ITEM 4

ORDINANCE 8065 – RULE 8

WITH ACCEPTED TRACK CHANGES

RULE 8

Suspension, Reduction, Discharge

Section 1. Causes of Suspension, Reduction or Discharge.

The following may constitute causes for discharge, suspension or reduction of regular employees: That an officer or employee in the Civil Service: (Amended 7/31/07)

a. Has been convicted of, or entered a period of deferred adjudication with community supervision for,a felony or Class A or B misdemeanor; or (Amended 9/17/13)

b. Has willfully, or through culpable negligence been guilty of brutality or cruelty to an inmate or prisoner of a city institution or to a person in custody, provided the act committed was not necessarily or lawfully done in self defense, or to protect the lives of others, or to prevent the escape of a person lawfully in custody; or (Amended 3/6/12)

c. Has been under the influence of intoxicants or drugs or the use thereof while on duty; or

d. Has contracted a disease or has some physical or mental ailment or defect which makes him unfit for Civil Service, to the extent permissible under federal and state laws. (This subsection may not be availed in any case to effect the discharge of an employee where such employee is entitled to and intends in due course to seek leave of absence for the purpose of procuring proper treatment for such disease if it is curable within the maximum of 12 month time allowed hereunder for leave of absence. Action hereunder will not in anywise affect the right of one suffering physical injury or disability arising from course of employment in the Civil Service to retirement or disability payments under any existing retirement or disability payments, or to participate in any retirement or disability plan adopted by the City); or (Amended 11/13/84, 8/25/09, 9/17/13)

e. Is wantonly offensive in his conduct or language towards the public, an elected or appointed official, the head of any department, or his fellow employees; is abusive, threatening, or uses coercive treatment to another employee or a member of the public, or provokes or instigates violence; or abusive to an animal in the care or control of the employee; or (Amended 8/25/09, 3/6/12, 9/17/13)

f. Is incompetent or negligent in the performance of duties, including but not limited to, failure to perform assigned tasks, or failure to discharge duties in an accurate, prompt, competent, or responsible manner; or (Amended 8/25/09, 9/17/13)

g. Is dishonest, commits theft, violates a law, or violates policies relating to the handling or procurement of property, or negligent in care or misuse of City property; or (Amended 7/31/07, 3/6/12, 9/17/13)

h. Abandons his position, has repeated unexcused absences or tardies, abuses leave privileges, or is absent without notification or without the provision of a valid or acceptable reason for the absence; or (Amended 9/17/13)

i. Fails to meet or maintain qualifications, including but not limited to, failing to obtain or maintain required certificates, licenses or other credentials established for the employee's position or classification; or (Amended 9/17/13)

j. Has induced, or has attempted to induce an officer or employee in the service of the City to commit an unlawful act or to act in violation of any lawful departmental or official regulation or order; or has taken any fee, gift, or other valuable thing in the course of his work or in connection with it, for his personal use from any person, when such fee, gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than accorded other persons; or (Amended 8/25/09)

k. Deliberately or carelessly acting in a manner that endangers the safety of self or others; or (Amended 9/17/13)

l. Except as permitted in paragraph (q) below, engaging in the following political activity is prohibited and the employee will be subject to disciplinary action for the following conduct (Amended _____):

(1) actively engaging in the management or organizational committee of any municipal campaign;

(2) acting as a worker at the polls in a municipal election;

(3) participating in the solicitation of money in a municipal election;

(4) contributing money or other valuables for any political purpose in connection with municipal elections;

(5) while on duty, engaging in the distribution of any political material;

(6) while on duty, promoting or engaging in the candidacy of any candidate or political party during any election period, whether it be a partisan or municipal election;

(7) using city time or resources for any political purpose;

(8) while wearing a city uniform, engaging in any political activity;

(9) attempting to influence the vote or political action of any city employee whether superior or subordinate, while on duty;

(10) attempting to influence, through threat or coercion, the vote or political action of any city employee whether superior or subordinate, while on or off duty;

(11) recruiting or encouraging other city employees to support or participate in municipal elections;

(12) accepting political paraphernalia while on duty or on city property;

(13) using your city title or position in an endorsement for any political election.

Anything not prohibited above is permitted, to include the following:

(1) engaging in the organizational efforts of partisan elections;

(2) participating in partisan election steering committees;

(3) demonstrating their political preference in partisan or municipal elections by displaying political paraphernalia representative of their political preference, so long as the employee is off duty, not in uniform, and not in a city facility, and does not use his city position or title; (Amended 8/25/09)

(4) participating in the dialogue of community forums in any election;

(5) endorsing the candidate of their choice in any elections so long as the employee is off duty, not in uniform, and not in a city facility, and does not use his city position or title; (Amended 8/25/09)

(6) participating in all matters related to their candidate's election in partisan elections;

(7) joining political clubs and organizations;

(8) participating in all partisan activities related to the election process.

(Amended 05/07/02)

m. Violates the City's Ethics Ordinance; or (Added 7/31/07)

n. Refusal to follow the lawful order of a superior or supervisor; or (Added 7/31/07)

o. Subjecting a fellow employee or subordinate to unlawful intimidation, harassment or retaliation; or (Added 7/31/07)

p. For just cause; or (Added 7/21/07)

q. As permitted by law, and as provided in Rule 10, an employee may become a candidate for public office while maintaining his or her employment with the City; however, the employee must continue to fulfill all the duties and responsibilities associated with his or her city employment. An employee is prohibited and will be subject to disciplinary action for campaigning or taking affirmative action for the purpose of gaining nomination or election to public office while on duty, while using city time or resources, and/or while in city uniform. (Added _____)

Section 2. Disciplinary Notice.

Disciplinary actions in the nature of a discharge, involuntary reduction, or suspension taken against a regular employee, other than at the end of a probationary period, will not become effective until the Department Head has first served upon such employee a written notice of discipline. The notice must contain one or more statutory reasons or grounds for discipline, together with such specifications of fact as will enable the employee to make an explanation and place him fairly upon his defense. The specifications of fact shall be of sufficient specificity so as to preclude the possibility of disciplinary action for the same act or omission in the future. Nothing contained herein shall prohibit the Department Head from using an employee's prior acts or omissions resulting in discipline in determining future disciplinary action against the employee. An employee may be disciplined for other acts or omissions not specified in the notice even if such acts arise from the same incident or event. A Department Head may not unilaterally reduce the discipline given once notice of discipline has been provided to the employee, without the employee's consent. A copy of such notice of discipline, together with the employee's explanation, if any, will be filed with the Human Resources Director. (Amended 06/24/03, 7/31/07, 8/25/09)

Section 3. Notice of Proposed Disciplinary Action, Procedure and Limitation of Action.

a. When disciplinary action in the nature of a five (5) day suspension or greater, a reduction, or discharge is being contemplated by the Department Head, the employee must be served with a notice of proposed disciplinary action which shall conform with the notice requirements set forth in

Section 2 and Section 3 (b) of this Rule. In addition to the notice of proposed disciplinary action, the employee shall be furnished with the written materials and tangible things in the possession of the Department Head that form the factual and evidentiary basis for the proposed disciplinary action. No matter may be withheld from the employee that is inconsistent with the theory of discipline or that could tend to mitigate the contemplated sanction. (Amended 8/25/09)

b. Within ten (10) working days of receipt of the notice of proposed disciplinary action, the employee may request a conference with the Department Head. Within five (5) working days of receipt of the employee's response, the Department Head shall meet with the employee, provided further that this period may be extended with the mutual consent of the Department Head and the employee. No witnesses may be called to testify as part of the employee's explanation or response. During the conference, the employee, their representative, and the Department Head shall engage in discussions with a view toward reaching a consensus and agreement relative to the proposed disciplinary action. No part of the discussions that take place during the conference may be offered into evidence at any subsequent hearing, except for the limited purpose of determining compliance or non-compliance with the provisions of this Rule as provided in paragraph "e" and for impeachment purposes. In the event such a consensus is reached, the execution by the employee of documents finalizing the settlement agreement shall constitute a waiver of the employee's right to appeal to the Commission, and the employee shall be so advised in plain language. (Amended 09/09/03, 01/06/04, 8/25/09)

c. Respecting discharge, those departments currently using a pre-termination hearing shall not be required to have a conference as contemplated hereinabove provided that the time between notification and hearing shall be at least five (5) days and further provided that there shall be no change to current practices regarding violations of applicable federal laws. (Amended 09/09/03, 01/06/04, 8/25/09)

d. The employee is entitled to have a representative of their choice assist them in the preparation and presentation of their response, provided further that in the event the representative is an employee of the City, he shall use vacation leave or personal days for such time as may be required for the representative to attend the conference. If the employee does not have any accrued vacation or personal days, the employee will be placed on unpaid administrative leave for such time as may be required for the representative to attend the conference. The employee must provide his Department Head with two days notice of the request to take the above leave. The Department Head may disapprove the request if the leave significantly interferes with the operational needs of the department. (Amended 09/09/03, 01/06/04, 8/25/09)

e. Disciplinary action must be taken against an employee within 80 working days after the occurrence of the incident giving rise to the discipline or from the date that the Department Head knew or should have known that disciplinary action is appropriate, whichever is later, provided however that this period of limitation shall be tolled if an investigation is being conducted by a law enforcement authority into criminal charges against the employee arising out of the same incident. Once a Department Head receives notice from the employee that charges have been preferred, through an indictment or information, or that the criminal investigation has been concluded without the preferral of charges, then the time period will resume running. (Amended 09/09/03, 01/06/04, 8/25/09)

f. Any issue of non-compliance with these provisions will be considered by the hearing officer and/or Commission upon the appeal of the disciplinary action. (Amended 01/06/04)

g. In computing any time periods set forth in this Rule, Saturdays, Sundays, and City Holidays shall not be included. (Amended 01/06/04)

h. Nothing in this Rule shall prevent suspension of the employee from service without pay in appropriate circumstances. (Amended 01/06/04)

i. A copy of this Rule shall be attached to each notice of proposed disciplinary action. (Passed 1/6/04)

Section 4. Resignation Before Appeal Decision.

The acceptance by Department Head of the resignation of a person discharged before final action on the part of the Commission will be considered a withdrawal of the charges and the separation of the employee concerned will be recorded as a resignation and the proceeding will be dismissed without judgment.(Amended 7/31/07)

Section 5. Disqualification for Reappointment.

Any employee who is dismissed for cause or who resigns while not in good standing will be disqualified from taking a Civil Service examination for two years thereafter. His name will be removed from all eligible lists, unless, in the judgment of the Commission the cause of his dismissal or resignation under charges will not affect the possibility of his usefulness in some other position. (Amended 8/25/09)

Section 6. Non-Certification of Suspended Persons.

The names of persons suspended will not be certified from eligible lists during the period of suspension.

Section 7. Election to Forfeit Annual Leave.

Regular employees suspended for not more than ten (10) working days may elect to forfeit annual leave for a period equal to the suspension, or to the extent of the employee's annual leave balance, subject to the approval of the Department Head. The election provided for herein, shall work a waiver of the employee's right to appeal the disciplinary action to the Commission, and the employee shall be so advised in plain English on a suitable form upon which the election shall be made, as developed by the Human Resources Director and appended to the notice of suspension. The Department Head shall not unreasonably withhold approval of the employee's election. (Added 05/11/04, Amended 7/31/07)

Section 8. Formal Counseling.

Formal Counseling is not within the type of disciplinary action specified in Section 6.13-2 of the Charter which may be appealed to the Civil Service Commission. A formal counseling is issued by the Department Head and considered a written counseling to address employee workplace conduct. Employees receiving a formal counseling shall have the right to place responses to the formal counseling into their personnel files which shall remain in the file so long as the formal counseling to which the response relates remains in the file. Upon an employee's request, formal counselings shall be removed from an employee's personnel file after the expiration of twenty-four (24) months from the date of the last formal counseling, provided the employee has not received any disciplinary action during the twenty-four (24) month time period between the request and the last-received formal counseling. Formal counselings meeting the criteria above shall not be considered against the employee for purposes of determining progressive discipline or performance

evaluations, regardless of whether or not the employee requested removal of the formal counselings. If a department-specific policy contains a look-back period for formal counselings that conflicts with this Rule's twenty-four (24) month look-back period, the department-specific policy supersedes this provision of the Rule for purposes of progressive discipline and performance evaluations. (Added 8/25/09)(Amended 11/2/10, 3/6/12, _____)