

ORDINANCE NO. 28-12
CITY OF CENTERVILLE, OHIO

Sponsored by Council Member Brooks Compton on the 28th day of January,
2013.

AN ORDINANCE ADOPTING THE CITY OF
CENTERVILLE PERSONNEL APPEALS BOARD
RULES.

PREAMBLE AND PURPOSE

WHEREAS, the City of Centerville has a Personnel Appeals Board that may hear appeals involving a suspension, reduction or removal of an employee in the non-exempt service in accordance with Section 10.04 of the Centerville Charter; and

WHEREAS, Section 10.04 of the Centerville Charter authorizes Council, by Ordinance, to prescribe the process by which the Personnel Appeals Board cites witnesses, administers oaths and produces evidence, and its enforcement by the Department of Law;

WHEREAS, it is the intent to provide the Personnel Appeals Board with Rules and Procedures; and

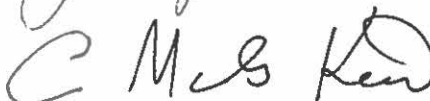
WHEREAS, Council has determined that such Rules would benefit the Personnel Appeals Board, as well as the Appellant and Appellee in matters of an appeal;

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1. The City hereby adopts the Personnel Appeals Board Rules for the City of Centerville as set forth in Exhibit "A" attached hereto and incorporated herein. A copy of such Rules shall be placed in the Office of the Personnel Officer.

Section 2. This Ordinance shall take effect at the earliest date allowed by law.

PASSED THIS 28th day of January, 2013.



Mayor of the City of
Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 28-12, passed by the Council of the City of Centerville, Ohio on the 28th day of January, 2013.

Debra A. James
Clerk of the Council

Approved as to form, consistency with existing ordinances, the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

CITY OF CENTERVILLE

PERSONNEL APPEALS BOARD RULES



Adopted by City Council on January 28, 2013

Gregory B. Horn, City Manager

Prepared by:

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TABLE OF CONTENTS

CHAPTER ONE JURISDICTION

1-01	Generally	1
1-02	Definitions	1
1-03	Time Limits for Filing Appeals	3

CHAPTER TWO APPEALS AND APPELLANTS

2-01	Filing and Contents of Appeals	3
2-02	Removals, Reductions and Suspensions Without an Order	4

CHAPTER THREE RULES OF EVIDENCE

3-01	Rules of Evidence	4
3-02	Hearsay	4
3-03	Cumulative Testimony	4
3-04	Prior Discipline	4
3-05	Stipulations	5
3-06	Witnesses	5
3-07	Conviction of a Crime	5
3-08	Best Evidence	5

CHAPTER FOUR GENERAL PROCEDURE

4-01	Denomination of Parties	6
4-02	Notice of Hearings	6
4-03	Continuances	6
4-04	Consolidations	7
4-05	Appearances	7
4-06	Motions	7
4-07	Briefs	8
4-08	Filing	8
4-09	Service	9
4-10	Communications to Representatives and Parties	9
4-11	Computation and Extension of Time	9
4-12	Procedural Orders	10
4-13	Procedural in Record Hearings	10
4-14	Record of Hearings	11
4-15	Subpoenas	11
4-16	Failure to Appear	12
4-17	Settlements and Withdrawals	12
4-18	Resignation Before Final Order	13
4-19	Final Orders	13

CHAPTER FIVE DISCOVERY

5-01 Exchange of Documents and Witness Lists
5-02 Prehearings

13
14

Chapter One Jurisdiction

1-01 Generally.

- (A) The jurisdiction of the Personnel Appeals Board (“the board” or “the PAB”) is derived from Article 10 of the City of Centerville Charter and the Ohio Revised Code.
- (B) A party bearing the burden of proof in an action before the board must prove its case by a preponderance of the evidence.

1-02 Definitions.

- (A) “Abolishment” means the deletion of a position from the organization or structure of an appointing authority due to lack of continued need for the position, due to reorganization for efficient operation, economy, or lack of work.
- (B) “Appointment” means placement of an employee in a position.
- (C) “Board” or “PAB” means the members of the Personnel Appeals Board.
- (D) “Classification” means any of the following:
 - (1) A group of positions of sufficiently similar duties that the same title and specification may be assigned to each.
 - (2) The title assigned to a position or the employee appointed to fill a position.
 - (3) The act of assigning a classification title to a position based upon the duties performed in that position.
- (E) “Fiduciary relationship” generally means a relationship where the appointing authority places a special confidence and trust in the integrity, fidelity, and ability of an employee to perform duties. These qualifications are over and above the technical competency requirements to perform the duties of the position. Whether one position occupies a fiduciary relationship to another is a question of fact to be determined by the board.
- (F) “Filed” means received, in writing, and time stamped in the offices of the board, or its designee.

- (G) "Layoff" means a suspension of employment due to either a lack of work, a lack of funds, or abolishment of position.
- (H) "Non-competitive examination" means any written device by which a prospective employee's qualifications to hold a position may be determined (e.g., an application form).
- (I) "Notice" means the date of receipt by the employee, in writing, of the action. If the employee did not receive a written notification, then "notice" means the date of the actual implementation of the action.
- (J) "Party" means an individual or agency who participates in and is directly affected by an action brought before the PAB. As used in these rules, "party" is not limited to the definition in Chapter 119 of the Revised Code.
- (K) "Pay" means either:
 - (1) The annual, non-overtime compensation due an employee including, when applicable, the cost of the appointing authority's insurance or other contributions, longevity pay, supplemental pay and hazard pay, divided by the product of the number of regularly scheduled hours in a workweek times fifty-two; or
 - (2) The annual compensation assigned to a position including, when applicable, the cost of the appointing authority's insurance, or other contributions, longevity pay, supplemental pay and hazard pay.
- (L) "Pay range" means the salary schedule and level assigned to a position.
- (M) "Position" means a group of duties intended to be performed by an employee.
- (N) "Position description" means a written general summary of the most important duties of a position.
- (O) "Progressive discipline" generally means the act of disciplining an employee in graduated increments and progressing through a logical sequence, such as a written reprimand for a first offense, a short suspension for the second offense, and a longer suspension or removal for the third offense. The severity of the offense may negate the use of progressive discipline and management has discretion on whether to use progressive discipline in any particular situation.

- (P) "Promotion" means the appointment of an employee to a different position assigned a higher pay range than the employee's previous position.
- (Q) "Reassignment" means the assignment of an employee to a different classification.
- (R) "Reclassification" means the assignment of a different classification to a position.
- (S) "Reduction in pay" means an action which reduces an employee's pay. When the conditions entitling an employee to supplemental pay end, the ending of supplemental pay shall not be considered a reduction.
- (T) "Reduction in position" means an action which reduces an employee's duties or responsibilities to the extent an audit of the employee's position would result in a reclassification to a classification assigned a lower pay range.
- (U) "Removal" means the termination of an employee's employment.
- (V) "Representative" means any person who is admitted to the practice of law in Ohio.
- (W) "Specification" means a synopsis of the duties and qualifications of an employee assigned to a classification.
- (X) "Suspension" means the interruption of an employee's employment and compensation for a fixed period of time.
- (Y) "Transfer" means the movement of an employee between different offices or positions as set forth in the City of Centerville Personnel Manual.

1-03 Time limits for filing appeals. Appeals to the Board shall be in writing and shall be filed with the Board or postmarked no more than fourteen (14) calendar days after the earlier of receipt of the notice of the action by the employee or the date of the implementation of the action. A copy of the notice of the action, if applicable, shall be attached to the appeal.

<p>Chapter Two Appeals and Appellants</p>

2-01 Filing and contents of appeals.

- (A) All appeals to the PAB shall be in writing.

- (1) If an appeal is received by United States mail, inter-office mail, or by personal delivery, the appeal is deemed to have been filed as of the date of its receipt.
 - (2) If an appeal is made by facsimile transmission or by electronic mail, the appeal is deemed to have been filed as of the date of its receipt as evidenced by the receipt date generated by the facsimile transmission or as shown on the electronic mail.
- (B) Notices of appeal shall include the following information:
- (1) The appellant's name, address, and telephone number; and
 - (2) The name, address, and telephone number of the appointing authority; and
 - (3) A description or summary of the action which is being appealed.
- (C) Appellants shall notify the PAB, in writing, of any change of address which may occur during the period that an appeal is pending.

2-02 Removals, reductions and suspensions without an order. If a reduction, removal or suspension is alleged and no disciplinary order has been submitted to the employee and filed with the PAB, the employee shall prove, by a preponderance of the evidence, that the reduction, removal or suspension occurred.

Chapter Three Rules of Evidence
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3-01 Rules of evidence. The rules of evidence prevailing in civil actions in Ohio courts of general jurisdiction are to be used as evidentiary guidelines in hearings before the board, except as modified by these rules.

3-02 Hearsay. The board may permit the introduction of evidence otherwise excludable as hearsay, so long as a foundation, establishing both the reliability of the testimony and its necessity, is established.

3-03 Cumulative testimony. The board may limit cumulative testimony.

3-04 Prior discipline.

- (A) For purposes of this rule, prior discipline consists of those written or oral warnings, reprimands, suspensions, reductions, or removals contained or referenced in the employee's personnel file.
- (B) The board may admit evidence of prior discipline if it is offered to prove either:
 - (1) Notice to an employee that particular conduct is unacceptable;
 - (2) A continuing attitude or problem justifying harsher discipline than might otherwise have been imposed; or
 - (3) Progressive discipline.

3-05 Stipulations. Stipulations may be accepted by the board only when both parties consent to the stipulation.

3-06 Witnesses.

- (A) All witnesses at any hearing before the board shall testify under oath or affirmation.
- (B) Witnesses may be sequestered upon action of the PAB or upon request of one or both parties to the action.

3-07 Conviction of a crime.

- (A) Conviction of any crime in a court of competent jurisdiction is conclusive evidence of the existence of all of the elements of that crime.
- (B) A conviction can be established through copies of the original journal entry from the court in which the conviction was obtained, through stipulation or by any other method the board uses to verify the conviction occurred.
- (C) Evidence of conviction of a crime may be inadmissible in the board's discretion unless a connection is established between the crime and the particulars alleged in a disciplinary order.

3-08 Best evidence. A duplicate may be admitted to prove the content of a document, recording, or photograph unless:

- (A) A genuine question is raised as to the authenticity of the original; or

- (B) The board determines it would be unfair to admit the duplicate in lieu of the original.

Chapter Four General Procedure

4-01 Denomination of parties. The party filing an appeal is denominated "appellant." All other parties are denominated "appellee."

4-02 Notice of Hearings. Scheduling notices will be mailed to the parties by ordinary United States mail at least thirty (30) calendar days in advance of the hearing.

4-03 Continuances.

- (A) Upon its own motion or upon the motion of any party, the board may continue a hearing.

(1) Requests for continuance shall be addressed to the PAB. A request for continuance will not automatically stay the hearing, but must be expressly granted.

(2) Requests for continuance shall be made, in writing, at least seven (7) calendar days prior to a scheduled hearing date, unless good cause is shown for failing to do so. Exceptions to this rule may be made at the discretion of the board. If a party requests a continuance less than seven (7) calendar days prior to hearing, then that party shall inform the board of the opposing party's consent or opposition to the continuance request.

(3) Each party shall contact its subpoenaed witnesses and inform them of the continuance. Failure to notify the opposing party or opposing party's counsel of a continuance which has been granted may be treated as a failure to appear by the party requesting the continuance if the opposing side appears for the hearing.

(4) The board will not re-issue subpoenas when a hearing has been continued unless specifically requested to do so in writing.

- (B) Absent compelling circumstances, hearings may not be continued due to the unavailability of a subpoenaed witness. The board may hold the record open or accept a testimonial deposition, if it deems it necessary to continue a hearing. The cost of testimonial depositions taken under this rule shall be borne by the requesting party.

4-04 Consolidations. If two (2) or more appeals involve substantially identical issues of fact and law, the board may consolidate them into a single hearing upon its own motion or upon the motion of either party.

4-05 Appearances.

- (A) Any person, unless prohibited by law, may represent himself. An employee may be represented by a person permitted to practice before the board who is an attorney at law.
- (B) Provided a party has not been subpoenaed and has authorized his representative to represent him in all facets of a hearing before the board, that party is not required to appear personally at the hearing.
- (C) If a party chooses to have representation, such party shall notify the PAB or designee at least seven (7) calendar days prior to the scheduled hearing date of the representative's name and contact information. Representatives shall enter their appearances in writing.
- (D) One who has entered an appearance as the representative of a party is that party's representative of record unless and until a written withdrawal is filed with the PAB.
- (E) If more than one (1) person enters an appearance as a party's representative, communications shall be sent as follows:
 - (1) If one (1) of the representatives entering an appearance has been designated, in writing, to receive communications from the board, all communications shall be sent to that representative.
 - (2) If no representative has been designated to receive communications from the board, all communications shall be sent to the representative who last entered an appearance.
 - (3) If it is impossible to determine who last entered an appearance, all communications shall be sent to the representative whose name is first in alphabetical order.

4-06 Motions.

- (A) All motions shall state, with particularity, both the relief sought and the basis for such relief.

- (1) All motions, and any supporting documentation, shall be served on the opposing party.
 - (2) Motions to dismiss an appeal may be supported by affidavits, made on personal knowledge, setting forth facts as would be admissible in evidence. Affidavits shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers referred to in an affidavit shall be attached thereto. When a motion is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials. An adverse party's response, by affidavit or otherwise, shall set forth specific facts showing there is a genuine issue in dispute.
- (B) Procedural motions, not determinative of the final outcome of an appeal, may be acted upon at any time after receipt by the board without awaiting a response from the opposing party. Procedural and/or jurisdictional issues must be raised prior to or at the record hearing or such issues are considered waived.
- (C) Within ten (10) calendar days of service of a non-procedural motion, a party shall serve a written response on the opposing party and file a copy of that response with the board. The board may rule on any non-procedural motion once the time to respond has run or at the record hearing if the ten (10) days have not elapsed. Provided the time for response to a non-procedural motion has not run, an oral response may be presented at the record hearing.
- (D) Upon motion of the affected party, the board may extend the time to reply to a non-procedural motion

4-07 Briefs.

- (A) At any time prior to the issuance of a final order, the board may require briefs from the parties. Briefs shall address questions put to the parties by the board and shall be filed within the time limits set by the board.
- (1) The board may limit both the number of reply briefs and the time for their preparation and filing.
 - (2) If a party fails to submit a brief within the time limit, the board will consider only the brief submitted timely by the other party.
- (B) Upon motion, the board may hold the record open for receipt of briefs.

4-08 Filing.

- (A) A document is filed when it is received, in writing, and time stamped by the PAB or the board's designee. Any document received after five p.m. on a business day, or received at any time on a non-business day, including facsimiles and electronic transmissions so received, shall be considered to be filed on the next business day and shall be entered accordingly.

4-09 Service.

- (A) All motions or other documents filed with the board shall be served upon the opposing party by the party filing such document and an appropriate certificate of service shall be signed by the submitting party or representative. Failure to comply with this rule may result in the board striking the document from the record.
- (B) Any document required by these rules to be served upon a party may be served either personally or by mail. When practical, parties are encouraged to also serve courtesy copies by electronic mail, if possible. When a party is represented by a representative who has entered an appearance, service shall be made upon that representative. Service is complete on the date of mailing or upon the date of personal transmission of the document.
- (C) All motions and briefs shall contain the name, address, and telephone number of the person submitting the motion or brief.
- (D) A motion shall be considered by the board only if a certificate of service appears on it. Any statement signed by the moving party is an acceptable certificate of service so long as it contains all of the following information:
 - (1) Date of service,
 - (2) Method by which service was made,
 - (3) Address where service was made, and
 - (4) Name of the person or authority who was served.

4-10 Communications to representatives and parties. Communications regarding scheduling shall be sent to all parties and their representatives.

4-11 Computation and extension of time.

- (A) The date of occurrence of the event causing time to run is not counted in the computation of any time limit under these rules. The last day of a time period is included in the computation of time under these rules. If the last day of a time period is not a regular business day, then the time period shall extend to the end of the next regularly scheduled business day.
- (B) The board may extend the time for filing or responding to motions and briefs.
 - (1) Requests for extension of time shall be made, in writing, stating the reason for said request.
 - (2) Requests for extension of time shall be directed to the PAB.

4-12 Procedural orders.

- (A) Procedural orders may be issued by the board at any time prior to the issuance of a final order.
- (B) If a party fails to comply with a procedural order, the board may dismiss the appeal or grant other appropriate relief to the opposing party.

4-13 Procedure in record hearings.

- (A) Board hearings will be open to the public, unless a request for closed hearing is requested, and such request is legal. Any request for a closed hearing shall be in writing stating the reasons therefore, and shall be received by the board or designee no later than ten (10) calendar days prior to the scheduled hearing date.
- (B) The board shall determine the order in which a hearing shall proceed.
- (C) Either party may call the opposing party to testify as if on cross-examination.
- (D) The board may require, limit, or eliminate opening statements and closing arguments.
- (E) Copies of exhibits shall be made available to the board and the opposing party as they are identified. Pursuant to Section 5-01, parties are to exchange documents and exhibits prior to the hearing.
- (F) The parties are encouraged to discuss stipulations and settlement prior to the start of a hearing.

- (G) All parties, witnesses and representatives are required to arrive at the hearing location at the scheduled hearing time.

4-14 Record of hearings.

- (A) All record hearings shall be recorded. Any party requesting a copy of the transcript shall be responsible for the cost thereof.

4-15 Subpoenas.

- (A) Either party may request the board to issue subpoenas for documents and subpoenas for up to three (3) witnesses. The party shall submit a written list of witnesses and a summary of each witness's testimony prior to the issuance of the subpoenas. If a party deems it necessary to subpoena more than three (3) witnesses, prior approval is required, and the board will rule on the need to call any of the witnesses the party requests to be subpoenaed.

- (B) Subpoenas shall be issued in either of two (2) ways:

- (1) The board shall supply subpoenas to the parties who are responsible for completing and serving subpoenas. A subpoena is deemed served when:

- (a) It is personally served upon the person; or
- (b) It is received by the person at the person's last known address by certified mail, return receipt requested; or
- (c) It is left at the usual place of residence, or last known address of the person, with an adult residing therein; or
- (d) If the service by certified mail under paragraph (B)(1)(b) of this rule is returned with an endorsement showing the service was refused or unclaimed, then the subpoena may be sent by ordinary mail, evidenced by a certificate of mailing; and
- (e) The party serving the subpoena shall file a copy of the subpoena, properly endorsed as to service, at or prior to the hearing for which the subpoena was issued.

- (2) The board shall mail subpoenas by ordinary United States mail to the last known address of the person as directed by the party requesting the subpoena.
 - (a) The board shall not mail subpoenas fewer than fourteen (14) calendar days in advance of a hearing. If subpoenas cannot be mailed more than fourteen (14) calendar days in advance of a hearing, the board shall, on request, hold the subpoenas so they can be served on the witness at the hearing subject to the provisions contained within paragraph (C) of this rule.
 - (b) If the board is requested to serve the subpoena by ordinary mail, then the subpoena is deemed delivered.
- (C) To be enforceable, witnesses shall receive their subpoenas at least seven (7) calendar days prior to the hearing. Subpoenas duces tecum shall be received at least ten (10) calendar days prior to the record hearing. Absent proof a witness has received a subpoena in a timely manner, the board shall not enforce the subpoena nor hold the record open for the testimony of an unsubpoenaed non-appearing witness.
- (D) Hearings may be continued by the board due to the absence of a witness subpoenaed under paragraph (B) of this rule.
- (E) The board will not re-issue subpoenas when a hearing has been continued unless specifically requested to do so in writing.
- (F) Witnesses may not be subpoenaed to prehearings.

4-16 Failure to appear.

- (A) If neither the appellant nor appellant's authorized representative appears at a hearing, the board may dismiss the appeal.
- (B) If neither the appellee nor appellee's authorized representative appears at a hearing, the board may grant appropriate relief, including reversal of the order.
- (C) If neither party appears at a hearing, the board may, based upon the information available to it, resolve the appeal in the manner it deems appropriate.

4-17 Settlements and withdrawals.

- (A) An appeal may be withdrawn any time prior to the issuance of the final order of the board. All withdrawals shall be in writing and shall be signed by either the appellant or appellant's representative.
- (B) An appeal may be settled by the parties thereto any time prior to the issuance of a final order of the board. The board will accept signed settlement agreements and consider them as rendering the appeal moot. All settlement agreements shall be in writing and shall be signed by all affected parties and their representatives.
- (C) If the board is notified a case has been withdrawn or settled, and no settlement agreement or withdrawal is filed with the board within fourteen (14) calendar days of the notification to the board, then the board shall schedule the case for a hearing if it has not already scheduled such hearing.

4-18 Resignation before Final Order.

The acceptance by the appointing authority of the resignation of a terminated employee before the final action by the board will be considered a withdrawal of the employee's appeal.

4-19 Final Orders.

After deliberations have concluded, the board may issue a verbal decision at the discretion of the board; however, the final order of the board shall be issued to both parties in writing.

Final orders are appealable orders under the Ohio Revised Code and may be appealed pursuant to that code.

<p>Chapter Five Discovery</p>

5-01 Exchange of documents and witness lists.

- (A) *Each* party shall, at least fourteen (14) calendar days prior to the first scheduled record hearing, provide to the *other* party and the board a list of the documents intended to be introduced at the hearing, copies of the documents and a list of witnesses.
- (B) In addition to the requirements contained within paragraph (A) of this rule, if a party deems it necessary to call more than five (5) witnesses to testify at hearing, the party shall file with the board at least fourteen (14) calendar

days prior to the first scheduled record hearing date a list of witnesses to be called and a short summary of the expected testimony of each of those witnesses. If a party fails, without good cause, to comply with this requirement, the board may exclude the testimony of witnesses whose names would have appeared on the witness list referenced in this paragraph.

- (C) If a party fails, without good cause, to comply with paragraphs (A) and (B) of this rule, such testimony or documents may, upon motion of the adversely affected party, be excluded from a hearing before the board.
- (D) The board may continue hearings to permit discovery under this rule.
- (E) Discovery, as it pertains to the exchange of documents and witness lists, may be supplemented as set forth in the applicable Ohio Rules of Civil Procedure.

5-02 Prehearings.

- (A) At any time prior to a record hearing, the board may, on its own motion or upon motion of any party, direct the parties or their representatives to participate in a prehearing.
- (B) Prehearings may be held for the following purposes:
 - (1) To simplify or clarify issues;
 - (2) To obtain stipulations and admissions;
 - (3) To exchange documents and witness lists;
 - (4) To discuss matters intended to expedite the proceedings.
- (C) Final board orders, procedural orders and reports and recommendations may be issued based upon information obtained at a prehearing.
- (D) All prehearings shall be summarized on the record and may, at the discretion of the board, be recorded.
- (E) Upon request of either party, and approval of the board, prehearings may be conducted in person or by telephone conference.