

**CITY OF CHARLOTTE
CIVIL SERVICE BOARD**

RULES OF PROCEDURE

- AUTHORITY AND PURPOSE OF THESE RULES -

The Charlotte City Charter, Part I, Chapter IV, Subchapter D, Section 4.61 ("Charter") establishes the Civil Service Board ("Board") consisting of nine (9) members. A copy of the Charter is attached. Pursuant to the Charter, the Board is empowered to hold hearings:

- (a) upon an appeal by an officer or employee of the Police or Fire Department from a suspension without pay, and
- (b) upon a citation by the Chief of the Fire or Police Departments, or the officer in charge in the absence of the Chief, relieving an employee or officer from duty and recommending dismissal from the Department.

Certain provisions governing the scheduling and conduct of hearings are set forth in Sections 7(c)-(e) of the Charter. These Rules of Procedure are promulgated pursuant to the inherent authority of the Civil Service Board to schedule its meetings and determine its manner of proceeding, subject to the authority of the Charter. Any conflict between these Rules of Procedure and the Charter shall be resolved in favor of the Charter.

-RULES-

1. Appointment of Chair and Vice-Chair of the Board.

The Board shall elect a chairperson and vice-chairperson from the members of the Board. The chair and vice-chair shall be elected by majority vote of the members of the Board and shall serve for the duration of his or her term. The vice-chair shall serve as and perform the duties of the chair in his or her absence.

2. Documentary and Other Communications with the Board.

Any documents required or allowed to be filed with the Board shall be filed with the Board's Clerk at 600 East Fourth Street, Charlotte, North Carolina. All other communications with the Board shall be made to the Board's Clerk. Filings and other communications shall be made with Board members only in cases of emergency, and in such cases shall be made with the Board's Chair or Vice-Chair if available.

3. Scheduling and Postponement of Meetings.

Meetings of the Board shall be held monthly or as the conduct of the official business of the Board requires. While regular meetings of the Board are held monthly, postponements of meetings of the Board may be granted by the Chair, if the Chair is unavailable, then by the Vice-Chair; provided that no matters to come before the Board require immediate action. The provisions of this section shall be subject to the provisions of Section 6 herein.

4. Appeals.

A Notice of Appeal is sufficient in form if it states that the officer or employee appeals and describes the action appealed sufficiently for its identification. In cases where appealable adverse action is taken against an officer or employee and the penalty imposed is suspended by the Department, the officer or employee may appeal within the time allowed from such adverse action. If the suspended penalty is later placed into effect, an appeal may then be taken within the time allowed from the action placing the penalty into effect, but the appeal ability of the initial adverse action is not thereby revived. Non-appealable adverse action may not be challenged on later appeal even if such later appeal is from punishment based on the earlier, non-appealable determination, since grievance procedures are available for such earlier determination.

5. Scheduling of Hearings.

The Board strictly enforces the requirement of at least seven days prior notice of requests for change of hearing date set forth in Section 4.610) of the Charter. Exceptions are granted only for the most compelling reasons. Lack of time for preparation, either by the officer or employee or counsel, is not a compelling reason. Officers or employees desiring to appear before the Board with counsel are advised to retain counsel promptly upon citation or appeal. Hearing date postponements may be granted only by the Chair, or the Vice-Chair in the absence of the Chair; however, the Board's goal is to resolve appeals by hearing within six months from the date the appeal is received. Absent exigent circumstances, a postponement of hearing will not be granted except for a crucial cause that could not have been reasonably foreseen. Any delay occasioned by the officer shall not be included in the computation of any back pay to be awarded, absent compelling reason to do otherwise.

6. Subpoenas and Character Witnesses.

Rule 45 of the North Carolina Rules of Civil Procedure will generally govern the issuance and service of subpoenas for Board hearings. Consistent with that Rule, either the Board or an attorney representing a party before the Board may issue subpoenas for the attendance of witnesses. Any request for Board-issued subpoenas for witnesses must be submitted to the Board's Clerk at least 10 full working days prior to the commencement of the hearing at which such witnesses are to appear. Each party is responsible for serving its own subpoenas, and may do so in any manner allowed by Rule 45. Not more than 5 character witnesses shall be heard for any officer or employee. The Board will accept any number of character affidavits from character witnesses.

7. Statements of the Parties.

No later than fourteen (14) calendar days prior to the scheduled start of the hearing, the opposing parties shall submit to the Clerk of the Board, and the member of the City Attorney's Office designated to represent the Civil Service Board, a typed statement of the case representing their contentions concerning the case, including defenses, if any. The statement shall provide a nonargumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues to be considered by the Board. This statement shall consist of no more than three (3) typewritten single spaced pages on 8 ½ X 11 inch, plain white paper. This statement of the case is not to be served on the opposing party; rather it will be distributed to the parties by the Clerk of the Board, within 48 hours of its receipt by the Clerk of the Board. The statement will be distributed to those Civil Service Board members who will serve on the hearing panel for their review prior to the start of the hearing, and no later than three business days prior to the start of the hearing. If a party chooses not to provide this statement, the statement of the opposing party shall be provided to members of the hearing panel without comment. If the statement is not submitted before the fourteen day deadline prescribed above, the written statement shall not be provided to the Civil Service Board, nor may it be used as a submission to the Board at the hearing. The statement shall not be considered a substitute for the citation of an officer or firefighter to the Board required by Section 4.61 (h) of the City Charter.

8. Pre-Hearing Conference, Marking of Exhibits, and Exchange of Witness Lists.

(a) Pre-Hearing Conference and Marking of Exhibits: No later than 72 hours before the scheduled start of the hearing, the opposing parties (through counsel if represented) shall meet and discuss the possibility of entering into stipulations of fact or law governing the hearing, and shall mark, number and exchange copies of all exhibits expected to be used at the hearing and shall indicate whether their authenticity is questioned. If the hearing is scheduled to take place on a Monday, then the pre-hearing conference should take place no later than the preceding Thursday. The parties should come to the hearing prepared to provide copies of exhibits to the witness, the Clerk, the Board's Attorney, and each member of the hearing panel.

(b) Witness Lists: No later than 72 hours before the scheduled start of the hearing, the parties (through counsel if represented) are required to exchange witness lists. The parties are required to ensure that the opposing party receives the witness list no later than 72 hours prior to the hearing, meaning that the list, if mailed, should be mailed three days in advance of the deadline. Otherwise, hand delivery, facsimile transmission or electronic mail is permitted as a method of serving the list, so long as the party utilizing any of these methods obtains either: a signed receipt; electronic delivery receipt showing delivery; or a facsimile confirmation showing the date and time of transmission. If the hearing is scheduled to take place on a Monday, then the witness lists should be exchanged no later than the preceding Thursday. Failure to provide the opposing party with a witness list in accordance with this rule, shall mean that the party failing to exchange the witness list, will not be allowed to call any witnesses to testify at the hearing, absent a showing of substantial need, undue hardship, and extreme prejudice. Parties are not permitted to call a witness whose name does not appear on the witness list.

9. Conduct of Hearings

(a) Opening the Hearing. The Chair of the hearing (hereafter "Chair" in this rule) shall open the hearing and introduce the Board, its Clerk, its Counsel, and the Reporter. The Chair will then inquire whether the hearing is open or closed, and make arrangements accordingly. The Chair will then inquire of all parties whether they have read and understood these Rules and the attached Charter provisions. If so, explanation of these Rules and the attached Charter provision will be waived and a copy submitted to the Reporter for inclusion in the Record. If not, the Chair shall explain these Rules and the attached City Charter provisions to the parties, sufficient to assure that they are understood. In all hearings the Chair shall specifically assure compliance with Rule 5. The Chair will then inquire whether there are any stipulations. The Chair will then present the charge for inclusion in the Record and read the factual allegations of the charge to the officer or employee or counsel, and inquire particularly which facts of the charge are admitted, if any. The parties may stipulate that the charge need not be read into the record, and opt for its inclusion into the record without reading.

(b) Function of the Board. The Board is an administrative agency of the City of Charlotte, charged to carry out personnel functions defined by the Charter. It is not a Court, but it does have certain powers traditionally associated with courts, such as the powers to subpoena witnesses, administer oaths, and compel production of evidence. The Board is empowered to resolve disputed questions of fact and apply rules and regulations to its findings of fact, much in the manner of a Court.

(c) Presentation of Evidence. The Chair functions as the presiding authority on all matters of conduct, procedure, and admissibility of evidence. The rules of evidence applied in the North Carolina General Court of Justice are generally applied by the Board. Persons and the Department appearing before the Board are allowed to be represented by counsel, to call witnesses, to present documentary or real evidence, to cross-examine witnesses against them, and to be present during all proceedings except the Board's deliberations. The Board may call the appealing or cited officer as a witness. Technical objections are discouraged. The Rules of Evidence will be applied consistent with the personnel function of the Board. The Chair rules on all objections to evidence, and, if appropriate, raises objections and controls the presentation of evidence on the Chair's own motion. Nevertheless, each Board member is of equal right and power to each other Board member in the conduct of hearings, and the Chair exercises power subject to the consent of the Board. Approval of the rulings and other actions of the Chair is implied in the absence of objection by any Board member.

(d) Order of Examination of Witnesses. All witnesses before the Board shall be sworn or shall affirm. The Department has the burden of proof and offers its case first. The Department shall first present evidence showing the jurisdiction of the Board, unless it is stipulated. The usual order of questioning of a witness is, first direct and cross-examination are conducted by the parties, then questions are asked by Board members, then by the Board's Counsel, and then questions are asked by the Chair. Variations in this order of proceeding, and supplemental questions, are freely allowed if pertinent. The parties are encouraged to be direct and brief in their presentations, consistent with full presentation of all pertinent evidence.

(e) Closing Arguments. The parties will be allowed to make closing arguments before the Board retires to deliberate. The Chair may set time limits on arguments.

(f) Stages of the Hearing. The Board may decide at any time to bifurcate hearings into determinations of liability and punishment, or in any other manner, upon motion of a party, or upon the Board's own motion. Unless otherwise ruled, hearings will not be bifurcated and the parties shall present all pertinent evidence before the Board retires to deliberate.

(g) Motions Practice. Motions to dismiss and other such motions are not required. The Board assumes, unless otherwise advised by a party, that each party makes all appropriate motions for all relief then allowable to such party.

(h) Deliberations. In its deliberations the Board first considers whether the evidence presented, if believed, allows relief to be granted. If so, it finds to what extent facts have been proved. If facts allowing for relief to be granted have been proved, the Board determines what relief shall be granted. The burden of proof by a preponderance of the evidence is on the Department at all stages of the hearing and the Board's deliberations. A Board member must be present during all proceedings prior to deliberations in order to participate in the Board's deliberations. A Board Member must be present during all of the Board's deliberations to be entitled to vote on the case. All decisions during deliberations shall be made by simple majority vote. In the event that no simple majority vote can be obtained on any issue presented, a rehearing of undecided matters shall be set, or the matter dismissed, in the discretion of the Board. No Board member qualified to vote on an issue presented shall abstain there from. Decisions of the Board shall be made in writing, with Findings of Fact and Conclusions of Law.

10. Recording of Hearings and Appeals.

The Board will provide a verbatim reporter at all hearings. Any transcript of such hearing shall be the responsibility of the party desiring it, and the Board is not obligated to pay for any transcript or transcript copy unless necessary for its own purposes.

11. Notice of Rules.

The Clerk shall send a copy of these Rules of Procedure to each officer or employee who is cited to the Board or who appeals to the Board, or counsel for such party if known, promptly upon receipt of notice of appeal or citation. Failure to so send these Rules, or failure of such officer or employee or counsel to receive them, shall not relieve such officer or employee or counsel of notice of these Rules and their applicability.

12. Former Rules Rescinded.

The Rules of Procedure promulgated May 11, 1978, March 19, 1980, June 24, 1981, May 18, 1983, September, 1984, January 16, 1985, October 9, 1985 effective November 1, 1985, September 1, 1998, and June 7, 2005 and all other rules of procedure inconsistent herewith, are

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ADOPTED on October 6, 2015

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hereby rescinded. The Rules on Conflict Of Interest, adopted March 19, 1980, are not repealed by these Rules of Procedure. The Board is also subject to the October 28, 2013 Resolution of the City Council establishing The Code of Ethics for Members of Boards, Committees and Commissions of the Charlotte City Council.

13. Sanctions.

The Board has power to sanction substantial violations of these Rules.

14. Construction of Rules.

These Rules shall be construed to promote the just, speedy and inexpensive determination of matters heard by the Board.

Done by the Civil Service Board of the City of Charlotte, North Carolina, at Charlotte, North Carolina, on this the 6th day of October, 2015, effective on adoption.



Jason McGrath
Chair, Civil Service Board

ATTEST: A True Copy


CLERK

