

**CITY OF CHARLOTTE CIVIL SERVICE BOARD
RULES OF PROCEDURE**

- AUTHORITY AND PURPOSE OF THESE RULES -

The Charlotte City Charter, Part I, Chapter 4, Article III, Section 4.61 ("Charter") establishes the Civil Service Board ("Board") consisting of nine (9) members. A copy of the Charter is attached. Pursuant to the Charter, the Board is vested with the authority to establish and set requirements for applicants for hire in the Police and Fire Departments, approve applicants for hire in each Department, and approve or disapprove promotions made by the Chiefs of each Department. The Board is also empowered to hold hearings:

- (a) upon an appeal by an officer or employee of the Police or Fire Department from a suspension without pay, and
- (b) upon a citation by the Chief of the Fire or Police Departments, or the officer in charge in the absence of the Chief, relieving an employee or officer from duty and recommending dismissal from the Department.

These Rules of Procedure are promulgated pursuant to the inherent authority of the Civil Service Board to schedule its meetings and determine its manner of proceeding, subject to the authority of the Charter. Any conflict between these Rules of Procedure and the Charter shall be resolved in favor of the Charter.

-RULES-

1. Selection of Chair and Vice-Chair of the Board.

The Board shall elect, prior to July 30th each year, a Chair and Vice-Chair to serve a one-year term. In the event a Chair or Vice Chair cannot finish a term for any reason, the Board will elect one of its members to finish out the unexpired term. Individuals may be elected to the offices as long as they are eligible to serve on the Board. Individuals serving as Chair must have been a member of the Board for at least a year prior to beginning any term as Chair. The Chair shall preside at all meetings, have the right to vote, and shall decide upon all points of order and procedure, subject to these Rules. The Vice Chair shall serve and perform the duties of the Chair in the absence of the Chair.

2. Documentary and Other Communications with the Board.

Any documents required or allowed to be filed with the Board shall be filed with the Board's Clerk at 600 East Fourth Street, Charlotte, North Carolina. Documents due to the Board may be filed electronically. Documents sent electronically and before 5 p.m. will be deemed filed on that business day. Documents received after 5 p.m. will be deemed received on the following business day. All notices, documents, or papers served by either the Board or a party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel. All other communications with the Board shall be made to the Board's Clerk.

Civil Service Board Rules of Procedure
Adopted: 12/7/2021

3. Meetings.

(a) Regular Meetings

Meetings of the Board shall be held monthly or as the conduct of the official business of the Board requires. Meetings shall be held on the first Tuesday of each month at 4:00pm. The date, time, and place of the Board's regular meetings shall be filed with the City Clerk and posted on the City's website.

(b) Special Meetings

Special meetings of the Board may be called by the Chairperson or at the request of a majority of members. Notice of the time and place of special meetings shall be given at least forty-eight (48) hours prior to the meeting by the Board Clerk or the Chairperson to each member of the Board.

(c) Changes to Meeting Schedule and Cancellation of Meetings

The Board may revise its regular meeting schedule to change the time or place of a particular meeting or all meetings within a specified period. The Board shall ensure that the revised regular meeting schedule is filed with the City Clerk at least seven (7) calendar days before the first meeting held pursuant to the revised schedule. The Board shall also have the revised schedule posted on the City's website. Whenever there are no requests for approval of applicants or promotions, or other business for the Board, or whenever a quorum will not be available, the Chairperson may dispense with a regular meeting by giving written or oral notice to all members prior to the time set for the meeting.

(d) Quorum

Five members of the Board shall constitute a quorum in order to conduct business at regular or special meetings.

(e) Hearings

Hearings to consider a citation for termination require a panel of five Board members. Hearings to consider an appeal of a suspension require three Board members. Hearings to consider a demotion shall be conducted by a panel of five Board members.

Hearings shall be held on the fourth Wednesday of each month. Depending on the complexity of the case, and in the Board's discretion, the Board may schedule an additional day to conduct a particular hearing. As necessary, the Board may schedule hearings on dates other than the fourth Wednesday.

(f) Motions and Voting

An affirmative vote equal to a majority vote of members present shall be required to take any action. Vacant positions on the Board and members who are disqualified from voting for one or more of the reasons listed in Rule 13 below shall not be considered "members of the Board" for calculation of the requisite majority.

(g) Meeting Minutes

The Board shall keep full and accurate minutes of its meetings, including any closed sessions. To be "full and accurate," the minutes must record all actions taken by the Board, as well as the Board's compliance with any applicable procedural requirements. The minutes shall include the final decision of the Board upon each motion, every resolution acted upon by the Board, including the number of votes cast for and against each motion.

4. Appeals.

A Notice of Appeal is sufficient in form if it states in writing that the officer or employee appeals and describes the action appealed sufficiently for its identification. In cases where appealable adverse action is taken against an officer or employee and the penalty imposed is suspended by the Department,

Civil Service Board Rules of Procedure

Adopted: 12/7/2021

the officer or employee may appeal within the time allowed from such adverse action. If the suspended penalty is later placed into effect, an appeal may then be taken within the time allowed from the action placing the penalty into effect, but the appealability of the initial adverse action is not thereby revived. Non-appealable adverse action may not be challenged on later appeal even if such later appeal is from punishment based on the earlier, non-appealable determination, since grievance procedures are available for such earlier determination. The appealing officer's or employee's failure to appear at the scheduled appeal hearing without good cause shall constitute an abandonment of the appeal, and the appeal may be dismissed by the Board.

5. Scheduling of Hearings.

The Board strictly enforces the requirement of at least seven days' prior notice of requests for change of hearing date set forth in Section 4.61 (j) of the Charter. Exceptions are granted only for the most compelling reasons. Lack of time for preparation, either by the officer or employee or counsel, is not a compelling reason. Officers or employees desiring to appear before the Board with counsel are advised to retain counsel promptly upon citation or appeal. Hearing date postponements may be granted only by the Chair, or the Vice-Chair in the absence of the Chair; however, the Board's goal is to resolve hearings within six months from the date the appeal or citation is received. Absent exigent circumstances, a postponement of hearing will not be granted except for a crucial cause that could not have been reasonably foreseen. Any delay occasioned by the officer shall not be included in the computation of any back pay to be awarded, absent compelling reason to do otherwise.

6. Subpoenas and Character Witnesses.

Rule 45 of the North Carolina Rules of Civil Procedure will generally govern the issuance and service of subpoenas for Board hearings. Consistent with that Rule, either the Board or an attorney representing a party before the Board may issue subpoenas for the attendance of witnesses. Any request for Board-issued subpoenas for witnesses must be submitted to the Board's Clerk at least 10 full working days prior to the commencement of the hearing at which such witnesses are to appear. Each party is responsible for serving its own subpoenas, and may do so in any manner allowed by Rule 45. A party or the person to whom the subpoena is directed may file a written objection to the subpoena with the Chairperson. Objections must be filed within 3 business days of the person's receipt of the subpoena or one day before the date on which the person objecting is commanded to appear, whichever is sooner, and must be served upon the party on whose behalf the subpoena was issued. The Board hearing panel may: (1) Quash or modify the subpoena if it is unreasonable, or upon finding of other grounds in Rule 45(c), or (2) Condition denial of a motion to quash or modify upon just and reasonable conditions. The decision shall be made by a majority vote of the Board hearing panel. Not more than 5 character witnesses shall be heard for the officer or employee. The Board will accept any number of character affidavits.

7. Statements of the Parties.

No later than fourteen (14) calendar days prior to the scheduled start of the hearing, the opposing parties shall submit to the Clerk of the Board, and the member of the City Attorney's Office designated to represent the Civil Service Board, a typed statement of the case representing their contentions

Civil Service Board Rules of Procedure

Adopted: 12/7/2021

concerning the case, including defenses, if any. The statement shall provide a nonargumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues to be considered by the Board. This statement shall consist of no more than three (3) typewritten single-spaced pages on 8 ½ X 11 inch, plain white paper. Documentary evidence or exhibits shall not be included within, or attached to, the statement. This statement of the case is not to be served on the opposing party; rather it will be distributed to the parties by the Clerk of the Board, within 48 hours of its receipt by the Clerk of the Board. The statement will be distributed to those Civil Service Board members who will serve on the hearing panel for their review prior to the start of the hearing, and no later than three business days prior to the start of the hearing. If a party chooses not to provide this statement, the statement of the opposing party shall be provided to members of the hearing panel without comment. If the statement is not submitted before the fourteen-day deadline prescribed above, the written statement shall not be provided to the Civil Service Board, nor may it be used as a submission to the Board at the hearing. The statement shall not be considered a substitute for the citation of an officer or firefighter to the Board required by Section 4.61 (h) of the City Charter.

8. Pre-Hearing Conference, Marking of Exhibits, and Exchange of Witness Lists.

(a) Pre-Hearing Conference and Marking of Exhibits: No later than 7 calendar days before the scheduled start of the hearing, the opposing parties (through counsel if represented) shall meet and discuss the possibility of entering into stipulations of fact or law governing the hearing, and shall mark, number, and exchange copies of all exhibits expected to be used at the hearing and shall indicate whether their authenticity is questioned. Stipulations shall be presented in writing at the beginning of the hearing for inclusion in the Record. The parties should come to the hearing prepared to provide copies of exhibits to the witness, the Clerk, the Board's Attorney, and each member of the hearing panel. Parties should include an Exhibit list with their exhibits.

(b) Witness Lists: No later than 7 calendar days before the scheduled start of the hearing, the parties (through counsel if represented) are required to exchange witness lists. The parties are required to ensure that the opposing party receives the witness list no later than 7 calendar days prior to the hearing, meaning that the list, if mailed, should be mailed three days in advance of the deadline. Otherwise, hand delivery, facsimile transmission or electronic mail is permitted as a method of serving the list, so long as the party utilizing any of these methods obtains either: a signed receipt; electronic delivery receipt showing delivery; or a facsimile confirmation showing the date and time of transmission. Failure to provide the opposing party with a witness list in accordance with this rule, shall mean that the party failing to exchange the witness list will not be allowed to call any witnesses to testify at the hearing, absent a showing of substantial need, undue hardship, and extreme prejudice. Except for purposes of rebuttal, parties are not permitted to call a witness whose name does not appear on the witness list.

Any expert witnesses are required to be disclosed to the opposing party as soon as practicable, but no later than fourteen days before the scheduled start of the hearing.

9. Conduct of Hearings.

(a) Opening the Hearing. The Chair of the hearing (hereafter "Chair" in this rule) shall open the hearing and introduce the Board, its Clerk, its Counsel, and the Reporter. The Chair will then inquire

Civil Service Board Rules of Procedure

Adopted: 12/7/2021

whether the hearing is open or closed and make arrangements accordingly. The Chair will then inquire of all parties whether they have read and understood these Rules and the attached Charter provisions. If so, explanation of these Rules and the attached Charter provision will be waived and a copy submitted to the Reporter for inclusion in the Record. If not, the Chair and/or Board Attorney shall offer an explanation of these Rules and the attached City Charter provisions to the parties. The Chair will then inquire whether there are any stipulations. The Chair will then present the charge for inclusion in the Record and read the factual allegations of the charge to the officer or employee or counsel, and inquire particularly which facts of the charge are admitted, if any. The parties may stipulate that the charge need not be read into the record, and opt for its inclusion into the record without reading.

(b) Function of the Board. The Board is an administrative agency of the City of Charlotte, charged to carry out personnel functions defined by the Charter. It is not a Court, but it does have certain powers traditionally associated with courts, such as the powers to subpoena witnesses, administer oaths, and compel production of evidence. The Board is empowered to resolve disputed questions of fact and apply rules and regulations to its findings of fact, much in the manner of a Court.

(c) Presentation of Evidence. The Chair functions as the presiding authority on all matters of conduct, procedure, and admissibility of evidence. The rules of evidence applied in the North Carolina General Court of Justice are generally applied by the Board. Persons and the Department appearing before the Board are allowed to be represented by counsel, to call witnesses, to present documentary or real evidence, to cross-examine witnesses against them, and to be present during all proceedings except the Board's deliberations. The Board may call the appealing or cited officer as a witness. Technical objections are discouraged. The Rules of Evidence will be applied consistent with the personnel function of the Board. The Chair rules on all objections to evidence, and, if appropriate, raises objections and controls the presentation of evidence on the Chair's own motion, including setting reasonable and equitable time limits on the presentation of evidence. Nevertheless, each Board member is of equal right and power to each other Board member in the conduct of hearings, and the Chair exercises power subject to the consent of the Board. Approval of the rulings and other actions of the Chair is implied in the absence of objection by any Board member.

All hearings will be conducted in an open or closed session as the officer or employee has elected. However, the officer's or employee's entitlement to an open hearing remains subject to state confidentiality laws.

(d) Order of Examination of Witnesses. All witnesses before the Board shall be sworn or shall affirm. The Department has the burden of proof and offers its case first. The Department shall first present evidence showing the jurisdiction of the Board, unless it is stipulated. The usual order of questioning of a witness is: first direct and cross-examination are conducted by the parties, then questions are asked by Board members, then by the Board's Counsel, and then questions are asked by the Chair. Variations in this order of proceeding, and supplemental questions, are freely allowed if pertinent. The parties are encouraged to be direct and brief in their presentations, consistent with full presentation of all pertinent evidence.

(e) Opening and Closing Arguments. The parties will be allowed to make opening arguments and closing arguments before the Board retires to deliberate. The Chair may set time limits on arguments.

(f) Stages of the Hearing. The Board may decide at any time to bifurcate hearings into determinations of the charges and dispositions, or in any other manner, upon motion of a party, or upon the Board's own motion. Unless otherwise ruled, hearings will not be bifurcated, and the parties shall present all pertinent evidence before the Board retires to deliberate.

Civil Service Board Rules of Procedure

Adopted: 12/7/2021

(g) Motions Practice. Motions to dismiss and other such motions are not required. The Board assumes, unless otherwise advised by a party, that each party makes all appropriate motions for all relief then allowable to such party. To the extent practicable, motions should be submitted in writing and served on the opposing party.

(h) Deliberations. In its deliberations the Board first considers whether the evidence presented, if believed, allows relief to be granted. If so, it finds to what extent facts have been proved. If facts allowing for relief to be granted have been proved, the Board determines what relief shall be granted. The burden of proof by a preponderance of the evidence is on the Department at all stages of the hearing and the Board's deliberations. A Board member must be present during all proceedings prior to deliberations in order to participate in the Board's deliberations. A Board Member must be present during all of the Board's deliberations to be entitled to vote on the case. All decisions during deliberations shall be made by simple majority vote. In the event that no simple majority vote can be obtained on any issue presented, a rehearing of undecided matters shall be set, or the matter dismissed, in the discretion of the Board. No Board member qualified to vote on an issue presented shall abstain there from. Decisions of the Board shall be made in writing, with Findings of Fact and Conclusions of Law.

10. Transcripts of Hearings.

The Board will provide a verbatim reporter at all hearings. Any transcript of such hearing shall be the responsibility of the party desiring it, and the Board is not obligated to pay for any transcript or transcript copy unless necessary for its own purposes.

11. Appeal from Action of Board.

Appeal from any order of the Board shall be made to the Superior Court of Mecklenburg County by giving notice of appeal in writing, in the form of a petition for writ of certiorari, to the Superior Court within 10 days after the entry of the order. For purposes of an appeal to Superior Court, entry of the Board's order shall be complete when the order is signed by the Chair, filed with the Board Clerk, and served upon the appealing party. If service is by mail, three days shall be added to the time to appeal. Appeals to Superior Court shall be guided by the procedures set forth in N.C.G.S. § 160D-1402 for judicial review of quasi-judicial decisions. In addition, assignments of error must be filed with the court and served upon the Board within 30 days after the entry of the order. The appeal to the Superior Court will be upon the record of the proceedings before the Board at its hearing.

12. Notice of Rules.

The Clerk shall send a copy of these Rules of Procedure to each officer or employee who is cited to the Board or who appeals to the Board, or counsel for such party if known, promptly upon receipt of notice of appeal or citation. Failure to so send these Rules, or failure of such officer or employee or counsel to receive them, shall not relieve such officer or employee or counsel of notice of these Rules and their applicability.

13. Rules of Conduct for Members.

(a) All new and returning Board members shall take an oath of office before performing any duties of their office.

Civil Service Board Rules of Procedure

Adopted: 12/7/2021

(b) All Board members shall thoroughly familiarize themselves with the City Charter, Part I, Chapter 4, Article III, Section 4.61 and these Rules.

(c) New Board members must complete a new member orientation before participating in and voting at any hearing.

(d) The Board is subject to the November 23, 2015 Resolution of the Charlotte City Council Amending The Code of Ethics for Members of Boards, Committees and Commissions of the City of Charlotte.

(e) Faithful attendance at all Board meetings is required and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Any member who fails to meet the attendance requirements specified by City Council policy shall be automatically removed from the Board. Vacancies resulting from the removal of a member shall be filled by the same method as providing for initial appointments.

(f) City Council's Code of Ethics for Members of Boards, Committees, and Commissions requires that "Board members should be willing to bear their fair share of the body's workload. To the extent appropriate, they should be willing to put the City's interests ahead of their own." To that end, it is critical for Board members to attend and participate in hearings in order to hear citations for termination and appeals of suspensions of officers and employees subject to the Board's jurisdiction. In order to avoid the need to cancel or postpone hearings due to an insufficient number of panel members, the Board hereby adopts the following attendance policy for hearings: Board members are expected to sign-up for at least one hearing per quarter.

(g) Board members shall not disclose any confidential information received as a member of the Board. Any such breach of confidential information shall be reported to the appointing body and may then be the basis for a member's removal from the Board.

(h) Conflicts of Interest – No member of the Board shall vote on or participate in the consideration of any matter in which the member has a conflict of interest. This includes any matter in which the member has a close familial, financial, business, or other associational relationship with an affected person that may color the member's judgment, or in which the member has a personal or financial interest in the outcome of the matter, including any decision which may result in a direct or indirect benefit to the member, their relatives, or their business interest.

In applying this rule, the following procedures shall govern:

(1) A member who determines the existence of a conflict of interest shall declare the existence and nature of the conflict prior to consideration of the matter and shall refrain from any deliberation on the matter.

(2) A member who believes there may exist a conflict of interest shall declare the possible conflict and ask for a determination by the Board. A majority vote of the Board shall determine whether or not a conflict of interest exists. The member who may have the conflict of interest shall be excused from voting on the question.

(3) Any interested party or member of the Board may challenge the existence of a conflict of interest, whether disclosed or undisclosed, and shall state the reason for the challenge. The Board shall consider the challenge and shall determine by majority vote whether a conflict of interest exists. The member who allegedly has a conflict of interest shall be excused from voting on the question.

Civil Service Board Rules of Procedure
Adopted: 12/7/2021

(4) Withdrawal from participation in any matter is necessary only in those specific cases in which a conflict arises. There shall be no attempt to exclude entire categories of considerations because of the business or profession with which a member is associated.

(i) When considering a decision in a disciplinary hearing, the Board is acting in a quasi-judicial capacity. Due process requires that a quasi-judicial decision be made by unbiased decision-makers on evidence appearing in the record. To this end:

(1) No member of the Board shall discuss any case with any party prior to the hearing on that case. A Board member shall not participate in or vote on any matter in which the Board member has had undisclosed *ex parte* communications prior to the hearing on the case.

(2) No member of the Board shall form or express individual opinions on the proper judgment of any case prior to the consideration of the case at a Board hearing. A Board member shall not participate in or vote on any matter in which the Board member has a fixed opinion, which is not susceptible to change, prior to hearing the matter.

(3) If there are facts within the special knowledge of a member of the Board, they may be properly considered. However, they must be revealed at the hearing and made a part of the record so that the parties will have an opportunity to challenge them by evidence or argument and the Board may judge their competency and materiality.

14. Construction of Rules.

These Rules shall be construed to promote the just, speedy, and inexpensive determination of matters heard by the Board.

15. Amendments.

These Rules may, within the limits allowed by law, be amended at any time by an affirmative vote of a majority of members of the Board present, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

16. Former Rules of Procedure Rescinded.

The Rules of Procedure promulgated October 6, 2015 and all other rules of procedure inconsistent herewith, are hereby rescinded. The Conflict Of Interest Policy, adopted by City Council on January 24, 1983, is not repealed by these Rules of Procedure.

Done by the Civil Service Board of the City of Charlotte, North Carolina, at Charlotte, North Carolina, on this the 7th day of December, 2021, effective January 1, 2022.



Ryan McGill
Chair, Civil Service Board