

Employee Disciplinary Appeal Hearings



March 2007

Today's Discussion



- Personnel Rules (City Code, Chapter 34)
 - Section 34-38 addresses employee grievance and appeal procedures
 - Appeal procedures apply only to employees covered by Civil Service as designated by Charter
 - See Appendix A for covered employees/departments
- Ordinance change scheduled for 3/28 agenda
- Proposed change to sworn police officer discharge appeal procedure
- Appeal procedures for all other employees will remain same

Overview: Disciplinary Appeal Process

- Scenario: Employee is discharged
 - Discharge of sworn employees is only issued by Police Chief or Fire Chief
 - Discharge of civilian employees is often issued by Department Director
 - If employee was discharged by a lower-level manager, the employee appeals to Department Director
 - Next step: employee may appeal to City Manager's Office

City Manager's Office Appeal Hearings

- Employee submits appeal through Human Resources
 - HR determines if the appeal is submitted by deadline
 - Appeal hearings assigned to ACM on a rotation by Human Resources
- ACM staff schedules hearing & notifies employee
 - ACM, department or employee may request reschedule
- Appeal hearing lasts approximately one hour

Who Attends Discharge Appeal Hearings?

- ACM
- Employee
- Assistant City Attorney (advises the ACM)
- Department executive
 - Uniformed departments often represented by Internal Affairs staff
- Human Resources generalist for the department
- Optional:
 - Employee may bring one representative, for example: association representative, attorney, relative, co-worker
 - Department may bring knowledgeable manager
 - Witnesses allowed at discretion of ACM

ACM Hearing Procedures



- Department presents justification/documentation for action
- Employee has opportunity to respond to allegations
- ACM asks questions of either party, allows rebuttals and brief summaries
- ACM issues ruling in writing within 10 business days after hearing
 - Charter and Personnel Rules state that the ACM “is not limited in determining the extent of any discipline ordered”
 - Disciplinary action may be upheld, reduced, increased, or overturned
- Employees whose discharges are upheld may appeal to Civil Service & have a hearing with the Trial Board or an Administrative Law Judge

Concerns about Hearing Process

- Consistency of hearings when conducted by 5 different ACMs
- Accountability for rulings on discharged police officers
- Attendance at hearings by Police Chief or First Assistant Chief
- Attorney's office representation for Police Department

Recent Improvements to ACM Hearing Process



- Consistent structure for all hearings, regardless of which ACM conducts hearing
- Police executive (Police Chief, Assistant or Deputy Chief) represents DPD
- Re-training session for ACMs conducted
 - Guidebook prepared
 - Hearing protocol and procedures
 - Format
 - What's allowed, what's not
 - Review of pertinent Personnel Rules
 - Decision-making:
 - Burden of proof
 - "Preponderance of evidence"
- City Attorney's Office working with DPD Internal Affairs staff to improve documentation

3/28/07 Council Agenda Item

- Section 34-38 (f) (4) of City Code (Personnel Rules) proposed revisions will provide:
- Sworn members of the police department may appeal a discharge to the City Manager (not an Assistant City Manager)
- Police Chief must be present at hearing
- City Manager and Police Chief will each have a representative of the City Attorney present

Before & After Personnel Rules Revision

Action: Sworn police employee is discharged by Police Chief	
Before Revision:	After Revision:
Appeal Hearing conducted by ACM	Appeal Hearing conducted by City Manager
DPD represented by Internal Affairs staff	DPD represented by Police Chief
Legal representation for ACM	Legal representation for City Manager and Police Chief

Options

1. City Manager hears all sworn police discharge appeals
 - Police Chief attends as DPD representative
 - 2 City Attorney representatives available for City Manager and Police Chief
 - Single point of accountability for hearing outcome
 - Consistency of hearing procedures
 - Based on past volume of hearings, this method would consume a week's worth of time over the course of a year
2. First Assistant City Manager hears all sworn police discharge appeals
 - Other proposed conditions apply (Police Chief and attorney representatives)
 - Still provides:
 - Single point of accountability
 - Consistency
3. Continue current ACM rotational hearing process with recently implemented improvements (results to be reviewed in six months)
 - Allow process improvements to work
 - Monitor progress
 - City Manager holds ACMs accountable for outcome

Appendix A



	CIVIL SERVICE		NON CIVIL SERVICE DEPARTMENTS
	Classified	Unclassified	
Includes these employees:	<p>All employees, excluding Directors, Assistant Directors, other managerial personnel and laborers of:</p> <ol style="list-style-type: none"> 1. Aviation 2. Civil Service 2. Code Compliance 3. Communication & Info. Svcs 4. Convention & Events Services 5. Court & Detention Services 6. Development Services 7. Employee Retirement Fund 8. Environmental & Health Svcs. 9. Equipment & Building Services 10. Fire Department 11. Housing 12. Human Resources 13. Police & Fire Pension Fund 14. Police Department 15. Public Works & Transportation 16. Sanitation Services 17. Street Services 18. Trinity River Project 19. Water Utilities 	<ul style="list-style-type: none"> • Directors, Assistant Directors, other managerial personnel of civil service departments • City Auditor • City Secretary • Civil Service Board Secretary • Labor class (unskilled) 	<p>All employees of:</p> <ol style="list-style-type: none"> 1. City Attorney's Office 2. City Auditor's Office 3. City Secretary's Office 4. Library Department 5. Park & Recreation 6. Radio Dept (WRR) 7. Municipal Court Judges 8. City Council Office Staff 9. City Manager's Office, including but not limited to: <ul style="list-style-type: none"> • Business Dev & Procurement • Cultural Affairs • Economic Development • Emergency Mgt • Environmental Quality • E-Team • Financial Services • Intergovernmental Services • Public Information • Strategic Customer Service
Serve Probation, as defined by City Charter?	Yes – usually 6 months, with extensions for additional training by Civil Service	Yes	No
Have Civil Service Appeal Rights?	<p>Yes - Civil Service disciplinary rights of appeal:</p> <p>Letter of Counseling – no appeal Reprimand – appeal up to Director Suspension – appeal up to City Mgr Office Demotion/Discharge – appeal up to CS Trial Board/ALJ</p> <p>Grievance rights of appeal to the Civil Service Board as provided for in the Personnel Rules</p>	Only laborers have Civil Service rights of appeal. Directors, Assistant Directors and other managerial personnel are exempted from Civil Service appeal process by charter.	<p>No Civil Service rights of appeal</p> <p>With exception of Park & Recreation, final decision on employee appeals is made by Department Head.</p> <p>Park & Recreation appeals to council-appointed board</p>
Competitive selection process?	Yes - exceptions made in some cases for “non-competitive class” which requires special needs or peculiar/exceptional qualifications	Not required, but all appointments must be based on fitness and merit.	Not required, but all appointments must be based on fitness and merit