

# **RULES OF PROCEDURE FOR APPEAL HEARINGS BEFORE THE AURORA CAREER SERVICE COMMISSION**

The Aurora Career Service Commission (the “Commission”) hereby adopts the following Rules of Procedure (“Rules”) to govern the conduct of appeal hearings. These Rules are intended to be supplemental to and not in derogation of the provisions set forth in the City Code of the City of Aurora (“City Code”) or the Charter of the City of Aurora (“City Charter”).

## **Rule 1 — Decision of the Commission**

- a. The Commission is comprised of five Commissioners as set forth in Section 9-3 of the City Charter.
- b. The Commission hears and reviews appeals by aggrieved Career Service employees who have been laid off or disciplined by suspension, demotion, fine or dismissal. The Commission may affirm, reverse or modify the original action or disciplinary order; however, the Commission may not increase the level of discipline imposed by the order.
- c. The Commission shall issue a finding within 30 days after the final date of the hearing. The finding, depending on the reason for the appeal will address one or two issues: (i) whether the employee’s conduct constituted a violation; and/or (ii) whether the action was appropriate. The finding will be provided to the petitioner (by certified mail, addressed to the last known address), the petitioner’s representative, the petitioner’s Deputy City Manager and/or City Council Appointee, the petitioner’s Department Director, the Director of Human Resources and the City Attorney’s Office.
- d. The determination by the Commission shall be final, except for an appeal as set forth under Colorado law.
- e. No hearing will be conducted without a panel of at least three Commissioners, which shall constitute a quorum. The appeal will be determined by a majority decision by the Commission. If the Commission’s decision is equally split, the City did not sustain its burden of proof and the action brought against the employee will be deemed reversed.

## **Rule 2 — Written Statement of Appeal**

- a. The appeal to the Commission shall be initiated by a written statement in compliance with the City’s Personnel Policies and Procedures Manual. As explained therein, the written statement must set forth the reasons why the disciplinary order should be reversed or modified.
- b. Only those reasons set forth in the written statement will be considered by the Commission. Any issue not raised in the written statement will not be heard by the Commission

absent good cause shown. Evidence relating to reasons other than those stated in writing will be excluded and not considered by the Commission.

### **Rule 3 — Hearing Dates and Continuances**

a. Upon receipt of the written statement for appeal, the Commission will schedule a hearing in accordance with the City's Personnel Policies and Procedures Manual.

b. A hearing date which has been scheduled may be continued by the Commission only upon a showing of good cause.

c. In computing any period of time or deadline prescribed by these rules, "days" means calendar days, not business days.

### **Rule 4 — Discovery**

a. Within 21 days of the filing of the written statement for appeal, or at such earlier time set by the Commission, each party shall provide to the other party:

- (1) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the issues set forth in the written statement for appeal or the underlying event that resulted in the action against the employee; and
- (2) A listing, together with a copy of, or a description by category and location, of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the issues set forth in the written statement for appeal or that relate to the underlying event that resulted in the action against the employee.

b. In addition to the initial disclosures, either party may serve written discovery, including no more than 10 interrogatories, 10 request for production of documents and 10 requests for admission (including subparts). Such discovery must be served within 28 days of the filing of the written statement for appeal. Written responses must be provided to such requests within 14 days or at such earlier time set by the Commission.

c. If a party, in connection with its initial disclosure or in response to a supplemental discovery request, withholds information required to be disclosed by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing

information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.

d. A party is under a duty to supplement its disclosures and responses when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other party during the disclosure or discovery process.

e. Every disclosure, supplemental discovery request or discovery response, including objections thereto, made pursuant to the provisions of this Rule shall be signed by at least one attorney of record in the attorney's individual name. An unrepresented party shall sign such documents as well. The signature of the attorney or party constitutes a certification that, to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made and that the request, response or objection is made in good faith and not interposed for any improper purpose, such as to harass the other party or delay the proceeding or needlessly increase the cost of the hearing.

f. Initial disclosures by the parties, supplemental discovery requests and discovery responses shall be filed with the Commission.

g. The parties are encouraged to conduct discovery informally and to freely exchange materials without involving the Commission. If it becomes necessary for a party to file a formal motion to compel discovery with the Commission, the party must first contact the attorney for the Commission before filing the motion. In addition, any motion shall include a certification by the party or representative that all reasonable efforts have been made to resolve the discovery issue informally between the parties.

h. The Commission may issue appropriate sanctions for any discovery violation.

#### **Rule 5 — Subpoenas**

a. Upon request of either party, the Chair or Acting Chair of the Commission shall prepare subpoenas to desired witnesses requiring their attendance at the hearing. Unless otherwise agreed by the parties, it shall be the responsibility of the party seeking the subpoena to have it served on the witness in the manner provided by the Colorado Rules of Civil Procedure.

b. If a witness has been properly subpoenaed and fails to appear for the hearing, the Commission or a party may apply to a court of competent jurisdiction for issuance of a subpoena, enforceable through the contempt powers of the court.

#### **Rule 6 — Witnesses and Exhibits**

a. No later than 14 days before the hearing, each party shall provide the opposing party a list of witnesses the party intends to call and a list and copy of the

exhibits the party intends to introduce. Any witness not disclosed to the opposing party shall not be permitted to testify at the hearing absent good cause shown. Any exhibit not disclosed to the opposing party shall not be admitted at the hearing absent good cause shown.

b. All exhibits shall be marked in advance of the hearing. The City shall mark its exhibits using numbers and the petitioner shall mark his/her exhibits using letters. Seven copies of all lists and exhibits, preferably arranged in a notebook, shall be provided to the Commission 14 days before the hearing. Each party must have the original exhibits for use at the hearing.

c. The parties shall stipulate to the admissibility of as many exhibits as possible in advance of the hearing to avoid duplication of exhibits and unnecessary evidentiary disputes.

### **Rule 7 — Motions**

a. In general, written motions are discouraged. If it becomes necessary for a party to file a formal motion with the Commission, the party must first contact the attorney for the Commission before filing the motion. In addition, any motion shall include a certification by the party or representative that all reasonable efforts have been made to resolve the dispute informally between the parties. Seven copies of the motion and any attachments must be filed with the Commission and an additional copy must be provided to the opposing party. All written motions must be filed no less than 14 days before the hearing absent good cause shown. The opposing party shall have 7 days to file a written response to the motion. No reply shall be permitted by the moving party except with the express consent of the Commission.

b. In its discretion, the Commission may request oral argument on the motion or it may resolve the motion based solely on the written submissions of the parties. In the discretion of the Commission, motions may be ruled on prior to commencement of the hearing.

### **Rule 8 — Pre-Hearing Conferences**

a. Any party may request a pre-hearing conference to be conducted by the attorney for the Commission. The Commission may or may not be present at such pre-hearing conference.

b. The purpose of the pre-hearing conference shall include, but not be limited to, resolving procedural issues, discovery disputes and other pre-trial matters. Such pre-hearing conferences may be conducted at any time prior to the hearing.

### **Rule 9 — Opening and Closing Statements**

a. Unless otherwise approved by the Commission, opening statements are limited to 10 minutes per party.

b. Generally, closing statements will be made orally and are limited to 15 minutes per party (but should be kept as concise as possible), unless otherwise approved by the Commission. In its discretion, the Commission may request that closing arguments be submitted in writing.

### **Rule 10 — Order of Presentation**

a. The City has the burden of persuasion and shall present its case-in-chief first. This shall be followed by the case-in-chief of the petitioner. Each party shall have the right to present his/her/its case or defense by oral or documentary evidence and cross-examination.

b. In the discretion of the Commission, either party may be permitted to provide rebuttal evidence. The Commission may inquire into the purpose of rebuttal evidence prior to its presentation.

c. The Commission may limit the presentation of evidence or impose time limits to prevent repetitive or cumulative evidence or examination, or to prevent the harassment of any party.

### **Rule 11 — Evidence**

a. All witnesses shall take an oath and be sworn by the reporter.

b. In general, the Colorado Rules of Evidence shall govern the admissibility of evidence presented to the Commission. However, if the Commission concludes that evidence not otherwise admissible under such rules possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs and that such evidence is necessary to enable the Commission to ascertain the facts affecting the substantial rights of the parties, such evidence is admissible.

c. The Commission, on the advice of its attorney, will rule on all evidentiary matters. A record will be made of the hearing. The Commission may retire outside the presence of the parties to consider the admissibility of evidence at the hearing.

### **Rule 12 — Questions by the Commission**

The Chair or Acting Chair of the Commission shall recognize and allow each Commissioner to ask questions of any witness, party or representative of a party during a

hearing. Any Commissioner may request a brief recess in the hearing for the purpose of clarifying any issue presented at the hearing.

**Rule 13 — Appeal**

If a party chooses to appeal the Commission's decision, such appeal shall be made in accordance with Colorado law. There is no petition for rehearing or reconsideration.

**Rule 14 —No Contact With Commission**

The parties shall not communicate with the Commission, and vice versa, concerning a pending appeal. The parties and Commission, however may communicate concerning an appeal with the City's Employee Relations Officer and/or the attorney for the Commission. Failure to comply with this rulemaking may result in dismissal of the hearing.