



## COMMISSIONERS COURT COMMUNICATION

AGENDA DATE: 06/10/2013

CONSENT OR REGULAR: Consent

CONTRACT REFERENCE NO  
(IF APPLICABLE): \_\_\_\_\_

### **SUBJECT:**

Approve the change to the **El Paso County Civil Service Rules and Regulations** to revise Section VII (Grievance Procedures) to include adding an Alternative Resolution Meeting (ARM) process to the *Grievance Resolution Procedures*, Section 7.22 and revise Section 7.24 with new ARM language.

### **BACKGROUND/DISCUSSION OF TOPIC:**

The County's policy on Grievance Procedures was last revised on October 23, 2006 (Item #61, Motion #23). Since this date, certain areas have been identified which need to be updated to better reflect best practices and to ensure compliance with federal regulations.

In December of 2012, the County's Civil Service Commission request that the General Counsel Unit of the County Attorney's office work to draft rules that would encourage, not require, the timely pre-hearing settlement of grievances through an Alternative Resolution Meeting (ARM). ARMs shall be used to determine if a mutually acceptable resolution to the grievance can be achieved prior to a hearing thus reducing potential claims to the County.

The Civil Service Commission met on May 7, 2013 and approved the rule change as attached.

In an effort to be most effective in our practice to resolve grievances, the Human Resource Office recommends this policy be amended to include the above-mentioned provisions.

### **FISCAL IMPACT:**

There is no budget impact for this item.

### **RECOMMENDATION:**

Approve the change to the **El Paso County Civil Service Rules and Regulations** to revise Section VII (Grievance Procedures) to include adding an Alternative Resolution Meeting (ARM) process to the *Grievance Resolution Procedures*, section 7.22 and revise section 7.24 with new ARM language.

<b>SUBMITTED BY:</b>	Betsy C. Keller, SPHR Director of Human Resources	Contact information: <a href="mailto:humanresources@epcounty.com">humanresources@epcounty.com</a> phone: 915-546-2218
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## **GRIEVANCE RESOLUTION PROCEDURES**

### **7.20** Revised: 06/18/07

Hearings before the El Paso County Civil Service Commission are De Novo\* and the grievant shall have the burden of proof by a preponderance of the evidence, except in cases involving dismissal, demotion or suspension. In cases involving dismissal, demotion, or suspension, the Elected Official/Department Head by whom the action was taken has the burden of proving by a preponderance of the evidence just grounds for the dismissal, demotion or suspension. \*De Novo means the Commission will conduct an evidentiary hearing and make a decision independent of any previous decisions or hearings.

### **7.21**

Hearings before the El Paso County Civil Service Commission will be set for the next available meeting date that is at least twenty-one (21) days after the grievance is filed. If more time is needed to hear the matter, the Commission may continue the hearing to another date, either a specially set hearing date or the next regularly scheduled meeting.

### **7.22 Added: 06/03/13 - Effective 06/05/13**

## **PRE-HEARING MEETING AND OTHER PROCEDURES**

It shall be the policy of the El Paso County Civil Service Commission to encourage the timely pre-hearing resolution of grievances. In keeping with this policy, all parties shall adhere to the following procedures:

- (a) Upon the filing of a grievance, Human Resources personnel shall advise the grievant of the existence of these Civil Service rules and provide a hyperlink to these rules on a paper form, as approved by the Human Resources Director. The grievant should acknowledge receipt by signing the form.

- (b) No fewer than 10 days nor more than 17 days from the filing of a grievance, the COUNTY ATTORNEY shall contact the grievant, or his or her attorney, if represented, and confirm that the grievant (or attorney) has obtained a copy of these rules and regulations;
- (c) The Parties may agree to arrange an Alternative Resolution Meeting (ARM). The purpose of an ARM meeting is to determine if a mutually acceptable resolution to the grievance can be achieved prior to the hearing. A member of County Human Resources staff, as assigned by the Director of Human Resources, shall be present at any ARM to facilitate communication. County Human Resources staff may also assist the grievant with the ARM process if the grievant is not represented. However, Human Resources staff may not advocate on behalf of the grievant. In accordance with Texas law, discussions at an ARM are confidential and may not be recorded or otherwise entered into evidence at a grievance hearing or any other matter (see Texas Rule of Evidence 408).
- (d) Parties may request a continuance in order to facilitate alternative resolution in accordance with rule 7.26.

**7.23** All parties filing documents with the El Paso County Civil Service Commission shall serve a copy of the documents upon the opposing party at the same time.

**7.24 Revised: 05/20/13** At least seven (7) days prior to the date set for the hearing, all parties shall furnish each other and the El Paso County Civil Service Commission with the names of the witnesses to be called, a summary of their expected testimony, and a copy of each document, record, or exhibit to be introduced at the hearing. In its submission, COUNTY shall also provide a brief report as to the existence of any alternative resolution discussions and indicate whether

any tentative agreement has been reached. Each party is responsible for notifying the witness(es) and requesting the presence of its own witness(es). A party cannot rely on the other party's witness list as a guarantee that a witness will be present.

**7.25 ADDED: 12/07/09**

The copy of each document, record, or exhibit provided by the department must be picked up by the grievant or designated party once he/she is notified that the documents are ready for pick up by the Human Resources Department. If a grievant has an e-mail address, the grievant has the option of having the documents e-mailed to them at the e-mail address they provide to the Human Resources Department. If the Human Resources Department is unable to e-mail the documents due to the electronic file size or if the grievant is unable to receive the documents via e-mail, the Human Resources Department shall notify the grievant and the grievant or their designated party must pick up the documents from the Human Resources Department.

**7.26**

When either party requests a continuance, that party shall file a written motion with the El Paso County Civil Service Commission, setting forth the grounds upon which such motion is made. Except for good cause shown, any such motion shall be made not less than seven (7) days prior to the scheduled date of the hearing. If both parties agree to the continuance in writing and it is the first continuance of the hearing, the continuance shall be automatically granted and the Director of Human Resources is authorized to postpone the item until the next regularly scheduled Civil Service meeting; provided however, that such request must be made at least seven (7) days before the hearing. A request for a continuance, made fewer than seven (7) days

before the hearing, may not be automatically granted, and the Director of Human Resources may not postpone the item without a hearing before the Commission. Both parties (and counsel) must be present for a hearing on any request for a continuance made fewer than (7) seven days before the hearing on the matter, even where the Parties agree to the continuance.

#### **7.27**

A decision by the El Paso County Civil Service Commission becomes final upon the expiration of thirty (30) days from the date the decision is announced in open session by the El Paso County Civil Service Commission, unless the grievant, Elected Official/Department Head or the El Paso County Civil Service Commission motions to re-open the original decision within that thirty (30) day period. If a motion to re-open is filed in a timely basis, the El Paso County Civil Service Commission will have thirty (30) days to decide whether to re-open the original hearing. The El Paso County Civil Service Commission may only re-open the original hearing upon good cause shown. If the El Paso County Civil Service Commission does not make a decision within thirty (30) days to re-open, the decision becomes final on the 30<sup>th</sup> day after the motion to re-open was filed.

#### **7.28**

"Good cause" may include newly discovered evidence which was not readily available at the time of the hearing despite reasonable efforts having been made to obtain the evidence, inability to have witness(es) appear despite reasonable efforts having been made to secure the attendance of the witness(es), unexpected illness or injury to any party or witness, or when the El Paso County Civil Service Commission's decision is contrary to law.

#### **7.29**

If a motion to re-open is granted, the El Paso County Civil Service Commission shall schedule the matter for hearing for the next regularly scheduled Civil Service meeting and shall designate the issues to be considered at that hearing. Only evidence relevant and material to those issues so designated shall be admissible at that hearing. The decision by the El Paso County Civil Service Commission following this hearing becomes final upon announcement in open session.

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