time there were two separate rules: Answer to the Charges and Right to Appeal. These two rules were consolidated and revised in 1989 resulting in the language contained in the current CSR.

The due process clauses of the U.S. Constitution (Fifth and Fourteenth Amendment) and the California Constitution (Article I, Section 7) protect a public employee’s right to both a property and liberty interest in employment. Court decisions have established that public employees have a property interest in their continued employment and can only be disciplined “for cause.” Additionally, a public employer must satisfy the procedural due process requirements before depriving a permanent employee of his/her property interest through a disciplinary action. The California Supreme Court case of *Skelly v. State Personnel Board* (1975) 15.Cal.3d 194, is the leading case in California which clarified and defined these due process rights.

Procedural due process (also referred to as “Skelly Rights”) requires that public employees be provided with notice of the proposed disciplinary action, the reasons for the adverse action, a copy of the charges and materials relied upon, and the right to respond orally or in writing prior to implementing the discipline. The documents subsequently become a part of the file of record and are provided to the Commission as part of the introduced evidence during the disciplinary appeal hearing.

The requirement for an employee to file an answer to the charges and statement of issues being appealed, as required in Rule 11.8.b.1, is outdated, redundant of requirements set forth in *Skelly* and potentially burdensome for those employees without representation. As noted above, under *Skelly*,

employees have the option of fulfilling this requirement orally.

Closed Hearings

Civil Service Rule 11.8.b.1 also requires that when an employee requests an appeal hearing he/she must also specify an open or closed hearing. If an employee fails to make this request the CSR's require that the hearing be closed to the public. Further, CSR 11.10 provides that "if an employee elects a closed hearing, the name of the employee shall not be included on the public posting."

During the May 2018 Commission meeting staff recommended to the Commission that its consideration of a peace officer's request for a closed disciplinary appeal hearing not be televised and that the meeting be closed to the public.

The Ralph M. Brown Act ("Brown Act") requires, except under limited circumstances, that local agency meetings be open to the public and any actions taken must be publicly reported. However, the Brown Act allows legislative bodies to conduct closed sessions (meetings) for the following personnel-related reasons:

- Appointment of a public employee
- Employment of a public employee
- Evaluation of performance of a public employee
- Discipline of a public employee; or
- Complaints or charges brought against a public employee

Thus, any matter relating to the charges against and the discipline imposed on an employee should, under the Brown Act, be discussed in a closed session, unless the employee exercises his or her right to have an open proceeding.

Next Steps

A public hearing is required if the Commission determines to further review and revise the Civil Service Rules. There is also a 'meet and confer' requirement with the City's six recognized bargaining units. Once those obligations have concluded, the Commission then makes a final recommendation to the City Council to adopt the revised Rules via Resolution.

If the Commission wishes to clarify the Civil Service Rules in regard to adding specific information on how to handle requests for a hearing officer, whether the hearing is open or closed, and if closed, what portion(s) of the meeting should be appropriately closed to the public, a public hearing to discuss CSR revisions may be scheduled for a future meeting date.

FISCAL ANALYSIS

There is no direct fiscal impact associated with discussing this item. However, staff resources will be required should the Commission decide to move forward with any Rule amendments.

AUTHORITY

11.8 Right to Appeal:

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.*

11.9 Processing: *Upon the receipt of an appeal, the Human Resources Director shall prepare a summary of the charges and imposed discipline for the Commission to review. The matter will then be placed on the next regular meeting agenda to schedule a hearing date.*

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).

17.3 Amendment of Rules: *Any employee, elected official, Commissioner or employee organization, hereinafter referred to as "party," may propose amendments to these Rules, subject to the following procedures.*

ATTACHMENTS

1. N/A

MOTION

That the Civil Service Commission:

1. Discuss the Disciplinary Appeal Processes; and
2. Provide Direction to Staff, as Deemed Appropriate.