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## RULES AND PROCEDURES CITY OF SCOTTSDALE PERSONNEL BOARD

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### **1.0. General**

**1.1. Authority.** The authority of the Personnel Board ("Board"), including the right to establish rules and procedures for personnel hearings ("Rules"), is derived from the Scottsdale city charter and the provisions of Chapter 14 of the Scottsdale Revised Code, relating to Human Resources Management ("Code"). These Rules supplement the provisions of the city charter and the Code. They are intended to govern the manner in which hearings ("Hearings") on appeals to the Personnel Board are conducted.

**1.2. Arizona Open Meeting Law.** All of the proceedings of the Board shall be subject to the provisions of the Arizona Open Meeting Laws (A.R.S. §§ 38-431 et seq.) The Personnel Board may meet in executive session, as provided by the Open Meeting Laws. Two (2) of the three (3) members of the Personnel Board shall constitute a quorum for the transaction of any business. Meetings of the Board, including Hearings, shall be conducted by the chairperson ("Chairperson") or, in the absence of the Chairperson, the Chairperson's designee.

**1.3 Definitions.** "Chairperson", as used in these Rules and Procedures, includes both the Chairperson and designee. "HR Director", as used in these Rules and Procedures, includes the Executive Director of Human Resources and his/her designee.

### **2.0. Pre-hearing Procedures.**

**2.1. Representation by Counsel.** Both the employee bringing the appeal ("Appellant") and the City ("Respondent"), collectively the "Parties", may be represented by legal counsel. At the time that each party provides the list of witnesses and copies of the exhibits to the other party, as required by section 2.2 of these rules, below, the appellant shall indicate to the respondent, in writing, whether Appellant will be represented by counsel at the hearing, indicating counsel's name, address and telephone number.

In the event that the Appellant does not make timely disclosure of counsel, but is later represented by counsel, and notice is received prior to the hearing, Respondent is entitled to a continuance of the hearing, upon the filing of a written request for continuance. If the first notice the Respondent receives that the Appellant is represented by counsel is at the time set for the hearing, Respondent, at its election, is entitled to a continuance of the hearing or may consent to proceed with the hearing as scheduled. A continuance based upon this section shall not be considered as a continuance as a matter of right, as referred to in section 2.5, below, but in addition to any such continuance.

**2.2. List of Witnesses and Exhibits.** Each Party shall provide to the other Party, not less than ten (10) working days prior to the date set for the Hearing, or as otherwise ordered by the Chairperson, a list of witnesses such Party intends to call for testimony, and the exhibits that such Party intends to present at the Hearing. Each Party shall also provide four (4) copies of each exhibit for the Board, through the HR Director, at this

time. The Parties are encouraged to confer in advance to avoid unnecessary duplication of exhibits.

**2.3. Subpoena Power.** While the Personnel Board has the authority to issue subpoenas for either testimony or documents, the Board will only do so upon written request of the Appellant and/or Respondent. Such a request shall be directed to the Chairperson, through the HR Director, not later than fifteen (15) working days prior to the scheduled Hearing. Human Resources, on behalf of the Chairperson, will prepare subpoenas, and the subpoenas will be returned to the party that named the witnesses for service.

(a) Testimony of City Employees. All current City employees are expected to appear at the hearing and provide testimony when requested by either Party in accordance with this section unless excused for good cause as set forth in subsection (b) below. Any Party desiring the testimony of a current City employee may direct to such employee a written request to appear which includes the date and location of the hearing and a brief statement of why the employee is requested to appear. The request shall be made as soon as practicable but in any event not later than ten (10) working days prior to the scheduled hearing. The request to appear shall be a separate and distinct document from any list of witnesses and exhibits submitted by such Party. Alternatively, the Party may request that the Board issue a subpoena for said employee as provided above.

(b) Excusal from Attendance. Any City employee who has received a subpoena or a request to appear at a hearing may file a written request to be excused from the required appearance at the hearing. The request for excusal shall be directed to the HR Director, and shall set forth all reasons why the employee seeks to be excused from participation. The request shall also be signed by the employee's direct supervisor or designee. Upon receipt of a request for excusal of a witness, the HR Director shall forward the request to all Parties to the hearing and provide the Parties a reasonable opportunity to submit any objections to excusal of the witness. The designated liaison to the Personnel Board for Human Resources shall then decide, after consultation with the Chairperson, whether or not good cause exists for the City employee to be excused from participation in the hearing and shall notify the Parties and the Chairperson of the decision.

(c) Delivery of Notice to City Employees. Any subpoena or request to appear directed to a current City employee shall be effective if delivered in any of the following manners:

- 1) By e-mail to the City employee's designated City e-mail address with an additional copy to the executive director<sup>1</sup> of the City employee's department; or
- 2) By sending a copy through the City's inter-office mail system with an additional copy to the executive director of the City employee's department; or
- 3) By delivering a copy to the employee personally by a person who is at least eighteen years of age and not a party or anticipated witness for the hearing.

(d) Service of Subpoena on Person who is not a Current City Employee. Any subpoena directed to a person who is not a current employee of the City shall be made in accordance with Rule 45, Arizona Rules of Civil Procedure as amended from time to time.

**2.4. Participation of Witnesses.** The Board is not responsible for securing the attendance of witnesses. The Board has no authority to compensate anyone for attending or testifying at a Hearing, or for traveling to and from a Hearing, or for any other costs incurred for participating in a Hearing. The City may compensate employees, however, who are required to attend or testify at a Hearing, as may be provided by the City Code or administrative rule or practice. In the event of a postponement or cancellation of a scheduled Hearing, it is the responsibility of the naming Party (Appellant and/or Respondent) to notify witnesses of such action.

**2.5. Continuance of Hearing.** Either Party may request the continuance of a Hearing. Requests for continuance must be submitted to the Board not less than five (5) working days prior to the scheduled date of the Hearing. Each Party is entitled to only one (1) continuance of a Hearing, as a matter of right, but on the request of a Party, the Chairperson may grant additional continuances upon a showing of good cause, when in the interest of fairness to the Parties.

**2.6. Withdrawal/Abandonment of Appeal.**

(a) *Employee Withdrawal of Appeal.* The Appellant may submit a written notice to the Executive Director of Human Resources, or designee, withdrawing the appeal at any time prior to the scheduled Hearing. Upon receipt of such request, the HR Director shall cancel the Hearing and notify the members of the Board, the Respondent, and the Appellant of such cancellation. The Appellant's notice of withdrawal shall constitute a waiver of the right to appeal and the appeal shall be deemed abandoned without any further action by the Board.

At any time during a Hearing, prior to the Board making its findings, conclusions and recommendations, the Appellant may request to withdraw the appeal. Withdrawal of the appeal, during the Hearing, shall constitute a waiver of the right to appeal and the appeal shall be considered abandoned.

b) *Notice of Intent to Appear.* No later than five (5) working days prior to the scheduled Hearing date, Appellant shall confirm, in writing, Appellant's intent to attend the Hearing. The written confirmation must be directed to and received by the HR Director within the time period indicated above. In the event that Appellant fails to confirm his/her intent to appear for the Hearing, as required by this section, the HR Director shall cancel the Hearing and notify the members of the Board, the Respondent, and the Appellant, in writing, of such cancellation. The notice of cancellation to the Appellant shall be made by certified and regular U.S. mail and shall be deemed complete upon mailing. Upon such cancellation, the appeal shall be deemed abandoned without any further action by the Board.

c) *Reinstatement of Appeal.* Within fourteen (14) days of the notice of cancellation of the Hearing pursuant to subsection (b), the Appellant may submit a motion to the Board seeking reinstatement of the appeal. The Respondent may submit a response to the motion within ten (10) days of the date that the motion is submitted. The Board, in its discretion, may order that the appeal be reinstated if the motion demonstrates good cause why the Appellant failed to provide the notice required

under subsection (b). If the Board decides that the appeal should be reinstated, the HR Director shall reschedule a Hearing on the appeal within a reasonable time after the reinstatement. If after consideration of such a motion, the Board determines that good cause has not been shown, the appeal shall not be reinstated and the appeal shall continue to be deemed abandoned.

**2.7. Pre-hearing Motions.** Either Party may file pre-hearing motions not later than ten (10) working days before the scheduled date of the Hearing. The moving party shall file the original and five (5) copies of any pre-hearing motion with the HR Director. All pre-hearing motions shall be submitted in writing with any relevant exhibits attached to the motion. The moving party shall also deliver a copy of any such motion and exhibits to the opposing party, or its designated representative. The non-moving party may submit a response to any motion within five (5) working days before the scheduled date of the Hearing. The Chairperson shall rule on any such motion either prior to the Hearing or at the time set for the hearing, with or without oral argument, as the Chairperson may so determine. The Chairperson shall make the determination as to whether oral arguments are necessary. If the Chairperson determines oral arguments are necessary, the Chairperson shall schedule such oral arguments at such time as the Chairperson may determine, including at the time of the scheduled Hearing. The decision of the Chairperson on any such motion shall be final as to that motion.

The Chairperson shall not, however, make a decision on any motion which effectively decides the merits of the appeal and precludes further consideration of the appeal by the Board. Any such potentially dispositive motion shall be considered and decided by the Board at a public meeting, in compliance with the Arizona Open Meeting Laws.

### **3.0. Conduct of Hearings.**

**3.1. Exclusion of Witnesses.** Upon the request of the Appellant or Respondent, witnesses will be excluded from the Hearing until it is time for them to testify. At no time, however, shall the Appellant or Respondent (City representative) or their attorneys, if any, be excluded from the Hearing.

**3.2. Hearing Participants.** Participation in a Hearing shall be limited to the Parties and their counsel, if applicable, unless otherwise stipulated by the Parties prior to the Hearing and approved by the Chairperson. There shall be no consultation or communications, written or oral, between the Parties and non-participants in attendance at the Hearing, except during breaks. Legal assistants or paralegals employed by counsel for the Parties, however, may communicate with the Parties, during the Hearing, if they are introduced to the Board at the beginning of the Hearing. Communications permitted by this section may not disrupt the Hearing.

**3.3. Rules of Evidence Inapplicable.** The formal rules of evidence applicable to state and federal courts shall not apply in Board Hearings. All testimony, however, shall be upon oath or affirmation administered by the Chairperson.

**3.4. Presentation of Evidence; Generally.** Each Party shall have the right to present the testimony of witnesses and documentary evidence. Each Party shall have the right to

examine and cross-examine witnesses for the other Party. Each Party shall have the right to object to the admission or exclusion of testimony and evidence because it is irrelevant, immaterial, incompetent, verbose, or unduly repetitious. A Party may also object to the extent or limitation of examination or cross-examination.

**3.5. Rulings by Chairperson.** The Chairperson shall preside over Hearings and shall determine the manner in which the Hearing will be conducted. The Chairperson shall rule on objections made to the admission of testimony or evidence. Motions made prior to or during the Hearing shall require the recognition of the Chairperson, shall be made in order, and shall be ruled upon by the Chairperson.

**3.6. Order of Presentation.**

(a) Prior to presenting evidence and testimony, the Respondent and Appellant may each give a brief opening statement (i.e. 5-10 minutes). After the opening statements, the Respondent will present testimony and evidence in support of the action that is the subject of the appeal. The Appellant shall be given the opportunity to cross-examine each witness.

(b) After the Respondent has presented all of its witnesses and evidence, the Appellant will be given the opportunity to present witnesses and evidence. The Respondent shall be given the opportunity to cross-examine each witness.

**3.7. Summations.** When the Appellant's presentation of witnesses and evidence is concluded, each Party shall be given the opportunity to give a summation of its position, beginning with the Respondent. Each summation shall be limited to fifteen (15) minutes, except as may otherwise be provided by the Chairperson.

**3.8. Record of Proceedings.** All Hearings, with the exception of executive sessions, shall be recorded either stenographically or audio recorded. Minutes of executive sessions shall be taken as provided by law. The recording(s) of the proceedings, along with all documents and exhibits of evidence shall constitute the record and shall be maintained by the HR Director. All of the documents and materials constituting the record shall be subject to the Arizona Public Records Laws (A.R.S. §§ 39-121 et seq.).

**4.0. Findings of Fact, Conclusions and Recommendations.**

After the summations have been given, the Board will consider all of the evidence and make findings of fact, conclusions and recommendations, which shall be done in open session. The Board will transmit its written findings of fact, conclusions and recommendations to the city manager. The recommendation shall be to:

- a. Affirm the decision of the department's executive director.
- b. Overrule the decision of the department's executive director.
- c. Modify the decision of the department's executive director, as specifically recommended.

**5.0. City Manager's Review and Decision.**

The city manager, within a reasonable time after having received the written findings of fact, conclusions and recommendations from the Board, shall notify the HR Director of the city manager's decision in respect to the appeal. The HR Director shall immediately, in writing, notify the Appellant and Respondent and their respective legal counsel, if any, of the city manager's decision.

**6.0. Compliance by Executive Director.**

Within a reasonable period of being notified of the city manager's decision, the department's executive director shall take any action necessary to comply with the decision. It shall be the responsibility of the department's executive director to notify the employee of any such action.

**7.0. Expansion or Limitation of Time.**

The time limits set forth in these Rules for the completion of any act, requirement or activity may be expanded or limited by the Chairperson, at the Chairperson's discretion, when necessary to facilitate the preparation for or conduct of the Hearing, or in the interest of fairness.

**8.0. Copies of Documents; Service by Mail and Electronic Mail.**

Any notice or document required to be sent by the HR Director to the Parties shall also be sent via electronic mail to the Parties if an electronic mail address is provided to the HR Director by such Party. A Party shall promptly send a copy of any document filed with the HR Director to the other Party via first class mail unless another form of service is expressly required by these Rules. Provided, however, the Parties may enter into a mutual agreement that documents required to be served by first class mail may be served by electronic mail in lieu thereof. Any such agreement shall be in writing and filed with the HR Director before it is effective.

Revisions ADOPTED by the Personnel Board of the City of Scottsdale this 24th day of November, 2009 with an effective date of December 7, 2009.



Chairperson

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<sup>i</sup> *"For clarification, the use of the term "general manager" was administratively changed to "executive director" to be consistent with a change in nomenclature within the City's organizational structure.*