



Civil Service Commission

Roles of the Commission and its Legal Advisor

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Civil Service

- The City of El Paso “Civil Service System exists to ensure a personnel system that is based solely on merit.”

El Paso City Charter Section 6.1-1



Purpose

- Ensure fairness, economy and efficiency in the selection process and personnel system. City Charter Section 6-1.1
 - Hiring and firing – more regulated and less discretionary than the private sector
 - Predictable, non-political and transparent



Civil Service Commission

- Duties – City Charter Article 6
- Rules – Ordinance 8065, as amended
- One of the City’s quasi-judicial boards with final decision-making power-higher standard
- Procedures – must be within the framework of Charter, and comply with Rules – City Charter 6.1-1)



ROLE OF THE COMMISSION

- Neutral, fact-finding, impartial body
- Decides appeals of discipline properly filed
- Not an advocate for the City, employees or applicants
- Oversight of Civil Service



Functions and Duties

- Recommend to Council rules and amendments for administration of Charter

City Charter Section 6.1-2



Duties and Functions Continued

- Hear appeals and complaints as prescribed by the Charter and Rules
- Ensure fair and equitable treatment of all persons
- Appoint Hearing Officers to Discipline Appeal cases
- Hear appeals from Hearing Officer



Common Types of Appeals

- Disciplinary Actions
- Qualification Reviews
- Grievances



Hearing Officer

- Steps into shoes of CSC
- Is the fact finder
- Recommends a ruling after hearing the evidence and testimony



Discipline Appeal Review

by Hearing Officer

- Does the evidence sustain the discipline?
- Was the City consistent with application of Rules/Discipline Matrix. Subject to Charter and Rules?
- Does the good of the service require the discipline be upheld or reduced?
- Did the City prove by preponderance of the evidence?

City Charter 6.13-6

Ord. 8065 Rule 9



Preponderance of the Evidence

- Was more likely than not to have happened.
51%
- Same standard as most civil cases
- Much lower than criminal standard



Appeal of Hearing Officer Opinion

- What error(s) is appealing party alleging?
- Was all evidence considered?
- Did the Hearing Officer follow relevant laws/rules?
- Is there new evidence and why was it not considered?



Options After Appeal

- Accept or reduce the Hearing Officer's recommendations within the rules
 - Reductions cannot change the nature of the recommendation
- Remand to the Hearing Officer for development of newly discovered evidence; or
- Reject the Hearing Officer's recommendations and have a de novo hearing before commission as a whole



Appeals of Disqualification

- What specific qualification does employee allege was wrongfully disqualified?
- Did the City apply the rules correctly?
- Can the employee prove by preponderance of the evidence the City committed an error?
- What is the remedy sought?



Grievance Appeals

- What specific wrong does the employee allege?
- Why was the City's Response unacceptable?
- What is the remedy sought?
- Does the CSC have the ability to provide the remedy?



Oral Arguments, Debate and Decorum

- Each side is granted time to present oral arguments as set by the Chair not to exceed 45 mins with 15 min extension by vote
- Each Commissioner has up to 5 mins to speak after being recognized
- No Commissioner shall interpret, argue with or personally attack another or any member of staff or party
- Any individual wishing to speak must be recognized by the Chair



Limitations

- Discrimination and harassment – outside CSC jurisdiction
- Ex parte communications – No communication outside the presence of both parties, concerning the merits of a pending complaint or appeal.
- Not a policy making body
 - Cannot change policy or create new policy
 - Can recommend new policy to Council through City staff

Legal Advisor

- City Attorney Office – expertise in municipal and employment law
 - Review agenda and monitor meetings to:
 - Assist in compliance with the Texas Open Meetings Act
 - Guide in compliance with City Charter, Commission Role
 - Advise on meaning and application of the Charter, Civil Service Rules and City Policies
 - Advise Commission on legal questions and issues related risk of liability

Legal Advisor Continued

- Neutral - is NOT and advocate for the City nor an appellant, is screened from discussion related to the discipline cases.
- The Legal Advisor can advise the City personnel and the Commission simultaneously on advisory duties.
- The City Attorney's Office is the only legal advisor for the Commission, and only one ethically obligated.

Virtual Attendance Policy

- A quorum must be physically present
- Commissioners attending virtually may still cast a vote on any matter
- Requests to appear virtually must be made by 10am the Thursday prior to the meeting (1 week)
- Cannot request more than 3 months in advance



Removal from Office

- Removal for: incompetence or nonfeasance, misfeasance or malfeasance.
Examples:
 - neglect of duty (persistent absences)
 - refusal to perform the duties imposed by this Charter.
- Nonfeasance: The neglect or failure of a person to do some act which he ought to do.
- Misfeasance: not doing a lawful act in a proper manner, omitting to do it as it should be done
- Malfeasance: The wrongful or unjust doing of some act which the doer has no right to perform
 - Includes acting outside scope, against advice of counsel
 - If there is a lawsuit filed, the City will not represent you.



Ethics Ordinance and Code of Conduct

- The Commission is required to work within the framework of the City's ethics ordinance (City Code 2.92) and the Code of Conduct
 - Comply with law and City Policy
 - Make decisions and act on facts
 - Never disclose confidential information
 - Respect City process
 - Maintain positive work place environment

CITY ETHICS ORDINANCE

- Commission members are subject to the same sanctions as other city officials who are found to have violated the Ethics code.

PERSONAL LIABILITY

- Commission, as a sub-entity of the City is the City Attorney's client
- Acting against the advice provided by the City Attorney's office may subject you to personal liability and can result in removal from office.
- Acts beyond the authority of the Commission granted by Charter, ordinance or statute would be ultra vires –beyond or outside one's legal power or authority.

Mission

Deliver exceptional services to support a high quality of life and place for our community

Values

Integrity, **R**espect, **E**xcellence,
Accountability, **P**eople

Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government