

Policy 3-1-2 Merit System Rules, Merit Board Procedures, Merit Board Appeal and Merit Board Grievance Hearings

COUNCIL POLICY 3-1-2

DISTRIBUTION: Mayor and City Council
All Departments
All Merit System Employees

SUBJECT: Merit System Rules, Merit Board Procedures, Merit Board Appeal and Merit Board Grievance Hearings

PURPOSE: The purpose of these Merit System Procedures (procedures) is to ensure that the City of Muskogee's Merit System, Merit System Board (the Board) and City employment activities exist and operate within a framework of equity, efficiency and effectiveness. These procedures and Merit System processes are intended to help provide uniform classification, employment and qualifying/selection processes for all positions, employees and City departments, other than Fire sworn and unclassified employees, with all the benefits such efforts can ensure. Additionally, these procedures set forth procedures to hear employee suggestions, concerns and/or grievances with regard to the various Merit System procedures. The fundamental objectives to be achieved by these rules are declared:

- A. To comply with the City Charter goals set forth within Article IV, Sections 4.02 through 4.11 of maintaining a merit employment process and a well qualified City employee group that is not unfairly impacted by political influence or changes involving the officials holding elected or appointed City offices.
- B. To ensure the City Charter and City Council goals of maintaining a merit employment process so that employees are not unfairly impacted based on protected member status or diversity considerations as well as continuing to ensure equal employment opportunities; including adoption of the rules and regulations of Merit System employment and related employment examinations.
- C. To promote fairness, consistency, efficiency and economy in the Board's administrative processes and ensure enforcement of the rules for the administration of the Merit System as adopted by the City Council or as may otherwise be necessary to carry out Charter intent.
- D. To require that in the review of disciplinary appeals, employees are given a fair and impartial hearing that results in a determination of whether cause for disciplinary action exists and a review of the appropriate level of discipline, given the nature of the work rule or violations, in cases where just cause is determined to exist.

- E. To provide a fair and appropriate review of grievances to ensure that qualification examinations, methods of employment and classification system practices are proper for the employees of the City of Muskogee.

PROCEDURES:

I. Merit System Classified Positions and Unclassified Positions

- A. All employees and positions of the City shall be considered to be within the classified service except for sworn Fire Department employees (see Charter Sections 4:12 through 4:19) and those individuals listed as within the unclassified service within this section. All regular full time employees who are initially hired and have less than one year of service shall be considered provisional and outside of the classified service until completion of a one (1) year's probationary period. After that time, if the employee is retained at the discretion of the department head and with approval of the City Manager, the employee shall be considered a member of the classified service of the City of Muskogee.
- B. The unclassified service shall be comprised of the following offices and positions: (Charter Section 4:02)
 - 1. Officials elected by the people
 - 2. Members of Boards and Commissions
 - 3. Election officials appointed pursuant to the City Charter
 - 4. Sworn members of the Muskogee Fire Department
 - 5. Employees within positions that are determined by the City Manager to be part-time, temporary, seasonal and/or provisional
 - 6. All City Officials elected by the City Council
- C. Any person serving within the unclassified service shall not have rights under the Merit System nor any appeal or grievance processes set forth in these procedures and provisions.

II. Merit System General Administration

- A. The City Manager shall be responsible to administer the Merit System subject to Merit System rules and regulations and/or the rules and regulations approved by the City Council (Charter Section 4:03). The City Manager shall also delegate and assign such responsibilities to other personnel and department heads as he sees fit, including an Administrative Officer (Personnel Director/Human Resource Director or designee) to be custodian of personnel records. Included in this

maintenance of personnel records shall be maintenance of the classifications and the number of jobs in each department and classification descriptions indicating job qualifications and requirements.

- B. The Administrative Officer shall also present a set of rules and regulations, job classifications (titles) and descriptions, hours of work, sick and annual leave benefits, transfers and promotions and work rules that, if violated, may be cause for termination or suspension. These rules and regulations shall be recommended to and approved by the City Council as terms of employment for City personnel. However, it is not intended by this provision that collective bargaining processes required by State statute provisions arising from those processes be hindered or blocked by these provisions.

III. Merit Board Organization, Legal Authority and Support

- A. The Merit System Board shall be responsible for the enforcement of the rules and regulations for the administration of the Merit System as adopted by the City Council and such other matters as may be necessary and advisable in carrying out the intention and purpose of the Merit System (Charter Section 4:04).
- B. Appointments to the Merit Board (Charter Section 4:05) shall be appointed as follows:
 - 1. Employee's appointed member shall be selected by the City employees covered by the Merit System. The city employees shall also appoint an alternate to serve if the designated member is unable to be present at a hearing of the Board due to disqualification or illness.
 - 2. One member will be appointed by the Mayor with approval of Council. The Mayor shall also appoint with the approval of Council an alternate to serve if the designated member is unable to be present at a hearing of the Board due to disqualification or illness.
 - 3. Third member will be selected by the other two members of the Board. The two members of the Board shall also appoint with the approval of Council an alternate to serve if the designated member is unable to be present at a hearing of the Board due to disqualification or illness
- C. The Merit Board members and alternates appointed as set out above shall serve two (2) year terms and members may be re-appointed. New members shall be confirmed according to the provisions set forth therein. The Merit Board will normally hold at least one meeting every quarter. The yearly schedule shall be submitted to the City Clerk no later than December 15th of each year as required by the Oklahoma Open Meeting Act, 25 O. S. § 311. Normally, regular meetings shall occur on the second Monday of each calendar quarter at 9:30 a.m. in the City Council Chambers and shall be announced via an open meeting notice

through the City Clerk who shall act as Board Secretary. If there is no business brought by any group or individual at least two weeks prior to the scheduled meeting, the members shall be notified of cancellation by the Board Secretary and notice of the cancellation shall be made pursuant to the Oklahoma Open Meeting Act. Special meetings shall be requested and set up through the City Clerk/Board Secretary to accommodate issues that need Board attention/action that arise throughout the year.

- D. A Merit Board member can disqualify himself or herself from an appeal hearing in which they believe there may be any conflict of interest or problem with being able to hear the case in a fair and impartial manner. Notification by the Board Member of his or her disqualification shall be made by the Board Member to the City Clerk/Board Secretary as soon as it is determined by the Board Member prior to the scheduled meeting
- E. The Merit Board members shall annually elect a Chairperson to lead the meetings of the Board.
- F. The City Manager is charged with general administration of the Merit System. The Human Resources Director, acting as the appointee of the City Manager for administrative and technical direction of the City's personnel programs as well as the City Clerk/Board Secretary (or designees) shall both normally act as administrative support to the Merit Board as requested, necessary and appropriate. The Human Resources Director or designee shall normally present the City's case in hearings as determined appropriate by the City Manager. The Board Secretary shall receive all notices, requests for hearings, complaints and other official documents which are served, filed and/or provided to the Board as appropriate.
- G. The legal authority regarding the operation and responsibilities of the Merit Board is established Article IV, Sections 4:04 and 4:05 of the Charter of the City of Muskogee. Merit Board members shall exercise their authorities as appropriate for citizen stewards of the City of Muskogee Merit System and the related appeal processes as set forth within the legal framework of the Charter and these established procedures. All meetings shall be open to the public as provided by the laws of the State of Oklahoma, except that the Board may enter into executive session for consideration of the evidence presented Oklahoma Open Meeting Act, 25 O. S. § 307 B1. All actions of the Board shall be taken in open session.
- H. The City Attorney or his designee shall be assigned to assist the Merit Board on the request of the Board and shall act as the Board's Legal Counsel. The attorney so assigned shall advise the Board on those legal matters, questions and procedural matters which must be dealt with by the Board in the performance of their duties. Board's Legal Counsel shall not normally perform a dual role of presenting appeal cases for the City of Muskogee while in this designated role. However this provision shall not prohibit the City Attorney or his/her designee

from representing the City in those specific cases it is deemed appropriate by the City Manager to have an Attorney represent the City.

- I. New members appointed to the Board shall receive a copy of the Oklahoma Open Meeting Act, the Charter of the City of Muskogee, the Human Resources Policies and Procedures Manual, relevant collective bargaining agreements and these Board procedures.

IV. Merit Board Proceedings

A. Meeting Agenda

1. Items or appeals to be placed on the Board's agenda shall be presented to the City Clerk/Board Secretary.
2. The City Clerk in consultation with the City Attorney and or Human Resources Director shall determine if the item is appropriate to be placed on the agenda based on the Charter Authority and procedures of the Merit Board. Periodic conversations between the Board Members and the City Clerk may be required to set or determine the agenda and other relevant matters.
3. Normally, the agenda shall have the following headings as relevant to a meeting of the Board:

a. Administrative Matters

- (1) Convening Meetings via Roll Call for Minutes
- (2) Approval of Minutes of Past Meetings
- (3) Tentative approval or recommendation action or review of Merit Employment System, Board or Hearing Procedures
- (4) Review or hearing employee or employee state statute based organization suggestions or Merit Procedure considerations or concerns.

b. Disciplinary Appeals (Terminations, Demotions, Suspensions)

Appeal Hearings by Employee and Type of Discipline

c. Merit System Grievances (Promotional Processes or Merit System Rights)

- (1) Recommended Employment Case Resolutions
- (2) Merit System complaints
- (3) Grievance Hearings

- d. Other Items
 - (1) Information Items
 - (2) Discussion Items

- e. Adjournment

B. Appeal and Grievance Reviews and Hearing Processes

1. Disciplinary Appeal Cases: (Article IV, Section 4:04) Defined as those cases which involve suspension without pay, demotion or termination of classified employees. If a collective bargaining agreement existing under State statute applies to a specific employee, the Appeal of the employee shall be governed by the provisions and timeframes set forth within that collective bargaining agreement if different from the following provisions.

a. If an employee desires to appeal one of the disciplinary actions set out in B 1 of this subsection the appeal shall be filed with the City Clerk/Board Secretary case in writing by an employee within five (5) calendar days of the date of disciplinary action was taken against the employee. Such written filing shall be provided to the Merit Board. The written appeal shall include all facts and evidence the employee wishes the Merit Board to consider. Failure to include the required information and evidence shall cause the Board to reject the appeal as not being timely filed, there shall be no appeal from the determination by the Board. The appeal hearing shall be set within ten (10) calendar days of the receipt of the written appeal from the employee receiving the discipline.

b. The agenda for disciplinary appeal hearings and related information shall be provided at least forty eight (48) hours in advance excluding Saturday, Sunday and official state holidays. The packet will normally include at a minimum the following: proposed minutes of the prior meeting including any determinations of the Board, original disciplinary action document(s), any procedural questions to be raised before the Board known at the time of packet submission, relevant Charter provisions, applicable rules and regulations, policies and/or contractual provisions (if any), a list of potential, requested witnesses from each party, and a brief statement (one to two sentences) as to how the testimony of each requested witness is believed to be relevant to the case. Each party shall be responsible to provide the (above) witness and testimony information to the City Clerk's Office at least seventy two (72) hours prior to Agenda

deadline. These packets shall be provided or mailed to each party when provided or mailed to the board members.

- c. The Merit Board shall have no authority to hear cases of lesser disciplinary action under the procedures neither of this subsection nor of unclassified employees, as defined by Section I B 5 of this policy.
- d. The authority of the Merit Board as related to appeal hearings shall be to determine whether the person was suspended, demoted or terminated based on just cause. The Board, based upon a finding of cause, may approve or modify the action of the appointing authority. If the Board determination is that no cause existed for the discipline, the employee shall be restored to his/her position with the City with full back pay.
- e. In a case involving a disciplinary appeal hearing, the City shall have the burden of proof as to establishing that there existed cause for management's disciplinary action.
- f. Failure to follow the timelines provided in this policy shall cause the Merit Board to dismiss all appeals as untimely.

2. Grievance Appeal Cases: Grievances cases are those cases defined as employee disagreements or complaints which arise from decisions or processes involved in the promotional process, interpretation or application of the rules, regulations and policies of the city within the scope of the Merit System and classified service of the City of Muskogee. If a State statute based collective bargaining agreement applies to a specific employee, the employee shall be governed by the provisions and timeframes set forth within that collective bargaining agreement if different from the following:

- a. An employee grievance case shall involve those grievances filed in writing by an employee (or employee's state statute based representative organization) within ten (10) calendar days of the event or the date the event was reasonably known to an employee allegedly affected by the issue or disagreement. The grievance shall initially be presented in writing to the Department Head or designee, who may investigate and/or meet with the parties, involved at his/her discretion. The Department Head shall answer the grievance within ten (10) working days after notification of the grievance to the grieving employee or representative.
- b. If the employee feels the grievance has not been remedied at the Department level, the employee may continue the grievance by

providing a written filing of the matter to the City Clerk (Board Secretary) within ten (10) calendar days of notification of the Department Heads determination. The City Clerk shall provide a copy to the Personnel Director (or Human Resources Director).

- c. The Personnel Director or his/her designee, acting as designee of the City Manager, shall review and provide a written summary of the facts of the case known at that time as well as a recommended resolution (resolution) related to the grievance to both the Merit Board (via the Board Secretary) and the grievant. This resolution shall be provided in writing within fifteen (15) business days after receipt of the employee's grievance as provided in b above. The review by the Personnel Director may include a meeting with the affected employee(s) and/or management or other employees as applicable. Within ten (10) calendar days of receipt of the proposed grievance resolution, the grievant may accept the determinations made by the Personnel Director or file written objections with the Board Secretary (City Clerk). Failure to include the reasons for the written objection shall cause the board to dismiss the grievance.
- d. If the employee or employee representative state statute based organization files such objections, the case shall be set for a Merit Board grievance hearing by the City Clerk. The summary provided by the Personnel Director and the employee's documents in objection shall be provided to the Board members by the Secretary at least forty eight (48) hours in advance of the hearing, along with any other relevant documents provided by the parties and related to the matter including rules and regulations, contractual provisions or other policies or procedures.
- e. The Board shall initially hear summaries of any grievance case at an abbreviated hearing. The case will be presented by the Personnel Director or designee and the employee(s) or employee's representative(s). The parties may also summarize what additional information may be provided or revealed by a full (longer timeframe) hearing process before the Board. The summaries of the city and the employee shall be limited to fifteen (15) minutes in length. The Board may allow an opportunity for a short rebuttal of each party not to exceed five (5) minutes each if either party so requests based on a belief there are statements made or issues that need clarified.
- f. The Board may then decide the case or make a determination to proceed with a full hearing (if the Board believes that sufficient information has not been provided by both or either party). If the

Board decides to conduct a full hearing, the Personnel Director or designee and the employee or employee's representative(s) may proceed with witness presentation through questioning and cross-examination at that time.

- g. The authority of the Board as it relates to grievance cases shall be to adopt, modify or reject the recommended resolution presented by the Personnel Director or designee and based on the evidence received and heard by the Board. The Board's decision on the matter shall be final.
- h. In a case involving a grievance-related matter, the employee raising the grievance based on a particular policy, administrative action by the City or other matter shall have the burden of proof. Disciplinary matters not covered under the subsection "Disciplinary Appeal Cases" shall not be subject to review by the Board as grievance matters.
- i. The employee's failure to follow the timelines provided in this policy or submit any required document as a part of the grievance shall cause the Merit Board to dismiss the grievance.

C. Conduct of Hearing Provisions:

- 1. Persons normally allowed to participate in any type of hearing shall include:
 - a. Merit Board – Board members and the Secretary
 - b. City – Department Head involved in case and spokesperson
 - c. Employee – Employee involved and one spokesperson or representative
- 2. Witnesses shall not be allowed to be present within hearings except when testifying. Witnesses must have a direct bearing on the case, character witnesses are not to be allowed to present testimony. Witnesses who are employees are compensated for time required at a hearing, but the parties and Board shall cooperate to limit the impact on the employee's job and/or citizen's costs of witnesses.
- 3. Direct contact with the Board members is prohibited prior to a hearing in any manner involving a case, except as involves the Board Secretary's administrative responsibilities in scheduling cases with Board members. Any request directed to the board shall be submitted in writing to the secretary of the board (city clerk) and shall be accompanied by a statement

of show cause as to why the request should be granted. The secretary of the board shall then present the request and accompanying statement to the chairman of the board, who shall rule on the request.

4. The City and the employee shall normally be limited to one presenting representative, three witnesses, and to a maximum two (2) hour time frame to present its case during a full hearing. However, either of the parties may make a request to the Board for extension of the number of presenting representatives, witnesses or time limits. The request shall be presented in writing to the City Clerk/Board Secretary at least forty eight (48) hours prior to the hearing. If such an extension is granted by the Board, the opposite party shall then be afforded the same extension(s) opportunities should they so desire. The determination of the request shall be the first order of business on commencement of the hearing.
5. The board may recess or continue a hearing on its own motion which may be made by a Board Member at any time before or during the hearing. Any continuation of a hearing, whether requested by the employee, the city or the Board, shall be approved by vote of the Board, based on all facts or circumstances presented to the Board.

However every reasonable effort shall be made to complete appeal/case in a timely and reasonable manner, normally within thirty (30) calendar days of the Board Secretary's receipt of request for hearing. If a request for continuation or delay of hearing is received by the Board, the original hearing shall be commenced by vote of the Board, for consideration of the requested delay or continuation of the case. The Board shall set a time and date for the delayed/ continued hearing at the time of approval of the requested delay/ continuance. If the delay or continuance is by motion of the board the approval shall include the date and time of the commencement of the continued hearing. The Board may only approve one request for delay filed by the employee and one request for delay filed by the city. The Secretary shall ensure that any such decisions are either known to or provided to all parties.

6. The Board shall encourage the parties to agree to any possible stipulations of fact prior to the beginning of any hearing to expedite the processes of the Board. Upon the end of testimony the Board may utilize executive session processes to decide the case determinations that are revealed by the hearing or determine those questions that the Board feels still need to be answered prior to rendering a determination in the case. The final determination of the case must be made in open session and the Board shall decide the case by motion and vote of the members.

7. Appeal (discipline) cases shall be given priority for hearing over grievance cases to ensure the protection of any possible pay implication and/or time off involving an employee.
8. Time limits established by the Charter for the conduct of a disciplinary appeal hearing as set out in Section 4:11 of the Charter and IV B 1 of this policy may only be extended by the written agreement of the employee and the city and with the approval of the Board, except as provided in subsection 5 above. All time limits set forth for a grievance appeal case will be strictly observed, except that time limits set out in Section IV B 2 a, b and c of this policy may be extended only with the approval of the City Manager for good cause shown. The determination by the City Manager is not subject to appeal to the Board or any other agency or tribunal.
9. The Merit System Board's authority in resolving grievances and appeals is limited to the interpretation and application of the terms of an employee's collective bargaining agreement, if one is applicable and/or the rules and regulations of the Merit System as approved by the City Council. The Merit System Board shall not have the authority to amend, add to, delete or modify any agreement or Merit System rule

D. Rules of Evidence

1. The rules of evidence for a court of law set out in the Oklahoma State Statutes or the United States Code shall not apply to the conduct or any aspect of a Board proceeding.
2. Within the time and witness restraints set forth in these procedures, either party may offer such relevant evidence as he/she may desire to aid in the determination of material disputed issues.
3. It shall be the province of the majority of the Board to ultimately and finally determine:
 - a. the non-admissibility or non-consideration of any particular evidence or testimony;
 - b. the relevance, non-relevance or weight given to any particular evidence or testimony;
 - c. the credibility, or lack thereof, of any particular evidence or testimony
4. The Board may receive and consider the evidence of witnesses by signed affidavit and assign such weight as it deems proper after consideration of

the value and propriety of that evidence as well as objections, if any, made to admission of the affidavit(s).

5. All evidence and testimony shall be presented and received into the record while in open session unless a closed hearing is allowable under law and determined to be proper by the Board. All witnesses appearing shall be sworn prior to their testimony being received by the Board.
6. Hearsay evidence may be received and considered by the Board and assigned such evidential weight as deemed appropriate after consideration of the value and propriety of the particular source and nature of the hearsay evidence as well as objections, if any, regarding the reliability of the information.
7. The Board may allow the submission of related documents, policies, rules, records or prior employee counseling, discipline and performance as part of their consideration of a case. Such information may include other similar case information as may be deemed necessary in instances of discipline or as relates to the determination of the matter of cause for the disciplinary action as well as to determine the appropriate level and/or consistency considerations involving the discipline.

V. Maintenance of Merit Board Hearing and Administrative Procedures

- A. Any proposed revisions to these procedures may be requested by the Board, the City Manager, the City Attorney or the Human Resources Director. The Human Resources Department will be responsible for preparing any requested revisions. Any employee or employee state statute based organization covered by these rules shall have the opportunity to request and receive copies of proposed procedures or may submit recommendations to the Board for procedure modification as deemed appropriate by the employees or employee organization.
- B. Any changes to the Board procedures shall be voted upon as noted as approved, recommended for modification or disapproved by a majority of the full Board before moving forward as recommendations to the City Council. The procedure updates and Board actions related to same shall then be presented to the City Council by the Human Resources Director or designee for review, possible modification and/or formal approval. These procedures shall be utilized in the training of new Board members and for conducting the operations of Merit Board processes and administration of the Merit System.
- C. A copy of these Merit System Rules and Merit System Procedures which would shall be available to any party through the City Clerk's Office

REFERENCES: City Charter Article IV, Section 4.02 through 4.11

EFFECTIVE DATE/ RESCISSION: This Policy shall be in effect on approval by the City Council of the City of Muskogee and shall superseded and replace all prior versions thereof including but not limited to the "Merit System Rules, 1952 and amendments thereto; the Merit System Rules Passed and Approved by the City Council, December 14, 1964 and any amendments thereto; and the Merit System Rules and Procedures of the Merit Board passed and approved by the City Council February 23, 1981 and any and all amendments thereto,

DISTRIBUTION: Mayor and City Council
All Departments

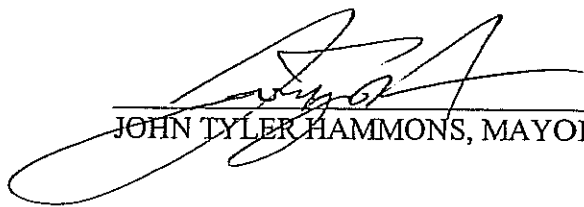
These procedures are hereby recommended for adoption by action o the Merit System Board on this 25th day of October, 2011.

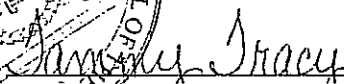
MERIT SYSTEM BOARD



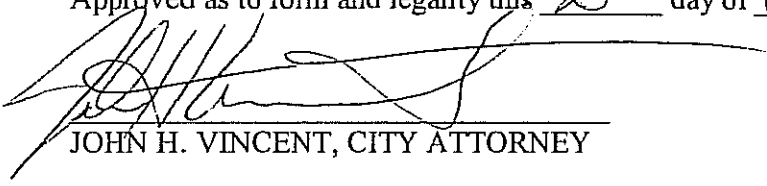
CHAIRPERSON




JOHN TYLER HAMMONS, MAYOR


PAMELA S. BATES, CITY CLERK
Jimmy Tracy, Acting City Clerk

Approved as to form and legality this 25th day of October, 2011.


JOHN H. VINCENT, CITY ATTORNEY

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Human Resources/msb