

AR 04-02

AN ADMINISTRATIVE REGULATION AMENDING AR 03-04
PROCEDURES FOR CONDUCT OF DISCIPLINARY
APPEAL HEARINGS

Section 1. Purpose.

Pursuant to Section 21-7-12 and 21-7-14 of the Hobbs Municipal Code (Personnel Rules for the City of Hobbs), this Administrative Regulation sets forth procedures for disciplinary appeal hearings.

Section 2. Procedure for Suspension and Demotion Appeal Hearings.

- A. The city manager is the hearing authority in the case of an appeal of a suspension or demotion. The decision of the city manager shall be final.
- B. An employee appealing a suspension or a demotion, pursuant to 21-7-12 (a), must file a written appeal with the personnel division within ten (10) calendar days of the receipt of the written notice of suspension or demotion. The appeal shall be a signed, written statement explaining the reasons for the appeal in detail and setting forth therein the action desired.
- C. The city manager may, at his discretion, elect to hold a hearing or hear additional evidence. The city manager shall render a timely decision and reserves the right to modify the penalty imposed.
- D. In instances involving a division or department head under direct supervision of the city manager whereby the suspension or demotion has been initiated and imposed by the city manager, an outside hearing officer will be selected by the personnel director to serve as the hearing authority. The hearing officer may, at his discretion, elect to hold a hearing or hear additional evidence. The hearing officer shall render a timely decision and reserves the right to modify the penalty imposed. The decision of the outside hearing officer shall be final.

Section 3. Procedure for Dismissal Appeal Hearings.

- A. An outside hearing officer shall be appointed by the city manager in the case of an appeal of a dismissal. The decision of the hearing officer shall be final.
- B. In the case of an appeal of a dismissal involving a division or department head under direct supervision of the city manager, an outside hearing officer shall be appointed by the personnel director. The decision of the hearing officer shall be final.

- C. An employee appealing a dismissal, pursuant to 21-7-14 (a), must file a written appeal with the personnel division within ten (10) calendar days of the receipt of the written notice of dismissal. The appeal shall be a signed, written statement explaining the reasons for the appeal in detail and setting forth therein the action desired.
- D. Notice. The personnel division shall establish a time, date and location for the hearing, and shall give written notice of that information with the name of the hearing officer appointed by the city manager (or personnel director if appropriate) to the department head and the employee. The personnel division will use reasonable means to assure the employee receives written notice of the appeal hearing at least forty-eight (48) hours before the time set for the hearing. The hearing shall be set within a reasonable time after the receipt of the notice of appeal.
- E. Removal of Hearing Authority. In the case of an appeal of a dismissal, the department head or the employee may request removal of a designated hearing officer within thirty-six (36) hours after receiving notice of the appointment of the hearing officer, but prior to the hearing. The request for removal shall be in writing stating the reasons, which, in the opinion of the person requesting removal, establish an improper bias of the hearing officer. This written request shall be presented to the city manager, who shall promptly rule upon the request. If the city manager deems it appropriate, he may remove the appointed hearing officer and appoint another hearing officer. Each of the parties (the city and the employee) is entitled to only one request for removal. The hearing officer may, for good cause shown to the city manager, voluntarily remove himself prior to the hearing. Any removal, whether done voluntarily or by the city manager at the request of the party(ies), shall be accomplished so that no substantial prejudice results to either party. In the case of an appeal of a dismissal involving a division or department head under direct supervision of the city manager, the personnel director shall serve in lieu of the city manager in addressing requests for removal of hearing authority.
- F. Authority of Hearing Officer. The appointed hearing officer shall have authority to:
- a. Review all documents pertinent to the case, including the employee's personnel file;
 - b. Rule on the relevance or other admissibility of evidence;
 - c. Question the parties and their witnesses, if any;
 - d. Hear and decide motions relating to jurisdiction, discovery, production of documents and items for inspection and copying, amendment, dismissal and any other similar matter;
 - e. Reprimand or exclude from the hearing any person for improper or contemptuous conduct; and,
 - f. Take any other action consistent with this regulation, the Hobbs City Code, the laws of the State of New Mexico, and the laws of the United States.

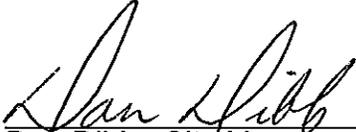
- G. Subpoenas and Witnesses. The hearing officer may issue administrative subpoenas to any city employee, department head or city officer. A city employee serving as a witness will be considered "on duty" and shall be compensated at the appropriate rate. Such employees will be released by their supervisors to attend the hearing.
- H. Conduct of Hearing. A department head causing the disciplinary action to be taken shall have the burden of proof, based upon a preponderance of the evidence. Every party to the proceedings shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be substantially prejudiced, the hearing officer shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence will not be necessary. The hearing officer may receive and consider the evidence of witnesses by affidavit, and shall give it only such weight as he deems proper after consideration of any objections made to its admission. The hearing officer shall cause a tape recording to be made of the hearing.
- I. Decision of Hearing Officer. It shall be the duty of the hearing officer to consider whether the dismissal shall be sustained based upon the context of the alleged violation or violations of the provisions of the personnel Rules. The hearing officer shall either sustain or reject the dismissal and shall enter written findings as herein provided. The hearing officer shall not, however, modify the terms and conditions of the disciplinary action taken by substituting his own remedy.
- J. Record on Appeal. In addition to the tape recording of the proceedings, the record shall include all pleadings, applications, evidence, exhibits, and other papers presented or considered, matters officially noticed, rulings upon exceptions, and findings of fact and conclusions of law proposed by any party, and any written briefs filed. No ex parte material or representation of any kind offered without notice shall be received or considered by the hearing officer or become part of the record. The appeal shall be governed by sections 21-7-12, 21-7-14 and 21-7-15 of the Hobbs City Code.
- K. Findings. The decision of the hearing officer shall include a statement of the findings and conclusions. The statement of the findings and conclusions shall be submitted to the employee, city manager, personnel director and department head within twenty-one (21) calendar days of the conclusion of the hearing.

Section 4. Parties and Representation.

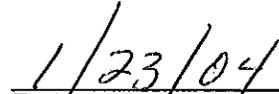
The parties are the City of Hobbs and the employee. One person, such as legal counsel or other representative, may represent a party. The employee will notify the personnel division within thirty-six (36) hours prior to the time of the hearing if they plan to have legal counsel present.

Section 5. Closed Meeting.

The appeal of a suspension, demotion or dismissal is a personnel action. Internal personnel actions are a matter between the employee and the city and are not public hearings. Those permitted to attend are the representatives of the city and the employee and his/her representative.



Dan Dible, City Manager



Date