CHAPTER 8 – DISCIPLINE

Section 1 – Just Cause Standard

Non-probationary employees in the classified service shall be disciplined only for just cause.

Just cause for discipline shall include, but is not limited to:

- Violation of any of the provisions of these Rules, departmental work rules, safety rules, or City policies.
- Incompetence, inefficiency, or misconduct in the performance of an employee's duties.
- Conviction of a criminal offense involving moral turpitude or directly related to the employee's occupation.
- Violation of any lawful or official regulation or order or failure to obey any lawful direction given by a supervisor where such violation or failure to obey amounts to an act of insubordination.
- Violation of the City's Drug Free Workplace Policy, including failure to enroll in or successfully complete a directed program of substance abuse treatment.
- Inability or unwillingness to perform the essential functions of the employee's position, with or without reasonable accommodation.
- Offensive conduct toward the public or any City employee.
- Careless or negligent handling or control of City property.
- Inducing or attempting to induce any employee of the City to commit an unlawful act or to act in violation of an official regulation or order.
- Off-duty conduct which adversely affects the employee's ability to fully perform the duties of the employee's position.
- Dishonesty in the performance of duties.
- The use of any City vehicle or property for personal use or gain.
- Excessive absenteeism and/or tardiness.
- Harassment or discrimination against other City employees, volunteers, vendors, or members of the public based upon political opinion or affiliation, race, color, creed, religion, national origin, sex, sexual orientation, disability, age, marital status, familial status, status with regard to public assistance, membership or activity in a local commission or any other protected class status.
- Theft of City property, including falsifying timesheets.
- Possession of a firearm in a City vehicle or while on the employer's premises, except for
    1) sworn police officers or other City employees acting within the scope of their employment, or
    2) employees legally in possession of a firearm for which the employee holds a valid permit, if required, and said firearm is secured within an attended personal vehicle or

secured and concealed from view within a locked unattended personal vehicle while that person is working on City property.

Section 2 – Forms of Discipline

When just cause exists, discipline for non-probationary employees in the classified service will be in one or more of the following forms, dependent upon the circumstances:

- Oral Reprimand
- Written Reprimand
- Unpaid Suspension
- Demotion
- Dismissal

2.1 Oral Reprimand: When just cause exists, supervisors shall have the authority to deliver an oral reprimand to employees directly or indirectly under their supervision. The supervisor shall document, in writing, the date and general subject of the reprimand.

2.2 Written Reprimand: With the concurrence of the appointing authority, supervisors may issue a written reprimand for just cause. Human Resources staff should be consulted prior to the issuance of any written reprimand, and the final document shall be filed with the Human Resources Manager.

2.3 Unpaid Suspension: With the concurrence of the Human Resources Manager, the appointing authority may suspend a non-probationary employee in the classified service without pay for periods not exceeding ninety working days in any calendar year for just cause. An exempt employee shall not be suspended from duty without pay for a period of less than one work day. The appointing authority shall provide the employee with a written statement of reasons for the suspension prior to the effective date of the suspension, and a copy shall be filed with the Human Resources Manager. A non-probationary employee in the classified service suspended without pay may appeal the suspension following the procedure outlined in Section 3.

2.4 Demotion: The City Manager, or the appointing authority with the concurrence of the City Manager, may demote a non-probationary employee in the classified service for just cause. The appointing authority shall provide the employee with a written statement of the reason for the demotion prior to the effective date of the demotion, and a copy of the written statement shall be filed with the Human Resources Manager. An employee who is demoted shall not be required to serve a probationary period in the position in which the employee is being demoted. A non-probationary employee in the classified service who is demoted for disciplinary reasons may appeal the demotion following the procedure outlined in Section 3.

2.5 Dismissal: The City Manager, or the appointing authority with the concurrence of the City Manager, may dismiss a non-probationary employee in the classified service for just cause. The appointing authority shall provide the employee with a written statement of the reason for the dismissal prior to the effective date of the dismissal, and a copy shall be filed with the Human Resources Manager. A non-probationary employee in the classified service who is dismissed for disciplinary reasons may appeal the dismissal following the procedure outlined in Section 3.

Section 3 – Formal Hearing in the Case of Suspension, Demotion, or Dismissal

3.1 Request for Hearing: When a non-probationary employee in the classified service is suspended, demoted, or dismissed, the employee shall be entitled to a hearing pursuant to these Rules. Probationary employees and unclassified employees shall not be entitled to such a hearing.

Members of certified bargaining units shall avail themselves of either arbitration pursuant to the labor agreement or a Merit Board hearing. Members of bargaining units who elect arbitration pursuant to the labor agreement shall not receive a Merit Board hearing unless authorized by the Minnesota Veteran's Preference Act.

To obtain a hearing, the employee shall, within ten days after receipt of written notice of suspension, demotion, or dismissal, file a written request for a hearing with the Human Resources Manager. The ten-day period shall be calculated beginning the day after the written notice is received by the employee and counting each calendar day thereafter.

3.2 Hearing: Any non-probationary employee in the classified service who is suspended, demoted, or dismissed pursuant to these Rules, who has requested a hearing under Section 3.1, shall be provided a hearing by an independent hearing officer, selected pursuant to Bloomington City Code Section 1.17(a). Prior to the hearing, both parties may stipulate on mutually agreed matters. The parties shall have the opportunity to present testimony and question any witness. It shall be the responsibility of each party to compensate its own witnesses and representatives.

The independent hearing officer may administer oaths and may on its own, or upon written request of a party, issue a subpoena for the attendance of a witness or the production of books, papers, records, or other documents that are material to the matter being heard. The party requesting the subpoena shall be responsible for serving the subpoena in the manner provided for civil actions and for paying the statutory fees and expenses of any witness. Any party requesting the subpoena may seek an order from district court directing compliance.

The hearing will be conducted in the following manner:

The hearing shall be tape recorded and the full record of the hearing shall be kept by the Human Resources Manager.

Strict rules of evidence shall not apply. The independent hearing officer shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of affairs.

Management or the representative of management presents evidence in support of the disciplinary action.

The employee or employee's representative presents evidence in defense of the employee.
Both parties may cross-examine witnesses and offer rebuttal evidence.

The independent hearing officer shall recommend to the Merit Board an appropriate disposition of the case. The recommendation shall be in writing and shall contain findings of fact, including a finding whether there was just cause for the [disciplinary action at issue] suspension, demotion, or

dismissal. The report shall also include conclusions and a memorandum of law.

If no objections are made by the employee or the appointing authority, the independent hearing officer's recommended disposition shall be final upon Merit Board approval. If objections are made, the Merit Board, upon a review of the record, may accept the independent hearing officer's recommendation with or without additional oral or written argument; may remand the case to the independent hearing officer for further hearing or may issue its own decision and order. Notwithstanding Minnesota Statutes Chapter 13, the meeting of the merit board to receive the report, receive objections to the report, and review the record of the report shall be open to the public pursuant to Minnesota Statutes Chapter 13D.

3.3 Merit Board Order: If the Merit Board finds that there is just cause for the suspension, demotion, or dismissal, by a preponderance of the evidence, it shall either affirm the action of the appointing authority, or modify the appointing authority's action by substituting a disciplinary action as the Merit Board sees fit pursuant to federal, state, or local laws and rules. If the Merit Board finds that there was not just cause for the suspension, demotion, or dismissal, the employee may be reinstated without loss of pay and benefits, or the Merit Board may substitute a remedy as the Merit Board sees fit.

The Merit Board shall make its findings and issue its order in writing within a reasonable period of time after receipt of the recommendation of the independent hearing officer. Within three days after receipt of the Merit Board's order, the Human Resources Manager shall file the order with the appointing authority, the employee, and the City Clerk. A record of the Merit Board hearing shall be made, and a copy shall be filed with the City Clerk.

3.4 Appeals to the Courts: Either the employee or the appointing authority may appeal to the district court the order of the Merit Board concerning the employee's suspension, demotion, or dismissal within ten days after written notice of the Merit Board's order has been received by the appointing authority or the employee. The Human Resources Manager shall provide the Merit Board with a copy of the appeal.