



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: April 28, 2015

TO: Mayor and Councilmembers

FROM: Human Resources, Administrative Services

SUBJECT: Civil Service Commission Hearing Procedures

RECOMMENDATION:

That Council receive a report on the Civil Service Commission's adoption of revised and expanded Hearing Procedures.

DISCUSSION:

In an effort to make the Civil Service Commission hearing process more consistent and understandable for employees, union representatives, management, and contract hearing officers, and to minimize related misunderstandings, the Civil Service Commission recently undertook a process to revise and expand its written Civil Service Commission Hearing Procedures.

The Civil Service Commission, appointed by the City Council, plays an important role in ensuring adherence to merit-based employment principles at the City. Among these principles, as simplified: (1) employees in classified positions will be subject to serious discipline (e.g., suspension, demotion, termination) only for "just cause", and (2) these employees will receive a form of procedural due process related to such disciplinary decisions, including the right to appeal the decision to an impartial tribunal. The Civil Service Commission serves as that appeal body in disciplinary appeal hearings, which are presided over by a contracted hearing officer (generally a local licensed attorney).

Some of the pre-existing written hearing procedures of the Civil Service Commission came from the City Charter and the Municipal Code (SBMC 3.16), and the new procedures incorporate these. Others were adopted by the Commission itself over the years. The City Attorney, who serves as counsel to the Commission, incorporated the most recent changes recommended and discussed by staff and the Commission into a proposed draft revision, which was then approved by the Commission.

The vast majority of the changes are technical, non-substantive changes, and therefore not subject to any duty to meet and confer with the City's labor unions. However, the Commission's draft was shared with the unions in order to give them the opportunity to

review and comment on the revised procedures and/or to identify any negotiable issues that they might wish to meet and confer about. Of the City's eight labor organizations, only two objected by the deadline, the rest waiving objection. S.E.I.U. Local 620, requested to meet and confer/consult over the changes, and several enhancements were made to the draft procedures by the Commission based on those discussions.

The Police Officer's Association (P.O.A.) objected, and declined to discuss the changes at all, citing a zipper clause in their labor agreement as prohibiting the City from making any changes to the terms and conditions of their employment. As mentioned, staff feels that the changes arguably are not negotiable anyway, and no negotiable items were identified by the P.O.A. in its response. However, if there is a hearing related to a P.O.A. member, the City will be open to any assertion by the P.O.A. that one or more of the changes should not apply in that instance. Staff will seek the P.O.A.'s concurrence with all of the changes when their labor agreement expires next year.

The Commission adopted the new procedures on April 8, 2015. The parties that were actively involved in the process-- the Commission, staff, and S.E.I.U Local 620-- all expressed satisfaction with the outcome. The Commission asked staff to share the revised Hearing Procedures with the City Council, though no action by the City Council is required.

ATTACHMENT(S): Civil Service Commission Hearing Procedures, Updated 4-8-2015

SUBMITTED BY: Kristy Schmidt, Director of Administrative Services

APPROVED BY: City Administrator's Office

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Approved by the Civil Service Commission on April 8, 2105
(as posted on City of Santa Barbara website www.santabarbaraca.gov)

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A. CIVIL SERVICE COMMISSION GENERALLY

1. Powers of the Civil Service Commission (CSC)

The CSC hears appeals of any (non-probationary) officer or employee under the Civil Service System i.e. classified, who is terminated, suspended, demoted or removed, and reports in writing to the appointing power and City Council, its findings, conclusions, recommendations and decision. Its decision shall be binding on the appointing or removing power. (Charter Section 808)

The decision of the Board shall affirm, modify or rescind the action taken as in its judgment shall seem warranted by the evidence and by the applicable provisions of the Charter and any ordinances, rules or regulations adopted hereunder; and such decision shall be final and conclusive. (Charter Section 1007)

2. Right to Employment during Good Behavior

a. Every person holding an office or position in the Classified Service, *who shall have completed the probationary period* therein, shall be entitled to retain his/her office or position during good behavior so long as it exists under the same or a different title, subject however, to suspension, demotion or dismissal as in this section provided. (Charter Section 1007) This section shall not be deemed to create any new substantive rights.

b. Any such persons may be suspended, demoted or dismissed by the appointing power, subject to the provisions of the Charter, for incompetence, habitual intemperance, immoral conduct, insubordination, repeated discourteous treatment of the public or fellow employees, dishonesty, conviction of a felony, inattention to duties, engaging in prohibited political activities, acts inimical to the public service, physical or mental incompetency, or other ground of penalty or forfeiture specified by the (State) Constitution or by the Charter. (Charter Section 1007)

i. Definition of Insubordination: Insubordination is a refusal to obey an order which a superior is entitled to give and entitled to have obeyed where the order is reasonably related to the duties of the employee. (Civil Service Commission January 2013)

c. Any such person who is suspended, demoted or dismissed shall be entitled to receive, upon filing a timely petition, a hearing by the Board of Civil Service Commissioners to review such suspension, demotion or dismissal. (Charter Section 1007)

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- d. The Commission will be informed of a request for a hearing regardless whether the request has been denied for late filing or other reasons, such as a request for a hearing regarding a probationary termination. Job abandonment is a resignation, not disciplinary, and a hearing is not scheduled; however, the CSC will be informed of the request for a hearing and the reason for the denial. (City Attorney & Civil Service Commission, March 2004).
- e. Retaliation Prohibited. The employer will not threaten or take any adverse action against an employee because he or she participated in or cooperated with or provided evidence or testimony to an investigation or appeal before the Civil Service Commission. Prohibited adverse actions include imposition or threat of termination, demotion, harassment, denial of promotion, increased surveillance, providing unjustified negative evaluations or any other discipline.

3. Petition for Hearing

- a. Any person entitled to a hearing before the Board of Civil Service Commissioners under Section 1007 and Section 808(d) of the Charter or this chapter may petition for a hearing before the Board. (MC 3.16.440(a))
- b. Such petition shall be in writing, signed by the petitioner or his/her representative, giving his/her mailing address, (his/her home email address and the email address of his/her representative (CSC September 2007)), the action which he/she appeals, and a general denial of the allegations in the letter/memo of suspension, demotion, or dismissal. (MC 3.16.440(b))
- c. The petition must also state the date of the decision being contested and the petitioner's telephone number.

The hearing itself will generally be an open meeting, with the deliberations of the Commission to be closed pursuant to the Ralph M. Brown Act, Government Code sections 54950, *et seq.* The Commission may conduct closed hearings with the consent of the employee obtained pursuant to the procedures specified in Government Code section 54957(b). The meeting agenda shall reflect these provisions.

4. Timeframe for Employee to File a Petition for Hearing

- a. A petition for hearing must be filed with the City Clerk ***within ten (10) calendar days of receipt of the*** letter/memo of suspension, demotion, or dismissal by the petitioner. (MC 3.16.440(c)). The petition shall state that it is directed to the City of Santa Barbara Civil Service Commission.
- b. "Receipt" means the date employee received the letter, not necessarily the date on the letter.

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- c. If the last day of this appeal period falls on a Saturday, a Sunday, a furlough day or a holiday, the appeal period is extended to and includes the next working day.
- d. The Board may extend the time or grant a hearing where the petition is filed ***after said ten (10) calendar day period***, where good cause is shown, and it is shown that other parties are not likely to suffer substantial hardship from the delay. (MC 3.16.440(c)). (Per the CSC on 1-13-2014, the following by itself is not “good cause”: employee / representative missing the deadline to file for a hearing).

5. Filling a Position during an Appeal to the CSC

Where an appeal is taken to the Board from an order of dismissal, the vacancy in the position shall be considered a temporary vacancy pending final action by the Board and may be filled only by a temporary appointment. (Charter Section 1007)

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B. HEARING BOARD AND HEARING OFFICER SELECTION

1. Composition of the Hearing Board

- a. Human Resources will be responsible for contacting and setting up the hearing with the Civil Service Commissioners, the Hearing Officer, City Attorney's Office, the department manager / supervisor, the employee's representative (who contacts their employee), and the court reporter. (Human Resources process)
- b. The term "Hearing Board" as used in this chapter shall mean the Board of Civil Service Commissioners (5 members), or those members thereof named or appointed under this section to hear any appeal petition. (MC 3.16.440(d))
- c. On receiving a petition which complies with the foregoing rule, the Board shall determine whether the matter will be heard before the entire Board or by three (3) or more members of the Board as designated by the chairperson. (MC 3.16.440 (d))
- d. In order to expedite the hearing process and insure that the Hearing Board shall avoid a possible tie vote, the following procedures shall be followed in establishing a Hearing Board (CAR 5/3/83, Section II):
 - i. Terminations: When convenient to the CSC, all hearings concerning terminations will be heard by the entire CSC. If one member is unable to attend, the Hearing Board shall consist of three (3) members. The selection of the three (3) members shall be made according to the procedures outlined below. (CAR 5/3/83, Item #23, Section IIA)
 - ii. Suspensions & Demotions: All suspensions and demotions shall be heard by a three (3) member Hearing Board. This Hearing Board shall be established according to the procedures outlined below. (CAR 5/3/83, Item #23, Section IIB). Note: If all five Commissioners are available, then the hearing can be scheduled with all 5 members.
 - iii. Procedures: To establish a three (3) member Hearing Board the Human Resources Manager shall contact potential board members according to the Hearing Board list. This list shall initially be established according to the date of appointment to the Commission, with the most "senior" Commissioner #1 on the list. The Human Resources Manager shall survey the Commissioners as to their availability for a hearing and the first three (3) members (in order of the list) available shall serve as the Hearing Board. For subsequent

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hearings requiring a three (3) member Hearing Board, the member immediately below the lowest ranking member to serve on the prior Hearing Board shall be #1 on the list with the rest of the list being established to maintain the same order as was originally established. In cases where the three (3) member Hearing Board does not have the Chair or Vice Chair of the Commission serving as a member, then the highest ranking (according to the Hearing Board list) member shall act as Chair for the hearing. (CAR 5/3/83, Item #23, Section IIC)

2. Hearing Officer

For all hearings on the discharge, suspension, or demotion of a City employee, a Hearing Officer shall be appointed. The Hearing Officer shall be an attorney admitted to practice in the State of California. The Hearing Officer shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the Hearing Board on matters of law. (MC 3.16.440(e)) The Hearing Officer shall be selected on a rotating basis from a panel of qualified attorneys maintained by Human Resources. The employee or his/her representative has the option to contribute to the fees charged by a Hearing Officer.

3. Disqualification for Financial Conflict of Interest or Personal Bias. (Per the CSC 11/2009)

- a. Prior to a Civil Service Commission disciplinary appeal hearing, each Commissioner and Hearing Officer shall consider whether he or she has a financial conflict of interest or personal bias which could preclude the Commissioner or Hearing Officer from being a fair and impartial participant in the disciplinary appeal hearing.
- b. For the purposes of this policy, a financial conflict of interest may include, but is not limited to, the following:
 - i. The bases for not participating in a “governmental decision” as set forth in section 87100 of the state Political Reform Act of 1974 (hereinafter the “PRA”) and the state Fair Political Practices Commission regulations adopted pursuant to the PRA.
- c. For the purposes of this policy, personal bias shall include, but is not limited to, the following:
 - i. Circumstances that suggest that the Commissioner may have a personal interest in the outcome of the Commission disciplinary appeal hearing sufficient to appear to a reasonable person that the interest might influence

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the objective exercise of the Commissioner's responsibilities in the hearing. For example, a conflict of interest may exist if the Commissioner has participated in the disciplinary process in another role other than as a City Civil Service Commissioner or if the Commissioner knows the employee or the employee's close family personally. Another example of a potential conflict of interest would be if a City Civil Service Commissioner could advantage or disadvantage a party or their representative in another forum or context, such as a board, commission, labor negotiations, administrative, judicial, or quasi-judicial proceedings, or a Human Resources/personnel-related action involving another public agency.

- ii. The test for disqualifying personal bias under this policy is whether a reasonable person aware of the facts of the potential personal bias might entertain a reasonable doubt that the Commissioner is able to decide the disciplinary appeal hearing with appropriate impartiality and objectivity.
- d. If the City departmental representative, a Commissioner, the employee or the employee's representative believes a reasonable person would believe himself or herself to have a disqualifying financial conflict of interest or personal bias under this policy, the Commissioner shall do either of the following no later than the close of business two working days prior to the scheduled hearing date: 1. Recuse himself or herself by promptly informing the City Human Resources Manager of the Commissioner's need to abstain from participating in the hearing; or, 2. Inform the Human Resources Manager and the Hearing Officer assigned to the Commission disciplinary hearing of the facts which may give rise to a possible disqualifying conflict and request that the Hearing Officer make a determination prior to the start of the hearing on whether a disqualifying conflict appears to exist.
- e. If the City departmental representative, a Commissioner, the employee or the employee's representative participating in the Commission's disciplinary appeal hearing is aware of facts which they believe may form the basis for a reasonable conclusion that a Commissioner has a disqualifying conflict of interest, that party may, no later than the close of business two working days prior to the scheduled hearing date, inform the City Human Resources Manager of such concerns and the Manager shall advise the assigned Hearing Officer of such facts and may request a ruling by the Hearing Officer on whether disqualifying conflicts of interest are apparent.
- f. As required by the Political Reform Act of 1974, a Commissioner who recuses himself or herself or who is otherwise disqualified from participating in the Commission's hearing shall not attend or otherwise observe the Commission's hearing. (Civil Service Commission 2010)

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C. PREHEARING ACTIONS

1. City Staff Meeting

- a. If approved for a hearing, Human Resources sends a copy of the employee's personnel file and any other pertinent information to the attorney in the City Attorney's Office who has been designated to represent the affected department during the hearing. Generally, the City Attorney shall be segregated from such meetings and shall represent the CSC as a decision-making body.
- b. Human Resources contacts and sets up a pre-hearing meeting with the affected department representatives, Human Resources representative(s), and the City Attorney's Office attorney who has been designated to represent the affected department during the hearing. This meeting will usually take place at the City Attorney's Office or in the Human Resources Annex.

2. Establishment of Hearing Date

Upon receipt of a hearing request, the Human Resources Manager **will attempt to establish a date *within twenty (20) days (as specified in the City Charter)*** with the concurrence of the petitioner (and his/her representative), the Commissioners, and the City Attorney. The 20-day requirement will be waived only with the concurrence of both the petitioner (and his/her representative) and the City. If no concurrence can be reached, the Vice Chair of the Civil Service Commission shall set a date to comply with the provisions of the City Charter. In absence of the Vice-Chair, the Chair shall establish the date. (CAR 5/3/83, Item #23, Section IA)

The petitioner is entitled to a hearing within twenty (20) days unless he or she expressly waives the 20 day requirement. At the time of the waiver, the petitioner may set a limit on the time duration of the waiver.

Written notice of the time and place thereof shall be sent, via certified and regular US mail, and emailed to the employee's home email address and to the email address of his/her representative (per the CSC September 2007) to the employee and his/her representative (with a copy to the Hearing Board, Department staff, etc.) in person or by mail **at least ten (10) calendar days before the hearing.** (City Charter Section 1007 & MC 3.16.440(f))

3. Prehearing Discovery

Requests for discovery, such as a request for the production of documents or employees' work schedules, from the City Attorney's Office or the petitioner, shall be made to the opposing party **not later than *fourteen (14) calendar days prior to the pre-hearing meeting.*** Parties shall provide to the opposing party, **at least seven (7)**

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calendar days before the pre-hearing meeting, copies of all documents timely requested by the opposing party. The final opportunity to request discovery shall be at the pre-hearing meeting. All discovery requests shall be in writing.

Any requests for discovery after the pre-hearing meeting shall be only for good cause shown and are to be responded to based upon the reasonableness of the request (e.g., timing, volume of request) as determined appropriate by the Hearing Officer. (Civil Service Commission 5/11; Human Resources 4/13)

If any witness cannot be present at the time of the hearing, a deposition may be taken in accordance with the rules applicable to depositions in civil cases. The cost of a deposition shall be borne by the party taking the deposition. Affidavits shall be used only when it is impossible to secure depositions.

4. Mandatory Prehearing Meeting

- a. The City Attorney's Office contacts and sets up the prehearing conference between the City Attorney's Office attorney representing the affected department, the Hearing Officer, and the employee and, if applicable, the employee's representative. This meeting will usually occur in the City Attorney's Office or can be held via conference call. (Human Resources process).
- b. **At least ten (10) working days prior** to the scheduled Civil Service Commission disciplinary appeal hearing date, the attorney representing the City, the petitioner, the petitioner's attorney or representative, and the attorney acting as the Hearing Officer shall meet (either in person or by telephone, as determined by the Hearing Officer) in order to discuss hearing procedures, all possible evidentiary issues which may arise at the hearing (particularly with respect to documentary evidence to be provided to the Commission), the witness list, and any other issue deemed relevant by the Hearing Officer. (CSC 11/96 and 5/11; Human Resources 4/13)
- c. Both the City Attorney's Office and the petitioner shall be prepared for the pre-hearing meeting with the Hearing Officer with all documents to be used at the hearing and witness lists. A copy of all documents to be used at the hearing and a witness list shall be provided to the opposing party and presented to the Hearing Officer at the pre-hearing meeting. (Civil Service Commission 5/11)
- d. At the conclusion of the pre-hearing meeting or as soon thereafter as possible, the Hearing Officer shall determine the admissibility of any documents which the City or the petitioner wishes to submit to the Commission in connection with the hearing.

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5. Exhibit Packet for the CSC

- a. Timing of Delivery to Commission: After the conclusion of the pre-hearing meeting and **at least seventy-two (72) hours prior to the scheduled hearing, City staff shall provide the Commission with an indexed document / exhibit list and** an exhibit packet.
- b. Contents of Packet: The Exhibit Packet shall contain **an indexed document / exhibit list** and all of the documentary and other written evidence deemed relevant and admissible by the Hearing Officer. For all hearings, the required "Notice of Intent to Terminate" (or suspend or demote, as the case may be) and the formal "Notice" letter, and all substantiating documents attached to such letters and made available to the employee shall also be presented to the Commission as part of the exhibit list. (Civil Service Commission 5/11) The exhibit list shall identify, for each exhibit, the party that requested its inclusion in the packet. City staff shall make the copies of the petitioner's documents and index them for the Commissioners.
- c. Petitioner's Exhibit Packet Document Responsibilities: After the Mandatory Pre-Hearing Meeting, Petitioner shall complete the following **by ninety-six (96) hours before the scheduled hearing** with documents determined to be admissible by the Hearing Officer:
 - Bates stamp or consecutively number pages at the bottom, and
 - Submit one copy to the City Attorney's Office.

6. Briefs for the CSC

For either party wishing to submit a brief to the Commission, those briefs (6 copies) shall be provided to Human Resources **at least seventy-two (72) hours prior to the scheduled hearing** so that they may be delivered to the Commission and the Hearing Officer with the exhibit packet. The briefs should also be served to the opposing party **at least seventy-two (72) hours prior** to the scheduling hearing (service includes hand delivery, facsimile, e-mail or any other method of delivery that ensures delivery of the brief during the aforementioned time period). The Commission, may, at its discretion, accept briefs beyond this time frame. (Civil Service Commission 5/11)

7. Prehearing Preparation between the City Attorney's Office and City Staff

If the City Attorney's Office staff representing the affected department needs to meet with City witnesses before the hearing, the City Attorney's Office will set-up this meeting directly between them and the department. (Human Resources process).

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8. Agenda

- a. **At least seventy-two (72) hours** (3 calendar days) prior to each meeting, the Civil Service Commission (i.e. Human Resources staff) must prepare an agenda containing a brief general description of each item to be transacted or discussed, including items which will be handled in closed session. A description of each item generally need not exceed 20 words, although the description of each item must be sufficient to provide interested persons with an understanding of the subject matter that will be considered. (Gov. Code, §54954.2). These agendas will be posted with the City Clerk's Office and on the City's internet site.
- b. In addition to the agenda requirement for meetings, the Brown Act requires a representative of the Civil Service Commission to orally announce the items to be discussed in closed session prior to any closed-session meeting. (Gov. Code, §54957.7)
- c. The Brown Act provides for closed sessions regarding the appointment, employment, evaluation of performance, discipline or dismissal of a public employee, subject to the consent of the employee when the session is for the purpose of a hearing on specific complaints or charges. (Gov. Code, §54957) Deliberations will be conducted in closed session regardless of employee consent.
- d. Closed sessions may involve only the membership of the body in question plus any additional support staff which may be required (i.e. Hearing Officer). Persons without an official role in the meeting shall not be present.
- e. Once a closed session has been completed, the Civil Service Commission must convene in open session. However, with respect to a dismissal, the report shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any. (Gov. Code, §54957.1(a)(5))
- f. Regular and special meetings may be adjourned to a future date. If the subsequent meeting is conducted **within five (5) days** of the original meeting, matters properly placed on the agenda for the original meeting may be considered at the subsequent meeting. If the subsequent meeting is **more than five (5) days** from the original meeting, a new agenda must be prepared and posted pursuant to Government Code section 54954.2. Hearings continued pursuant to section Government Code section 54955.1 are subject to the same procedures.

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D. HEARING RULES

1. Continuances

- a. The Hearing Board may grant a continuance of any hearing upon such terms and conditions as it may deem proper, including in its discretion the condition that the petitioner shall be deemed to have waived salary for the period of the continuance, if the continuance is at the petitioner's request. Any request for continuance made **less than twenty-four (24) hours** prior to the time set for the hearing will be denied unless good cause is shown for the continuance. (MC 3.16.440(n)) The petitioner (or petitioner's representative) or City not being prepared, by itself, will not be considered good cause. (CAR 5/3/83, Item #23, Section IB)
- b. If the petitioner and City concur that good cause has been established, then the party requesting the continuance shall supply alternative dates satisfactory to all concerned parties, which meet the time requirements outlined in the Charter. If those time requirements cannot be met and if the requesting party is the petitioner, they will be deemed to have waived back pay for the period of the continuance. If the requesting party is the City, back pay would be granted. (CAR 5/3/83 #IC)
- c. In cases where a continuance has been granted, the petitioner shall be deemed to have waived the **ten (10) calendar day** notification of hearing requirement for the establishment of a new hearing date. (CAR 5/3/83 #ID)

2. Evidence

- a. Petitioning employees shall be given the opportunity at such hearing to be heard in his/her defense in person or by counsel. (Charter Section 1007)
- b. Hearings may be conducted informally and the legal rules of evidence need not apply. (Charter Section 1007)
- c. The following evidentiary rules shall apply to hearings conducted under this section:
 - i. Oral evidence shall be taken only under oath. (MC 3.16.440(g))
 - ii. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called him to testify, and to rebut the evidence against him. If petitioner does not testify on his/her own behalf he/she may be called and examined as if under cross-examination. (MC 3.16.440(g))

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- iii. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall 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 or statutory rule 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 other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded. (MC 3.16.440(g))

3. Stenographer / Tape Recordings at Hearings

Hearings on discharges, reductions (demotions), and suspensions shall be conducted with a stenographic reporter and whenever possible a mechanical recording machine. (MC 3.16.440(l))

4. Transcripts

Transcripts of hearings shall be furnished to any person on payment of the cost of preparing such transcripts. (MC 3.16.440(m)) Transcripts are not available for hearing deliberations that occur in closed session.

5. Burden of Proof

In hearings on discharges, reductions (demotions), or suspensions, the burden of proof shall be on the appointing power, i.e., the City. In all other types of hearings the burden of proof shall be on the petitioner. (MC 3.16.440(h))

6. Witnesses

- a. The complete witness list must be presented to the Hearing Officer during the pre-hearing meeting (see Mandatory Pre-Hearing Meeting, above). Final revisions to the witness list shall be submitted no later than **five (5) calendar days** after the pre-hearing meeting. Revisions to the list sought after this date will be considered by the Hearing Officer and granted only for good cause shown. Requests to change the witness list after the pre-hearing meeting shall be transmitted in writing to the CSC Hearing Officer, the City Attorney, the Human Resources Manager, the employee whose employment status is at issue, and the employee's hearing representative, if any.
- b. If the employee or, if represented, the employee's representative requests employees to be released during the workday to testify for the employee at the hearing, then the City Attorney will inform Human Resources and Human

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Resources then arranges with the managers of these employees when they will come to the hearing. Usually the employees are asked to be available to be able to come to the hearing ***within ten (10) minutes*** of being called by Human Resources.

- c. The Board may at its discretion exclude witnesses not under examination, except the Human Resources Manager, the petitioner or person to be discharged or reduced, the appointing power and counsel. (MC 3.16.440(i))
- d. City witnesses testifying or waiting to testify, on petitioner's behalf, shall only be paid if testifying during their normal working hours on a normal workday. No overtime shall be paid. If testifying on a scheduled day off no pay shall accrue.

7. Subpoena of Witnesses

- a. The Board shall have the power and authority to compel the attendance of witnesses, to examine them under oath or affirmation and to compel the production of evidence before it. Subpoenas shall be issued in the name of the City and be attested by the City Clerk. They shall be served and compiled with in the same manner as subpoenas in civil actions. Disobedience of such subpoenas, or the refusal to testify (upon other than constitutional grounds), constitutes a misdemeanor, and shall be punishable as provided in Section 515 of the Charter. (MC 3.16.420)
- b. Compelling Appearance of outside (non-City) individuals as witnesses (“outside witnesses”): If such witnesses are desired at the hearing, a subpoena is recommended because the City cannot otherwise compel the presence of witnesses who are not its employees. The subpoena procedure is as follows:
 - i. The employee or employee’s representative (“requesting party”) shall first provide to the City Attorney and the Hearing Officer the employee’s most recent witness list.
 - ii. At least ten (10) days before the CSC hearing, the requesting party contacts the City of Santa Barbara’s City Clerk’s Office to request subpoenas for the appearance of **outside witnesses** for a CSC hearing and supplies the names and addresses of the requested individuals and the time, date and location of the hearing.
 - iii. The City Clerk’s Office prepares the subpoenas (based on information (name/address) supplied by the requesting party.

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- iv. The City Clerk issues the subpoenas, which are signed by the City Clerk, with the name/address of each requested individual, and that their appearance is required for a hearing related to a CSC hearing with the time, date and location.
- v. The subpoenas are given to the requesting party for them to serve the named individuals. The requesting party pays the cost of serving the subpoena. (Human Resources April 2013).
- vi. Those requesting subpoenas are encouraged to ensure that they request them far enough in advance of the hearing to serve the outside persons in time to compel their appearance at the hearing. For example, if the subpoena provides to the subpoenaed person 7 days notice from the date on which it is served, a subpoena served less than 7 days before the hearing is ineffective. An ineffective subpoena does not compel the outside witness to appear. A subpoena that is ineffective because it was not timely served on the outside witness is not good cause for a continuance.

8. Appearance of Petitioner

The appearance of the petitioner shall be required at all hearings, provided, however, the Hearing Board shall have discretion to consent to the absence of the petitioner upon a showing of good cause therefore. (MC 3.16.440(j))

Unexcused absence of the petitioner at such a hearing may, in the discretion of the Hearing Board, be deemed a withdrawal of the petition and consent to the action or ruling from which the appeal was taken. (MC 3.16.440(j))

9. Class Actions

- a. The Board may, at its discretion, grant to any two (2) or more persons whose appeals are heard pursuant to this chapter, or to the appointing power, the right to consolidate such appeals as a class action. (MC 3.16.440(o))
- b. The granting of authority for such class action shall be contingent upon showing by petitioners or their representatives or by the appointing power that the appeals in question present common questions of fact and law, and the separate hearings upon such appeals would result in unnecessary multiplicity of hearings before the Board or its appointed Hearing Officers. (MC 3.16.440(o))
- c. Any petitioner who would otherwise be included in a proposed class action hearing shall have the right to appear before the Board and request that his/her appeal be heard separately from appeals involved in the class action. Such request must be filed with the City Clerk **not less than five (5) calendar days** prior to the date set for

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the consolidated hearing and may be denied by the Board if it determines that good cause does not exist for holding a separate hearing. (MC 3.16.440(o))

10. Guide for Hearing Officer

Draft findings shall be prepared by the Hearing Officer and faxed or delivered **within seventy-two (72) hours** to the Hearing Board for approval. The Hearing Officer will obtain majority approval from the Hearing Board on the draft, make revisions, if necessary, and finalize draft findings. The Hearing Officer will ask Human Resources to schedule a closed session in order that the Hearing Board can present to the full Board their draft findings.

11. Findings and Decision

Following the hearing and the deliberations (closed session) of the hearing board, the Hearing Officer shall inform the City and petitioner's representative of the Hearing Board's recommendation. *However*, if the Hearing Board is not comprised of all five (5) members of the Civil Service Commission, then the recommendation shall not be disclosed to anyone until the full Board accepts the decision of the Hearing Board. (CSC 1998).

If the hearing, as hereinbefore described, is not before the full Board, the Hearing Board shall submit, in a closed session, a written or oral report to the full Board for its approval. If the Board accepts such report, it need not read the record of the hearing. If the Board declines to accept such report, it must read the record or hold a hearing de novo. (MC 3.16.440(k)) Immediately after the conclusion of this closed session, the Commission will convene in open session and announce their decision to the City and to the employee's representative (if present). However, with respect to a dismissal, the report shall be deferred until the first public meeting after the exhaustion of administrative remedies. (Gov. Code, §54957.1(a)(5))

The Board may either adopt the report made by the Hearing Board and reduce the same to writing to serve as findings, or it may draft its own findings. (MC 3.16.440(k))

The Board shall make written findings which shall state as to each charge whether or not such charge is sustained. Such Board shall also set forth in writing its conclusions and recommendations based upon such findings **within ten (10) calendar days** after concluding the hearing. (Charter Section 1007). (Note: The findings are not public until all Commissioners have been informed of the decision, and the appropriate timeframes have been met.)

The findings shall not be signed by the Board **until five (5) working days after** they have been mailed to the petitioner and his/her representative via regular and US certified mail and, if available, emailed to the employee's home email address and to

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the email address of his/her representative (per the CSC September 2007). Notice of the decision and findings of fact and conclusions of law shall be mailed promptly to the petitioner. The petitioner **shall have five (5) working days after** the Board mails the findings of fact and conclusions of law to object in writing to said findings of fact and conclusions of law. (MC 3.16.440(k))

If objections to the findings are filed with the Board within the time specified above and the Board believes that the objections or parts thereof have validity, then the Board may amend said findings, or take such further action as it deems appropriate. (MC 3.16.440(k))

If no objection to said findings and conclusions is received by the Board **within said five (5) working days**, the findings and conclusions and decision shall be final and conclusive. (MC 3.16.440(k))

The Board shall certify its findings, conclusions, recommendations and its decision based thereon to the board or officer from whose action the appeal was taken, and to the City Administrator and City Council. The same shall also be available to the public. (Charter Section 1007)

A final letter is mailed to the petitioner, via regular and US certified mail, and emailed to the employee's home email address and to the email address of his/her representative (per the CSC September 2007) with an Affidavit of Mailing, advising him/her that the Board's decision is final and that the City has adopted an ordinance (S.B.M.C. 1.30.020) that provides that the time within which judicial review of the commission's decision must be sought, which is **not later than ninety (90) days** following the date on which the decision becomes final, is governed by the provisions of California Code of Civil Procedure 1094.6.

12. Ex Parte Communications

Ex parte communications with the Board are prohibited at all times. Ex parte communications with the Hearing Officer are prohibited at any time following conclusion of the hearing. Written ex parte communications with the Hearing Officer, when and only when invited by the Hearing Officer, may occur prior to or during the hearing and shall be copied to all parties.

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