

AGENDA ITEM NO.
<u>COUNCIL MEETING</u> <u>03/25/2008</u>
APPROVED BY

DEPARTMENT DIRECTOR
CITY MANAGER

March 25, 2008

FROM: Terry A. Bond, Director  
Personnel Services Department

SUBJECT: **APPROVE GENERAL AMENDMENT TO THE CIVIL SERVICE BOARD RULES AND REGULATIONS**

**KEY RESULT AREAS**

Customer Service, Employee Satisfaction and Financial Management

**RECOMMENDATION**

It is recommended that the Council approve the amended Civil Service Board Rules and Regulations with directions to authorize staff to make non-substantive changes to make the Fresno Municipal Code ("FMC") references consistent with the Reorganized FMC.

**EXECUTIVE SUMMARY**

The Civil Service Board (CSB) held a public hearing on March 13, 2008, and, in compliance with Charter Section 909(a), recommends to Council the amendment of the February 19, 1987 Civil Service Board rules and regulations. The purpose of the changes is to update the language and create consistency with existing City practice. The amendment concludes a multi-year project by the CSB whose members established the update as a priority. The draft document was reviewed by bargaining units, and the meet and confer process concluded on August 3, 2007. The draft document was subsequently renumbered in compliance with the Reorganized FMC. Formal approval of the Civil Service Board Rules and Regulations is now presented to Council in compliance with Charter Section 909.

**KEY OBJECTIVE BALANCE**

Approval of the Amendment to the Civil Service Board Rules and Regulations balances the key objectives of Customer Service, Employee Satisfaction and Financial Management by clarifying and updating language and policies contained in the document.

**BACKGROUND**

The current version of the Rules and Regulations of the Civil Service Board is dated February 19, 1987 (See Exhibit "A" to Proposed Resolution). The Proposed Amended Rules and Regulations dated March 13, 2008, (See Exhibit "B" to Proposed Resolution) do the following:

(1) **General Language Cleanup.**

Cleans up language by updating gender specific language and definitions.

(2) **Delete Article 4, Section 3 – Interpretation of Class Specifications.**

The deletion from the Rules and Regulations of Article 4 Section 3 referred to interpretation of equivalent experience and education in determining an applicant's ability to meet minimum qualifications to test for a City position. That provision implied that an applicant could appeal to the Civil Service Board if the Director of Personnel Services ruled that the applicant did not meet minimum qualifications. This is inconsistent with practice and Section 3-223 of the Fresno Municipal Code (formerly Section 2-1621) which places final determination of minimum qualifications with the Director of Personnel Services.

(3) **Add Article 2, Section 4(c)(3) - Records Retention.**

Creates a records retention and destruction provision.

(4) **Modify Article 6 Sections 3, 4 and 5 - Procedures Related to Appeals.**

The changes to Article 6, Section 3(d)(2), and 3(d)(5) are intended to clarify procedures for disciplinary appeals. The changes to Article 6, Section 5 extend the time from thirty (30) to ninety (90) days to file a petition to the court in cases where judicial review of the Board's disciplinary decision is sought. The modification of Article 6 in Sections 3 and 5 reflect existing practice wherein an alternate appeal process for disciplinary actions is articulated for those bargaining groups which use a hearing officer as permitted by MOU, as well as the procedures to be followed after appeal. Article 6, Section 4 was modified to expand on the Procedures followed after the alternate appeal process, and sets forth the authority of the Board to request review of the official record of the hearing in those instances where the Board determines it has insufficient information to make a decision on the disciplinary action.

**FISCAL IMPACT**

There is no fiscal impact to action on this item.

Attachments: Proposed Resolution to Adopt Amended Rules and Regulations of the Civil Service Board

- Exhibit "A" – Civil Service Board Rules and Regulations dated February 19, 1987
- Exhibit "B" – Civil Service Board Rules and Regulations as amended on March 13, 2008

RESOLUTION NO. 2008-\_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
FRESNO, CALIFORNIA ADOPTING AMENDED RULES  
AND REGULATIONS OF THE CIVIL SERVICE BOARD.

WHEREAS, the Civil Service Board promulgates Rules and Regulations which identify and describe the duties of the Board and the procedures before the Board; and

WHEREAS, the current version of the Rules and Regulations ("1987 Rules") were last amended on February 19, 1987 (Exhibit "A"); and

WHEREAS, on March 13, 2008, after a public hearing, the Civil Service Board voted to update and amend its Rules and Regulations ("Proposed Rules") (Exhibit "B"); and

WHEREAS, the purpose of amending the 1987 Rules was to update language and apply consistency with existing City practice regarding disciplinary hearings and interpretation of class specifications, and include a records retention and destruction schedule; and

WHEREAS, pursuant to Fresno Charter Section 909(a), the Civil Service Board is required to recommend to Council, after a public hearing, the adoption, amendment or repeal of Civil Service Rules and Regulations.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The City of Fresno adopts the Proposed Rules for the Civil Service Board attached as Exhibit "B."

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STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the day of \_\_\_\_\_, 2008.

AYES  
NOES  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2008

Mayor Approval/No Return: \_\_\_\_\_, 2008

Mayor Veto: \_\_\_\_\_, 2008

Council Override Vote: \_\_\_\_\_, 2008

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

JAMES C. SANCHEZ  
CITY ATTORNEY

BY:  3/11/08  
KATHRYN C. PHELAN, Deputy - Date

KCP:eb[44416cb/mso] 3/11/08

# **CIVIL SERVICE BOARD**

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## **RULES AND REGULATIONS**

As amended on

March 13, 2008

City of Fresno

**CIVIL SERVICE BOARD**  
**RULES AND REGULATIONS**

**ARTICLE 1. DEFINITIONS**

SECTION 1. Definitions of Terms. For the purposes of these rules and regulations, certain words, phrases, and terms shall be construed as specified in this section.

- (a) "Appeal" means that document, filed with the Board, by or on behalf of the appellant, seeking modification, modification with conditions or revocation of an order of disciplinary action.
- (b) "Appellant" means a person by whom or on whose behalf an appeal is filed to an order of disciplinary action.
- (c) "Appointing Authority" means the officer, council, board or body having power of appointment or removal from any position in the classified service. For purposes of these rules and regulations, "appointing authority" includes the employee designated thereby to attend a hearing on disciplinary appeal on its behalf.
- (d) "Board" means the Civil Service Board of the City of Fresno.
- (e) "By law" means the Code, the Charter of the City of Fresno, the Constitution of the State of California, or any law applicable to chartered cities.
- (f) "Code" means the Fresno Municipal Code.
- (g) "Order of disciplinary action" means that the document, filed by the appointing authority with the Board and served on the appellant, imposing a suspension, fine, demotion, or removal.
- (h) "Parties" means the appellant and the appointing authority.
- (i) "Secretary" means the Secretary to the Civil Service Board appointed as such pursuant to Article IX, Section 904 of the Charter of the City of Fresno.

## **ARTICLE 2. MEMBERS AND OFFICERS**

SECTION 1. Resignation of Board Members. If, within any 365 day period, a Board Member is absent without good cause from:

- (a) All of any three different proceedings other than hearings on disciplinary appeals, whether consecutive or not; or
- (b) All or part of any three different hearings on disciplinary appeals, whether consecutive or not;

That Board Member shall be deemed to have resigned.

SECTION 2. Computing of Absences. In computing the number of Board Member's absences without good cause:

- (a) A maximum of one such absence shall be charged per day;
- (b) A maximum of one such absence shall be charged per hearing on disciplinary appeal.
- (c) Even if it is otherwise for good cause, an absence shall be deemed without good cause if the Board Member fails, without good cause, to provide at least five full business hours' advance notice of such absence to the Chair or Secretary. The hours between 8:00 a.m. and 5:00 p.m. on non-holiday weekdays are business hours.
- (d) The Chair shall determine whether good cause exists for an absence or for a failure to provide timely advance notice of an absence. Such determination shall be reversed only upon a majority vote of three or more Board Members.

SECTION 3. Officers Designated. The officers of the Board shall be a Chair and a Vice Chair, who shall be Board Members elected by the Board annually at the first regular meeting in July, and who shall serve at the pleasure of the Board, and a Secretary who, as provided in the Code, shall be the Personnel Services Director.

SECTION 4. Powers and Duties of Officers.

- (a) The Chair shall swear witnesses in all Board proceedings where sworn testimony is taken, and exercise and perform such other powers and duties as are conferred upon the Chair by law and these rules and regulations.
- (b) The Vice Chair shall have and perform all the powers and duties of the Chair in the absence of the Chair from the City or from any Board meeting, or whenever the Chair is unable to act for any reason.
- (c) The Secretary shall:
  - (1) Keep and record the minutes of all Board meetings and furnish a copy of the minutes of each such meeting to each Board Member prior to the next regular meeting;
  - (2) Keep complete files of, and act as custodian of, all minutes, communications, books, documents, papers, and records of or filed with the Board;
  - (3) Maintain records in accordance with state and local retention schedules and destroy as allowed by law;
  - (4) At the request of the Board, or either party, issue, execute, and have attested by the City Clerk, in the name of the City of Fresno, subpoenas ordering the attendance of any person as a witness, or ordering the production of evidence, at any Board proceeding;
  - (5) Perform such other duties as the Board may from time to time prescribe.

**ARTICLE 3. MEETINGS**

SECTION 1. Regular Meetings. The regular meetings of the Board shall be held on the first Thursday and the third Thursday of every month, at 1:00 P.M., at the City Hall of the City of Fresno, or such other place as shall be determined by the Board at the previous regular meeting and announced by posting notice thereof on the official bulletin board at the City Hall. Whenever a regular meeting date falls on a holiday, such regular meeting shall be held at the same hour on the next regular business day, unless the Board fixes a different day for such meeting and the time and place is entered in the minutes of a previous regular meeting.

SECTION 2. Special Meetings. Notice of each special meeting shall be given by delivering personally or by mail a written notice thereof to each Board

Member and to each local newspaper of general circulation, radio station or television station requesting notice in writing. Such notice must be delivered personally or by mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted and no other business shall be considered at such meeting. Such written notice may be dispensed with as to any Board Member who, at the time the meeting convenes, or prior thereto, files with the Secretary a written waiver of notice. Such written notice may also be dispensed with as to any Board Member who is present at the time the meeting convenes. The call and notice shall be posted at least twenty-four hours prior to the special meeting in a location that is freely accessible to the public.

SECTION 3. Adjourned Meetings. The Board may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all Board Members are absent from any regular or adjourned regular meeting, the Secretary may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided in Section 2 of this Article for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within twenty-four hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified in these rules and regulations for regular meetings.

SECTION 4. Presiding Officer; Duties. The Chair shall be presiding officer over all meetings, but in the Chair's absence, the Vice Chair shall be presiding officer. If neither of them are present, the senior Board Member present shall be presiding officer. The presiding officer shall have the power and duty to preserve strict order and decorum at all meetings and shall order a person to yield the floor when the orderly and expeditious conduct of such meeting requires it. The presiding officer shall rule on the admissibility of evidence and may permit questioning and other participation by Board Members. The presiding officer shall state each question before it is voted on, announce the results of each such vote, and shall decide all questions of order, subject, however, to an appeal to the Board, in which event a majority vote of the Board shall conclusively determine such question of order. The presiding officer shall be entitled to vote on all questions, with the Chair's name being called last.

SECTION 5. Quorum. Three Board Members shall constitute a quorum for the transaction of business. Except as may be otherwise provided by law and by

these rules and regulations, a majority of a quorum may decide all matters which come before the Board.

SECTION 6. Resolutions and Motions. The actions and decisions of the Board at any meeting shall be expressed by motion, duly seconded and voted upon by roll call vote of the Board Members. The vote of each Board Member present, shall be entered upon the minutes of the meeting. Unless a Board Member states that the Board Member is not voting, that Board Member's silence shall be recorded as an affirmative vote.

SECTION 7. Order of Business. At the regular meetings of the Board the following shall be the order of business:

1. Roll Call
2. Approval of Minutes
3. Unfinished or Old Business
4. Reports of Committees
5. Communications
6. New Business
7. Hearings on Disciplinary Appeals or other Proceedings
8. Unscheduled Public Communications
9. Adjournment

The presiding officer may vary the order of business whenever in the presiding officer's discretion this will expedite the conduct of the meeting.

SECTION 8. Agenda.

- (a) Agenda. The order of business of the Board shall be conducted from a written agenda prepared by the Secretary. The agenda shall specify the time and location of the meeting and a brief general description of each item of business to be transacted or discussed. No action shall be taken on items not appearing on the posted agenda. Matters to be brought before the Board shall be processed as provided in this section. The Secretary shall decide what items of business shall be placed thereon, and shall place such items of business on the agenda for any regular or special meeting of the Board. Items of questionable necessity shall be placed on the agenda by the Secretary after consultation with the Chair or Vice Chair. A Board Member may request the Secretary to place any matter on the agenda, and it shall be so placed unless the Chair or Vice Chair rules that the matter is not germane to Board business as provided by law. In the case of such ruling, the Secretary shall place the request and the ruling before the Board for its decision at the next regular meeting.

- (b) Submittals. Employees, their representatives, and other persons to whom this rule reasonably applies, shall submit written requests to appear, or written request for consideration of matters, to the Secretary, by 12:00 noon of the Friday before any regular meeting at which the appearance is to be made or the matter considered. The written request shall contain such information, including rules and regulations and authorities involved, so as to allow full consideration of the matter, including the jurisdiction of the Board to consider it.
- (c) Distribution of Agenda. The Secretary will endeavor to make such request, and other materials to be considered by the Board, available for distribution to interested employee organizations by 4:00 p.m. of the Friday before any regular meeting. This distribution shall include mailing of copies of the agenda and all supporting materials to any such organization with matters pending before the Board on said agenda. At least seventy-two hours before a regular meeting, the Secretary shall post a copy of the agenda in a location that is freely accessible to members of the public. Matters personal to an individual which the Secretary, in his/her reasonable discretion believes should be kept confidential, need not be so distributed.
- (d) Matters Not on Posted Agenda. Notwithstanding subsection (a), the Board may take action on items of business not appearing on the posted agenda under any of the following conditions:
  - (1) The Board determines by a two-thirds vote, or, if less than two-thirds of the Board members are present, a unanimous vote of those members present, that the need to take action arose subsequent to the agenda being posted as specified in Subsection (a) above. A separate vote shall be taken in making any such determination. The Secretary shall reflect in the minutes what the need for action was and why the need arose after the posting of the agenda.
  - (2) The item was posted pursuant to subsection (a) of this Rule for a prior meeting of the Board occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.
- (e) Tabled Matters. The Secretary will keep a record of tabled matters and scheduled proceedings, and shall list such items, together with any other known suspended and future items, at the end of each agenda.

## SECTION 9. Procedure for Alleged Violation of Open Meeting Rules

- (a) Prior to any court action being commenced pursuant to Government Code Section 54960.1(a), the interested person shall make a demand of the Board to cure or correct any action alleged to have been taken in violation of Government Code Section 54953 requiring that Board meetings be open and public, or of Sections 2 or 8. The demand shall be in writing and clearly describe the challenged action of the Board and nature of the alleged violation. The written demand shall be made and shall be filed with the Secretary within thirty days from the date the action was taken. Within thirty days of such filing, the Secretary shall place the matter on the Board agenda for Board consideration. The Board shall either cure or correct the challenged action and inform the demanding party in writing of its action to cure or correct, or inform the demanding party in writing of its decision not to cure or correct the challenged action. If the Board takes no action within the thirty day period following such filing with the Secretary, the inaction shall be deemed a decision not to cure or correct the challenged action.
- (b) Upon receipt of a demand described in subsection (a) of this Section, an item with two sub-items shall be added to the next meeting's agenda, as follows:
- (1) The first sub-item shall be consideration of the demand, i.e., whether the challenged action can reasonably be said to have violated the Brown Act. Such sub-item may be considered in closed session pursuant to Government Code Section 54956.9.
  - (2) The second sub-item shall be consideration of the underlying subject matter of the challenged action if the Board decided, in considering the demand, that the challenged action may have violated the Brown Act.
- (c) Should the Board determine that corrective action is warranted as to any challenged action, it shall adopt a corrective action stating that the original action is superseded or rescinded as of the effective date of the corrective action. Such corrective action shall also describe the original action and why the corrective action is being taken.

## SECTION 10. Minutes.

- (a) Circulation. The approved minutes of each Board meeting shall be posted on the City's website.

## **ARTICLE 4. MISCELLANEOUS**

SECTION 1. Appointment of Committees. The Chair shall appoint such committees of Board Members as the Board shall authorize to investigate and report to the Board on matters within its jurisdiction.

SECTION 2. Amendments to Rules and Regulations. These rules and regulations may be amended by a majority vote of three or more Board Members at any regular or special meeting when at least ten days written notice of the proposed presentation of such amendment at such meeting has been given all Board Members in the manner prescribed herein for special meetings, or when announcement of the proposed presentation of such amendment was recorded in the minutes of the previous regular meeting of the Board.

## **ARTICLE 5. MEDIA EQUIPMENT RULES**

SECTION 1. When Audio-visual Coverage may be Excluded. Audio visual coverage shall not be excluded from any public portion of a Board meeting.

SECTION 2. Prevention of Disruption. Audio-visual coverage shall be conducted with minimal intrusion. Accordingly, the following restrictions are imposed:

- (a) Television cameras shall be operated from fixed positions.
- (b) Television cameras shall be placed well away from, and so as not to obstruct, the space between parties, their representatives, witnesses, or Board Members.
- (c) Television cameras shall be placed so as to not obstruct unnecessarily the coverage of the meeting by other media.
- (d) Equipment shall only be installed prior to commencement of the meeting or during recesses. It shall only be removed after adjournment of the meeting or during recesses.
- (e) There shall be no flash photography, artificial illumination or flood lighting other than that provided by the particular hearing room. The television media may install additional lighting in order to raise the lighting level to the lowest level necessary to provide adequate television coverage.
- (f) All sound equipment, cameras, and photographic equipment shall be substantially noiseless.

- (g) All microphones used shall be those provided within the hearing room by the City of Fresno. If no such microphones are provided, then the Chair shall have the discretion to provide them so long as there is no disruption. Electrical conduits and wiring cables for microphones or cameras shall not be allowed to obstruct the space between parties, their representatives, witnesses, or Board Members.

## **ARTICLE 6. HEARING ON DISCIPLINARY APPEALS**

SECTION 1. Authority and Purpose. These rules are promulgated pursuant to the authority granted the Board in Article IX, Sections 904 and 909 and Article X, Section 1002 of the Fresno City Charter. These rules are in addition to the rules found in Fresno Municipal Code Sections 3-281 through 3-290, and 3-293 through 3-297 which are incorporated by reference.

The purpose of this Article is to provide a procedure for hearings on disciplinary appeals in accordance with the Fresno Municipal Code, to the end that such appeals be fairly and expeditiously processed and that when such a hearing is required, the appellant, the appointing authority, and the Board have fair notice thereof. This Article provides an opportunity for the appellant to appear before the Board and present a case for modification, modification with conditions, or revocation of the order of disciplinary action, for the appointing authority to present a case for affirmation of such order, and for the Board to have such facts as will enable it to arrive at a fair decision on such appeal. For purposes of a fair hearing, the Board is to act as an independent body, findings facts and applying law.

### SECTION 2. Procedures Before Hearing on Disciplinary Appeal.

- (a) Within ten days after the filing of an appeal, the Secretary shall notify the appellant by mail, at the address shown on such appeal, that the hearing on disciplinary appeal shall be conducted in accordance with these rules and regulations, a copy of which shall be made available upon request.
- (b) The Board shall set a date for the hearing on disciplinary appeal. Such hearing shall be set for the earliest possible regular or special Board Meeting mutually agreeable to the parties. Upon setting the date of such hearing, the Secretary shall provide written notice of such date to all parties, or parties' representatives, as provided for in Fresno Municipal Code Section 3-284. If the date for such hearing cannot be established by mutual agreement, the Secretary or the Board shall fix the time and place for hearing.
- (c) Continuances, before or during the hearing on disciplinary appeal, may be granted by the Board for good cause upon its own motion, or upon

motion of either party. Any such requests for continuance by either party prior to such hearing shall be in writing, shall be for a reasonable time, and shall be reasonable in number, and shall be submitted to the Secretary at least two working days prior to such hearing.

(d) Withdrawal of notice of an appeal.

- (1) An order of disciplinary action or an appeal may be withdrawn if the party filing it provides written notice of withdrawal to the Secretary.

If appellant withdraws his/her appeal pursuant to this rule, no hearing on disciplinary appeal shall be scheduled, or if scheduled, it shall be removed from the agenda by the Secretary. Upon the withdrawal of an appeal, the order of disciplinary action shall be final.

(e) Subpoenas may be issued according to the Charter of the City of Fresno.

- (1) Subpoenas shall be provided by the Secretary upon request of either party. The party requesting the subpoena shall be responsible for its service. Whenever possible, subpoenas shall be served at least forty-eight hours in advance of the time set for appearance or production of documents.
- (2) Prior to or at the commencement of the hearing, or as otherwise directed by the Board, either party may move to quash a subpoena on any or all of the following grounds, which shall be clearly and fully stated in a written motion:

- i. Compliance will be oppressive or against public policy.
- ii. The items subpoenaed are privileged.
- iii. The items subpoenaed are irrelevant or unnecessary.
- iv. The items subpoenaed have not been described with sufficient clarity to enable compliance.

Before it commences or continues with the hearing on disciplinary appeal, the Board shall rule on the motion to quash.

SECTION 3. Procedures During Hearing on Disciplinary Appeal.

- (a) All hearings on disciplinary appeals shall be electronically recorded at the cost of the Board. If a certified shorthand reporter is requested, the cost shall be paid by the requesting party, unless both parties agree to share costs.
- (b) All hearings on disciplinary appeals shall be governed by the following:
- (1) Only those Board Members in attendance throughout such hearing may participate.
  - (2) Rules of Evidence
    - i. The appointing authority has the burden of proving by a preponderance of the evidence that the order of disciplinary action should be affirmed.
    - ii. Oral evidence shall be taken only on oath or affirmation which shall be administered by the presiding officer.
    - iii. Each party may call and examine witnesses, introduce exhibits, and cross-examine and impeach any witness on any matter relevant to the issues. If the appellant does not testify in his/her own behalf, the appellant may be called and examined as if under cross-examination.
    - iv. Such hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law rule or statute which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
    - v. Copies of the reports and records of any governmental agency, division or bureau will be accepted as evidence in lieu of the original thereof.

- vi. In hearings on disciplinary appeals from those orders of disciplinary action which seek removal pursuant to Fresno Municipal Code Sections 3-286(c)-(d) or 3-290, the right of cross-examination of a physician on his/her written report may be deemed waived where the report of the physician has been filed with the Board and served upon the parties at least five days prior to the hearing on disciplinary appeal, unless the physician is produced at the hearing or unless good cause has been shown for not producing the physician. The party submitting such report shall, if asked by the opposing party, join in requesting the physician to appear at such hearing, but the party initiating the request shall pay the physician such fee as may be fixed by the Board, which may require that it be deposited in advance.
- (c) The Board, through its presiding officer, may avail itself of advice from its appointed counsel at any time.
- (d) All hearings on disciplinary appeals shall proceed in the following manner:
- (1) The Chair shall call the case and ask for appearances by or for the parties, which shall be recorded in the minutes and in the official file of such hearing. The Chair shall determine that the parties are ready to proceed, and if so, or if the Chair otherwise rules for good cause, the hearing shall commence.
  - (2) All hearings on disciplinary appeals, and every part thereof, shall be in closed session, except the required announcements of the Board action pursuant to the Brown Act and when the appellant elects otherwise.
  - (3) The Secretary shall mark for identification only, and not as evidence, all papers in the official file, which should include:
    - a. The notice of proposed action, served upon or mailed to the appellant, pursuant to Fresno Municipal Code Section 3-280;
    - b. The order of disciplinary action, with proof of service on the appellant;
    - c. The appeal;

- d. The notice of hearing on disciplinary appeal, with proof of service on the parties; and
  - e. Other relevant documents in the official personnel file of the appellant, upon the request of either party.
- (4) The Secretary or other person authorized by the Chair shall read the order of disciplinary action and the appeal unless waived, by stipulation of the parties.
  - (5) At any time, either party may move the Board, in its discretion, to exclude any witness not at that time under examination, so that such witness cannot hear the testimony of other witnesses. Such exclusion of a witness shall not affect the right of the parties or parties' representatives to be present.
  - (6) The appointing authority shall present testimony and evidence.
  - (7) The appellant shall present testimony and evidence.
  - (8) Each party may cross-examine witnesses, after examination, but only as to matters within the scope of the direct examination.
  - (9) Rebuttal evidence may be presented.
  - (10) Each party shall be allowed to present closing arguments the appointing authority to argue first and to have the right to a rebuttal argument.
  - (11) Upon the conclusion of all testimony, the Chair shall ask if the parties are ready to submit the matter for decision on the disciplinary appeal, and if so, or if the Chair otherwise orders for good cause, the Chair shall declare the matter submitted to the Board for decision on the disciplinary appeal. If no further evidence or documentation is required, the Board may render its decision on the disciplinary appeal prior to adjournment. If further documentary evidence is to be filed, the Board, for good cause, may allow time for filing and serving such documentary evidence, and may order that the matter will be deemed submitted after such period unless a party objects to such documentary evidence within five calendar days after it is filed. Copies of such documentary evidence shall be served on the adverse party, who shall have three days there from to file rebuttal evidence. At its next meeting, the Board shall rule on any objection to documentary evidence

filed and shall, after deliberation, render its decision on the disciplinary appeal.

- (12) The Board's deliberation upon its decision on the disciplinary appeal shall be in executive session.

The Board shall vote on each of the charges set forth in the order of disciplinary action. A tie vote on a particular charge shall result in revocation of that charge.

The Board shall then vote on the discipline set forth in the order of disciplinary action. A tie vote on the discipline shall result in modification, modification with conditions or revocation of the discipline.

In the event of a modification or modification with conditions of the discipline, the Board shall then vote on such modification or modification with conditions.

After voting thereon, the Board shall announce its decision on the disciplinary appeal by roll call vote in closed session. Announcement of the Board's action shall be in public session pursuant to the Brown Act. The Board's decision shall become final upon issuance and approval of the written Findings and Decision.

#### SECTION 4. Procedures After Alternate Appeal Process.

- (a) For those hearings conducted pursuant to the authority in FMC Section 3-283, each Board Member shall be provided with a copy of the Hearing Officer's Findings of Fact and Decision recommending affirmation, modification, modification with conditions or revocation of the disciplinary action.
- (b) The Board shall consider the Hearing Officer's Findings of Fact and Decision in executive session at the next regularly scheduled Board meeting.
- (c) Without taking evidence or hearing argument on behalf of either the Appellant or Appointing Authority, the Board shall either affirm, modify, modify with conditions or revoke the disciplinary action.
- (d) Prior to issuing its final decision, the Board may request to review the official record of the hearing in those instances where the Board determines it has insufficient information from the Hearing Officer's

Findings of Fact and Decision upon which to either affirm, modify, modify with conditions or revoke the disciplinary action.

- (e) Notice in writing of the decision of the Board shall be mailed to the Appellant and Appointing Authority and shall be filed with the Director.
- (f) The decision of the Board shall be final for all purposes subject to Section 5 below.

SECTION 5. Procedures After Hearing on Disciplinary Appeal. In those cases where judicial review of the Board's decision on the disciplinary appeal is sought by either party, the petition to the court shall be filed within ninety (90) days from the date of mailing of notice to the parties of the Board's decision on the disciplinary appeal.

**CIVIL SERVICE BOARD**

**RULES  
AND  
REGULATIONS**

**As amended on  
February 19, 1987**

CIVIL SERVICE BOARD

RULES AND REGULATIONS

ARTICLE 1. DEFINITIONS

SECTION 1. Definitions of Terms. For the purposes of these rules and regulations, certain words, phrases, and terms shall be construed as specified in this section.

- (a) "Appellant" means a person by or on whose behalf a response is filed to an order of disciplinary action.
- (b) "Appointing Authority" means the officer, council, board or body having power of appointment or removal from any position in the classified service. For purposes of these rules and regulations, "appointing authority" includes the employee designated thereby to attend a hearing on disciplinary appeal on its behalf.
- (c) "Board" means the Civil Service Board of the City of Fresno.
- (d) "By law" means the Code, the Charter of the City of Fresno, the Constitution of the State of California, or any law applicable to chartered cities.
- (e) "Code" means the Fresno Municipal Code.
- (f) "Order of disciplinary action" means that document filed by the appointing authority with the Board and served on the appellant, imposing a suspension, fine, demotion, or removal.
- (g) "Parties" means the appellant and the appointing authority.
- (h) "Response" means that document, filed with the Board, by or on behalf of the appellant, seeking modification, modification with conditions or revocation of an order of disciplinary action.
- (i) "Secretary" means the Secretary to the Civil Service Board appointed as such pursuant to Article IX, Section 904, of the Charter of the City of Fresno.

ARTICLE 2. MEMBERS AND OFFICERS

SECTION 1. Resignation of Board Members. If, within any 365 day period, a Board Member is absent without good cause from:

- (a) All of any three different proceedings other than hearings on disciplinary appeals, whether consecutive or not; or

- (b) All or part of any three different hearings on disciplinary appeals, whether consecutive or not:

-That Board Member shall be deemed to have resigned.

SECTION 2. Computing of Absences. In computing the number of a Board Member's absences without good cause:

- (a) A maximum of one such absence shall be charged per day;
- (b) A maximum of one such absence shall be charged per hearing on disciplinary appeal.
- (c) Even if it is otherwise for good cause, an absence shall be deemed without good cause if the Board Member fails, without good cause, to provide at least five full business hours' advance notice of such absence to the Chairman or Secretary. The hours between 9:00 a.m. and 5:00 p.m. on nonholiday weekdays are business hours.
- (d) The Chairman shall determine whether good cause exists for an absence or for a failure to provide timely advance notice of an absence. Such determination shall be reversed only upon a majority vote of three or more Board Members.

SECTION 3. Officers Designated. The officers of the Board shall be a Chairman and a Vice-Chairman, who shall be Board Members elected by the Board annually at the first regular meeting in July, and who shall serve at the pleasure of the Board, and a Secretary who, as provided in the Code, shall be the Personnel Director.

SECTION 4. Powers and Duties of Officers.

- (a) The Chairman shall swear witnesses in all Board proceedings where sworn testimony is taken, and exercise and perform such other powers and duties as are conferred upon him by law and these rules and regulations.
- (b) The Vice Chairman shall have and perform all the powers and duties of the Chairman in the absence of the Chairman from the City or from any Board meeting, or whenever the Chairman is unable to act for any reason.
- (c) The Secretary shall:
  - (1) Keep and record the minutes of all Board meetings and furnish a copy of the minutes of each such meeting to each Board Member prior to the next regular meeting;

- (2) Keep complete files of, and act as custodian of, all minutes, communications, books, documents, papers, and records of or filed with the Board;
- (3) At the request of the Board, or either party, issue, execute, and have attested by the City Clerk, in the name of the City of Fresno, subpoenas ordering the attendance of any person as a witness, or ordering the production of evidence, at any Board proceeding;
- (4) Perform such other duties as the Board may from time to time prescribe.

### ARTICLE 3. MEETINGS

SECTION 1. Regular Meetings. The regular meetings of the Board shall be held on the first Thursday and the third Thursday of every month, at 2:00 P.M., at the City Hall of the City of Fresno, or such other place as shall be determined by the Board at the previous regular meeting and announced by posting notice thereof on the official bulletin board at the City Hall. Whenever a regular meeting date falls on a holiday, such regular meeting shall be held at the same hour on the next regular business day, unless the Board fixes a different day for such meeting and the time and place is entered in the minutes of a previous regular meeting.

SECTION 2. Special Meetings. Notice of each special meeting shall be given by delivering personally or by mail a written notice thereof to each Board Member and to each local newspaper of general circulation, radio station or television station requesting notice in writing. Such notice must be delivered personally or by mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted, and no other business shall be considered at such meeting. Such written notice may be dispensed with as to any Board Member who, at the time the meeting convenes, or prior thereto, files with the Secretary a written waiver of notice. Such written notice may also be dispensed with as to any Board Member who is present at the time the meeting convenes. The call and notice shall be posted at least twenty-four hours prior to the special meeting in a location that is freely accessible to the public.  
(Amended 2/19/87.)

SECTION 3. Adjourned Meetings. The Board may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all Board Members are absent from any regular or adjourned regular meeting, the Secretary may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided in Section 2 of this article for special .

**meetings**, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within twenty-four hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified in these rules and regulations for regular meetings.

SECTION 4. Presiding Officer; Duties. The Chairman shall be presiding officer over all meetings, but in his absence, the Vice-Chairman shall be presiding officer. If neither of them are present, the senior Board Member present shall be presiding officer. The presiding officer shall have the power and duty to preserve **strict** order and decorum at all meetings and shall order a person to yield the floor when the orderly and expeditious conduct of such meeting requires it. He shall rule on the admissibility of evidence and may permit questioning and other participation by Board Members. He shall state each question before it is voted on, announce the results of each such vote, and shall decide all questions of order, subject, however, to an appeal to the Board, in which event a majority vote of the Board shall conclusively determine such question of order. He shall be entitled to vote on all questions, his name being called last.

SECTION 5. Quorum. Three Board Members shall constitute a quorum for the transaction of business. Except as may be otherwise provided by law and by these rules and regulations, a majority of a quorum may decide all matters which come before the Board.

SECTION 6. Resolutions and Motions. The actions and decisions of the Board at any meeting shall be expressed by motion, duly seconded and voted upon by roll call vote of the Board Members, and the ayes and noes and Board Members present and not voting shall be entered upon the minutes of the meeting. Unless a Board Member states that he is not voting, his silence shall be recorded as an affirmative vote.

SECTION 7. Order of Business. At the regular meetings of the Board the following shall be the order of business:

1. Roll Call
2. Reading and Approval of Minutes
3. Unfinished or Old **Business**
4. Reports of Committees
5. Communications
6. **New Business**
7. Hearings on Disciplinary Appeals or other Proceedings
8. Unscheduled public communications (Amended 2/19/87)
9. Adjournment

The presiding officer may vary the order of business whenever in his discretion this will expedite the conduct of the meeting. Upon motion unanimously adopted by the Board Members present, the reading of the minutes will be dispensed with.

SECTION 8. Agenda.

- (a) Agenda. The order of business of the Board shall be conducted from a written agenda prepared by the Secretary. The agenda shall specify the time and location of the meeting and a brief general description of each item of business to be transacted or discussed. No action shall be taken on items not appearing on the posted agenda. Matters to be brought before the Board shall be processed as provided in this section. The Secretary shall decide what items of business shall be placed thereon, and shall place such items of business on the agenda for any regular or special meeting of the Board. Items of questionable necessity shall be placed on the agenda by the Secretary after consultation with the Chairman or Vice Chairman. A Board Member may request the Secretary to place any matter on the agenda, and it shall be so placed unless the Chairman or Vice Chairman rules that the matter is not germane to Board business as provided by law. In the case of such ruling, the Secretary shall place the request and the ruling before the Board for its decision at the next regular meeting. (Amended 2/19/87)
- (b) Submittals. Employees, their representatives, and other persons to whom this rule reasonably applies, shall submit written requests to appear, or written requests for consideration of matters, to the Secretary, by 12:00 noon of the Friday before any regular meeting at which the appearance is to be made or the matter considered. The written request shall contain such information, including rules and regulations and authorities involved, so as to allow full consideration of the matter, including the jurisdiction of the Board to consider it.

(c) Distribution of Agenda. The Secretary will endeavor to make such request, and other materials to be considered by the Board, available for **distribution** to interested employee organizations by 4:00 p.m. of the Friday before any regular meeting. This distribution shall include mailing of copies of the agenda and all supporting materials to any such organization which has previously deposited sufficient funds with the Secretary to cover the cost of mailing. At least seventy-two hours **before** a regular **meeting**, the Secretary shall post a copy of the agenda in a location that is freely accessible to members of the public and shall sign and maintain a declaration of the time and place the agenda is posted. Matters personal to an **individual** which the Secretary, in his reasonable discretion, believes should be kept **confidential**, need not be so **distributed**. (Amended 2/19/87)

(d) Matters Not on Posted Agenda. Notwithstanding subsection (a), the Board may take action on items of business not appearing on the posted agenda under any of the following conditions: (Amended 2/19/87)

(1) The Board determines by a two-thirds vote, or, if less than **two-thirds** of the Board members are present, a unanimous vote of those members present, that the need to take action arose subsequent to the agenda being posted as specified in subsection (a) above. A separate vote shall be taken in making any such determination. The Secretary shall reflect in the minutes what the need for action was and why the need arose after the posting of the agenda. (Amended 2/19/87)

(2) The item was posted pursuant to subsection (a) of this Rule for a prior meeting of the Board occurring not more than five calendar days prior to the date action is **taken** on the item, and at the prior meeting the item was continued to the meeting at which action is being taken. (Amended 2/19/87)

(e) Tabled Matters. The Secretary will keep a record of tabled matters and **scheduled proceedings**, and shall list such items, together with any other known suspended and future items, at the end of each agenda.

#### SECTION 9. Procedure for Alleged Violation of Open Meeting Rules

(a) **Prior** to any court action being commenced pursuant to Government Code Section 54960.1(a), the interested person shall make a demand of the Board to cure or correct any action alleged to have been taken in violation of Government Code Section 54953 requiring that Board meetings be open and public, or of Sections 2 or 8. The demand shall be in writing and clearly

describe the challenged action of the Board and nature of the alleged violation. The written demand shall be made and shall be filed with the Secretary within thirty days from the date the action was taken. Within thirty days of such filing, the Secretary shall place the matter on the Board agenda for Board consideration. The Board shall either cure or correct the challenged action and inform the demanding party in writing of its actions to cure or **correct**, or inform the demanding party in writing of its decision not to cure or correct the-challenged action. If Board takes no action within the thirty day period following such filing with the Secretary, the inaction shall deemed a decision not to cure or correct the challenged action. (Amended 2/19/87).

- (b) Upon 'receipt of a demand described in subsection (a) of this Section, an item with two sub-items shall be **added** to the next meeting's agenda, as follows: (Amended 2/19/87)
- (1) The first sub-item shall be consideration of the demand, **i.e.** whether the challenged action can reasonably be said to have violated the Brown Act. Such sub-item may be considered in closed session pursuant to Government Code Section 54956.9. (Amended 2/19/87)
  - (2) The second sub-item shall be consideration of the underlying subject matter of the challenged action if the Board decided, in considering the demand, that the challenged'action may have violated the Brown Act. (Amended 2/19/87)
- (c) Should the Board determine that corrective action is warranted as to any challenged action, it shall adopt a corrective action stating that the original action is superseded or rescinded as of the effective date of the correction action. Such corrective action shall also describe the original action and why the corrective action is being taken. **(Amended 2/19/87)**

#### SECTION 10. Minutes.

- (a) Circulation. The minutes of each Board meeting shall be mailed to all persons who have requested such distribution and have deposited the cost of mailing. Copies of such minutes shall be distributed to Board Members, the City Attorney, and affected department heads.

## ARTICLE 4. MISCELLANEOUS

SECTION 1. Appointment of Committees. The Chairman shall appoint such committees of Board Members as the Board shall authorize to investigate and report to the Board on matters within its jurisdiction.

SECTION 2. Amendments to Rules and Regulations. These rules and regulations may be amended by a majority vote of three or more Board Members at any regular or special meeting when at least ten days written notice of the proposed presentation of such amendment at such meeting has been given all Board Members in the manner prescribed herein for special meetings, or when announcement of the proposed presentation of such amendment was recorded in the minutes of the previous , regular meeting of the Board.

SECTION 3. Interpretations. When a class specification includes a **specific** type or amount of education or training or a specific type or amount of experience, the applicant for the position must have completed or attained the specific type or amount of education or specific type or amount of experience. However, when a class specification provides for the substitution of, or an alternate choice of experience for education or training, or vice versa, by the use of the phrase "**or any equivalent,**" "**may be substituted,**" or similar phrase, the Director, upon the advice of the appointing authority on the necessities relative to the filling of the position, and after a determination, based on the labor market, of the degree of difficulty of filling the position, may exercise the choice presented by the class specification. Unless the Director determines that there is actual non-equivalency on a time basis, substitution shall be applied year for year.

## ARTICLE 5. MEDIA EQUIPMENT RULES

### SECTION 1. When audio-visual coverage may be excluded.

Audio-visual coverage shall not be excluded from a Board meeting, or any part thereof, **except that**, prior to presentation of any testimony, the appellant may move the Board, in its discretion, to exclude such coverage from a hearing on disciplinary appeal.

### SECTION 2. Prevention of disruption.

Audio-visual coverage shall be conducted with minimal intrusion. Accordingly, the following restrictions are imposed:

- (a) Television cameras shall be operated from fixed positions.
- (b) Television cameras shall be placed well away from, and so as not to obstruct, the space between parties, their representatives, witnesses, or Board Members.
- (c) Television cameras shall be placed so as to not obstruct unnecessarily the coverage of the meeting by other media.
- (d) Equipment shall only be installed prior to commencement of the meeting or during recesses. It shall only be removed after adjournment of the meeting or during recesses.
- (e) There shall be no flash photography, artificial illumination or flood lighting other than that provided by the particular hearing room. The television media may install additional lighting in order to raise the lighting level to the lowest level necessary to provide adequate television coverage.
- (f) All sound equipment, cameras, and photographic equipment shall be substantially noiseless.
- (g) Any microphones used shall be those provided within the hearing room by the City of Fresno. If no such microphones are provided, then the Chairman shall have the discretion to provide them so long as there is no disruption. Electrical conduits and wiring cables for microphones or cameras shall not be allowed to obstruct the space between parties, their representatives, witnesses, or Board Members.

## ARTICLE 6. HEARINGS ON DISCIPLINARY APPEALS

### SECTION 1. Authority and Purpose.

These rules are promulgated pursuant to the authority granted the board in Article IX, Section 904 of the Fresno City Charter. These rules are in addition to the rules found in Fresno Municipal Code Sections 2-1662 through 2-1670, and 2-1673 through 2-1676, which are incorporated by reference.

The purpose of this Article is to provide a procedure for hearings on disciplinary appeals in accordance with the Fresno Municipal Code, to the end that such appeals be fairly and expeditiously processed and that when such a hearing is required, the appellant, the appointing authority, and the Board have fair notice thereof. This Article provides an opportunity for the appellant to appear before the Board and present a case for modification, modification with conditions, or revocation of the order of disciplinary action, for the appointing authority to present a case for affirmation of such order, and for the Board to have such facts as will enable it to arrive at a fair decision on such appeal. For purposes of a fair hearing, the Board is to act as an independent body, finding facts and applying law.

### SECTION 2. Procedures Before Hearing on Disciplinary Appeal.

- (a) Within ten days after the filing of a response, the Secretary shall notify the appellant by certified mail, at the address shown on such response, that the hearing on disciplinary appeal shall be conducted in accordance with these rules and regulations, ~~a copy of which shall be included with such notice.~~
- (b) The Secretary shall, with the concurrence of the Board, set a date for the hearing on disciplinary appeal. Such hearing shall be set for the earliest possible regular or special Board Meeting mutually agreeable to the parties. Upon setting the date of such hearing the Secretary shall provide written notice of such date to all parties or parties' representatives, as provided for in Fresno Municipal Code section 2-1664(a). If the date for such hearing cannot be established by mutual agreement, the Secretary or the Board shall fix the time and place for hearing.

(c) Continuances, before or during the hearing on disciplinary appeal, may be granted by the Board for good cause upon its own motion, or upon motion of either party. Any such requests for continuance by either party prior to such hearing shall be in writing, shall be for a reasonable time, and shall be reasonable in number, and shall be submitted to the Secretary at least two working days prior to such hearing.

(d) Withdrawal of notice of termination or appeal.

(1) An order of disciplinary action or a response may be withdrawn if the party filing it provides written notice of withdrawal to the Secretary.

If appellant withdraws his response pursuant to this rule, no hearing on disciplinary appeal shall be scheduled, or if scheduled, it shall be removed from the agenda by the Secretary. Upon the withdrawal of a response, the order of disciplinary action shall be final.

(e) Subpoenas may issue according to the Charter of the City of Fresno.

(1) Subpoenas shall be provided by the Secretary upon request of either party. The party requesting the subpoena shall be responsible for its service. Whenever possible, subpoenas shall be served at least forty-eight hours in advance of the time set for appearance or production of documents.

(2) Prior to or at the commencement of the hearing, or as otherwise directed by the Board, either party may move to quash a subpoena on either or both of the following grounds, which shall be clearly and fully stated in a written motion:

i. Compliance will be oppressive or  
against public policy.

ii. The items subpoenaed are privileged.

iii. The items subpoenaed are irrelevant or unnecessary.

iv. The items subpoenaed have not been described with sufficient clarity to enable compliance.

Before it commences or continues with the hearing on disciplinary appeal, the Board shall rule on the motion to quash.

SECTION 3. Procedures During Hearing on Disciplinary Appeal.

- (a) All hearings on disciplinary appeals shall be recorded at the cost of the Board by a certified shorthand reporter unless waived by the parties.
- (b) All hearings on disciplinary appeals shall be governed by the following:
  - (1) Only those Board Members in attendance throughout such hearing may participate.
  - (2.) Rules of Evidence
    - i. The appointing authority has the burden of proving by a preponderance of the evidence that the order of disciplinary action should be affirmed.
    - ii. Oral evidence shall be taken only on oath or affirmation which shall be administered by the presiding officer.
    - iii. Each party may call and examine witnesses, introduce exhibits, and cross-examine and impeach any witness on any matter relevant to the issues. If the appellant does not testify in his own behalf, he may be called and examined as if under cross-examination.
    - iv. Refusal by any witness or party to submit to and answer relevant questions shall be grounds for fair comment.
    - v. Such hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law rule or statute which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

- vi. Copies of the reports and records of any governmental agency, division or bureau will be accepted as evidence in lieu of the original thereof.
  - vii. In hearings on disciplinary appeals from those orders of disciplinary action which seek removal pursuant to Fresno Municipal Code Sections 2-1666(c)-(d) or 2-1670, the right of cross-examination of a physician on his written report may be deemed waived where the report of the physician has been filed with the Board and served upon the parties at least five days prior to the hearing on disciplinary appeal, unless the physician is produced at the hearing, or unless good cause has been shown for not producing the physician. The party submitting such report shall, if asked by the opposing party, join in requesting the physician to appear at such hearing, but the party initiating the request shall pay the physician such fee as may be fixed by the Board, which may require that it be deposited in advance.
- (c) The Board, through its presiding officer, may avail itself of advice from its appointed counsel at any time.
- (d) All hearings on disciplinary appeals shall proceed in the following manner:
- (1) The Chairman shall call the case and ask for appearances by or for the parties, which shall be recorded in the minutes and in the official file of such hearing. The Chairman shall determine that the parties are ready to proceed, and if so, or if the chairman otherwise rules for good cause, the hearing shall be opened.
  - (2) All hearings on disciplinary appeals, and every part thereof, shall be in public session, except:
    - a. As provided in Article 5, Sections 1 and 2 of Media Equipment Rules;
    - b. As provided in that portion of Article 6, Section 3, of Procedures During Hearing on Disciplinary Appeals, specifically relating to decision on the disciplinary appeal;

- c. Prior to presentation of any testimony, the appellant may move the Board, in its discretion. to exclude all persons except the Board. its appointed counsel. the Secretary. the certified shorthand reporter, witnesses. parties, and parties' representatives.
  - d. At any time, either party may move the Board. in its discretion, to exclude any witness not at that time under examination, so that such witness cannot hear the testimony of other witnesses. Such exclusion of a witness shall not affect the right of parties or **parties'** representatives to be present.
- (3) The Secretary shall mark for identification **only**, and not as evidence. all papers in the official file. which should include:
- i. the notice of proposed action, served upon or mailed to the appellant pursuant to Fresno Municipal Code Section 2-1661.5;
  - ii. the order of disciplinary action, with proof of service on the appellant;
  - iii. the response;
  - iv. the notice of hearing on disciplinary appeal, with proof of service on the parties; and
  - v. other relevant documents in the official personnel file of the appellant, upon the request of either party.
- (4) The Secretary or other person authorized by the Chairman shall read the order of disciplinary action and the response, which reading may be waived upon the stipulation of the parties.
- (5) The appointing authority shall present **testimony** and evidence.
- (6) The appellant shall present testimony and evidence.
- (7) Each party may cross-examine witnesses, after examination, but only as to matters within the scope of the direct examination.

- (8) Rebuttal evidence may be presented.
- (9) Each party shall be allowed to present closing arguments, the appointing authority to argue first and to have the right to a rebuttal argument.
- (10) Upon the conclusion of all testimony, the Chairman shall ask if the parties are ready to submit the matter for decision on the disciplinary appeal, and if so, or-if the Chairman otherwise orders for good cause, the Chairman shall declare the matter submitted to the Board for decision on the disciplinary appeal. If no further evidence or documentation is required, the Board may render its decision on the disciplinary appeal prior to adjournment. If further documentary evidence is to be filed, the Board, for good cause, may allow time for filing and serving such documentary evidence, and may order that the matter will be deemed submitted after such period unless a party objects to such documentary evidence within five calendar days after it is filed. Copies of such documentary evidence shall be served on the adverse party, who shall have three days therefrom to file rebuttal evidence. At its next meeting, the Board shall rule on any objection to documentary evidence filed and shall, after deliberation, render its decision on the disciplinary appeal.
- (11) The Board's deliberation upon its decision on the disciplinary appeal shall be in executive session unless the Board in its sole discretion elects to deliberate thereon in public session.

The Board shall vote on each of the allegations set forth in the order of disciplinary action. A tie vote on a particular allegation shall result in revocation of that allegation.

The Board shall then vote on the discipline set forth in the order of disciplinary action. A tie vote on the discipline shall result in modification, modification with conditions or revocation of the discipline.

In the event of a modification or modification with conditions of the discipline, the Board shall then vote on such modification or modification with conditions.

After voting thereon. the Board shall announce its decision on the disciplinary appeal by roll call vote in public session. A tie vote shall result in modification, modification with conditions or revocation of the order of disciplinary action. .

SECTION 4. Procedures After Hearing on Disciplinary Appeal.

In those cases where judicial review of the Board's decision on the disciplinary appeal is sought by either party, the petition to the court shall be filed within thirty days from the date of mailing of notice to the parties of the Board's decision on the disciplinary appeal.

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