



WESTMINSTER

RULES OF PROCEDURE OF THE PERSONNEL BOARD

Adopted Pursuant To:

W.M.C Section 2-3-3

Westminster Charter Section 6.1(b)

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TABLE OF CONTENTS

		<u>Page</u>
PART I	GENERAL	
	1.1 Meetings	1
PART II	APPEALS	
1.	The Appeals Process	3
	1.1 Nature of Proceedings	3
	1.2 Role of the Board	3
	1.3 Participants	4
2.	The Rights of the Parties	4
	2.1 Right to Appear	4
	2.2 Right to Present Evidence and to Cross-Examine	4
	2.3 Right to Counsel	5
	2.4 Right to Copy of Testimony	5
	2.5 Right to Judicial Review	5
3.	Pre-Hearing Procedures	6
	3.1 Notice of Appeal and Request for a Hearing	6
	3.2 Hearing Data Certificate	6
	3.3 Pre-Hearing Conference	8
	3.4 Stipulations	9
	3.5 Discovery	9
	3.6 Notices	10
4.	Subpoenas	10
	4.1 Types of Subpoenas	10
	4.2 Subpoena Authority	11

	4.3	Service of Subpoena	11
	4.4	Response to Subpoena	11
	4.5	Enforcement	12
5.		Conducting the Hearing	12
	5.1	The Chairman or Presiding Officer	12
	5.2	Standards of Conduct	13
	5.3	Conduct of Board Members	13
	5.4	Admission of Public	13
	5.5	Record of Proceedings	13
	5.6	Official Notice	14
	5.7	Quorum	14
	5.8	Recess	14
6.		Order of Proceedings	15
	6.1	Convening the Hearing	15
	6.2	Oaths and Affirmations	16
	6.3	Order of Proceedings	16
7.		Evidence	17
	7.1	Purpose of Evidence	17
	7.2	Forms of Evidence	17
	7.3	Admissibility	18
	7.4	Rules of Privilege	19
	7.5	Exclusion of Evidence	19
	7.6	Exhibits	20
	7.7	Objections	20
	7.8	Motions	20
8.		The Board's Decision	21
	8.1	Decision	21
	8.2	Making the Decision	21
	8.3	Burden of Proof	22

	8.4	Proposed Decisions	22
	8.5	Delivery of Decision	22
9.		The Case Record	22
	9.1	Need for Record	23
	9.2	The Case Record	23
	9.3	Transcript of the Record	23
10.		Judicial Review	24
	10.1	Seeking Judicial Review – Effect	24
11.		Computation of Time	24
	11.1	Computation	24
12.		Rules Procedural, Not Mandatory	24
	12.1	Procedural Rules	24
PART III		Table of Referenced Authorities	25

PART I GENERAL

1. MEETINGS

1.1 Schedule of Meetings

The Board shall meet at least one time per year. The Board may schedule more frequent meetings if the Board has business to conduct at that time. At any regular meeting, the Board shall consider any appeal scheduled for that date, City personnel policies, or any other business regularly before the Board. Additional meetings may be scheduled as necessary to hear additional or continued appeals.

In construing, understanding, and implementing these Rules of Procedure, the following concepts shall be paramount:

- (a) The Personnel Board is comprised of lay persons who are fulfilling a quasi-judicial function. The Personnel Board strongly discourages the parties appearing before it from treating or conducting any appeal proceeding as a civil trial.
- (b) Witnesses who appear in hearings before the personnel Board are not "on trial." Accordingly, cross-examination (in those instances where a witness' testimony is such as to justify cross-examination) should be limited in its scope and intensity.
- (c) Attorneys appearing on behalf of any party should make every effort to avoid making technical objections to the introductions of either written or testimonial evidence, or from otherwise interjecting themselves excessively into the proceedings before the Personnel Board. While the Personnel Board expects attorneys representing either party to any appeal to represent their respective clients zealously, the Personnel Board has found, from experience, that too much of the time and effort involved in appeal hearings has been taken up by hearing and ruling upon, strictly legal issues which are better resolved in a court of law.

- (d) Notwithstanding any of the above concepts (a) through (c) inclusive, the Personnel Board shall conduct its hearings in such a manner so as both to allow all parties to the appeal to present all relevant evidence in their respective cases and to protect the due process rights of all persons appearing before the Board.

PART II APPEALS

1. THE APPEAL PROCESS

1.1 Nature of Proceeding

A regular full-time employee in the classified service may appeal his or her suspension, demotion, or termination to the Personnel Board. The purpose of the appeal proceeding is to conduct a hearing to determine whether or not the action appealed was justified in whole or in part. In making this determination the issues shall be defined in the following manner:

- (a) Did the employee do the acts alleged by the appointing authority?
- (b) If he or she did those acts, was such action or inaction cause for discipline?
- (c) If cause for discipline is found, was the discipline administered appropriately?

An appeals proceeding is not a civil trial, and accordingly, shall be conducted in a manner less formal than a judicial proceeding. It is not subject to the strict application of the Colorado rules of evidence or civil procedures, but should be conducted so as to serve the best interests of justice. The Personnel Board shall conduct the appeals proceeding in accordance with considerations of fair play and constitutional requirements of due process. All participants in any appeal shall comply with requirements set out in the Charter and the Municipal Code of the City of Westminster, as well as these rules of procedure.

1.2 Role of the Board

The Board shall be responsible in the appeal proceeding to act as a fact-finder, reach a decision, and send a written recommendation to the City Manager as set forth in W.M.C. section 1-24-3(I). The Board is responsible for conducting the hearing.

1.3 Participants

There are two parties to the appeal: the employee/appellant and the City/appellee. The appellant may be a current employee who is appealing a demotion or suspension or a former employee who is appealing a termination. The employee is referred to throughout these rules as employee/appellant, appellant, or employee. The employee may be represented by counsel or may appear pro se. The Board shall be advised by counsel in the City Attorney's Office or retained by the City. The City may be represented in the same fashion.

2. THE RIGHTS OF THE PARTIES

2.1 Right to Appear

Each party has the right to appear and be heard, either in person or by counsel at an appeal hearing. A party also has a right to receive notice of the hearing. If the party does not appear after receiving proper notice, or does not inform the Board that the party will be unable to appear, the party has waived his or her right to appear and the Board may proceed with the hearing without the presence of the party.

2.2 Right to Present Evidence and to Cross-Examine

Every party has the right during an appeal proceeding:

- (a) To present evidence on questions of fact, providing that such evidence is acceptable under the rules governing the hearing;
- (b) To present arguments on issues of law and policy;
- (c) To cross-examine those witnesses that appear and provide testimony;
- (d) Notwithstanding the above rights of the parties, the Personnel Board shall not accept, and will not consider, evidence relating to discipline imposed upon any employee other than the appellant. The Board shall limit its determination to the questions posed in Section 1.1 as they relate to the appellant and appellant's circumstances only.

2.3 Right to Counsel

The employee has a right to be accompanied and advised by counsel who must be licensed to practice law in Colorado. Neither the Board nor the City has the responsibility to either pay for or appoint counsel for the employee.

The filing of an appeal or other notice of representation by an attorney constitutes his or her appearance on behalf of the employee for the appeal process. The Personnel Board must be notified in writing if the attorney withdraws from the proceeding.

2.4 Right to Copy of Testimony

Any person who gives evidence, whether as a party, in response to a subpoena, or as a witness, is entitled to procure a copy of any transcript of his or her testimony. The person requesting the copy must pay for the transcript. The requesting party shall obtain the transcript from the reporter; the Board does not order the transcript, unless it desires a copy.

If the Board preserves testimony by means of a tape recording or orders a transcript, the tape or transcript is a public record and any person may listen to it or look at and take notes from it or obtain a copy subject to any restrictions in the Charter or ordinances of the City of Westminster or in the Colorado Open Records Act, Parts 2 and 3 of Article 72 of Title 24, C.R.S. The Board adopts the Colorado Open Records Act, as amended, as it applies to the Board.

2.5 Right to Judicial Review

The City or the employee has the right to ask the district court to review an adverse decision of the City Manager. On appeal, the court considers whether the City Manager has exceeded his or her jurisdiction or abused his or her discretion.

3. PRE-HEARING PROCEDURES

3.1 Notice of Appeal and Request for a Hearing

The employee must file an appeal and request for a hearing, in writing, with the Human Resources Director or designee within the timeframe set forth in W.M.C. Section 1-24-3(E). An employee is not eligible to request an appeal unless he or she has exhausted all of his remedies in the grievance proceeding.

The appeal shall specify the grounds for appeal and shall contain a detailed statement of facts in support of the grounds for appeal. If the appeal does not meet these requirements, the Human Resources Director or designee may return the appeal to the employee for correction or may ask the Board to dismiss the appeal.

After a sufficient appeal has been received, a copy of the appeal and all written communication on which it is based shall be transmitted to each member of the Board by the Human Resources Director or designee. A date for a pre-hearing conference and a hearing shall then be set pursuant to these Rules.

3.2 Hearing Data Certificate

When both parties are represented by counsel, no later than one week (5 working days) prior to the date of the Pre-Hearing Conference, the employee and the City shall deliver to the Human Resources Director, and the other party, a Hearing Data Certificate which shall include the following:

- (a) Statement of Claims and Defenses. A concise and brief statement of all claims and defenses the party intends to assert.
- (b) Undisputed Facts. A plain, concise statement of all facts which the party filing the statement contends are undisputed or should be admitted by the other party. The parties are expected to act in good faith in asserting, and in agreeing to, what constitutes undisputed facts.
- (c) Disputed Issues of Fact. A plain, concise statement of the material facts which the party claims or concedes to be in dispute.

- (d) Points of Law. Brief and concise statements of all points of law which are to be relied on, or which may be in controversy, citing pertinent statutes, ordinances, regulations, cases, and other authority. Extended legal argument should appear in this document.
- (e) Witnesses. The name, address, and telephone number of any witness whom the party may call at the hearing, together with a summary of each person's testimony, and an estimate of how long examination and cross-examination of the witness will take.
- (f) Exhibits. An attached copy or photograph of any physical or documentary evidence which the party may offer into evidence at the hearing; or, if the document or photograph is not attached, an explanation of why it is not attached, together with an accurate description of the document or evidence, and a disclosure of its physical location. Included in the exhibits required hereunder shall be a copy of appellant's entire record of prior discipline and commendations, together with appellant's prior performance evaluations.
- (g) Statutes, Ordinances, Regulations or Standards. A listing and attached copies of ordinances, regulations, standards, Colorado, foreign, or United States statutes intended to be relied upon at the hearing.
- (h) Hearing Efficiencies. An estimate of the amount of time required for the hearing and a statement of whether any requested or offered stipulations would materially reduce the estimated hearing time.

Counsel are expected to meet or converse prior to the submission of hearing data certificates for the purpose of discussing, and attempting to agree as to what constitutes undisputed facts, stipulations as to witnesses and exhibits, and other points which will aid in expediting the hearing before the Board.

The parties shall attempt to comply with the information provided and theories asserted in this certificate. The Board may allow new witnesses or exhibits to be added if the need to do so was not reasonably foreseeable at the time of completion

of this certificate and if it will neither prejudice other parties nor necessitate a delay of the hearing.

Upon receipt of the Hearing Data Certificates, the Human Resources Director or designee shall deliver copies to the chairman of the Personnel Board and to the Board's counsel.

Submission of a hearing data certificate is not required when the employee is not represented by legal counsel, however, the Board may establish other pre-hearing requirements in its discretion.

3.3 Pre-Hearing Conference

Upon receipt of the appeal, the Chairman and counsel for the Board shall discuss the conduct of the upcoming hearing. The Chairman shall schedule a Pre-Hearing Conference. The Human Resources Director or designee shall notify the parties of the date, time, and place of the Pre-Hearing Conference. No appeal in which an employee is represented by legal counsel shall be heard by the Board until a Pre-Hearing Conference has been held.

- (a) The purpose of such conference is to consider any or all of the following actions:
 1. To review the hearing data certificates of the parties;
 2. To reduce or simplify the issues to be adjudicated;
 3. To stipulate the issues that are not contested by the parties;
 4. For the parties to stipulate to the admission of certain evidence or admissions of fact which will avoid unnecessary proof;
 5. To identify documentary or other physical evidence and to dispose of any questions by the parties about its authenticity;
 6. To determine which witnesses identified by either party should be exempt from cross-examination due to the limited materiality of relevance of their expected testimony;

7. To address other matters which might aid in the expeditious conduct of the hearing;
 8. To establish time frames for the presentation of the evidence; and
 9. To advise the parties and their legal counsel, that the Personnel Board shall, in the discretion of the Chairman or the Board as a whole, invoke the provisions of Rule 403 of the Colorado Rules of Evidence to avoid undue delay, waste of time, or needless presentation of cumulative evidence.
- (b) A Pre-Hearing Conference shall be recorded pursuant to Section 5.5 of this manual.

3.4 Stipulations

The parties may stipulate or agree upon certain issues or certain facts. Stipulated issues or facts are not required to be proved at the hearing. Evidence of any stipulation shall be preserved in the record of the proceedings.

3.5 Discovery

Discovery is the disclosure of facts, documents, or other things which are within the knowledge or possession of one party, and which are necessary to the party seeking the discovery as a part of the proceeding. The purpose of discovery is to minimize the element of surprise at the hearing and to give all parties a chance to prepare properly for the hearing. Discovery may be used when approved by the Board.

There are three basic procedures for discovery: (1) requests for production of documents, (2) depositions, and (3) written interrogatories. Depositions are written transcriptions of testimony taken outside of the Board's presence. Interrogatories are a series of written questions directed to a party. These means of discovery may be used by the parties, under the guidelines of the Colorado Rules of Civil Procedure, where approved by the Board.

An employee or his or her counsel has the right to obtain copies of the documents in his or her Personnel File for use at the hearing. Other departmental records may be discoverable but availability shall be subject to departmental rules and policies, ordinances, applicable statutes such as the Colorado Open Records Act, or rules and regulations. Discoverability of documents other than records in the employee's Personnel File must be considered on a case-by-case basis.

The chair of the Board may enter a protective order that prohibits the parties and Board members from using discovered information in documents for any purposes unrelated to the appeal and the proceeding before the Board.

3.6 Notices

All notices required to be delivered by the Board or the Department of Human Resources to the employee or counsel for the employee shall be in writing and shall be deemed effective if delivered through the U.S. Post Office, personally served by any employee of the City who is not a party to the proceeding, or confirmed via electronic means. Mail or personal or electronic delivery must be documented by a properly prepared and signed certificate of mailing or certificate of service. Delivery by U.S. Postal Service shall be presumed three days after the date of mailing. Delivery by email shall be presumed on the date and time as reflected on any sent email transmission. Each party may offer evidence in an effort to rebut these presumptions.

The Board shall give each party at least fifteen (15) calendar days' notice in writing of the date of hearing prior to conducting the formal hearing on the merits of the case.

4. SUBPOENAS

4.1 Types of Subpoenas

A subpoena is an order for a witness to be present at a proceeding, or to present documents for the record. The word subpoena is derived from the Latin words for

"under punishment;" failure to comply involves a fine or imprisonment, or both. The purpose of the subpoena is to produce evidence which otherwise would not be available, and which is needed for the determination of facts relevant to the case.

There are two types of subpoenas: (1) A subpoena requiring a person to appear and to give testimony, and (2) A subpoena duces tecum, which requires that a person to appear and to produce books, records, correspondence, or other materials over which he or she has possession or control.

The Appointing Authority shall direct any employee under the supervision of the Appointing Authority to appear and provide sworn testimony before the Board.

4.2 Subpoena Authority

Under Section 1-24-3(H), the Chair of the Personnel Board is empowered at his or her discretion to issue a subpoena. A subpoena may be prepared and signed by the Chair upon receipt of a written request of a party. The subpoena shall command a person to appear and testify before the Board on the hearing date.

The request for a subpoena may also seek production of documents. Such request, and the resulting subpoena, must list the objects to be produced. The request must be reasonable in terms of the amount required and must relate to the subject matter under consideration. The request for documents may also be denied by the Board when such discovery is not approved by the Board.

4.3 Service of Subpoena

A subpoena may be served by any peace officer or any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena shall be made by delivering a copy thereof to the person ordered to appear. The server must also complete and sign under oath a certificate of service. Service must be made at least 48 hours prior to the appearance or information sought by the subpoena.

4.4 Response to Subpoena

The person to whom the subpoena is directed must comply with it unless the person files a motion to modify or to quash the subpoena. Such a motion must be filed with the Human Resources Department at any time prior to the time and date of appearance.

The Chair may quash the subpoena if it finds that:

- (a) The testimony required is not reasonably related to the subject matter of the hearing;
- (b) The subpoena does not adequately describe the evidence required;
- (c) The production of the evidence would impose difficulties that are not justified in light of its importance to the case, or would subject the witness to undue hardship;
- (d) The material or testimony requested falls under a privilege afforded to the witness by statute, ordinance, regulation, or Constitutional guarantees.

4.5 Enforcement

If a person fails to comply with a subpoena, the Chair may request the City Attorney to file a Motion with the Municipal Court of the City of Westminster for an order enforcing the subpoena. If the person fails to appear before the Board pursuant to an order of the court, he may be punished by fine or imprisonment pursuant to W.M.C. Section 1-22-4.

5. CONDUCTING THE HEARING

5.1 The Chair or Presiding Officer

The presiding officer has an important role in the hearing. It is the responsibility of the Presiding Officer to ensure that the hearing proceeds smoothly. The Presiding Officer shall consult with the attorney for the Board in this regard. The Presiding Officer's powers shall include, but not be limited to:

- (a) Hold Pre-Hearing Conferences for the simplification or settlement of issues;
- (b) Regulate the discovery process;
- (c) Issue subpoenas;
- (d) Take action necessary to maintain order;
- (e) Rule on motions and procedural questions arising before or during the hearing;
- (f) Call recess, adjourn the hearing, or grant continuances;
- (g) Prescribe and enforce general rules of conduct and decorum; and
- (h) Exempt certain designated witnesses from cross-examination, and/or limiting the scope of cross-examination to which witnesses are subject.

The Presiding Officer may delegate any or all of these duties to the attorney for the Board during the hearing.

5.2 Standards of Conduct

To ensure a fair but efficient hearing, the Presiding Officer must enforce proper conduct on the part of persons present. The Presiding Officer should recognize the person who is entitled to speak, and refuse to allow any person to speak until that person has been recognized. In case of disturbance, the Presiding Officer should ask the offending person to be quiet or to leave the hearing. If necessary, and after appropriate warning, the Presiding Officer may rule that a person has forfeited his right to participate in the hearing, or may order a person removed from the room.

5.3 Conduct of Board Members

Board members should prepare for the hearing by reading in advance the notice of appeal and any other pleadings, motions, or briefs. They should plan to attend all of the sessions necessary to conclude a hearing on a particular case. Board members may examine witnesses and ask questions of counsel.

Board members should avoid any impression of prejudice against or favoritism toward any party, attorney, or witness, and especially in questioning a witness.

5.4 Admission of Public

All hearings shall be open to the public and the Board's decision shall be public information. This is consistent with the Colorado Public Meetings Law, Part 4 of Article 6 of Title 24, C.R.S., which the Board adopts by reference as applicable to its proceedings.

5.5 Record of Proceedings

The Board is responsible for ensuring the proceedings are accurately recorded. The Board may employ a court reporter or a stenographer for this purpose, or may make an audio recording. If an audio recorder is used, it should be checked carefully before the proceeding begins to ensure that it is working well.

Either the City or the employee (at his or her own expense) may request a transcription of the testimony and proceedings at a pre-hearing conference or at the Board hearing or upon appeal of the decision.

5.6 Official Notice

The Board may take official notice of a matter, thereby making it part of the official record. Proof of a matter is not necessary if it has been officially noticed. Where a Board's decision rests on official notice of material fact not appearing in the evidence, a party is entitled to an opportunity to disprove or rebut that fact. Official notice is usually limited to facts which are generally known, or which are readily determined by a source which is of unquestioned accuracy. A fact need not always be indisputable to be noticed, so long as parties have an opportunity to challenge it. Official notice may also be taken of rules, official reports, decisions, standards, orders or records of the Board or of other regulatory agencies or of state or federal courts.

5.7 Quorum

A majority of the members of the Board shall constitute a quorum to conduct a hearing.

5.8 Recess

The Chair may, at any time, call a recess in order to discuss with the Board's counsel any questions of law or procedure arising during the course of the proceedings.

6. ORDER OF PROCEEDINGS

6.1 Convening the Hearing

The Presiding Officer shall call the hearing to order and identify the matter at issue. The Presiding Officer shall state for the record a brief summary of the subject of the hearing and the authority for holding it. In this introductory statement the Presiding Officer must include at least the following:

- (a) The nature of the appeal, i.e., suspension, demotion, or termination;
- (b) A summary of the proceedings to the date of the hearing;
- (c) A summary of any admissions or stipulations entered into at the pre-hearing conference, including any time limits established;
- (d) A brief summary of the nature of the Board and its purpose, as established by the Charter, Chapter VI, and W.M.C. section 1-24-3 of the Code. (e.g., The Personnel Board consists of five citizens appointed by the Council). The Board is mandated to investigate each appeal, hold a hearing, and to recommend to the City Manager:
 - 1. That the action appealed was without justification and that the appellant should be restored to his or her previous status;
 - 2. That the action appealed was justified and should be confirmed; or
 - 3. That the action appealed was partially justified and should be modified.

The Presiding Officer should then ask the parties to identify themselves and their counsel, when present. All parties should then be allowed to state for the record any objections they have to the proceedings.

The Board may make any initial inquiries they may have based on the written appeal or the Pre-Hearing Data Certificate.

6.2 Oaths and Affirmations

As a general rule, all testimony should be given under oath. When an oath or affirmation is required, its purpose is to impress on the witness the seriousness of the occasion in order to assure that his testimony will be truthful.

If the witness objects to "swearing" or "taking an oath," the word "affirm" may be substituted.

If the witness' testimony is interrupted by a recess, it is not necessary to administer the oath again when the hearing reconvenes. The witness may, however, be reminded that the oath remains effective.

6.3 Order of Proceedings

The customary order of the proceeding required by Westminster ordinances is as follows:

- (a) all exhibits which have been stipulated to by the parties and all others received by the Board prior to the hearing should be marked and made a part of the record;
- (b) the person presenting the evidence for the appellant/employee makes an opening statement of what he intends to prove, and what action he or she wants the Board to take;
- (c) the person presenting the evidence for appellee/City makes an opening statement, explaining why he or she believes that the actions taken should be upheld (NOTE: the City may wish to reserve its opening statement until the start of its case);
- (d) the employee presents his or her witnesses;
- (e) the City cross-examines each witness;
- (f) the City presents its witnesses;

- (g) the employee cross-examines;
- (h) the employee rebuts the City's evidence;
- (i) the City rebuts the employee's evidence;
- (j) both parties make closing statements;
- (k) the Board may make any additional inquiry.

This order may vary, however, solely at the discretion of the Presiding Officer.

7. EVIDENCE

7.1 Purpose of Evidence

The purpose of evidence is to provide the facts necessary to reach a decision in a case. The Board is not strictly bound by the rules of evidence which govern court proceedings, except that the evidence admitted must be of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

Constitutional guarantees of due process give the parties a right to a decision based on evidence presented at the hearing. This means that a Board member in making up his or her mind must consider evidence presented at the hearing, and can consider only such evidence. A Board member may not consider anything that he or she has heard or read outside of the evidence presented at hearing in the case; he or she may consider only the evidence presented at the hearing. The Board members are entitled to draw inferences from the evidence and to assign to the evidence the weight they believe appropriate.

7.2 Forms of Evidence

Evidence includes testimony, documents, reports, technical and scientific facts, and real evidence, such as direct physical illustration of a fact before the Board.

Evidence usually consists of:

- (a) oral testimony given by witnesses at the hearing;

- (b) documentary evidence, i.e., written or printed materials including public, business, or institutional records;
- (c) visual, physical, and illustrative evidence;
- (d) admissions, which are written or oral statements of a party made either before or during the hearing; admissions may be made by a party or another witness may testify that a party admitted something relevant to the hearing;
- (e) facts officially noted (as explained in section 5).

7.3 Admissibility

The rules of evidence in the hearing shall conform, to the extent practicable, with those in civil non-jury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties, the Presiding Officer may receive and the Board may consider evidence not admissible under court rules if the evidence has probative value commonly acceptable by reasonable and prudent persons in the conduct of their affairs.

The Board may admit some hearsay evidence, although this would not be admitted in a court. Hearsay is testimony by a witness as to a statement made by another person who is not present at the time of the testimony and offered to prove the truth of the matter asserted, it is considered unreliable because the person who made the original statement was not under oath, because opposing parties do not have an opportunity to cross-examine that person, and because the truth of the statement depends on whether the declarant is believable. While hearsay and similar evidence that could not be admitted in a trial might be admitted in hearing, the Board may not recommend disciplinary action solely on the basis of such evidence.

A party to the proceeding should inform the presiding officer if he objects to the admission of any evidence. If the presiding officer sustains the objections, the evidence is immediately withdrawn from consideration. If not, the proceeding continues with the evidence admitted. If a document is offered but not admitted

into evidence, it remains a part of the administrative record, but the Board does not consider it in reaching a decision.

The members of the Board may utilize their personal experience, technical competence, and specialized expertise in the evaluation of evidence presented.

7.4 Rules of Privilege

The Board must follow the rules of privilege in excluding certain evidence.

Generally, these provide that communications to an attorney, religious advisor or physician may not be disclosed without the consent of the person who sought the professional's assistance. Privileged communications are defined by state law under section 13-90-107, C.R.S.

A Board also may not force an employee to testify if he or she invokes the Fifth Amendment privilege against self-incrimination. Because the decision of the Board must be based on evidence presented in the case, the employee's refusal to testify must be looked upon as having presented no evidence on his or her own behalf. Accordingly, the failure to testify may, from an evidentiary standpoint, weigh heavily against the employee.

7.5 Exclusions of Evidence

Evidence which is irrelevant, immaterial, incomplete, inaccurate, unsubstantiated, or unduly repetitious should be excluded. Examples are:

- (a) irrelevant evidence which does not relate to the issues, and has no bearing on their resolution;
- (b) immaterial evidence which, though it may relate to the issues, has no bearing on their resolution, including repetitious evidence, which covers matters that have already been fully covered by other evidence, although some repetition can be allowed for emphasis;
- (c) incomplete, inaccurate, or unsubstantiated evidence such as technical evidence submitted by an unqualified person.

- (d) evidence which, although relevant, results in undue delay, waste of time or needless presentation of non-cumulative evidence.

7.6 Exhibits

The Presiding Officer should see that all documentary and physical evidence is marked for identification and that a list is kept that describes the exhibit and its identification. The list should note whether the exhibit was admitted as evidence. One copy of any document offered as evidence must be furnished to each of the parties during or prior to the hearing. The original is given to the Presiding Officer unless he allows a copy to be substituted. Copies generally may be introduced into evidence in lieu of original documents unless a party challenges the copy's authenticity.

7.7. Objections

Either party may object to evidence being offered by the other party. An objection means the party believes that the evidence should not be considered by the Board because it is inadmissible under court rules of evidence.

Upon making an objection, the party should state the basis for his objection. The party may also make a very short statement in support of his objection. The opposing party should be allowed to make a short oral reply to the argument.

The Presiding Officer should note the objection for the record, consult with the attorney for the Board, if necessary, and rule that the evidence is admissible or not. The hearing should then proceed.

7.8 Motions

A party or attorney may make a motion to the Board in writing or orally prior to or during the hearing. A motion is a request to the Board to make a particular order.

The Board should allow the movant an opportunity to make a short argument in support of a motion. The opponent should then be allowed to make a short argument in reply.

The Presiding Officer may consult with the attorney for the Board or other members of the Board prior to ruling on the motion. Or the Presiding Officer may take the motion under advisement and not rule immediately. The hearing should then proceed.

8. THE BOARD'S DECISION

8.1 Decision

The Board must reach a decision within 30 days of the hearing's conclusion. The Board may retire from the public hearing to discuss and deliberate concerning the evidence and its decision. This may be done after the conclusion of the hearing on the matter, or the Chair may schedule another meeting for discussion.

Under W.M.C. section 1-24-3(I), in its decision the Board may find and recommend to the City Manager:

- (a) That the action appealed was without justification and that the appellant should be restored to his or her previous status and receive compensation for the period of the suspension, termination, or reduction in grade; or
- (b) That the action appealed was justified and should be confirmed: or
- (c) That the action appealed was partially justified but should be reduced, and shall enter an order reducing the action to such terms as the Board deems proper.

8.2 Making the Decision

The first task of the Board is to perform its fact-finding function. It must determine the facts in issue solely on the basis of the evidence submitted at the hearing and

its reasonable inferences drawn therefrom, including whether the Board believed some of the evidence offered. It then prepares its finding of facts and recommendations

The Board's decision must include a summary of the important facts (Findings), and then an application of the facts to support the Board's conclusion (Conclusions), and a recommendation.

8.3 Burden of Proof

Because the hearing before the Personnel Board involves an appeal from an existing administrative decision, the burden of proof is on the appellant. In performing its fact-finding function, the Board must evaluate the evidence to determine whether the employee presented sufficient evidence to prove that the City's action should be reversed or modified. The standard of proof is by a preponderance of the evidence.

) It is presumed that the City's actions were taken in good faith. The employee has the burden to present evidence otherwise.

8.4 Proposed Decisions

The Board may request that the prevailing party submit a proposed decision to the Board for approval. The Board is not bound to use the language in a proposed decision.

8.5 Delivery of Decision

Under W.M.C. section 1-24-3(J), the Board must issue its findings and decision within 30 days after conclusion of the hearing. The decision shall be delivered as set forth in Section 3.6 of these Rules of Procedure.

9. THE CASE RECORD

9.1 Need for Record

A complete case record must be maintained for each formal hearing in the event that a party requests judicial review. Under C.R.C.P. Rule 106(a)(4), the district court does not retry the matter; the court relies on the Board to furnish a complete record of everything that occurred during the hearing.

9.2 The Case Record

The case record should include the following, plus other material that the Board considers desirable to retain:

- (a) all papers filed and served in the proceeding;
- (b) all documents and other materials accepted as evidence at the hearing;
- (c) statements of matters officially noticed;
- (d) notices required by the statutes or rules, including notice of the hearing;
- (e) affidavits of service or receipts for mailing of process or other evidence of service;
- (f) stipulations, settlement agreements, or consent orders if any;
- (g) records of matters agreed upon at the pre-hearing conference;
- (h) orders of the Board and its final decision; and
- (i) a transcript of the proceedings, if one has been made, or the tape recording.

9.3 Transcript of the Record

The record of the hearing is not usually transcribed unless a party to the proceeding so requests and agrees to pay for such transcription.

A party may request that errors in the transcript be corrected. A motion to make corrections must be made within 28 days after receipt of the transcript. If no such motions are received, the transcript is considered approved.

10. JUDICIAL REVIEW

10.1 Seeking Judicial Review – Effect

Judicial review of the City Manager's decision may be sought by the employee or the City. A request for review must be filed with the Court as provided by C.R.C.P. 106 after the final action taken by the City Manager.

11. COMPUTATION OF TIME

11.1 Computation

In computing any period of time prescribed or allowed by these rules, the day of the act from which the time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. Unless specified otherwise, days refers to calendar days.

12. RULES PROCEDURAL, NOT MANDATORY

12.1 Procedural Rules

These rules are procedural in nature and not mandatory. Variance from these rules by any member of the Personnel Board or the staff of the Department of Human Resources shall not affect the validity of the underlying disciplinary action, or of the appeal.

PART III TABLE OF REFERENCED AUTHORITIES

- A. Official Code of the City of Westminster
 - 1. 1-24-3 Grievances and Appeals

- B. Colorado Revised Statutes
 - 1. 13-90-107 Who may not testify without consent

- C. Public Records
 - 1. 24-72-201 et seq. Inspection, Copying, or Photographing
 - 2. 24-72-301 et seq Criminal Justice Records
 - 3. 24-6-402 Public Meetings

- D. City of Westminster Personnel Policies and Rules (as amended)

NOTE: ORDINANCES AND STATUTES ARE SUBJECT TO AMENDMENT. THESE REFERENCED AUTHORITIES WILL BE UPDATED PERIODICALLY, BUT SHALL NOT BE RELIED UPON AS A STATEMENT OF CURRENT LAW.