



City of Tempe Merit System Board Guidelines

Revised February 10, 2016

City of Tempe

Merit System Board Guidelines

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Establishment of Merit System Board

1. The City of Tempe Merit System Board (“the Board”) was established by Tempe City Charter, Article IV, Sections 4.02(c), 4.02(d) and 4.02(d)(8).
2. City of Tempe Personnel Rule 407(F) further details the Board’s role in appeals of disciplinary actions.

Purpose

The Board meets to:

1. Review proposed changes to the Personnel Rules prior to their submission to City Council for approval.
2. Hear appeals submitted by employees in the classified service in relation to dismissal, demotion, disciplinary pay reduction or suspension of more than forty (40) hours (56 hours for firefighters).
3. Make advisory recommendations to the City Manager or to the Presiding City Judge if the appeal affects a Municipal court employee.

Terms & Definitions

For the purposes of this guideline, the following definitions apply:

1. Appeal – a written request for the Board to review a disciplinary action *or* for the City Manager or Presiding City Judge to review a Board recommendation.
2. Appellant – the employee appealing a disciplinary action.
3. Board – the City of Tempe Merit System Board.
4. City – the City of Tempe.
5. Hearing – the Board process of hearing testimony and reviewing evidence in an employee’s appeal. The hearing is considered “private” and will occur in executive session of the Board pursuant to A.R.S. § 38-431.03(1) unless the Appellant requests a public hearing.
6. Motion – a written request to the Board for a decision on an issue pertinent to an appeal.
7. Party – a person or an entity that is subject to the Board’s recommendation in an appeal (either the Appellant or the City).

8. Pre-Hearing Conference – a meeting called at the request of the Appellant, the City or the Board Chairperson in order to define hearing issues, clarify hearing procedures, review a motion filed or review the parties’ witness lists.
9. Pre-Hearing Planning Meeting – a meeting scheduled prior to the hearing, during which the Appellant, the City and the Board Chairperson discuss the hearing process and submission timelines.
10. Recommendation – the Board’s advisory ruling submitted to the City Manager, or to the Presiding City Judge in appeals brought by Municipal Court employees.
11. Subpoena – an order of the Board to an individual or entity to compel either testimony or production of evidence at the hearing.
12. Witness – a person who testifies at the hearing under oath.

Members

1. The Board shall consist of three members and two alternate members appointed by the City Council from the qualified electors of the City for staggered terms of three years.
2. Members of the Board and alternate members shall hold no other City office or City employment.
3. Alternate Members are only considered Board Members when designated by the Chairperson to fill that role in the absence of a Board Member.

Chairperson

1. The Board Chairperson also sits on the Public Safety Personnel Retirement System Board pursuant to A.R.S. § 38-847.A(1).
2. Rotation of the Chairperson position will be addressed on an as needed basis.
3. The Chairperson may delegate another Board Member to act as Chairperson in his or her absence. If necessary, an alternate member may be designated to act as Board Member/Chairperson.

Secretary to the Board

1. The Internal Services Director (or designee) acts as Secretary to the Board.
2. The Internal Services Director shall provide necessary staff assistance for the Board.

Board Counsel

1. Outside legal counsel may be retained to represent the Board.
2. The Board's legal counsel will advise the Board on the rules and general conduct of meetings.
3. The Board's legal counsel will not question witnesses or aid the Board in its deliberations on the facts or its advisory recommendations.

Meetings

Order of Business

The Board determines the order of business for the conduct of its meetings.

Arizona Open Meeting Law

1. Board meetings will be held in accordance with the provisions of the Arizona Open Meeting Law, A.R.S. §§ 38-431, *et seq.*
2. The meetings of the Board are open to the public, but the Board may hold executive sessions for the purposes set forth in A.R.S. § 38-431.03. Those purposes include hearing and considering appeals by employees in classified service who do not request public hearings.
3. Written minutes and/or a recording will be taken of all meetings in accordance with A.R.S. § 38-431.01(B).

Call to Order and Roll Call

1. At the onset of each meeting, the Chairperson will call the meeting to order and take roll call in order to determine if a quorum is present.
2. A quorum is achieved when there are at least two Board Members present in person or telephonically.
3. If a quorum is not present, the meeting will be rescheduled.

Hearing on the Appeal of a Disciplinary Action

Purpose of Hearings

1. The Board hears appeals submitted by employees in the classified service in relation to dismissal, demotion, disciplinary pay reduction or suspension of more than forty (40) hours (56 hours for firefighters), pursuant to the City of Tempe Personnel Rules.
2. During the hearing, the Board will take testimony and review evidence offered by the parties in order to make the following two-part determination:
 - a. Whether the evidence supports the City of Tempe’s finding that the Appellant violated the specific personnel rule(s) cited; and
 - b. Whether the City considered all facts and circumstances in issuing the particular disciplinary action.
3. Based on its findings, the Board will make an advisory recommendation to the City Manager or Presiding City Judge to uphold, modify or revoke the disciplinary action.

Request for a Hearing

1. Before requesting a Board hearing, the employee *must* exercise and exhaust the administrative review process detailed in City of Tempe Personnel Rule 407(E).
2. The employee has seven (7) calendar days following receipt of the final disciplinary action to submit a request for a hearing to the Internal Services Director.
3. The request shall be in writing and shall:
 - a. Indicate whether the Appellant will have legal counsel;
 - b. State if the Appellant is requesting a public hearing.

Private or Public Hearing

1. The hearing will be held in a private executive session of the Board in accordance with the Open Meeting Law, A.R.S. § 38-431.03, unless the Appellant requests a public hearing.
2. In a private hearing, the witness testimony, deliberations and minutes of the hearing are not open to the public.

3. If the Appellant requests a public hearing, all aspects of the hearing – including witness testimony, Board deliberations and minutes of the proceedings – will be public unless the Appellant elects private deliberations.

Legal Counsel

1. The Appellant has the right to be represented by legal counsel, which shall be at the Appellant's expense.
2. The Tempe City Attorney's Office will represent the City.
3. Both the Appellant (or his/her attorney, if applicable) and the City's attorney may address the Board and question witnesses.

Pre-Hearing Planning Meeting

Purpose

The purpose of the Pre-Hearing Planning Meeting is to review both the hearing guidelines and the deadlines for the exchange of materials.

Scheduling

1. The Staff to the Board will schedule a Pre-Hearing Planning Meeting to take place within 30 calendar days of the receipt of the Appellant's request to appeal the disciplinary action.
2. The hearing will be scheduled to occur within 60 calendar days of the Pre-Hearing Planning Meeting. If either or both parties cannot conduct the hearing on a date provided by the Board, they must stipulate to and seek Board approval of a new hearing date.
3. The Appellant, his/her attorney (if applicable) and the City's attorney must provide current contact information and shall respond timely to Board staff inquiries pertaining to scheduling or procedures.
4. Failure on behalf of the Appellant or his/her legal representative to respond to the Board staff within a specified time frame may result in dismissal of the request for a hearing.

Attendees

The Pre-Hearing Planning Meeting shall be attended by the following persons:

- The Appellant and/or the Appellant's attorney (if applicable)
- The City's attorney
- The Board Chairperson
- The Secretary to the Merit System Board or designee
- Merit System Board staff member(s)

The Pre-Hearing Planning Meeting may also be attended by:

- One (1) City Department Representative
- The Board's legal counsel

Communication with the Board

All communication with the Board shall be submitted through the Staff and/or the Secretary to the Board. The Appellant, the City department's representative and/or their respective attorneys shall not communicate directly with any member of the Board.

Pre-Hearing Statement

Purpose

The Pre-Hearing Statement consists of a summary statement, a witness list, a confirmation of witness notification and evidentiary document(s) submitted to the Board for its consideration as part of the hearing process.

Content and Format

The Pre-Hearing Statement shall include:

1. A one-page summary of the issues to be presented at the hearing;
2. A witness list detailing each witness's name, title, occupation, department/division (if a City employee) and a brief summary of the substance of each witness's testimony as detailed in the [Witness Testimony & Subpoenas](#) section below;
3. A copy of a witness notification for each witness, as described in [Witness Testimony](#) section of this guideline;

4. A written request for subpoena issuance that any party deems necessary for the attendance and testimony of witnesses and/or the production of any evidence, including books, records, correspondence or documents in their possession or under their control as detailed in [Subpoena](#) section of this guideline;
5. Any other material to be considered by the Board.
6. Pre-Hearing Statements and supporting materials shall be placed in a 3-ring binder or notebook, paginated and organized with a table of contents and corresponding index tabs.

Submission Deadline

The Appellant and the City shall each submit a Pre-Hearing Statement to the Board at least 20 calendar days prior to the hearing.

Distribution

1. The Appellant and the City shall exchange one copy of their Pre-Hearing Statements and supporting materials. The copy may be electronic if both parties agree.
2. Seven additional paper (hard) copies of the Pre-Hearing Statement shall be submitted to the Secretary to the Merit System Board, c/o Human Resources, 20 E. 6th Street, Tempe AZ 85281. The copies shall be distributed to the Merit System Board members, the Secretary to the Board, and the file.

Witness Testimony & Subpoenas

Witness Testimony

1. Witness notification is the sole responsibility of the party requesting testimony from that witness.
 - a. The party requesting a witness to testify must notify the witness *and the other party* in writing at least 20 calendar days before the hearing.
 - b. A copy of the witness notification shall be submitted to the Board as part of the Pre-Hearing Statement.
2. It should be noted that the opening and closing statements described in [Presentation of Evidence](#) section of this guideline is not considered testimony. If the Appellant wishes to testify on his/her own behalf, the Appellant must be listed as a witness.
3. If either party objects to the participation of a witness, that objection should be made in a motion, following the procedures set forth in [Pre-Hearing Motions](#) section.

4. If a prospective witness identified by the Appellant (or his/her attorney) is a City employee, the City may facilitate the presence of that witness at the hearing when it is reasonable to do so under the circumstances as stated in the City of Tempe Personnel Rules.
 - a. City of Tempe employees called as witnesses to Board hearings are allowed adequate time from work to testify.
 - b. No City employee shall be subject to any form of retaliation or discipline for testifying truthfully in a Board hearing.

Subpoenas

1. Pursuant to Witness Testimony section above, the Board or its authorized designee may issue subpoenas requiring the attendance of witnesses to give testimony at the hearing and/or the production of any evidence in the witnesses' possession or under their control.
 - a. The party requesting a subpoena must submit the request in writing to the Board at least 20 calendar days before the hearing.
 - b. A party submitting a request for a subpoena must also notify the other party of the request.
2. The subpoena shall show the name, address and phone number of the party requesting the subpoena.
3. It shall be the sole responsibility of the requesting party to ensure service of the subpoena at least 15 calendar days prior to the hearing.
 - a. Anyone at least 18 years of age who is not a party to the appeal may serve the subpoena.
 - b. Service of the subpoena requires delivering a copy to the named person.
 - c. All fees associated with service of the subpoena shall be the sole responsibility of the requesting party.
4. Witness fees and mileage shall be paid by the party serving the subpoena if requested by the witness. The amount paid to a subpoenaed witness shall be the same amount paid to a witness subpoenaed in proceedings before the Superior Court of the State of Arizona.
5. Any witness served with a subpoena who does not intend to comply with the subpoena shall file a written motion with the Board to quash the subpoena.
 - a. The motion to quash shall be filed within 5 calendar days of service of the subpoena and shall be served on the parties to the appeal.
 - b. Any response to the motion to quash shall be filed within 5 calendar days of service of the motion to quash.
 - c. A motion to quash a subpoena, a response thereto, and the ruling thereon shall not become a part of the official record except upon request of the party aggrieved by the ruling.

6. If a person fails to respond to a subpoena, the party requesting the subpoena shall present a certification by the person who served the subpoena detailing the date of service, manner of service and name(s) of the person(s) served. The Board may seek compliance with the subpoena by initiating proceedings authorized by A.R.S. § 12-2212.

Pre-Hearing Motions

Submission

1. The Appellant and the City shall submit any pre-hearing motions to the Board no later than 5 calendar days after submission of the Pre-Hearing Statements.
2. The moving party must provide a copy of the motion to the other party when it is submitted.
3. Motions may be submitted either in hard copy format or via email to Board Staff.
4. The Board may set limitations on the length or number of motions that may be filed. The Board may also set time limits and/or deny oral arguments related to the motion.

Response

The responding party will have 5 calendar days to submit a response to the Board.

Rulings on Pre-Hearing Motions

1. The Chairperson or the Board may rule on Pre-Hearing Motions prior to the hearing, when feasible.
2. In ruling on motions, the Board may at its discretion recommend or set forth methods to expedite the hearing process.

Pre-Hearing Conference

Purpose

After receipt of the Pre-Hearing Statements, the Board Chairperson, the Appellant or the City may determine the need for a Pre-Hearing Conference for the purpose of:

1. Defining the hearing issues;
2. Reviewing the witness list;
3. Providing information to the City and the Appellant on hearing procedures and rights; and/or
4. Reviewing and ruling on any motions filed.

Attendees

If a Pre-Hearing Conference is scheduled, attendees may include:

- The Board Chairperson (for procedural issues only) or the full Board (for substantive issues)
- The Board's legal counsel (if applicable)
- The Appellant and/or the Appellant's legal counsel
- One City department representative
- The City's attorney
- The Secretary to the Board, or his/her designee
- Staff to the Board

The Hearing

Start Time

1. The hearing will begin promptly at the scheduled time and the scheduled location unless otherwise noted.
2. Hearing participants may arrive thirty minutes prior to the scheduled start time to prepare for the hearing.

Statements for the Record

At the onset of the hearing, the Chairperson will state for the record:

1. The date, time and place of the hearing;
2. Board attendance (roll call);
3. A brief description of the issues to be considered during the hearing, including a review of the events leading up to the appeal; and
4. The order of the hearing proceedings.

Witness Instruction & Dismissal

The Board Chairperson will instruct all witnesses present as follows:

“Those of you who testify will be required to do so under oath and you shall not be subjected to any form of retaliation or discipline for testifying truthfully during this hearing. You will only be allowed in the hearing room during your testimony; please remain in the area so that you can be available when called by your representative. When you testify, please speak clearly, distinctly and loud enough that the court reporter can get your statement exactly. Once you have testified, please do not discuss your testimony with anyone (other than your attorney) until the hearing is over.”

1. Regardless of whether the hearing is public or private, the Chairperson will ask witnesses to excuse themselves from the hearing room until they testify. The Appellant and the City’s department representative may remain in the hearing room even if they are listed as witnesses.
2. Once a witness has testified, the Board may excuse him/her for the remainder of the hearing.

Private Hearing

If the Appellant has requested a private hearing, the Board shall vote to go into executive session and the Chairperson may clear the hearing room of all persons not directly involved in the hearing.

Those directly involved in the Hearing may include:

- Board members
- The Board’s legal counsel (if applicable)
- The Appellant
- The Appellant’s attorney (if applicable)
- The City’s department representative
- The City’s attorney
- Witnesses who are called to testify
- The Secretary to the Board (or his/her designee)
- The Staff to the Board, and
- The court reporter

Public Hearing

If the Appellant has requested a public hearing, all attendees may remain in the room except for witnesses waiting to testify.

Conduct of Participants

All participants are expected to act respectfully and considerately throughout the hearing.

Process

1. The hearing will be an informal, fact-finding process.
2. As stated in the City of Tempe Personnel Rules, *“The Board determines the order of business for the conduct of its meetings and is not bound by technical rules of evidence or civil procedures. The appealing employee has the burden of proof and makes the first presentation.”*
3. Each party shall have the right to introduce documentary evidence into the record, object to the admission or exclusion of evidence and object to the extent or limitation of witness examination or cross-examination.
4. The Chairperson has the final authority to determine whether proposed evidence will be considered and to rule on objections. The Chairperson also has the discretion to disallow testimony or any evidence that is irrelevant, incomplete, or unduly repetitious.

Time Allotted to Each Party

1. The time allotted for each party does not include Board questions.
2. Each party will have a total of 3.5 hours to present their opening statements, question witnesses, cross-examine witnesses, and present their closing statements.
3. The Board may require both parties to provide an estimate of how their time will be used for various tasks. When reviewing the witness list, the Board may ask who is going to testify and how much time will be needed.
4. The Board will use its best efforts to set equal time limits for both parties.¹
5. If either party does not believe it can adequately present its case within the time allotted, it may submit a motion requesting that the Board extend the time.
 - a. Any such request must be received by the Board 20 calendar days before the scheduled hearing.
 - b. The request must state the reason(s) why the allotted time is unreasonable under the circumstances. It must also specify the amount and purpose of the additional time requested.
 - c. The Board may, at its discretion, recommend or order methods to expedite the hearing process.

¹ The Staff to the Merit System Board will act as timekeeper, ensuring that both parties have equal time (tracking of time is not timed to the minute but will be a fair and balanced amount).

Presentation of Evidence

The parties' presentation of evidence will follow the order set forth below:

1. The Appellant and/or his/her attorney may make an opening statement.
2. The City's attorney may make an opening statement.
3. The Appellant and/or the Appellant's witnesses will testify and present evidence on direct examination in the Appellant's case.
4. The Chairperson shall administer the following oath or affirmation to each witness as they testify at the hearing:
"Do you swear (or affirm) that the testimony you are about to give in this proceeding shall be the truth and nothing but the truth?"
5. The City may cross-examine the Appellant and his/her witnesses as each testifies.
6. The Appellant and/or his/her attorney may ask questions on redirect and members of the Board may ask final questions of the Appellant or any of the Appellant's witnesses.
7. The City's witnesses will testify and present evidence on direct examination and take the oath described above in the City's case.
8. The Appellant may cross-examine the City's witnesses as each testifies.
9. The City's attorney may ask questions on redirect and members of the Board may ask final questions of the City's witnesses.
10. The Appellant may present rebuttal evidence and witnesses. Rebuttal evidence and witness testimony shall be limited to issues raised in the City's case that were not already covered in the Appellant's case.
11. The City's attorney may cross-examine the Appellant's rebuttal witnesses as each testifies.
12. Members of the Board may ask final questions of the Appellant's rebuttal witnesses.
13. The Appellant and/or his/her attorney may make a closing argument.
14. The City's attorney may make a closing argument.

Conclusion of Hearing

After the Board is satisfied that all relevant evidence has been presented, the hearing will be concluded.

Deliberation and Recommendation

Board Participation

1. At the end of the hearing, all Board members present will participate in the deliberation and final recommendation.
2. No member of the Board can participate in making the recommendation unless he/she has heard all the evidence and deliberations.
3. The recommendation will be adopted by a majority vote of the quorum.

Deliberations – Private Hearing

1. If the hearing is private, the Board will dismiss all participants from the room for the duration of the deliberations.
2. The Secretary to the Board, staff to the Board, the court reporter and the Board's legal counsel (if applicable) may remain present for the deliberations.
3. Private hearing deliberations are not recorded.
4. The Board will reconvene in public session when it is ready to make its recommendation.

Deliberations – Public Hearing

1. If the hearing is public, the deliberations will take place in public and all attendees may remain in the room.
2. The deliberations will be recorded.
3. The Board may ask the Appellant if he/she wishes the deliberations to take place in public or private. If the Appellant elects private deliberations, the Board will adjourn to executive session and proceed as stated in the Deliberations – Private Hearing section above.

Board Recommendation

1. The Board will submit its written recommendation to the City Manager or Presiding City Judge no later than the first business day following the hearing.
2. Copies of the recommendation will be distributed to the Appellant, the City, the Secretary to the Board and the file.

Appeal of Board Recommendation

Deadline

Either party may appeal the Board's recommendation by submitting a written request to the Secretary to the Board within *three business days* after issuance of the Board's written recommendation.

The appealing party will provide a copy of the appeal request to the other party.

Appeal Process

The Secretary to the Board will provide copies of the following hearing documents to the City Manager or Presiding City Judge to review:

- The Appellant's Pre-Hearing Statement
- The City's Pre-Hearing Statement
- Copies of all motions and responses
- Hearing minutes
- Court reporter audio recording (if requested)

The City Manager or Presiding City Judge may request additional materials from the hearing and may schedule a meeting with both parties before making a final decision.

Decision of City Manager or Presiding City Judge

1. The decision of the City Manager or Presiding City Judge will be made in a timely manner.
2. The decision of the City Manager or Presiding City Judge is final.

Appendix - Sample Documents

Meeting Agenda (including hearing)

PUBLIC MEETING AGENDA



MERIT SYSTEM BOARD MEETING

(Day), (Date)

(Time)

Human Resources Conference Room
20 East 6th Street, Tempe, AZ 85281

AGENDA

Notice of Meeting and Possible Executive Session

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Merit System Board and the general public that the Board will hold a meeting open to the public on (Day), (Date), at (Time) at the above address for the purpose of discussing matters on this agenda, and whether or not to meet in Executive Session. If authorized by a majority vote of the Board, the Executive Session may be held before, during or after the regular meeting.

I. Consideration of Meeting Minutes:

- A. (Date) Board Meeting Minutes
- B. (Date) Executive Session Minutes

II. Motion to Adjourn to Executive Session, if necessary, pursuant to A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3)

- A. Personnel: The Board may vote to hold an executive session to consider or discuss personnel matters pertaining to Item III below pursuant to A.R.S. § 38-431.03(A)(1).
- B. Records Confidential by Law: The Board will consider and discuss records and information exempt by law from public inspection received and considered pertaining to Items I-B above and III below pursuant to A.R.S. § 38-431.03(A)(2).
- C. Legal Advice: The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

III. Hearing on the Appeal of (name of Appellant), including Discussion and Consideration of Personnel Matters

IV. Lunch

V. Motion and Board Recommendation to the City Manager on the Appeal of (name of Appellant)

VI. Future Agenda Items

According to the Arizona Open Meeting Law, the Merit System Board may only discuss matters listed on the agenda. The City of Tempe endeavors to make all public meetings accessible to persons with disabilities. With 48 hours advance notice, special assistance is available at public meetings for sight and/or hearing-impaired persons. Please call 480-350-8241 (voice) or 480-350-8400 (TDD) to request an accommodation to participate in the meeting.

Hearing Timeline

City of Tempe Merit System Board Hearing Timeline

	Appellant:
Day, date, time	Request for Appeal of a Disciplinary Action received by the Secretary/Staff to the Merit System Board
Day, date, time	Pre-Hearing Planning Meeting
Day, date, time	Deadline: Pre-Hearing Statement Submission as detailed in the Merit System Board Guidelines to include: <ul style="list-style-type: none">• Summary Statement• Witness List• Confirmation of Witness Notification• Evidentiary Documentation• Request for Issuance of Subpoenas (if applicable)
Day, date, time	Deadline: Pre-Hearing Motion(s) Submission (if applicable) <ul style="list-style-type: none">• Opposing Party Response (within 5 calendar days of receipt of Motion)• Submitting Party Reply (if applicable, within 5 calendar days of receipt of Response)• Merit System Board Ruling
Optional	Pre-Hearing Conference
Day, date, time	Merit System Board Hearing
Day, date, time	Merit System Board Recommendation to the City Manager
Day, date, time	Deadline: Appeal of Merit System Board Recommendation

Reference Sources

The Hearing process, including all deadlines and submissions, is described in detail in the Merit System Board Guidelines. The Guidelines are provided to all participants upon receipt of a request for a Hearing and at the Pre-Hearing Planning Meeting. The Guidelines are also available upon request from the Staff to the Merit System Board listed on the reverse side of this form.

The City of Tempe Personnel Rules are available online at www.tempe.gov/hr

Previous meeting agendas and meeting minutes for the Tempe Merit System Board are available online at www.tempe.gov/hr on the Human Resources webpage.

Participant / Contact Information

Appellant
or
Appellant's Legal Representative

Name
Address
Phone:
Fax (if applicable):
Email:

Name of City Department Representative

Name, Title
All contact should be through the City's Legal Representative listed below

City's Legal Representative

Name, Title
City Attorney's Office
21 E. 6th Street, Suite 201, Tempe AZ 85281
Phone:
Fax: 480-350-8645
Email:

City of Tempe – Merit System Board

Bill Munch, Chair
Johnny Tse, Board Member
Lori Messer, Board Member
James P. Foley, Alternate
Jessica Vargas, Alternate
All contact with the Board shall be submitted through the Staff or Secretary to the Board listed below.

Secretary to the Merit System Board

Jon O'Connor, Deputy Internal Services Director - HR
City of Tempe – Human Resources
20 E. 6th Street, Tempe, AZ 85281
Phone: 480-350-8423
Fax: 480-350-8060
jon_oconnor@tempe.gov

Staff to the Merit System Board

Sarah Jenkins, HR Specialist Human Resources
City of Tempe – Human Resources
20 E. 6th Street, Tempe, AZ 85281
Phone: 480-350-8418
Fax: 480-350-8060
sarah_jenkins@tempe.gov

City of Tempe – Human Resources

20 E. 6th Street, Tempe, AZ 85281
Phone: 480-350-8278
Fax: 480-350-8060
www.tempe.gov/hr

Pre-Hearing Statement – Outline of Components

City of Tempe - Merit System Board Pre-Hearing Statement – Outline of Components

The information below is provided as guidance in preparing the Pre-Hearing Statement submitted by each party. Please also refer to the Merit System Board Guidelines Section V-B for direction on the specific content and format required.

Please remember that the Merit System Board has no prior knowledge of the facts underlying the appeal. The Pre-Hearing Statement and the testimony presented at the hearing are what the Board will rely on to make the following two-part determination at the hearing:

- Whether the evidence supports the City of Tempe’s finding that the Appellant violated the specific personnel rule(s) cited; and
- Whether the City considered all facts and circumstances in issuing the particular disciplinary action.

The Pre-Hearing Statement consists of the following components:

- Table of Contents
- Summary of Issues
- Witness List
- Witness Notification
- Subpoena Request (if applicable)
- Evidentiary Documentation

Section 1: Table of Contents – The Pre-Hearing Statement and supporting materials shall be placed in a 3-ring binder or notebook, paginated and organized with a table of contents and corresponding index tabs.

Section 2: Summary of Issues - There is no standard wording for this document. It should be a one-page summary of the issues to be presented at the hearing and should include the Appellant’s name, job title, department, what type of disciplinary action is being appealed to the Merit System Board, and a brief summary of the Appellant’s reasons for the appeal or, if the summary is being submitted by the City, the reasons for the disciplinary action.

Section 3: Witness List –Provide a list of witnesses to be called at the hearing. The list should include each witness’s name, title, occupation, department/division (if a City employee) and a brief summary of the substance of each witness’s testimony. The Appellant should include his/her own name if he/she wishes to testify on his/her own behalf. A sample format is proved below:

Witness List

Appellant's First and Last Name reserves the right to call, or not call, any of the following witnesses at the Merit Board Hearing:

1. *Jane Doe, Widget Maker I, was my co-worker at the Widget Department/Production Division and will testify as to the details of the incident on December 2, 2013 and my overall work performance.*
2. *John Doe, Customer Relations Supervisor, works in the Sales Department/Customer Service Division and will testify as to the customer complaints pertaining to the Widgets made on the defective widget machine.*

Section 4: Witness Notification – Provide a copy of the written notification sent to each witness notifying them of your request to have them testify as required by Section VI-A of the Merit System Board Guidelines.

Section 5: Subpoena Request – Provide a copy of any written request for subpoena issuance submitted to the Merit System Board, as described in Section VI-B of the Merit System Board Guidelines.

Section 6: All other evidentiary material for consideration by the Board – Provide any other material that you wish to present to the Board as evidence for its review. Such material may include copies of the following: disciplinary actions, documents referenced in disciplinary actions, previous performance reviews, computer screen shots, emails or letters, pertinent reports, or any other documentation to be presented as evidence to the Board.

Subpoena

BEFORE THE MERIT SYSTEM BOARD

FOR THE CITY OF TEMPE

In the Matter of:

[_____]

SUBPOENA

TO:

For Attendance of Witnesses at Hearing

YOU ARE COMMANDED, pursuant to the authority of the City of Tempe Merit System Board Guidelines and A.R.S. § 12-2212, to appear before the Merit System Board for the City of Tempe at the place, date and time specified below to testify at a hearing in the above-captioned appeal of a disciplinary action:

Public Officer: **TEMPE MERIT SYSTEM BOARD**

Location:

Address:

Date:

Time:

For Production of Documentary Evidence

YOU ARE COMMANDED, to produce and permit inspection, copying, testing, or sampling of the following designated documents, electronically stored information or tangible things:

at the place, date, and time specified below:

Place of Production:

Address:

Date:

Time:

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

Attendance at Hearing. If this subpoena commands you to appear at a hearing, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the Board and the Board quashes or modifies the subpoena. See City of Tempe Merit System Board Guidelines Section VI-B. See also “Your Right To Object To This Subpoena” section below.

Production of Documentary Evidence. If this subpoena commands you to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you file a timely motion with the Board and the Board quashes or modifies the subpoena. See Board Guidelines Section VI-B. See also “Your Right To Object To This Subpoena” section below.

You should note that a command to produce certain designated materials *may* be combined with a command to appear at a hearing or deposition. You do not, however, need to appear in person at the place of production or inspection unless the subpoena *also* states that you must appear for and give testimony at a hearing or deposition.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena.

YOUR RIGHT TO OBJECT

Generally. If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The Board may ultimately enforce this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached. See A.R.S. § 12-2212. If you request witness fees and mileage, they shall be paid by the party or attorney serving the subpoena. See Board Guidelines Section VI-B-3-c.

Procedure for Objecting to a Subpoena for Attendance at a Hearing or Production of Documentary Evidence. If you wish to object to a subpoena commanding your appearance at a hearing or your production of documentary evidence, you must file a motion to quash or modify the subpoena with the Board to obtain a Board order excusing you from complying with this subpoena. See Board Guidelines Section VI-B-5. The motion must be filed within 5 calendar days of service of the subpoena. See Board Guidelines Section VI-B-5-a. You must send a copy of any motion to quash or modify the subpoena to all parties to the appeal. See Board Guidelines Section VI-B-5.

ADA NOTIFICATION

Requests for reasonable accommodations for persons with disabilities must be made to the Board by parties at least three (3) business days in advance of the scheduled proceeding.

SIGNED THIS DATE: _____

MERIT SYSTEM BOARD FOR THE CITY OF TEMPE

By: Renie Broderick

Its: Secretary to the Merit System Board