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SECTION 9 – CONDUCT AND DISCIPLINARY POLICY

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9.1 GENERAL PROVISIONS**Employee
Conduct.**

Employees of the City are expected to maintain high standards of cooperation, efficiency, and economy in their work. Each employee is expected to display conduct both on and off the job in such a manner as to reflect credit on both the employee and the City. The maintenance of high standards of honesty, integrity, and conduct by City employees is essential to ensure the proper performance of City business and maintenance of confidence by its citizens.

**Corrective
Action.**

When work habits, behaviors, productivity or personal conduct of an employee falls below a desirable standard, managers should point out the deficiency at the time it is observed, or as soon as practicable. Warning in sufficient time for improvement should precede formal disciplinary action when practicable, but nothing in this section shall prevent formal action whenever the best interest of the City of Madison requires it.

City employees will be disciplined for violations of established City rules and regulations, violation of department policies, rules or procedures, or other misconduct.

Responsibilities.

It is the duty of each employee to correct any deficiency in performance, conduct or behavior when called to such employee's attention, and to make every effort to avoid conflict with the Personnel Policies and Procedures and department rules and guidelines.

It is the duty of every Department Head to discuss improper or inadequate performance with the employee in order to correct deficiencies and to avoid the need to exercise disciplinary action when practicable. Discipline should be, whenever practicable, of an increasingly progressive nature, the step of the progression normally being:

- (1) Written Warning
- (2) Suspension Without Pay
- (3) Demotion
- (4) Dismissal from Service

When infractions do occur, it shall be the policy of the City that the types of action involved and performance record, and not the individual, are the controlling factor in determining the level of discipline required and the correct amount of disciplinary progression required.

9.2 CLASSES OF OFFENSES

Employee offenses are grouped below. The offenses and disciplinary actions as described are neither all-inclusive nor automatic. Department Heads are permitted and expected to treat individual situations according to the specific conduct, circumstances and facts involved.

**Group One
Offenses.**

Group One offenses are defined as instances of unacceptable conduct by a City employee which, while serious, do not normally merit, upon the first occurrence of such conduct, demotion or dismissal and which normally, upon such first occurrence, may be addressed by lesser degrees of discipline. Examples of Group One offenses include, but are not limited to, the following types of situations:

- (1) Failure to give proper notice of an absence.
- (2) Unauthorized absence or irregular attendance.
- (3) Tardiness.
- (4) Interfering with the work or productivity of others.
- (5) Incompetence in the performance of duties, neglect or inefficiency in the performance of duties, or leaving work area without permission.
- (6) Failure to follow less serious safety rules and regulations.
- (7) Improper use and/or care of City property.
- (8) Refusal of required overtime or to work hours required by the Department Head.
- (9) Willful and/or repeated failure to honor court judgments.
- (10) Horseplay on the job.
- (11) Unauthorized release of privileged or confidential information.
- (12) Engaging in outside employment without approval.
- (13) Engagement in political campaigning activities during work time.
- (14) *Violation of City policies, department rules, or lawful orders made or given by a supervisor*
- (15) Other similar conduct that meets the intent of the definition of a Group One offense.

**Group Two
Offenses.**

Group Two offenses are defined as instances of unacceptable conduct by a City employee which are very serious and may constitute grounds for dismissal from City service upon the first occurrence of such conduct, unless mitigating circumstances, as determined by the Department Head, render lesser discipline, including suspension without pay or demotion, more appropriate. Examples of Group Two offenses include, but are not limited to, the following types of situations:

- (1) Personal possession and/or use of alcohol, illegal or not personally prescribed drugs, or similar intoxicants while on City property, in city vehicles, or while on the job.
- (2) Operation of a City vehicle or motorized equipment while under the influence of intoxicants such as alcohol, and/or any drugs, which induced an unsafe mental and/or physical state.
- (3) Failure to submit to a drug and/or alcohol test when directed or failure to provide information to the MRO (Medical Review Officer) **when** requested.
- (4) Unauthorized possession of firearms, other weapons, explosives, or other dangerous materials.
- (5) Falsification or suppression of any information required by any governmental agency, city management, or city forms or documents, including, but not limited to, employment application, employee reports, records, or timecards.
- (6) Fighting, or any other violent behavior or threats.
- (7) Using abusive language or conduct toward the public or a coworker or city official(s) (including, but not limited to, slander, foul language, sexual, racial or similar comments, etc).
- (8) Serious Leave Offenses, including excessive tardiness, unauthorized/unexcused absences, or fraudulent or abusive use of sick leave.
- (9) Conviction of, or the commission of, an act which would constitute (1) a felony or (2) a crime involving moral turpitude; conviction of, or the commission of an act which would constitute, a misdemeanor which reflects unfavorably upon the employee's character or his/her effectiveness in the job.
- (10) Theft, destruction, careless or negligent use, or willful damage of City property or property of others.
- (11) **Dangerous horseplay on the job resulting in injury or property damage, to include the disregard or violation of safety practices or rules or regulations.**

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- (12) Failure to immediately (or as soon as possible) report an accident (with injuries or damage to City equipment or property).
- (13) Serious violation of City administrative regulations, department rules, lawful orders, or directions made or given by a supervisor.
- (14) Membership in any organization, which advocates the overthrow of the government of the United States by force or violence.
- (15) Acceptance of any consideration of value or gratuity, which was given to improperly influence the employee in the performance of his/her duties.
- (16) Refusal to be examined by the City's physician when directed.
- (17) Political activities that are gross violations of federal and/or state laws or these policies and procedures.
- (18) Sexual harassment or other types of harassment, as defined by Sections 2.2 and 2.3 of the Personnel Policies and Procedures.
- (19) Sleeping while on duty, except when authorized by department or City rules.
- (20) Willful violation of any duly adopted City policy or state/federal law or regulation in the performance of one's duties.
- (21) Conduct unbecoming of a City employee, while on or off duty, which tends to bring discredit upon the City and/or its employees, which adversely affects the morale or efficiency of, or public respect for, the employee's assigned department.
- (22) Conduct which threatens order, safety, or health.
- (23) **Acts of insubordination, including refusal to obey legitimate orders or refusal to provide honest/truthful information.**
- (24) Unauthorized use, misappropriation, destruction, theft, or conversion of public property.
- (25) Conduct or actions determined to be a conflict of interest or ethics violation as defined by state law and/or City ordinance, rules, regulations, or procedures.
- (26) Willful or intentional conduct, to include gross negligence, which exposes the City to liability, litigation, or financial loss.
- (27) Repeated violation of a Group One offense.
- (28) Similar conduct not listed herein meets the intent of the definition of a Group Two offense.

9.3 DISCIPLINARY GUIDELINES – GENERAL PROVISIONS

Employee Rights. Department Heads must ensure that an employee's rights (as defined in the Personnel Policies and Procedures) are protected during any disciplinary action.

Facts and Circumstances. Normally disciplinary actions will be administered uniformly and according to the order listed for each group of offenses. However, a Department Head as a disciplinary official is expected and allowed to take actions according to the facts and circumstances of each situation.

Actions Recorded. All disciplinary actions will be recorded in writing. The Department Head and the employee will sign the record and the employee will be provided a copy. Refusal of an employee to sign the record of a disciplinary action will be noted on the record by the Department Head. A copy will also be forwarded to the Human Resources Director for inclusion in the employee's personnel file.

9.4 DISCIPLINARY GUIDELINES – WRITTEN WARNINGS

When Given. An employee may be issued a written warning when he/she fails to maintain desirable standards or commits a Group One offense or violates a less serious city policy or department policy or procedure, and the Department Head determines more severe action is not necessary.

Procedure. (1) Discussion **with Employee.** Before any action is taken against an employee, the Department Head shall make such inquiry/review or investigation as considered necessary. The employee shall be advised of the reasons for considering disciplinary action and allowed the opportunity to respond.

(2) **Content.** The written warning should contain the following information:

- ❑ Specific reason(s) for the written warning.
- ❑ Warning that future unacceptable conduct could result in more severe disciplinary action.
- ❑ Where appropriate, recommendations for corrective action.

9.5 DISCIPLINARY GUIDELINES – SUSPENSION WITHOUT PAY FOR SIX (6) WORK DAYS, 48 WORK HOURS OR LESS

When Given. An employee may be suspended from duty and pay for a period of time not to exceed six (6) workdays or 48 working hours when determined by the Department Head to be justified.

Procedure. **(1) Notice of Proposed Suspension.** Before any action is taken against an employee, the Department Head will notify the employee in writing of the proposed disciplinary action being considered and that the employee has a right to a **grievance review** concerning the allegation against the employee. A copy of the notice will be provided to the Human Resources Director for inclusion in the employee's personnel file. The written notice to the employee will contain the following information:

- (a) The grounds for the proposed disciplinary action;
- (b) The proposed disciplinary action;
- (c) Notice of the employee's right to discuss the allegations with the Department Head;
- (d) That the employee has the right to present evidence in his/her defense;
- (e) Notice of the employee's right to respond to the Department Head about the allegations, orally or in writing, within three (3) business days of the notice.
- (f) A description of the appeal rights of the employee as provided in Section 10.2 (Grievance Procedure) of the Personnel Policies and Procedures.

(2) Appeal Process. If the employee appeals the process, the procedure in Section 10 of the Personnel Policies and Procedures will be followed. (Section 10.2, Grievance Procedure).

(3) Final Action. A copy of the final Record of Action will be presented to the employee, and a copy will be provided to the Human Resources Director to be placed in the employee's personnel file.

9.6 DISCIPLINARY GUIDELINES – PROPOSAL OF SUSPENSION WITHOUT PAY FOR MORE THAN SIX WORKDAYS or 48 WORK HOURS, DEMOTION OR DISMISSAL

When Given. An employee may be suspended without pay for more than *six (6) workdays or 48 work hours*, demoted (where appropriate), or dismissed when such action is determined by the Department Head to be justified. No discharge action will be taken without review by the Human Resources Director or the City Attorney, and approval of the Mayor.

Notice of Proposed Action. Before any action is taken against an employee, the Department Head will notify the employee in writing of the charges against him/her, the proposed disciplinary action, and that the employee has a right to a hearing concerning the allegation against the employee. A copy of the notice will be provided to the Human Resources Director for inclusion in the employee's personnel file. The written notice to the employee will contain the following information:

- (a) The employee's right to request a hearing in writing to the Department Head within three (3) business days of the date the notice is received; and instructions that the employee's request must include accurate contact information for the employee during business hours, including a current mailing and street address and telephone number;
- (b) The charges against the employee;
- (c) The proposed disciplinary action that may result from a decision after a hearing adverse to the employee;
- (d) The employee's right to appear in person at a hearing on the allegations and his/her right to representation at his/her expense;

- (e) The employee's right to present evidence and/or other witnesses at a hearing on the allegations to be held by a Hearing Officer;
- (f) The employee's right to respond orally or in writing (to the Department Head) to the charges within three (3) business days of the notice.

Hearing Request.

If the employee files a timely written request for a hearing (within three (3) business days), the Department Head will notify the Human Resources Director for the designation of a Hearing Officer. The following will constitute a waiver of the employee's right to a hearing: 1) lack of a timely written request for a hearing (three business days from receipt); 2) failure to attend the hearing; 3) failure to provide accurate contact information during business hours (current telephone numbers and mailing and street address) with the hearing request in writing; and 4) failure to be available during business hours for contact and for receipt of notices and/or the scheduling of the hearing.

Hearing Schedule.

The Human Resources Director shall cause a hearing date to be set as soon as possible before an impartial Hearing Officer selected from a pool of eligible persons designated by the Council Human Resources Committee and Mayor.

Once the Hearing Officer is designated, the Hearing Officer will set a date for the hearing (to be held no later than 45 calendar days, [unless ordered otherwise by the Hearing Officer] and as soon as practicable). The Human Resources Director will notify the employee and the Department Head in writing of the date, time, and place of the hearing.

Hearing Procedure.

Hearings shall be conducted by the hearing officer in an orderly manner to ascertain relevant facts within a reasonable time while according fairness and impartiality to all parties. The order of presentation of evidence before the hearing officer shall be as follows:

- (a) Opening statement by the Department Head presenting the charges against the employee;

- (b) Opening statement by the employee against whom charges have been filed;
- (c) Presentation of evidence and testimony on behalf of the Department Head, with cross-examination by the employee;
- (d) Presentation of evidence and testimony on behalf of the employee, with cross-examination by the Department Head;
- (e) Presentation of rebuttal evidence and testimony on behalf of the Department Head, with cross-examination by the employee. Rebuttal evidence and testimony may address only issues raised by the employee in the presentation of evidence and may not be used to raise any new issue before the hearing officer;
- (f) Any documents presented during the hearing may be marked as exhibits and copies should be given to both parties' representation, the Hearing Officer and Human Resources (for the hearing file).
- (g) Closing remarks by the Department Head;
- (h) Closing remarks by the employee.

Opening and closing remarks may be waived by the parties.

Administrative Rules.

While hearing procedures do not follow court discovery procedures, the Human Resources Department may assist employees in obtaining copies of their personnel file or any other known public record, if requested in a timely manner prior to the hearing.

Hearings shall be conducted in accordance with the following administrative rules:

- (a) Hearings shall begin with an explanation of the order of presentation to be followed in the hearing.
- (b) The employee may be represented by an attorney, or another individual, at the employee's own expense, who may participate in the hearing. If the employee intends to have a representative, then he/she

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shall provide written notice of such, including the name of the attorney or representative, to the Human Resources Director at least three (3) business days prior to the hearing date.

- (c) The Department Head may be assisted by the City Attorney (or outside legal counsel for the City) who may participate in the hearing to whatever extent the Department Head desires.
- (d) If the employee seeks the testimony of another City employee, the employee may request the attendance of City employees as witnesses at the hearing by requesting such attendance, in writing, addressed to the Human Resources Director, at least three (3) business days prior to the hearing date.
- (e) Legal rules of evidence shall not be strictly applied in the hearing; however, evidence deemed irrelevant to the issues to be determined by the hearing may be excluded, as determined by the Hearing Officer.
- (f) Requests for postponement or continuances of hearings may be granted by the Hearing Officer only for documented extraordinary circumstances (such as, but not limited to, serious illness, death, etc.).
- (g) Decisions of the hearing officer concerning the conduct of the hearing shall be final.
- (h) The order of presentation set forth for hearings may be revised where deemed necessary by the hearing officer.
- (i) Only testimony presented before a Hearing Officer will be recorded but not transcribed unless ordered by a court of competent jurisdiction. No other recordings of the hearing will be conducted. The cost of any transcriptions may be billed to the requesting party.
- (j) Hearings may be closed to the public in order to protect good name and character of employees, witnesses and individuals mentioned in testimony.

If Council closes a hearing to the public, the Council must vote to meet in executive session to discuss the general reputation and/or character of individuals, consistent with the "Sunshine Law". No vote of the Council, however, may be taken in executive session. After completion

of the hearing, a majority of the City Council, after returning to an open meeting, shall either affirm or alter the disciplinary action taken.

Certification of Findings.

The hearing officer will carefully consider all testimony, evidence, and exhibits offered in support of or denial of such charges and make written findings of fact based upon all such evidence. The hearing officer is expected to certify the findings of fact within ten (10) *business* days of the hearing and deliver a copy of his/her findings to the Human Resources Director. The Director of Human Resources shall have a copy delivered to the Department Head and the affected employee. Failure of the Hearing Officer to meet this time request shall not affect the outcome of the disciplinary action nor confer on the employee the right to invalidate any disciplinary action.

The findings of fact should be in a form which addresses each of the charges made against the employee. The hearing officer shall make a specific finding of fact regarding each such charge based on the evidence.

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**Disciplinary
Action Notice.**

The Mayor and Department Head shall determine whether the facts, as found by the Hearing Officer, are cause for discipline, and shall discipline the affected employee in an appropriate manner consistent with such Findings of Facts (after review by the Human Resources Director or the City Attorney). The Department Head shall also discipline the employee consistent with the Notice of Proposed disciplinary action if the employee's right to a hearing was waived. If no discipline is due to be administered based on the factual findings, the employee will be so notified by the Department Head and the case will be closed.

If discipline is administered, the Department Head will notify the employee, in writing, of the discipline to be administered. The notice will contain:

- (a) The nature of the action and the effective date;
- (b) The specific grounds for the action taken; and
- (c) A description of the appeal rights of the employee, if any (none where the employee's right to a hearing was waived).

The notice should be signed and dated by both the Department Head and the employee. A copy of the notice will be provided to the Mayor and the Human Resources Director for inclusion in the employee's personnel file.

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9.7 APPEAL PROCEDURES – DISCIPLINARY NOTICE OF SUSPENSION WITHOUT PAY FOR MORE THAN SIX (6) WORK DAYS OR 48 WORK HOURS, DEMOTION OR DISMISSAL

A regular status employee who has not waived his/her right to a hearing or appeal may appeal his/her Notice of Disciplinary Action of suspension of more than six (6) workdays without pay, demotion, or dismissal to the City Council.

Council Appeal Request.

Notice of appeal to the City Council must be filed within three (3) business days of receipt of the written notice of disciplinary action. The notice of appeal must be submitted in writing to the Human Resources Director. The following will constitute a waiver of the employee's right to appeal:

- 1) lack of a timely written request for an appeal (three business days from receipt of the Notice of Disciplinary Action);
- 2) failure to attend the hearing before the Hearing Officer or the Council;
- 3) failure to provide accurate contact information during *business hours* (current telephone numbers and mailing address) with the appeal request in writing;
- 4) failure to be available for contact for receipt of notices and/or for the scheduling of the Council hearing.

Council Appeal Hearing Schedule.

The presiding officer of the City Council will *determine* the date, time, and place of any hearing of an appeal taken to the City Council.

Council Hearing Procedure.

The role of the City Council is **to determine whether the discipline administered is consistent with the certified findings of fact as determined by the hearing officer.** The presiding officer of the City Council will preside over the hearing. The order and nature of the presentation to the City Council relating to this issue shall be as follows:

- (a) Statements by the employee as to why the disciplinary action taken against such employee is inconsistent with the finding of facts made by the hearing officer.

Evidence and testimony presented on behalf of the employee related solely to the issue of whether or not the disciplinary action taken against such employee is consistent with the finding of facts made by

the hearing officer. No evidence or testimony shall be presented by the employee that relates to, or is connected in any way with, the facts which were, or should have been, presented at the hearing before the hearing officer. The City Council will accept the decision of the hearing officer if such decision was supported by a *preponderance of* evidence.

- (b) Statements by the Department Head or his/her representative in rebuttal thereto.

Evidence and testimony presented by the Department Head which is subject to the same restrictions and limitations as set forth in (a), above;

- (c) Opportunity for rebuttal by both the employee and Department Head.

- (d) Closing remarks by the employee;

- (e) Closing remarks by the Department Head.

Opening and closing remarks may be waived by the parties. The order of presentation set forth above may be revised where deemed necessary by the City Council.

Administrative Rules.

Administrative rules contained in Section 9.6 of this Policy shall be applicable in hearings before the City Council. In order to close a hearing to the public, however, the Council must vote to meet in executive session to discuss the good name and character of individuals. No vote of the Council, however, may be taken in executive session.

City Council Decision.

After completion of the hearing, a majority of the City Council, in open session, shall either affirm or alter the disciplinary action taken against the employee. If the City Council is unable to reach a majority vote, the decision of the Department Head, as approved by the Mayor, shall stand unmodified. The Council's decision will be provided to the employee in writing, with a copy furnished to the Human Resources Director, within five (5) business days of the hearing.

9.8 HEARING OFFICER POOL

The City will use local attorneys (from Madison or Limestone County) licensed to practice law in the State of Alabama as Hearing Officers.

Responsibility. A hearing officer will hear and carefully consider all evidence, testimony, and exhibits offered in support or denial of charges and shall render certified findings of fact regarding the specific charges as provided in this Policy Section 9. It will be the duty of the hearing officer to determine if the charges asserted against the employee are supported by the evidence and whether any rule or regulation of the City has been violated by the employee charged. A hearing officer will not determine the degree of any discipline which may be warranted.

Disqualification. No person will participate as a hearing officer in any matter, if he/she has a personal or financial interest therein or other conflict of interest.

Hearing Officer Pool. A pool of hearing officers to serve the City will be established to conduct hearings as required. The pool will be made up of eligible persons designated by the Council Human Resources Committee and Mayor.

Compensation. Hearing officers serving the City will be compensated for their services at the same rate paid to *an* alternate City Attorney, if and when they are called upon to serve in this capacity for the City.

9.9 ADMINISTRATIVE LEAVE

As a non-disciplinary measure, a Department Head, with the approval of the Mayor or the Director of Human Resources or City Attorney, may grant paid Administrative Leave, if disciplinary action is being considered by the Department Head or a disciplinary hearing or an investigation is pending.

However, the Department Head (or his/her designee), the Mayor or the Human Resources Director may require an employee on paid Administrative Leave to report to work or city offices at any time during business hours or their normal work schedule. An employee must be available for contact and reporting to work or city offices when the employee is on paid Administrative Leave for this purpose. If an employee is not available or does not report, the Administrative Leave can be immediately cancelled by the Department Head and the employee will be on Leave Without Pay for any day employee is not available. Exceptions to the availability requirement may be for pre-approved accrued leave or other approved leave (i.e., sick leave, annual leave, bereavement, etc.) taken consistent with those policies.

Paid Administrative Leave will be recorded on the department's time and attendance report by the Department.

9.10 CRIMINAL CHARGES

If an employee is charged with a felony, which is also considered a serious violation of these policies and procedures, the Department Head may conduct a hearing of the alleged violation in accordance with the disciplinary guidelines of this section. If the Department Head determines there is sufficient information available to indicate that the City's rules or standards of employment were violated, he/she may take appropriate disciplinary action, to include suspension without pay, demotion, or dismissal, as the case may warrant.

If an employee is in custody and cannot report to work or cannot perform his/her duties as a result of the criminal charge or related consequences, the employee will NOT receive regular pay but will be paid with any accrued leave that is applicable (including annual leave, personal day, floating holiday). Once the employee's applicable leave balances are exhausted, the employee will be placed on Administrative Leave Without Pay.