

# CIVIL SERVICE MERIT BOARD RULES – CITY OF KNOXVILLE

## Article 27 – Disciplinary Action

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### **SECTION 2700. PRE-DISCIPLINARY PROCEDURES**

**Section 2700.1.** Whenever the suspension, demotion, or termination of an employee who can be discharged only for cause pursuant to the provisions of Sections 1006 and 1007 of the Charter of the City of Knoxville is contemplated, before said action is taken and prior to any other procedures set out in this article, the employee shall be given a pre-disciplinary hearing at which he shall be given written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story, either orally or in writing. The pre-disciplinary hearing must be preceded by written notice of the reasons for the disciplinary action.

### **SECTION 2701. STATEMENT OF DISCIPLINARY ACTION**

**Section 2701.1.** A Statement of Disciplinary Action shall be served on the employee either before or at the time of the disciplinary action contemplated pursuant to Section 1007 of the Charter. This document shall state the nature of the disciplinary action being taken against the employee.

**Section 2701.2.** The Statement of Disciplinary Action may be in any form, but attached to the statement, on a separate sheet, shall be a form providing for the signature of the employee, designating his receipt of the Statement of Disciplinary Action, and also a form for the signature of the individual who serves the statement, stating the time, date, and place of said service. These forms are available in the Civil Service Office.

**Section 2701.3.** The Statement of Disciplinary Action shall include a brief statement of the reasons justifying the disciplinary action taken.

**Section 2701.4.** The Statement of Disciplinary Action shall include a notice of the employee's right to seek a review by a Hearing Officer designated by the Board of the disciplinary action taken. This notice shall also include information as to the procedure to follow to obtain such a review.

**Section 2701.5.** The Statement of Disciplinary Action shall also notify the employee of his/her rights to be represented by counsel or another representative.

**Section 2701.6.** The Statement of Disciplinary Action shall be signed by the Department Head initiating the action and the original shall be forwarded to the Executive Secretary/Director to be placed in the employee's official file.

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**Section 2701.7.** An oral or written reprimand given to an employee or placed in the employee's file shall not be construed to be a disciplinary action which is subject to the review process as set out in Article 27 or in the Grievance Procedure as set out in Article 28 of these Rules and Regulations; as long as said oral or written reprimand does not suspend, demote, discharge, or reduce the salary of the employee. The employee has the right to offer a written response to be attached to the reprimand in his/her file.

### **SECTION 2702. REQUEST FOR REVIEW OF DISCIPLINARY ACTION**

**Section 2702.1.** If the employee desires a review of the disciplinary action, within ten (10) days after the Statement of Disciplinary Action is received by the employee, he/she shall file his/her request for a review of that disciplinary action with the Executive Secretary/Director of the Board. Said request shall be in writing and signed by the employee. Upon request by the affected employee, the Board staff shall assist him/her with the writing of the request for review.

**Section 2702.2.** Upon receipt of the request, the Executive Secretary/Director of the Board shall send a copy of the same to the Department Head and to the City Attorney. Also upon receipt, the Executive Secretary/Director shall open a file with the Statement of Disciplinary Action and the Request for Review in regard to the matter in question.

**Section 2702.3.** The Request for Review of Disciplinary Action shall set forth with reasonable particularity (1) the grounds for attacking, objecting to, or challenging the validity of the disciplinary action; (2) whether the employee is contesting the entire scope of the disciplinary action or only a designated part thereof; (3) the particular relief demanded or requested.

**Section 2702.4.** The Request for Review will not be considered to have been filed until actually received in the Office of the Board.

**Section 2702.5.** The Department Head may, if he so desires, file a reply to the Request for Review, but such reply must be filed no less than three (3) days before that date set for the hearing.

**Section 2702.6.** If such a reply is filed, it shall be the duty of the Executive Secretary/Director to forward a copy of the same to the employee's attorney or representative, or if the employee has no such attorney or representative, to the employee himself.

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### **SECTION 2703. SELECTION OF HEARING OFFICER AND DATE OF HEARING**

**Section 2703.1.** Upon the timely receipt of a Request for Review of Disciplinary Action, the Executive Secretary/Director shall contact an individual on the list of Hearing Officers established by the Board.

**Section 2703.2.** The Executive Secretary/Director and the Hearing Officer, in cooperation with the City Attorney's Office and the employee's attorney or representative, if known, shall set the time for the hearing (or pre-hearing conference) of the Review of the Disciplinary Action, said time to be within ten (10) days of the receipt of the Request for Review.

**Section 2703.3.** The Executive Secretary/Director shall forward to the Hearing Officer a copy of all documents which have to date been filed with the Executive Secretary/Director. The originals of the documents and record shall be retained in the office of the Executive Secretary/Director when not requested by the Hearing Officer or Court.

### **SECTION 2704. NOTICE OF HEARING**

**Section 2704.1.** Upon the selection of a date for the review hearing, it shall be the responsibility of the Executive Secretary/Director to forward a Written Notice of Hearing to all parties. This notice shall contain the time, date, and place of said hearing. The notice shall also contain notification to the employee of his right to be represented by counsel or another representative. The notice shall also inform the employee of his/her right to a continuance if it is desired. The procedure for obtaining a continuance shall also be noted.

### **SECTION 2705. CONTINUANCE**

**Section 2705.1.** To be granted, any continuance must be at the employee's request or must have his/her consent. Any continuance granted shall in no way postpone or have any other effect upon the effective date of the disciplinary action instituted by the Department Head.

**Section 2705.2.** The employee shall be entitled to one continuance as of right, said continuance being for a maximum for forty-five (45) days from the original date of the hearing. Any other continuance requested by the employee, as well as the length of the same, must be for good cause shown and shall be granted or denied at the discretion of the Hearing Officer. The employee must request his continuance as of right no later than three (3) working days before the date set for the hearing. If the employee fails to make a timely request, the Hearing Officer shall have the sole discretion as to whether the request is granted.

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**Section 2705.3.** If it receives the consent of the employee, the City is entitled to one continuance for a maximum of forty-five (45) days from the original date of the hearing. Said continuance, if consented to by the employee, shall be granted by the Hearing Officer as a matter of right. Any further continuance sought by the City must be for good cause shown and must receive the consent of the employee and the approval, at his discretion, of the Hearing Officer.

**Section 2705.4.** A request for a continuance as of right must be submitted to the Hearing Officer no later than three (3) working days prior to the date set for the hearing. The Hearing Officer will have the sole discretion as to whether a request not filed in a timely manner is granted. The order granting or denying any continuance must be in writing and signed by the attorneys representing the appellant and appellee. The Hearing Officer's signature is required, and it is the responsibility of the attorney seeking the continuance to have the order in the office of the Civil Service Merit Board within two working days from the date the order was signed by the Hearing Officer.

### **SECTION 2706. PRE-HEARING CONFERENCE**

**Section 2706.1.** The Hearing Officer on his own motion, or upon motion of one of the parties, may direct the parties and/or the attorneys of the parties to appear before him for a conference not less than three (3) days before the date of the hearing.

**Section 2706.2.** The purpose of said Pre-Hearing Conference will be to consider the simplification of the issues, the necessity or desirability of amendments to the pleadings, the possibility of obtaining admissions of facts and of documents which will avoid unnecessary proof, and such other matters as may aid in the disposition of the action.

**Section 2706.3.** The Hearing Officer shall make an order which recites the action taken at the conference and which limits the issues for him to those not disposed of at the Pre-Hearing Conference.

### **SECTION 2707. NON-HEARING DISPOSITION**

**Section 2707.1.** Disposition of requests for review may be obtained without a hearing by means of stipulation of the parties, agreed settlements, consent orders, and default. Any extra-hearing settlement or a request for review shall be reduced to writing and presented to the Hearing Officer for his signature. Said action is conclusive upon the Hearing Officer, who shall sign the document as a matter of course.

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### **SECTION 2708. SUBPOENAS**

**Section 2708.1.** At least three (3) working days prior to the date of the hearing, all parties shall provide the Executive Secretary/Director with a list of the individuals they wish to have subpoenaed to appear at the hearing. If this list is provided to the Executive Secretary/Director less than three (3) days prior to the date of the hearing, the Executive Secretary/Director has the discretion as to whether or not the subpoenas will be issued. Subpoenas requested after the deadline, if issued, must be honored by the individuals named, but the party requesting said subpoenas cannot rely upon the failure of a witness untimely subpoenaed to appear as grounds for a continuance.

**Section 2708.2.** The list specified in subsection 2708.1 must be typed and must include the name, address, and phone number (both business and home, if possible) of the individuals to be subpoenaed. If a subpoena duces tecum is requested, the nature of the documents or information sought by the party requesting the subpoena duces tecum must also be set out on the subpoena request list.

**Section 2708.3.** The subpoenas may be served by a Police Officer of the City or by any officer authorized to serve subpoenas from a State Court.

### **SECTION 2709. HEARINGS FOR THE REVIEW OF DISCIPLINARY ACTIONS**

**Section 2709.1.** No disciplinary action shall ever be reversed or in any other way modified due to the form of the Statement of Disciplinary Action or of any other of the pleadings.

**Section 2709.2.** No charge contained in the Statement of Disciplinary Action or any amendment thereto shall ever be dismissed for insufficiency, vagueness, or other shortcoming as to form, but if after the hearing provided for, the employee who has been disciplined submits himself to examination, and after such employee has testified, he shall make affidavit: (1) that he was misled to his detriment by the insufficiency, vagueness, or other alleged shortcoming of the charge or charges, and (2) that he believes that he can obtain sufficient testimony to cause a dismissal of the charge or reversal or modification of the disciplinary action which has been taken, the evidence so taken shall become the charge and such employee shall be granted a reasonable time in which to obtain such testimony in his behalf.

**Section 2709.3.** The strict rules of evidence shall not apply. The Hearing Officer shall determine the evidence to be received.

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- Section 2709.4.** The Hearing Officer may take notice of any judicially cognizable fact or facts.
- Section 2709.5.** Polygraph examinations, the questions pursuant thereto, the results thereof, and the impressions or conclusions derived therefrom, are inadmissible.
- Section 2709.6.** With the exception set out in subsection 2709.5, any evidence may be admitted if, in the opinion of the Hearing Officer, it is of probative force and tends to prove or disprove a material fact.
- Section 2709.7.** The disciplinary authority shall bear the burden of establishing just cause for the disciplinary action taken by a preponderance of the evidence submitted to the Hearing Officer.
- Section 2709.8.** The final decision of the Hearing Officer shall be reduced to writing and entered into the record within ten (10) days from the date of the conclusion of the hearing. The Hearing Officer shall forward his written decision, along with the record (if in his possession), to the Executive Secretary/Director.
- Section 2709.9.** The written decision of the Hearing Officer shall include a recitation of the charges and/or specifications against the employee, the Hearing Officer's findings of fact, the Hearing Officer's conclusions of law, and the reasons for the decision which the Hearing Officer has reached.
- Section 2709.10.** It shall be the responsibility of the Executive Secretary/Director, upon receipt of the Hearing Officer's written decision, to file the original of that decision with the record of the hearing and to forward a photostat copy of the decision to all parties and other interested representatives of the City administration. By means of a cover letter or other notice attached to the employee's copy of the decision, the Executive Secretary/Director shall notify the employee of his right to appeal the decision of the Hearing Officer by the employee filing a petition for review in Chancery Court within sixty (60) days after the Order is entered.
- Section 2709.11.** Pursuant to T.C.A. Section 27-9-114, contested case hearings by Civil Service Boards of a municipality which affect the employment status of a Civil Service employee are to be conducted in conformity with contested case procedures under T.C.A. Section 4-5-301 et seq. from and after January 1, 1989. Therefore, for any disciplinary action pending or instituted on or after January 1, 1989, such procedures shall apply to all hearings and/or pre-hearing conferences before a Hearing Officer held under this Article and to the extent any of the rules or procedures set forth herein conflict

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with the provisions of T.C.A. Section 4-5-301 et seq., the provisions of T.C.A. Section 4-5-301 et seq. shall control.

### **SECTION 2710. TRANSCRIPT OF PROCEEDINGS**

**Section 2710.1.** All tape recordings of the hearing made either by representatives of the Board or by a Court Reporter retained for that purpose shall be labeled, sealed, and placed in the custody of the Executive Secretary/Director of the Board or retained by the Court Reporter, unless and until said recordings are actually transcribed. The tape recordings shall be retained by the Executive Secretary/Director or the Court Reporter until all rights to an appeal of the Hearing Officer's decision are exhausted. A copy of any transcript prepared shall be retained permanently by the Executive Secretary/Director.

**Section 2710.2.** The Executive Secretary/Director shall not be required to obtain a transcript of any proceeding until he has received a copy of a Petition for Review filed in the Chancery Court for Knox County, Tennessee, or other appropriate court or until he receives a written request for a transcript to be prepared in a non-appeal situation.

**Section 2710.3.** Upon receipt of a copy of a Petition for Review or of a written request (in a non-appeal situation) as specified in subsection 2710.2, it shall be the responsibility of the Executive Secretary/Director to have prepared a transcript of the proceedings. If the transcript is being prepared pursuant to an appeal, the Executive Secretary/Director shall send the original or a certified copy of the entire record of the proceeding under review to the reviewing court within forty-five (45) days of the receipt of the Petition for Review; unless a longer period of time is granted by that court. If the transcript is being prepared in a non-appeal situation, the Executive Secretary/Director shall forward the transcript to the requesting party as soon as is reasonably possible.

**Section 2710.4.** It shall be the responsibility of the party appealing the Hearing Officer's decision to pay for the preparation of the transcript. If the other party wishes a copy of the transcript, the only expense to that party shall be the reasonable expense of photocopying the transcript.

**Section 2710.5.** If the preparation of the transcript has been requested in a non-appeal situation by an individual who is not a representative of the City, that individual shall bear the total expense of the preparation of the transcript. The Board or any representative of the City of Knoxville shall have the right, at its own expense, to make a photocopy of any transcript so prepared.

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### **SECTION 2711. NOTICE OF APPEAL OF THE HEARING OFFICER'S DECISION**

**Section 2711.1.** A person who is aggrieved by a final decision of the Hearing Officer is entitled to judicial review pursuant to T.C.A. Section 27-9-114 and T.C.A. Section 4-5-301 et seq. In the event an aggrieved person to a disciplinary action appeals the decision of the Hearing Officer, that person must file a Petition for Review in the Chancery Court for Knox County, Tennessee, within sixty (60) days after the entry of said decision or in such other court as may be provided or required under the applicable statutory provisions. Said appeal shall be governed in all respects by the provisions of T.C.A. Section 27-9-114 and T.C.A. Section 4-5-301 et seq. To the extent these rules conflict in any part with said statutory provisions, the statutory provisions shall control.

**Section 2711.2.** An aggrieved person who appeals the decision of the Hearing Officer shall have the responsibility of insuring that a copy of his Petition for Review of the appeal, in writing, is served upon the Executive Secretary/Director of the Board either before or simultaneously with the filing of the appeal with the appropriate court. Upon receipt of said Petition, the Executive Secretary/Director shall prepare the transcript of the hearing as provided for in this Article.