

# PROPOSED CIVIL SERVICE BOARD APPEALS HEARING RULES

## **A. Authority and Purpose**

Board Purpose – The purpose of the Civil Service Board has been codified via statute as outlined below. The purpose of these rules is to provide fair, open and meaningful processes by which to conduct appeals hearings brought before the board.

The Winston-Salem Civil Service Board (hereinafter the “CSB”) is established and authorized with certain powers pursuant to the provisions of Senate Bill 9, Session Law 2023-112, being Chapter 232 of the Private Laws of 1927, as amended. Consistent with Session Law 2023-112 of the 2023 Session Laws of the North Carolina General Assembly, known and hereinafter referred to as the “Civil Service Law,” codified in Article XVI of the Charter of the City of Winston-Salem (hereinafter the “Charter”). The Board is authorized by the Civil Service Law to conduct a hearing in response to a timely request from a member of the classified service, as defined in the Civil Service Law, when that member is discharged, suspended, reduced in rank, transferred against his or her will or is denied any promotion or raise in pay to which they would be entitled. The CSB has other powers and duties as prescribed by the Civil Service Law. These rules are adopted in accordance with the Civil Service Law and shall govern proceedings held before the CSB as of the date of adoption.

The CSB is a quasi-judicial board and shall operate as such. All decisions of the board shall be based solely on the evidence before it and not on matters outside the record, personal bias, or public sentiment.

## **B. Definitions**

1. City: The City of Winston-Salem.
2. City Council: The elected City Council of the City of Winston-Salem.
3. City of Winston-Salem Personnel Policies: Those documents of the City of Winston-Salem establishing and governing the conditions of employment for City of Winston-Salem employees (to include, but not limited to, the City of Winston-Salem Personnel Resolution and the most current version of the City of Winston-Salem Employee Handbook).
4. Classified Service: All officers and employees of the City of Winston-Salem Police Department and all officers and employees of the City of Winston-Salem Fire Department EXCEPT for the Chief of Police, the Deputy Chief of Police, Assistant Chiefs of Police, the Fire Chief, the Deputy Fire Chiefs and Assistant Fire Chiefs. This term does not include new employees during their probationary period as determined by the rules of procedure adopted by city council pursuant to the Act.

5. Member. A Member of the Classified Service as defined in the Civil Service Law.
6. Discharged. For purposes of these Rules, this term, as it appears in the Civil Service Law, is to be used as defined in the City's current Employee Handbook as "dismissed."
7. Promotion or raise in pay to which they would be entitled. For purposes of these Rules, this term, as it appears in the Civil Service law, means a "promotion or raise in pay to which they would be entitled" is a promotion or raise in pay that is established by the applicable career ladder for the Police or Fire Department or is otherwise applicable outside of any competitive process.
8. Reduced in Rank. For purposes of these Rules, this term, as it appears in the Civil Service law, is to be used as defined in the City's current Employee Handbook as "demotion." Demotion is movement from one classification to another classification in a lower pay grade for disciplinary reasons.
9. Suspended. For purposes of these Rules, this term, as it appears in the Civil Service law, is to be defined as paid or unpaid time away from normal work duties due to disciplinary action.
10. Transfer against their will. For purposes of these Rules, this term means a reassignment of a Member such that the transfer is in effect a demotion as the result of a disciplinary action.

### **C. CSB Officers and Duties**

1. Chair. The Chair of the CSB shall be appointed by City Council. The term of office for the Chair shall be (1) year, and the Chair shall be eligible for reappointment subject to the Civil Service Law and to the policies of the City Council.
2. Duties of Chair. The Chair may call special meetings of the CSB, and shall: (a) preside over all meetings and appeal hearings; call the meeting or appeal hearing to order; state and put to vote all questions which are regularly moved or necessarily arise in the course of the meeting; and announce the results of the vote. The Chair will ensure that meetings of the CSB are conducted in accordance with Robert's Rules of Order, as they may be amended from time to time.
3. Vice-Chair. The Board, from among its members, shall elect a vice-chair. The term of office shall be for (1) year and the vice-chair shall be eligible for reelection. The Vice Chair shall serve as Chair in the absence of the Chair and shall have the same powers and duties as the Chair during the absence of the Chair.
4. Secretary. The City Clerk or their designee has been designated by the Civil Service Law to serve as Secretary to the CSB. The Secretary shall be responsible for: (a) the electronic recording of, and the preparation of minutes of, all CSB meetings and hearings; (b) the custody of all CSB records; (c) the posting and issuing of meeting notices to members of the CSB and the public; (d) the distribution of the agenda for regular meetings and the approved minutes for regular meetings as

set forth in the Civil Service Law; (e) posting of the agenda and minutes as required in the Civil Service Law and according to North Carolina law regarding privacy and confidentiality of certain records; (f) the acceptance of any reports of investigations issued by the CSB; (g) acceptance of requests for hearing and the setting of hearings before the CSB; (h) acceptance of the decisions of the CSB; and (i) such other duties and functions as required by the Civil Service Law. The minutes prepared by the City Clerk as Secretary to the CSB shall include a notation of members present and absent, all significant facts pertaining to each meeting, all votes of members of the CSB and such other matters and information as may be required by North Carolina law as to the minutes of meetings of public bodies. The Secretary shall not be eligible to vote on any matter before the CSB.

#### **D. CSB Members**

1. The CSB shall consist of five (5) members as authorized by the Civil Service Law. One (1) member shall be appointed by City Council; one (1) member shall be elected by the employees of the Winston-Salem Police Department; one (1) member shall be elected by employees of the Winston-Salem Fire Department; one (1) member shall be chosen by the mutual agreement of the Chief of the Winston-Salem Police Department and the Chief of the Winston-Salem Fire Department; and one (1) member shall be selected by majority vote of the four other members. If the person or entity that is designated to make the appointment or selection to the CSB is unable to do so, the Winston-Salem City Council, upon recommendation of the Mayor, shall, by default, make the appointment by majority vote. Selection and election of members shall be according to the process described in the Civil Service Law and associated protocols determined by the City. Each CSB member shall serve a term of two (2) years or until their successor is appointed or elected. CSB members are eligible for reappointment or reelection for additional two (2) year terms.
2. CSB members shall meet all eligibility requirements set forth in the Civil Service Law.
3. CSB members will not be compensated by the City for their service on the CSB but may be reimbursed for expenses directly related to their service on the CSB pursuant to applicable City policy.
4. A prerequisite to continued membership on the CSB is the faithful attendance of members at CSB meetings and hearings, and the conscientious performance of any other duties required of members. Unless otherwise approved by the CSB, any member who fails to attend at least 65% of the regularly scheduled meetings, any work sessions and hearings of the CSB during any calendar year shall be removed from the CSB and their vacant position filled pursuant to the Civil Service Law. Article II, Sec. 2-67(a) of the City ordinance provides for up to three excused absences that do not count toward the 65% rule. The CSB will be afforded these same provisions pursuant to and in alignment with the ordinance as it applies to other boards and commissions. If an appeals hearing runs longer than the one meeting day, the absence of any member will only be counted once for purposes of attendance.
5. CSB members are required to abide by the Code of Ethics for City employees and a member shall

be excused from participating in any discussion, investigation and or vote on any item, report, hearing or other matter before the CSB if such vote is prohibited under the City's Code of Ethics.

#### **E. Meetings of the CSB**

1. Regular meetings. The CSB shall meet in January of each year to adopt a regular meeting schedule. Regular meetings will be held at a City building or facility designated by the City according to availability; provided, however, that meetings may be held at some other convenient time and place within the City if directed by the Secretary in advance of the meeting and with notice of all meetings and locations being publicly announced in accordance with North Carolina laws on meetings of public bodies.
2. Special meetings. Special meetings may be called as outlined in the Civil Service Law and upon submission of a request for special meeting to the CSB Secretary at least seven (7) calendar days prior to the requested special meeting.
3. Quorum requirements. For regular meetings, special meetings and work sessions, a quorum shall consist of a simple majority of those members then appointed and elected to the CSB; provided, however, that the Chair or Vice-Chair of the CSB must be in attendance. In the event a quorum exists for a meeting, but a CSB member is then excused from voting, the quorum shall not be destroyed but in no event shall fewer than three (3) members of the CSB vote on any action item. For appeal hearings, a quorum shall consist of three (3) members of the CSB, to include the Chair or Vice-Chair.
4. Agendas. The deadline for receiving items to be placed on the regular agenda shall be by 5:00 p.m. at least seven (7) calendar days prior to the CSB meeting. Each agenda shall include a section for "other business" as required by the Civil Service Law.
5. Notice of meetings, work sessions and hearings. Notice of all CSB meetings and work sessions of, and all hearings to be held before, the CSB will be provided by the Secretary pursuant to North Carolina laws on the meetings of public bodies. All notices shall include the agenda for the meeting, session or hearing.
6. Cancellation of meeting. Whenever there is no business for the CSB for a regular meeting or if a quorum will not be or is not present for any meeting, session or hearing, the Secretary will cancel the meeting, session or hearing in accordance with North Carolina laws on meetings of public bodies. The Secretary shall also post a notice of the cancellation on the door of the location at which the meeting, session or hearing was scheduled to be held.
7. The Chair shall be responsible for ensuring that all requirements and/or relevant provisions of the Civil Service Law as to meetings of the CSB are followed.
8. All Board Meetings, other than Appeal Hearings, are public meetings and shall comply with the Open Meetings Law as set forth in Article 33C of Chapter 143 of the North Carolina General

Statutes, as amended.

## **F. Appeal Hearings**

1. The CSB shall only hear appeals pursuant to the Civil Service Law; to wit, appeals of a Member who has been discharged, suspended, reduced in rank, transferred against their will or denied any promotion or raise in pay to which they would be entitled. The CSB shall only hear those matters that were duly submitted in accordance with the Ordinance and after the City Council's adoption of the CSB Rules of Procedure.
  - a. Before the CSB may hear an appeal, the Member must have followed the City's established grievance procedure to the point of filing their grievance at the City Manager's level.
  - b. Before the CSB may hear an appeal as to a failure to be promoted, the City Manager must have completed the formal procedure for filling the vacancy and named a person to fill the vacant position.
2. Request for hearing. If, at the conclusion of a grievance pursued in accordance with applicable City policies, a Member is not satisfied with the final decision of the City Manager as to the appeal, the Member may file a request for an appeal hearing with the Secretary to the CSB. Such request must be filed with the CSB Secretary within ten (10) days of receipt of the decision of the City Manager; provided, however, that if the City's appeal procedures have not been concluded within thirty (30) days of the grievance hearing held before the City Manager, a hearing before the CSB may be requested in writing no more than ten (10) days after the expiration of the 30-day period. The CSB shall not act on any appeal not properly before the CSB.

An employee's failure to timely exhaust any administrative remedy available under City ordinance or policy deprives the Board of jurisdiction. The burden of proving the Board has jurisdiction over a complaint of employment action belongs to the employee.

Requests for an appeal hearing must be in writing and must include the following information: (i) the Member's current mailing address and telephone number; (ii) position held by the Member; (iii) the number of years the Member has been continuously employed by the City; (iv) the name of the department against which the appeal is being requested; (v) the nature of the appeal (for example, discrimination in promotion, dismissal without justifiable cause, etc.); (vi) a concise statement of the facts necessary to an understanding of the situation upon which the appeal is based; and (vii) a statement of the relief requested.

Requests for an appeal hearing must be submitted to the Secretary of the CSB either by hand delivery to 101 North Main Street, Winston-Salem, NC 27101 or by mail to Post Office Box 2511, Winston-Salem, NC 27101. A copy of the request for appeal must be submitted to the City's Human Resources Department either by hand delivery to the Bryce A. Stuart Municipal Building, 100 East First Street, Winston-Salem, NC 27101 or by mail to Post Office Box 2511, Winston-Salem, NC 27102. See Section 10 below regarding the requirement that any request for issuance of a subpoena in connection with an appeal must be filed along with the request for appeal in order to be considered.

3. Scheduling of appeal hearings. Appeal hearings before the CSB shall be scheduled in accordance with the Civil Service Law. Upon receiving a request for hearing which meets the requirements of the Civil Service Law, the CSB Secretary shall schedule the hearing before the CSB for a date not less than five (5) days nor more than fifteen (15) calendar days from receipt of the request. Upon notification of a scheduled appeal hearing, either party may request that the hearing be held at a later date. The CSB may extend the time for taking action for cause or by agreement of the parties; provided, however, that the CSB may not extend the time for filing the initial request for hearing. The CSB Secretary is responsible for notifying all parties of the date, time and location of the hearing.
4. Failure of party to appear at hearing. If a party properly served with notice fails to appear at an appeal hearing, the Board may: (i) order a continuance for good cause shown if one has been requested by the party failing to appear or (ii) proceed with the hearing without the party failing to appear present.
5. Due to the personnel nature of the hearings and according to North Carolina General Statute (NCGS) 160A-168, all appeal hearings will be a closed hearing and in a location that affords the participants privacy, unless otherwise the aggrieved Member requests a public hearing, and such a public hearing would not violate the personnel privacy of other employees or witnesses, as determined by the City.
6. Standard of Review. When considering an appeal, the CSB shall consider whether the action complained of was justified. The burden of proving the justification of the action or omission complained of shall be on the City, and the greater weight of the evidence is required to meet the City's burden. The Member filing the appeal shall be entitled to inspect and copy any records upon which the City intends to rely upon at the hearing if a request for such inspection and/or copying is made, in writing, at least three (3) business days prior to the day set for the hearing. In the event that either party intends or attempts to introduce new material evidence in support of its position at an appeal hearing, upon request by the Member or the City, the CSB shall stop the hearing and refer the parties back to the City Manager or their designee for consideration of such new material evidence. The City Manager or their designee shall consider any newly presented evidence and render a decision on whether to reverse or uphold the previous decision within three (3) business days of submission of the evidence to the City Manager or their designee.
7. Rules of Evidence. The CSB is not required to abide by the strict rules of evidence applicable in judicial proceedings; provided, however, that the CSB shall adhere to general rules of evidence in order to protect and preserve the integrity of the hearing process, which is quasi-judicial in nature. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.
8. Representation of parties and CSB. Any Member requesting an appeal hearing before the CSB shall be entitled to be represented by their attorney. In order to avoid the appearance of any possible conflict of interest, the Office of the City Attorney shall serve as legal advisor to or attorney for the Board, or both, only for those matters or proceedings when specifically requested to do so in a writing that has been signed by no fewer than four members of the Board. If a majority

of the CSB votes at an official meeting to designate independent legal counsel of its choice, then the CSB members may select an attorney from an established roster of attorneys whose qualifications and fees have been approved by the City Attorney. The fees for representation of such independent counsel shall be paid by the City; provided, however, that payment of independent counsel for purposes other than representation at appeal hearings shall be limited to twenty (20) hours of representation.

9. Order of presentation. Opening statements by the parties are allowed but not required. As the party with the burden of proof, the City will present its case first, followed by the Member's presentation of their case. The City shall be allowed to rebut evidence presented by the Member. Closing statements after the presentation of witnesses and evidence are allowed but not required. The City will have the option of presenting its closing argument after the closing argument of the Member.

10. Subpoena powers.

- a. Subpoena power of CSB - In connection with appeal hearings only, the CSB is authorized to issue subpoenas for the attendance of witnesses or the production of documents. The issuance and service of any such subpoenas shall be in compliance with applicable North Carolina laws and Rules of Civil Procedure.
- b. Subpoena Power of Members – Member requests for issuance of subpoenas for the attendance of witnesses or the production of documents must be made along with the filing of a request for appeal. Subpoenas will be issued when a written request for such is made by a party to an appeal and when such request is approved by the Chair.
- c. All requests for issuance of subpoenas must include the following information: (i) the requesting party's name and current mailing address; (ii) the name of the appeal; (iii) if appearance of a witness is sought, the name and address of the witness; (iv) if production of documents is being sought, specific information as to such documents (content, title, etc.) and the name and address of the person in possession of such documents); (v) a detailed explanation of why the witness or document sought is needed for the hearing, including statements as to the relevance and significance of the witness or document to the case and as to the effect the failure to issue the subpoena would have on the requesting party's case.
- d. The Chair or the Chair's Board member designee shall either approve or disapprove of the request for subpoenas within 5 days of the receipt of the request for appeal and request for subpoenas. If approved, the Chair shall issue subpoenas in duplicate and shall include in each subpoena the following information: (i) the name of the case; (ii) the name and address of the person to appear as a witness or to appear and bring documents; (iii) the date, hour and location of the hearing at which the person is to appear; (iv) if documents are being sought, a specific and detailed description of the books, papers, records or other items the person is directed to bring to the hearing; (v) the name of the party who requested the subpoena; (vi) the date of issuance of the subpoena; (vii) the signature, printed name, title and address of the Chair of the CSB who is issuing the subpoena; and (viii) a return of

service to be completed by the person serving the subpoena, which return shall state the identity of the person making service, the date on which service was made, the person on whom service was made, the location and manner of making service, and the signature of the person making service. Upon issuing a subpoena, the Chair shall ensure that a copy of the subpoena is provided to the other party.

- e. Subpoenas will be served by a private process server selected by the CSB. Once served, a copy of a subpoena will be returned to the Chair of the CSB.
  - f. Objections to subpoenas may be made as allowed under the North Carolina Rules of Civil Procedure; provided, however that objections must be submitted to the CSB within 5 days of receipt of the subpoena or no later than the day preceding the hearing, whichever is sooner. The CSB will take up the matter of objections to subpoenas as its first matter of business in an appeal hearing.
11. Documents. Should the Member or the City wish to submit documentation to the CSB for review and consideration at an appeal hearing, such party must: (a) submit five (5) copies of such documentation to the City Clerk's Office to be distributed to all parties, no later than five (5) days prior to the date of the hearing; (b) serve the attorney representing the other party, any independent counsel representing the CSB, and the Clerk, for filing as part of the official record of the matter, with a copy of such documentation no later than five (5) days prior to the date of the hearing.
12. Witnesses. Parties are responsible for arranging for appearance and testimony by witnesses on their behalf.
- a. Witness Testimony. The testimony of all witnesses shall be taken under oath or affirmation administered by the Secretary to the CSB. All witness testimony shall be recorded. It is the responsibility of the Chair, as he/she deems it appropriate, to sequester witnesses and/or to direct a witness to refrain from discussing their testimony with any other witness or any other person not having an official interest in the appeal. Each party shall have the right to cross-examine witnesses of the other party, with the Chair having the responsibility of ruling on any objections by representatives of the parties. The CSB shall not call witnesses or gather evidence on behalf of either party to an appeal. The CSB may ask questions of witnesses before it as deemed necessary for an understanding of the witness' testimony.
  - b. City employee witnesses.
    - i. Notification. In the event that a party to an appeal hearing wishes for a City employee to appear as a witness in the hearing, that party must notify the Human Resources Department, in writing, of such request no later than seven (7) days prior to the date of the hearing. The City's Human Resources Department shall provide the City employee with notice of such request.
    - ii. Excusal from Job Duties. In the event that City employees are requested and agree

to testify at a hearing, or are subpoenaed to testify at a hearing, they shall be excused from their regular job duties in order to appear at the hearing. City employees providing firsthand testimony as to the facts and circumstances surrounding the appeal will be paid for the time they spend in attendance at the appeal hearing. City employees providing character witness or other testimony not amounting to firsthand knowledge of the facts and circumstances of the appeal are not eligible for payment for their time spent in attendance at the appeal hearing, and it is the responsibility of the grieving party to notify any such City employee witness that they will not be compensated for any time spent attending and/or testifying. In the event of a question as to the nature of a City employee's testimony for purposes of payment, the Chair of the CSB is authorized to determine, at the conclusion of the City employee's testimony and in the Chair's sole discretion, the nature of the testimony. The Chair will place their decision on this issue into the record of the hearing and the Chair's determination is binding on the City employee in question.

### 13. Conflicts of Interest

- a. **Criteria for Excusal of Board Members from Appeal Hearing.** A CSB member shall be excused from attending an appeal hearing by a majority vote of the remaining members if: (a) the member was employed within the preceding seven (7) years in the City department from which the appeal originated; and/or (b) the member has an immediate family member (as defined in the City's personnel policies) currently employed in the City department from which the appeal originated. Any CSB member with a potential conflict of interest as described in this section is required to make such potential conflict of interest known to the Chair immediately upon notice of the hearing.
- b. **Process for Excusal of Board Member from Appeal Hearing.** A CSB member who has been made aware, outside of an appeal hearing, of information related to the subject matter of the appeal, must make such information known to the CSB at the beginning of the appeal hearing. The Chair shall question such member as to whether the receipt of this information has created a bias in the other CSB member such that this member would be more inclined to believe one party to the hearing over the other. In the event the Chair determines that such potential for bias exists, the Chair shall disclose their concerns to the Board and the Board may then vote to excuse the other member from participating in the hearing with a majority vote determining whether or not the CSB member can no longer be objective in considering the matter. A majority of the CSB is required to excuse the member from any vote.
- c. **Prohibition Against Board Member Ex-Parte Communications.** No CSB member shall, in any manner, discuss any appeal with any parties to the appeal, fellow CSB members, City staff, or any other individual prior to the CSB's deliberations on such appeal.
- d. **Board Member Impartiality.** No CSB member shall participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

- i. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
- ii. Undisclosed *ex parte* communications;
- iii. A close familial, business, or other associational relationship with an affected person; or,
- iv. A direct, substantial, and readily identifiable financial interest in the outcome of the matter.

If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objections.

14. Final Determinations. Upon conclusion of the appeal hearing, the Chair shall inform all persons in attendance as to whether the CSB intends to render a decision on the same day or at another specific date and time. The CSB reserves the right to continue deliberations to achieve a conclusion. All voting by the CSB must occur in open session.

#### **G. Voting**

1. Regular and Special meetings; work sessions. All members, including the Chair, shall vote on all issues unless the member has been excused from voting by a majority of the CSB members present due to a conflict of interest. In the event of a tie vote on a meeting agenda item, the motion shall be defeated and another motion on the same matter would be appropriate.
2. Hearings. All members, including the Chair, shall vote on all issues unless the member has been excused from voting by a majority of the CSB members present due to a conflict of interest. No CSB member shall vote as to an appeal hearing unless the member has been present during the entire hearing.
3. Communication regarding hearing matters. CSB members shall refrain from discussing appeal hearing matters with other CSB members outside of hearings and shall refrain from discussing appeal matters with members of the public. All such discussions shall be held in closed session of the CSB unless otherwise requested by the Member. In the event it is alleged that a communication outlined in this section was inappropriately discussed, and with a majority vote that the CSB member engaging in that communication can no longer be objective in considering the matter, a majority of the CSB shall vote to excuse the communicating member from any vote.

#### **H. Decisions of CSB as to appeal hearings**

The CSB shall render a decision on appeal hearings within ten (10) days after the conclusion of the hearing. Such decisions must be in writing, must contain findings of fact and conclusions, must be based on competent, material, and substantial evidence in the record, and must be provided to the CSB

Secretary, the Member who requested the hearing. If the Board determines the action or omission complained of is not justified, the Board shall order to rescind whatever action the Board has found to be unjustified and may order the city to take such steps as are necessary for a just conclusion of the matter before the Board. The CSB may award salary adjustment and backpay but may not award any other damages. The CSB may not award punitive damages to any Member or take any action against any employee rendering previous disciplinary action upon which the appeal hearing was based.

#### **I. Appeals of Appeal Hearing Decisions**

Within ten (10) days of receipt of a decision of the CSB on an appeal, either party may appeal to the Superior Court Division of the General Court of Justice for Forsyth County for a trial de novo. The appeal will be made by filing a petition for trial with the Clerk of Court for Forsyth County and the petition shall include facts supporting the relief requested and any request for a trial by jury.

#### **J. Amendments**

Board approved amendments to these Rules of Procedure shall be presented to Council for adoption. These Rules of Procedure may be amended at any time by an affirmative vote of a simple majority of the CSB, provided that such amendment(s) be first discussed, or presented in writing, at a regular or special meeting at which the vote is taken. A proposed amendment may be presented at a regular or special meeting without a vote being taken as to the proposal at that meeting; provided, however, that proposed amendment must be again presented in writing at the meeting during which the vote is to be taken.