

**Municipal Civil Service Rules
Commission Interest Log**

Time on Recording	Rule & Section	Page Number	Brief Description of Interest	Requestor
December 3, 2013				
	Voting Issue		<ul style="list-style-type: none"> Perez-Wiseley: Can we add additional language in Rules to break 2-1 or 2-2 situation? Law Department (Cronig): Yes. Commission can put in what the consequence of failure to reach a decision is. Perez-Wiseley: Maybe could have some sample language at next meeting? 	Perez-Wiseley
30 minutes	5.03.D. - Notice of Intended Reductions--In-Force--Notice of Separation to Affected Employees	13	<ul style="list-style-type: none"> Rubinett: More comfortable with 60 day (particularly when reads "whenever possible"; although not guaranteed, serves to highlight intent to aim for 60 days. 	Rubinett
33:48	6.02.A.-Cause for Certain Disciplinary Actions—Cause Required	15	<ul style="list-style-type: none"> Rubinett: Interested in seeing clarification with regard to discipline, demotion & discharge cases that City has burden of proof to prove Cause. In other Rules/ types of cases, should clarify that employee has burden of proof. Kovach: Burden of proof would be in procedure. Rubinett: Would like to see in both. 	Rubinett, Kovach
35 minutes	6.02.B.4.h. – "Cause" Defined – Unacceptable Personal Conduct (§ "h"). "Conduct related to the Employee's Position that contradicts the City's values."	15-16	<ul style="list-style-type: none"> Lancaster: Is it on the job? <ul style="list-style-type: none"> HR Staff: Cannot contemplate every instance; it could be off duty (e.g., in City uniform). Lancaster: Auditor writes hot checks on personal account? <ul style="list-style-type: none"> HR Staff: Cannot contemplate every single instance but rather provides an umbrella. Ethics & integrity are focus. Provides justifiable cause to take an action. Rubinett: Is there a statement somewhere with language as to what "contradicts the City's values?" <ul style="list-style-type: none"> HR Staff: We have PRIDE. Kovach: Broad. For example, an employee having derogatory statements on their 	Perez-Wiseley; Lancaster; Rubinett; Kovach

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			<p>Facebook and supervising people of the class supervisor is making derogatory comments about?</p> <ul style="list-style-type: none"> • Perez-Wiseley: Does not like 4-h. If no concrete definition, then should not be in Rules. • Lancaster: Will bleed over into personal lives. • Rubinett: Could somebody read this and know that if they did X, that they are in violation. It is difficult for employee to know. What could come up here that would not already be encompassed by other provisions? Make it specific enough to give genuine notice to employee if they were doing something that would fall under this section. • Lancaster: What does this add that is not covered somewhere else? • Kovach: Wants information on something that the City actually has that speaks to this—language and how often it is used. Need to give examples. Has this happened in the past? Needs a frame of reference. 	
42 minutes	6.02.B.1 – “Cause” Defined-- Insubordination	15	<ul style="list-style-type: none"> • Perez-Wiseley: Most people are not thinking “lawful” unless it is outright theft. <ul style="list-style-type: none"> ○ “Insubordinate” – could be that you disagreed with policy. Insubordination- what it means should be made clear. ○ “Authorized Supervisors” – how to distinguish among the many supervisors (e.g., custodian has numerous supervisors). ○ Need to define “supervisor” and “management” better than what is in language now. • Law Department (West): This language is for employee. “Clear and lawful” = legal. “Authorized supervisor”=someone in their chain, not just someone walking by. • Perez-Wiseley: How does employee know if someone is “authorized”? • HR Director: It would have to be communicated to the employee. Will not likely be able to describe every instance of an authorized supervisor. • Perez-Wiseley: Likes that employee has to 	Perez-Wiseley

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			be notified of someone who is “authorized supervisor.” Clarify in Rules.	
45:26	6.02.B.2. – “Cause” Defined--Theft	15	<ul style="list-style-type: none"> • Perez-Wiseley: (With regard to “intent”) What if things are taken by accident? Wants to make sure that there is a distinction. • Perez-Wiseley: Consider grade level of reader. Too legalistic. Every level of worker (including those with less formal education) should be able to pull out and understand. Language should be made clear and less wordy; too hard to understand. • Rubinett: Clarifies the definition of theft requires intent. 	Perez-Wiseley
1:22	6.03.B. – Administration of Employee Discipline—Factors Considered in Administering Disciplinary Action	17	<ul style="list-style-type: none"> • Lancaster: How far back (because the question has arisen in the past) into employee’s work history would employee’s record be considered? <ul style="list-style-type: none"> ○ Staff: No specific rule on this; reasonable or relevant. • Lancaster: Thinks City’s position has been that there is no cutoff date into the past and they have always considered the whole thing. Is that still going to be true? The farther away, the less it matters. 	Lancaster
1:23	6.03.B.3. – Factors Considered in Administering Disciplinary Action	17	<ul style="list-style-type: none"> • Lancaster: (With regard to factor #3 “the manner in which similar conduct has been addressed in the past”). Is this for employee specifically or how department addressed violation in the past or how City has addressed? <ul style="list-style-type: none"> ○ Staff: How department has addressed issue in the past. • Rubinett: Just the department? <ul style="list-style-type: none"> ○ Staff: Departments are trusted in making disciplinary decisions taking into consideration their unique circumstances. 	Lancaster, Rubinett

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1:24:20	6.03.B.3. – Factors Considered in Administering Disciplinary Action	17	<ul style="list-style-type: none"> • Perez Wiseley: (With regard to factor #2 “the Employee’s prior work history and disciplinary record”). Used to be that certain amount of time had passed, something in red file would be pulled out. There may be a note somewhere as to action taken but she thinks intent of <i>corrective action</i> (her preferred language) that if you have plan and fulfilled, then after that it is over. Is the intent to give no cutoff? Should have time. <ul style="list-style-type: none"> ○ Staff: We would not be pulling any official disciplinary or performance documentation out of file; there is no practice or policy that would suggest that we would pull anything out of employee’s file after a certain amount of time (that may not even be allowable);intention is to look back at what is reasonable and relevant; will be for commission to look at on case-by-case basis. 	Perez-Wiseley, Rubinett
1:27	6.03.C. – Review Prior to Disciplinary Action	17	<ul style="list-style-type: none"> • Russell: As it stands now, is there time requirement for having pre-termination hearing and then having hearing? What does “reasonable opportunity to respond” mean? • Staff: Reasonable amount of time is about notice to employee that discipline is going to happen. • Russell: How much time between notice of potential discipline and discipline? <ul style="list-style-type: none"> ○ HR Staff: will have to look at Rules and procedures as it relates to this and add to the interest log. • Russell: What type of information is being provided to that employee with the 	Russell Rubinett

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			<p>advanced notice? Wants to make sure that employee has enough time to respond.</p> <ul style="list-style-type: none"> • Rubinett: Agrees with Russell and wants to add that it is confusing in Rule because it says advanced written notice and reasonable time to respond in person or in writing. Not clear that there is always a meeting. Wants to make sure that there is a process where discipline is imposed and employee has full knowledge of what employee is being disciplined for. Spell it out. Do people have choice? Do they respond in writing? Do they request a meeting? • HR Director: Practice on pretermination notice has been at least 3 days • Staff: Reasons are cited in notice specifically; thinking of designing template form of communication that departments would have to utilize. • HR Director: Thinks timeframe in Rules would be very helpful. • Staff: Intent is always to have live meeting but can also be in writing if employee wants it. 	
1:35	6.03.D. Written Notice of Disciplinary Action	17	<ul style="list-style-type: none"> • Russell: Comment - on management providing notice to MCS director (time frame). Civil Service has a certain amount of time. There needs to be a time. • Kovach: Wonders about time issue as well. Notice. (1) Time between pre-notice and final meeting. (2) Time between meeting and written notice of disciplinary action. When does "D. Written Notice of Disciplinary Action" kick in? 	Russell Kovach

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1:40	7.02.A-B. Appeals to the Commission – General Rules for all Appeals - Departmental Grievance Process - Written Notice of Appeal	18	<ul style="list-style-type: none"> • Russell: (With regard to #1- “The Employee shall file a written grievance with the Employee’s manager or supervisor within twenty (20) Business Days of the action”). 20 Business days-- it is too long of a process. • Russell: (With regard to #4- “If the Employee receives no response or is not satisfied with the response from the Department Head, within twenty (20) Business Days, a notice of Appeal may be filed with the MCS Director).” How much time does Dept. Head have? • Russell: Is there any type of extension by agreement with the department head or supervisor? Needs to be in Rules whether there is or is not. Add language about mutual agreement to extend timeline. 	Russell
1:43	7.02.C. – MCS Director’s Procedures on Receipt of Notice of Appeal	18	<ul style="list-style-type: none"> • Russell: definitely needs language setting out consequences for management not getting paperwork over in reasonable/certain amount of time. 	Russell
1:46	7.02.D. – Written Notice of Hearing	19	<ul style="list-style-type: none"> • Rubinett: (With regard to ADR Process) Can hearing and ADR go on simultaneously? Do you have to delay to get hearing scheduled for ADR (may be disincentive to ADR). Should allow ADR to go on simultaneously with hearing scheduling. Put case on calendar even if employee chooses the ADR process. Does not want employee penalized on getting hearing date just because they want to go through ADR process. 	Rubinett
1:49	7.02.E. – Rescheduling a Hearing	19	<ul style="list-style-type: none"> • Rubinett: Is your intent to have “cause” review to get approval of director or do you automatically get one reschedule? <ul style="list-style-type: none"> ○ Staff: Intent is not for it to be a 	Rubinett

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			<p style="text-align: center;">cause issue.</p> <ul style="list-style-type: none"> • Rubinett: May be better to just say “upon notice within 5 days” can get automatic reschedule. Thinks 45 business days is too long in advance of a hearing; once you get a hearing scheduled, then that is probably where need to reschedule will arise. • Rubinett: What if both parties agree to a rescheduling, does that still need to be approved by either the director or chair or if parties are both in agreement, can that happen without approval? • Rubinett: Do we need to specify that Chair can have designee or Vice Chair? 	
2:08	7.03.D. – Alternative Dispute Resolution (ADR) Process— Confidentiality of ADR Process	20	<ul style="list-style-type: none"> • Kovach: Thinks we need to look a little more closely at the confidentiality provision; a lot of case law, exceptions, duties to disclose. Include some type of proviso (e.g., “unless required by law”) or if something comes up during course of ADR; language is too tight as is and unrealistic. Process should be confidential. Language too Broad, needs better explanation. 	Kovach
2:09	7.03.D. Confidentiality of ADR Process	20	<ul style="list-style-type: none"> • Rubinett: (With regard to #2) Too broad and does not explain what it means. “Other individuals involved” is unclear as to what violates this particular provision; does it include the actual grievant or someone included in the process? Want to make sure that mediator/conciliator is not called to testify (prohibit it specifically); as opposed to individuals participating in it. 	Rubinett
2:12	7.03 – Alternative Dispute Resolution (ADR) Process	20	<ul style="list-style-type: none"> • Lancaster: Is ADR required to be used? Can we say that there is not going to be any ADR at all (aka, you work through management and then can file grievance for commission)? Believes that ADR causes people to harden their positions/stories 	Lancaster, Kovach, Rubinett

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			<p>and is another layer of administration. What does ADR add other than another layer of complexity?</p> <ul style="list-style-type: none"> • Law Department (Cronig & West): Not required under the charter. • HR Director: It is not required under the charter, but can the City (in general) still offer it? <ul style="list-style-type: none"> ○ Cronig: Yes • Kovach: If it is eliminated in Rules, it does not mean that the employee could not still engage in it. • Rubinett: Likes Rule because sets the intention to encourage resolution but it does ensure that employees are made aware of process and ability to have a third party neutral potentially involved free of cost can be a big benefit. Keep ADR Process section-advises employees of the ADR Process. • HR Director: Intent of Rule is to make employees aware of process and try to make as much opportunity for resolution before scheduling commission time. <ul style="list-style-type: none"> ○ Does not preclude employee's options. ○ Ombuds created and funded for that specific purpose so need to be clear about eliminating from Rules only. 	
2:19	7.03.C. Effect of an Employee's Election to Use ADR Process	20	<ul style="list-style-type: none"> • Rubinett: Why does appeal process need to be suspended in order to take advantage of ADR? Could be a disincentive to ADR. Not advisable. Appeal process should not be suspended. Whether or not there should 	Rubinett

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			<p>be a stay for process of ADR or whether they should go together.</p> <ul style="list-style-type: none"> • Rubinett: We could eliminate section “C. Effect of an Employee’s Election to Use ADR Process” of this Rule. • Rubinett: Thinks it is good to address how processes work together. 	
2:20	7.03 – ADR Process	20	<ul style="list-style-type: none"> • Perez-Wiseley: Why 45 days? • Ombuds: Agrees, too long. There should be timeline for when department turns over investigation file. Hard to evaluate a case in ADR if file is not with the Ombuds and department has not turned over. If ADR is part of a formal process, then can streamline process. 	Perez-Wiseley
2:25	7.04.D. – Subpoenas—Service of Subpoenas	21	<ul style="list-style-type: none"> • Rubinett: With regard to method of service, US mail may be problematic without proof of service or return receipt. 	Rubinett
2:26	7.04.E. – Invalid Subpoena Requests	21	<ul style="list-style-type: none"> • Rubinett: Wants to see provision for somebody to be able to look at subpoena that has been requested outside of 15 business days and decide whether there was still cause to get to it even if outside of 15 business days. Parties may learn additional information later. Provision to override the general rule-- with certain time restraints and approval mechanism. 	Rubinett
2:30	7.05.A.1. - Submission of Hearing Information— Employee’s Submission	22	<ul style="list-style-type: none"> • Rubinett: What are you asking for in packet from employee? Needs clarification. Too vague. Are you saying they should delineate issues for appeal or set forth facts? Delineating the issues makes more sense than just providing generic information regarding the issue. 	Rubinett
2:31	7.05.A.2. – Department’s	22	<ul style="list-style-type: none"> • Rubinett: Should be getting statement regarding specific rules relevant, at issue, 	Rubinett

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	Submission		<p>or violated (this is important part of packet).</p> <ul style="list-style-type: none"> ○ May be duplicative but should have the above for both employee and department submissions. 	
2:33	7.05.C. – Rebuttal Submissions	22-23	<ul style="list-style-type: none"> • Rubinett: “requires” (in first sentence of subsection) is problematic. It should be that if the employee wishes to respond to a submission. • Rubinett: Clarify what “rebuttal submission” means—if we do not want it to raise new issues, we should clarify that. • Kovach: Agrees. Rebuttal can only respond to issues addressed; cannot add new issues in rebuttals (it is currently implied, but spell it out in the Rules). Define “rebuttal.” 	Rubinett Kovach
2:36	7.05.D. – Objection to Witnesses and Documents	23	<p>(With regard to section “D” - “Upon such objection the Commission may permit the presentation of the witness or document <u>by majority vote</u> of the Commission for good cause shown.”)</p> <ul style="list-style-type: none"> • Rubinett: Unclear. • Law Department (West): Should reword. 	Rubinett