

Article 3: Civil Service

Division 12: Resignation, Removal, Suspension, and Reduction in Compensation

*(“Resignation, Removal, Suspension, Layoff”
incorp. 1–22–1952 by O–5046 N.S.,
contained in O–4340 N.S. adopted 3–21–1950.)
(Retitled to “Resignation, Removal, Suspension”
on 2–22–1978 by O–12299 N.S.)
(Retitled to “Resignation, Removal, Suspension, and
Reduction in Compensation” on 7–28–1980 by O–15302 N.S.)*

§23.1201 Resignations

(Rule XI, Section 1 of the Rules of the Civil Service Commission)

An employee in the classified City service who desires to resign in good standing, shall submit a written resignation to the appointing authority, and must give at least one week’s notice of intention to leave the service, unless the appointing authority consents to the employee’s leaving sooner. Such request when approved by the appointing authority shall be immediately forwarded to the Commission.

(Amended 5–5–1976 by O–11838 N.S.)

§23.1202 Removals

(Rule XI, Section 2 of the Rules of the Civil Service Commission)

Upon attaining permanent status, any employee in the classified service may be removed from employment for cause by the appointing authority. Any employee who has not achieved permanent status may be removed at the sole discretion of the appointing authority.

(Amended 7–27–1981 by O–15553 N.S.; effective 9–4–1981.)

(Amended 11-14-2022 by O-21562 N.S.; effective 12-14-2022.)

§23.1203 Cause for Removal or Suspension

(Rule XI, Section 3, of the Rules of the Civil Service Commission)

Except as provided in Section 23.1203 (o), the following are declared to be causes for removal or suspension from the classified service of the City, though charges may be based on causes other than those enumerated:

- (a) That the employee is incompetent or inefficient in the performance of his or her duty.
- (b) That the employee has been offensive in his or her conduct toward fellow employees, wards of the City, or the public.
- (c) That the employee has some permanent or chronic physical or mental ailment which incapacitates the employee for the proper performance of his or her duties.
- (d) That the employee has violated any lawful or official regulation or order or failed to obey any lawful and reasonable direction given by a superior officer when such violation or failure to obey amounts to insubordination or serious breach of discipline.
- (e) That the employee has solicited or taken for personal use a fee, gift, or other valuable thing in the course of his or her employment or in connection with it when such fee, gift or other valuable thing is so solicited or given the employee by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons.
- (f) That the employee has failed to pay or make reasonable provision for future payment of just debts when annoyance is caused the employee's superior officer or other City officer or scandal is caused the service because of such failure.
- (g) That the employee has been convicted of a criminal offense involving moral turpitude.
- (h) That the employee through negligence or willful conduct has caused damage to public property or waste of public supplies.
- (i) That the employee has been guilty of any conduct unbecoming an officer or employee of the City.
- (j) That the employee has been absent without leave, contrary to the rules of the Commission, or has failed to report after leave of absence has expired, or after such leave of absence has been disapproved, revoked or canceled by the Commission; provided, however, that if such absence or failure to report is excusable, the Commission may dismiss the charges.
- (k) That the employee has hindered the regular operation of the department or division because of excessive absenteeism.

- (l) That the employee has violated the provisions of Section 134 of the Charter of The City of San Diego.
- (m) That the employee has violated the provisions of Section 135 of the Charter of The City of San Diego.
- (n) That the employee has failed to obey an order from the City Manager or other department head to terminate or desist from outside employment or enterprise that has been determined to be incompatible with City employment or detrimental to the efficiency of his or her regular City work.
- (o) An employee who is designated as exempt under the terms and provisions of the Fair Labor Standards Act may be suspended from work without pay only for a violation of a safety rule of major significance and not for any other reason.

(Amended 10-11-1993 by O-17995 N.S.)

§23.1204 Procedure for Removal

(Rule XI, Section 4 of the Rules of the Civil Service Commission)

The following steps shall be completed by the appointing authority prior to making a final decision to remove any employee in the classified service who has attained permanent status, except when the appointing authority deems immediate removal necessary in order to maintain the safety of the community or the reputation, morale, or harmony of the organization. The employee must be:

- (a) Given advance notice of the proposed action which includes a statement of the reasons for the action;
- (b) Provided with a copy of the proposed charges and, if practical, a copy of the materials or documents upon which the charges are based;
- (c) Given the right to respond either orally or in writing to the appointing authority;
- (d) Notified that he or she may have representation at any time during this procedure.

After due consideration has been given to the information provided by the employee, personal service of written notice of removal or written notice delivered and left at or mailed to the employee's last place of residence shall be sufficient to put any such removal into effect. Such notice shall include a statement of the charges upon which the action is based and a statement advising the employee of any rights of appeal. A copy of such notice shall also be provided to the Civil Service Commission.

(Amended 7-27-1981 by O-15553 N.S.; effective 9-4-1981.)

(Amended 11-14-2022 by O-21562 N.S.; effective 12-14-2022.)

§23.1205 Appeal of Removal

(Rule XI, Section 5 of the Rules of the Civil Service Commission)

- (a) **Appeal Procedure.** Within five days of receipt of notice of removal, an employee in the classified service who has attained permanent status may file an appeal by submitting a written demand to the Civil Service Commission for the right to be heard before the Commission.
 - (1) Failure of the employee to submit said written demand to the Commission within five days after the receipt of notice of removal shall result in the waiver of the right to appeal and the forfeiture of all rights to a hearing in the case before the Commission.
 - (2) The employee may at any time withdraw an appeal to the Commission. Such withdrawal may be either by written request prior to the public hearing, or may be made orally by the employee at or during the time of public hearing.
 - (3) Any employee who has appealed to the Commission for a public hearing and who fails to make an appearance at the hearing either in person, using a video communication application (hereinafter, a virtual hearing), or through a duly authorized representative after having received notice of the time and place for such hearing may be deemed to have abandoned the appeal. In the event of such failure to appear, the appointing authority or the appointing authority's representative may move the Commission to dismiss the appeal. The Commission shall have the discretion to grant or to deny such motion.

- (4) On verified petition of any party, the Commission may order the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in Civil actions. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify.
- (b) **Conduct of Hearing.** With the fulfillment by the employee of the above appeal procedure, the Commission shall fix a time and place for a public hearing, which may include a virtual hearing.
 - (1) The Commission, at its discretion, may appoint one or more of its members to hear the appeal and submit findings of fact and a decision to the Commission. Based on the findings of fact, the Commission may affirm, modify, or overturn the decision in accordance with the provisions of section 23.1205(d).
 - (2) The employee under charges shall be given an opportunity to produce witnesses and testimony and to be represented by counsel. The appointing authority shall have the same rights.
 - (3) The proceedings shall be as informal as is compatible with the requirements of justice, and the Commission need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the matter through oral testimony and records presented at the hearing, which is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit and provisions of the Charter. The testimony taken at the hearing shall be under oath and shall be recorded by a reporter.
 - (4) The Commission shall have the power to subpoena and require the attendance of witnesses and the production of pertinent documents, and to administer oaths, and if necessary, to continue the hearing from time to time.

- (5) The Commission shall have the discretion to require a virtual hearing or convert a previously scheduled in person hearing into a virtual hearing with a minimum of 10 working days notification to the employee. The Commission's discretion to order virtual hearings shall only be exercised during a proclaimed local, state, or federal state of emergency or when meeting in person would present imminent risks to the health or safety of attendees.
- (c) Order of Proof. The order of proof in any hearing of complaint shall be as follows:
 - (1) The appointing authority shall present the evidence in support of the charges.
 - (2) The employee shall then produce such evidence as he or she may wish to offer in defense.
 - (3) The parties in interest may then offer rebuttal evidence.
- (d) Findings and Decisions. The Commission shall report its findings and decisions to the appointing authority responsible for the removal. Thereupon, said appointing authority shall make such final disposition of the matter as may be determined by the Commission. The Commission may at its discretion:
 - (1) Notwithstanding Section 6 below, order the restoration of the employee to the position without loss of pay or with any intermediate degree of discipline during the period between the filing of the charges and a date specified in the Commission's order.
 - (2) Order the demotion of the employee to a class for which a lower maximum rate of compensation is prescribed.
 - (3) Order the removal of the employee from the position; provided that in case of such removal the Commission may at its discretion put the name of the employee on the eligible list for the class for certification when a vacancy occurs in some other department. The decision of the Civil Service Commission in any such case shall be final. A copy of the written statement of reasons given for any removal, and a copy of any written reply thereto by the officer or employee involved, together with a copy of the findings of fact and decision of the Commission, shall be filed as a public record in the office of the Civil Service Commission.

(Amended 12-9-1991 by O-17721 N.S.)

(Amended 11-14-2022 by O-21562 N.S.; effective 12-14-2022.)

§23.1206 Procedure for Suspension

(Rule XI, Section 6 of the Rules of the Civil Service Commission)

Any employee in the classified service may be suspended without pay, for disciplinary purposes for one or more periods aggregating not more than ninety (90) days in a calendar year. The procedure and rights afforded any such employee prior to such suspension shall be the same as those prescribed in the rules relating to removal of an employee who has attained permanent status, including the provision for immediate suspension necessary in order to maintain the safety of the community or the reputation, morale, or harmony of the organization.

(Amended 7-27-1981 by O-15553 N.S.; effective 9-4-1981.)

(Amended 11-14-2022 by O-21562 N.S.; effective 12-14-2022.)

§23.1207 Appeal of Suspension

(Rule XI, Section 7 of the Rules of the Civil Service Commission)

The procedures and rights for any employee in the classified service appealing a suspension shall be the same as those prescribed in the rules relating to removal of an employee who has attained permanent status.

(Amended 12-9-1991 by O-17721 N.S.)

(Amended 11-14-2022 by O-21562 N.S.; effective 12-14-2022.)

§23.1208 Suspension Pending Investigation

(Rule XI, Section 8 of the Rules of the Civil Service Commission)

Any employee in the classified service may be suspended without pay, for up to thirty (30) calendar days, pending investigation of charges of misconduct, when in the opinion of the appointing authority such suspension is necessary in order to maintain the safety of the community or the reputation, morale, or harmony of the organization. Such suspension is not a disciplinary action and may not be appealed to the Commission. If the charges are substantiated, disciplinary action may be taken in accordance with the other provision of this rule. If the charges are unfounded, the employee shall be restored to duty and paid for the term of the suspension.

(Amended 7-27-1981 by O-15553 N.S.; effective 9-4-1981.)

(Amended 11-14-2022 by O-21562 N.S.; effective 12-14-2022.)

§23.1209 Reduction in Compensation

(Rule XI, Section 9 of the Rules of the Civil Service Commission)

The compensation of any employee in the classified service may be reduced within the salary range of that employee's current classification by the appointing authority. Such reduction in compensation may be put into effect upon a determination that the employee's performance has not met the standards established for the employee's classification and/or position. The procedure for, and appeal of, a reduction in compensation shall be provided in the Personnel Manual and/or a current ratified Memorandum of Understanding.

(Amended 11-7-1983 by O-16076 N.S.)

§23.1211 Demotions

(Rule XI, Section 10 of the Rules of the Civil Service Commission)

The reduction of an employee from a position in a class to a position in another class for which the maximum rate of pay is lower, shall be called a "Demotion" and may be made upon the written request of the employee, approved by the appointing authority concerned, or upon the written recommendation of the appointing authority with a statement giving the specific reasons therefor, in which latter case, the employee so demoted shall be entitled to a hearing before the Commission.

The procedure and appeal rights affecting such a disciplinary demotion shall be the same as those prescribed in sections 23.1204 and 23.1205.

("Demotions" renumbered from Sec. 23.1002 and amended 11-7-1983 by O-16076 N.S.)