

RULE 7

PERSONNEL ACTIONS

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RULE 7 - PERSONNEL ACTIONS

7.1 Employment Status:

- A. **Purpose of Probation:** The probationary or working test period is an integral part of the employment process and shall be used by the Appointing Officer or the Department Head for closely observing an employee's work. It shall be utilized for the most effective adjustment of the new employee and for the elimination of any probationary employee whose conduct and performance does not meet the required standards in the opinion of the Appointing Officer or Department Head. The probationary or working test period shall begin immediately upon appointment and shall be for a period of at least six (6) months.

For Civil Service employees, all original and re-employment appointments shall be for a probationary period of at least six (6) months. Successful completion of the probationary period and the compliance with these Rules shall be requisites for employment as a Permanent Trainee, as described in the following paragraph, and the employee affected shall be notified of such employment status.

- B. **Permanent Trainee:** Upon successful completion of the Civil Service probationary period, probationary Civil Service employees shall be employed as a Permanent Trainee for an additional period of six (6) months in which time they shall be in a training status for the purpose of observation and evaluation on-the-job to assure that they meet required job standards and, during this period of time, Civil Service employees shall be subject to position/class rejection if their performance does not meet the required standards in the opinion of the Appointing Officer or Department Head.

Permanent Trainee employment status may be extended for six (6) additional months at three (3) month intervals. Permanent Trainee employees are subject to the same personnel rules as other permanent Civil Service employees.

Employment in Permanent Trainee employment status shall be regular and continuous and not of a temporary status and subject to those portions of the Charter of the City of Sarasota dealing with the service for Police personnel and the Civil Service Rules promulgated and adopted pursuant to such Charter's authority. Permanent Trainee employment status shall qualify the employee for all fringe benefits, such as vacation, life insurance, hospitalization, etc.

Upon successful completion of the employment status as a Permanent Trainee, and upon request of the Chief of the Department, recommendation of the Director of Human Resources and approval of the City Manager or City Auditor and Clerk, for their respective employees, the employee shall qualify for permanent appointment.

- C. **Promotional Probation Period:** Promotional appointments shall be for a probationary period of six (6) months. At the conclusion of the probationary period, no salary or other compensation payment shall be made to any probationary employee unless the Department Head has first filed, with the Department of Human Resources, a statement in writing that the performance of the employee during the probationary period was satisfactory and it is desired that he or she be continued in the service. The Department Head shall include in said statement an appraisal of the value of the services of the employee, and shall include a service rating on prescribed forms.

Successful completion of the probationary period and the compliance with this Rule shall be requisites for a permanent appointment, and the employee affected shall be notified of such appointment.

7.2 Evaluation:

- A. Performance Report: Each probationary employee's performance shall be evaluated at least twenty (20) calendar days prior to the conclusion of the probationary period by the employee's immediate supervisor on the Employee Performance Evaluation Form provided. The required evaluation shall be reviewed by the Department Head and be filed with the Director of Human Resources at least twenty (20) calendar days prior to the termination date of the employee's probationary period.
- B. Reports During Probationary and Permanent Trainee Periods: The Department Head shall file with the Department of Human Resources at the end of every six (6) months a service rating of each employee who is on extended probation or permanent trainee status on the prescribed form. The rating shall be offered to the employee for his or her signature.

7.3 Rejection:

- A. Probationary/Permanent Trainee Periods: The Department Head, with prior approval of the City Manager or City Auditor and Clerk, for their respective employees, may reject any employee during the Probationary/Permanent Trainee periods without the right of review of any kind for the employee. Such rejection shall not be based on consideration of age, sex, race, creed, religion, national origin, marital status or physical disability, except where age, sex, marital status and physical requirements are bona fide occupational qualifications.
- B. Promotion: If, following a promotional appointment, an employee is rejected during the probationary period because of failure to meet the performance requirements of the promotional position, the employee shall be reinstated in the position from which the employee was promoted, even though this may necessitate the layoff of the employee occupying the former position. However, if no vacancy exists at the time in such class of position to which the employee might have been restored, then the Rules governing layoff shall be applied.

7.4 Appointment:

A Probationary/Permanent Trainee employee who has received a rating less than satisfactory on his or her Employee Performance Evaluation shall not receive a permanent appointment. In order to receive a permanent appointment, the Department Head must notify the Director of Human Resources in writing at least twenty (20) days prior to the expiration date of any employee's Probationary/Permanent Trainee period that the employee's rating is satisfactory and that he or she is to continue in the position.

A probationary employee shall not be permitted to work after the concluding date of his or her probationary period unless the Director of Human Resources shall have been notified that the probationary employee had attained a rating of satisfactory.

7.5 Extension:

If, at the end of the required six (6) month probationary period, a Department Head cannot certify to Permanent Trainee/Permanent status for good and sufficient cause, the probationary period may be extended in intervals, each not to exceed three (3) months, with the recommendation of the Director of Human Resources and the approval of the Appointing Officer. Such request must be in writing setting forth the reasons for such extension.

The Department Head, with approval of the City Manager or City Auditor and Clerk, for their respective employees, for reason, may extend a probationary period, but not in excess of twelve (12) months beyond the initial period.

7.6 Service Date:

Upon the satisfactory completion of their Probationary, Permanent Trainee period and upon receiving permanent appointment, employees shall receive credit for service dating from the date of their probationary appointment.

7.7 Promotion:

Promotion of employees in the Classified Service shall be on the basis of merit earned by qualifying marks on promotional examinations, skill, ability, job knowledge, efficiency, fitness and industry, as shall be determined by the aid of Employee Performance Evaluation. Forms, to be established and maintained by Department Heads, and shall be filed with the Department of Human Resources.

7.8 Transfers:

The transfer of an employee from a position in one class under one Department Head to a position in another class under another Department Head may be made in order to bring about a better distribution of persons in service or to effect economies or to provide training. Such transfer must receive the approval of the Department Head and the City Manager or City Auditor and Clerk, for their respective employees.

No employee shall be transferred to a position involving duties for which the employee is not qualified, as indicated by experience, training, and record of service, nor shall such transfers involve any change in compensation without approval of the City Manager or City Auditor and Clerk, for their respective employees. The level of compensation is to be determined on the basis of skill, knowledge and experience of the employee, giving adequate consideration to the pay structure for the proposed position and shall not be based on consideration of age, sex, race, creed, religion, national origin, marital status, or physical disability, except where age, sex, marital status, and physical requirements are bona fide occupational qualifications

7.9 Reduction of Salary:

A Department Head may request a reduction in salary of an employee whose quality of work is of low service value and does not conform to the required standards for the employee's grade. Such reduction in salary shall not be below the minimum established for the employee's grade. Appeals from such action may be taken by the employee under these Rules.

7.10 Counseling:

An employee may be counseled, as defined in these Rules and Regulations by his or her supervisor, when the supervisor believes that such counseling will serve to improve the employee's behavior, conduct or performance. Counseling shall not be considered to be disciplinary action under these Rules and Regulations.

7.11 Instruction and Cautioning:

An employee may be instructed and cautioned, as defined in these Rules and Regulations, by his or her supervisor, when that employee has violated any cause for dismissal, suspension, demotion or rejection as provided in Rules 7.15, 7.16, 7.17 or other applicable Rules and Regulations.

7.12 Reprimands:

An employee may be reprimanded, as defined in these Rules and Regulations, by his or her supervisor, when that employee has violated any cause for dismissal, suspension, demotion or rejection as provided in Rule 7.15, 7.16, 7.17 or other applicable Rules and Regulations.

7.13 Restriction:

An employee may be restricted, as defined in these Rules and Regulations, by his or her Department Head with prior recommendation of the Director of Human Resources and approval of the City Manager or City Auditor and Clerk, for their respective employees, for the good of the service for a period of time deemed to be in the best interest of the City.

7.14 Pre-Determination Hearing, Pre-Suspension, Pre-Demotion or Pre-Dismissal Hearing:

In initiating a potential suspension, demotion or dismissal to a permanent employee as provided in Rule 7 of the Personnel Rules and Regulations, the employee is to be given a Pre-Determination hearing by the Department Head in which the employee is allowed to explain the cause for the conduct/behavior.

Procedure: The Pre-Determination hearing is to be informal and conducted by the Department Head at his or her location without extensive witnesses, court reporters or lawyers. Notes on the hearing are to be made and witnessed whenever possible.

The Department Head shall give a copy of the specifications and charges of the violation to the employee prior to the Pre-Determination hearing and allow reasonable time for the employee to study the charges and prepare for conference, at which the employee shall have the right to representation of his or her choice.

The Department Head shall conduct the Pre-Determination hearing and shall give due consideration to the comments of the employee before initiating the required personnel action papers. The Department Head shall inform the employee of the right of appeal under Rule 7.21 for general employees or Rule 7.22 for Police Uniform Service employees from subsequent duly approved suspension, demotion or dismissal. In addition, where the personnel action papers will result in dismissal, suspension, or demotion and when the circumstances in question meet the criteria set forth at Rule 7.23.C, the Department Head shall also give the employee notice that the employee has a right to request a Name-Clearing Hearing and may request that the appeal be used for that purpose, even though the employee does not choose to appeal the suspension, demotion or dismissal.

7.15 Suspension:

The Department Head may suspend any permanent employee after providing notice to the Director of Human Resources and to the City Manager or City Auditor and Clerk. The employee shall receive a copy of the notice of suspension. The reason or reasons shall be the same as the reasons for dismissals, demotions and suspensions as set forth by the General Personnel System Ordinance and these Rules. The employee shall be given a Pre-Determination hearing, in accordance with Rule 7.14 of these Rules and Regulations.

Such suspension shall be for a period not to exceed thirty (30) duty days, except that extensions with pay may be made pending any investigation and/or hearing.

7.16 Demotion:

After providing notice to the Director of Human Resources and to the City Manager or City Auditor and Clerk, a Department Head may demote the employee to a position in a lower class and grade if the employee's performance is unsatisfactory. Such employee shall be required to serve a class probationary or working test period of six (6) months in such position before acquiring permanent status therein.

The demoted employee may receive less compensation than the rate of compensation before demotion but not in excess of the maximum for the class of positions to which the employee has been demoted. The level of compensation is to be determined on the basis of the skill, knowledge and experience of the employee, giving adequate consideration to the pay structure for the proposed position and shall not be based on consideration of age, sex, race, creed, religion, national origin, marital status or physical disability, except where age, sex, marital status and physical requirements are bona fide occupational qualifications.

An employee may be granted a demotion upon his or her request and such demotion shall be termed and recorded as voluntary. The reason or reasons for any demotion (voluntary or involuntary) shall be put in writing by the Department Head and shall be forwarded to the Director of Human Resources, the City Manager or City Auditor and Clerk, and to the employee, before such demotion is put into effect. Such reason or reasons shall be the same as the reasons for dismissals, demotions and suspensions as set forth by these Rules and Regulations for Civil Service and General Employees.

The Department Head may require that a demotion to a vacant position be made in lieu of a layoff where deemed to be in the best interest of the City. Any employee so demoted shall have his or her name placed on the Re-employment List for the classification from which demoted as provided in cases of layoff. No employee shall be demoted to a position for which he or she does not possess the minimum qualifications.

7.17 Dismissals:

The Department Head may remove a permanent employee at any time for cause, or for the good of the City, with prior notice to the Director of Human Resources and the City Manager or City Auditor and Clerk. The Department Head shall give the affected employee and the Director of Human Resources a written statement setting forth the reasons for such dismissals before the effective dismissal date. The employee shall be given a Pre-Determination hearing in accordance with Rule 7.14 and may appeal a dismissal as set forth in these Rules.

Dismissals are permanent termination of employment and requests for the approval of dismissals shall include a statement of the charges and the required Personnel Action Form. A copy of the approved Personnel Action Form shall be served upon the dismissed employee at the time of removal.

Temporary and Probationary employees may be dismissed at any time by the Department Head with or without cause upon notice to the Director of Human Resources, the City Manager or City Auditor and Clerk, for their respective employees. The temporary or probationary employee may have a right to a Name-Clearing Hearing and notice of that right at the time of dismissal. The notice of the right to a Name-Clearing Hearing must be given when the circumstances outlined in Rule 7.23.C are present. The Department Head shall give the employee notice, and the notice must comply with the requirements of Rule 7.23.D.

Causes for dismissal suspension, demotion, or rejection, whether on duty or off, shall be based on, but not restricted to:

- A. Misrepresentation and/or falsification of employment application or any other records related to employment or employee benefits.
- B. Misrepresentation and/or falsification of any records of the City.
- C. Negligence in performance of duties.
- D. Incompetence, i.e., wanting in adequate skills, capability, or physical and mental qualifications to perform duties.
- E. Permanent or chronic physical or mental ailment or defect which incapacitates, after reasonable accommodation, the employee for the satisfactory performance of his or her duties.
- F. Service ratings falling below the minimum standards required for satisfactory job performance as a result of such causes as negligence, incompetence and inefficiency.
- G. Absence from duty without leave.
- H. Habitual or excessive tardiness or absence from duty.
- I. Willful violation of any of the provisions of the Civil Service Act or of these Rules. Attempt to commit or the commitment of any act or acts intended to hinder or nullify any of the provisions thereof.
- J. Violation of any lawful and reasonable order or regulation.
- K. Failure to obey an order or direction of a superior where a loss or injury to the City, persons or property in the custody of the City, or the public, might or does result because of such failure to obey the directions.
- L. Conduct which is deemed to be disruptive to either fellow employees' or superiors' on-the-job performance.
- M. Violation of rules, orders and policies issued and adopted by the City and/or Department.

- N. Insubordination.
- O. Offensive conduct towards the public, City Officials or other City employees.
- P. Conduct unbecoming an employee of the City which tends to reflect discredit upon the City.
- Q. Interference with and inhibiting the proper rendition or coordination of the services of the City by employees of the City.
- R. Conviction of an immoral or criminal act, reasonably related to job duties.
- S. Intoxication or under influence of alcohol or drugs while at work, subject to reasonable accommodations.
- T. Participation in political activity or campaign during duty hours in any way other than to exercise his or her right as a citizen or privately express an opinion or cast a ballot.
- U. Use of threats, or attempts to use or use of political influence to secure any favor whatsoever in any manner or in any way related to the Classified Service.
- V. The taking of any valuable thing, regardless of its designation or description, in the course of work or in connection therewith for the personal use of the employee from any person, corporation, firm, partnership, or cooperative, whether or not such valuable thing is accepted with the understanding that the donor shall or does receive favors or services not customarily accorded to the general public.
- W. Carelessness or negligence in the care and handling of the property of the City.
- X. Stealing, misusing, or misplacing property, equipment, supplies, materials or any other things of value belonging to the City.
- Y. Failure to complete training.
- Z. Failure to develop or maintain the proficiency required for grade/position.
- AA. Any other related prohibited activity or activities as set forth by these Rules and Regulations, State Statutes and City Ordinances.

Any permanent employee in the combined Classified Service may appeal from a dismissal according to the procedure outlined in these Rules and the City Charter.

7.18 Layoffs:

- A. General: A Department Head may request the layoff of a permanent employee in the service when it is deemed necessary by reason of shortage of work or funds, the abolition of the position, material changes in department organization, or for work-related reasons. Such layoffs shall not reflect discredit upon the service of the employee.

- B. Prior Displacement of Probationary/Temporary Employee: No permanent employee shall be laid off while another person in a position is employed on a probationary or temporary basis in the same class in that department. Temporary employees shall be laid off before probationary employees.
- C. Order of Layoff of Permanent Employees: The layoff of permanent employees shall be made on the basis of Employee Performance Evaluation ratings, and the need for the service rendered, and in inverse order of length of service, other considerations being equal, in the class and in the department.

Any layoff of a permanent employee shall require the recommendation of the Director of Human Resources and the approval of the City Manager or City Auditor and Clerk, for their respective employees.

- D. Notice of Layoff: Notice of the proposed layoff of a permanent employee with the reason therefore shall be made in writing on the required form by the Department Head to the Director of Human Resources. Such notice shall be given sufficiently before the effective date of the layoff to provide the permanent employee fourteen (14) calendar days notice of such layoff.
- E. Limitation of Layoff Status: An employee laid off for the period of one (1) year or more shall be removed from the Re-employment List as prescribed in these Rules.

No temporary or permanent removal of an employee from the service as a penalty or disciplinary action shall be made as a layoff.

In the event a reduction in the number of the lowest grade or class within a department shall cause a permanent employee to be laid off as prescribed in these Rules and Regulations, such employee shall not lose department grade/class and service for a period of time not to exceed one (1) year, provided he or she accepts re-employment within ten (10) days after notice has been given by the Department of Human Resources that the grade/position is open.

The Director of Human Resources shall prepare lists of employees who have been laid off and shall re-employ such persons possessing desired skills before recruiting competitively outside the service in accordance with these Rules and Regulations. Such layoff type separations or interruptions of employment shall be computed as continuous service for purposes of longevity pay for a period of time not to exceed ninety (90) days, or as approved by the City Manager or City Auditor and Clerk, for their respective employees.

7.19 Resignations:

To resign in good standing, a permanent employee must give the Department Head at least fourteen (14) calendar days prior written notice, unless the Department Head shall because of extenuating circumstances, agree to permit a shorter period of notice. A written resignation shall be supplied by the employee to the Department Head, giving the reason or reasons for leaving.

Such resignation shall be forwarded to the Director of Human Resources by the Department Head, together with an Employee Performance Evaluation on the form required, if applicable, and official notice of the resignation, giving pertinent information concerning the reason or reasons for the resignation.

The resignation of an employee who fails to give notice shall be reported to the Director of Human Resources immediately by the Department Head. Failure to comply with the notification requirement shall be entered on the service record of the employee and may be cause for denying future employment by the City.

An employee, who voluntarily resigns in good standing from the service of the City and complies with all Administrative Regulations, departmental policies and procedures, and Personnel Rules and Regulations, shall have his or her name placed on the Re-employment List for one (1) year. After one (1) year, such an employee shall forfeit all Civil Service or General Personnel rights and shall be eligible for future employment only through original entrance procedures.

A permanent employee who voluntarily resigns in good standing from the service of the City and returns and if re-hired within one (1) year from separation date, shall receive permanent employment status and an adjusted date of hire based on the number of days between the separation date and re-hire date.

A permanent employee who voluntarily resigns and whose service has not been satisfactory or who fails to submit a written resignation or to comply with the Administrative Regulations, departmental policies and procedures, and Personnel Rules and Regulations shall forfeit all Civil Service or General Personnel rights and shall be eligible for future employment only through original entrance procedures.

An employee is entitled to the notice of the right to a Name-Clearing Hearing where the employee submits a coerced resignation and where the circumstances specified in Rule 7.23.C are present. The notice shall comply with the requirements set forth in Rule 7.23.D.

7.20 Discipline Administration:

- A. Policy: It shall be the policy of the City to be fair and uniform in the disposition of discipline to employees who do not comply with City Administrative Regulations, departmental policies and procedures, and Personnel Rules and Regulations. The following, therefore, is to be viewed as the standard for the application of the disciplinary action described in this Rule.

- B. Supervisor/Management Responsibility:
 - (1) First-line Supervisors and middle management are responsible for monitoring the work conduct and job performance of their employees.
 - (2) Department Heads are responsible for managing their first-line supervisors and middle managers in the formulation of conduct and job performance standards and the administration of discipline within their departments.
 - (3) The Director of Human Resources is responsible for monitoring all employee disciplinary actions in the City and shall implement appropriate personnel action to ensure that basic employee rights are protected.

- C. Progressive Discipline Administration: Since each violation of a department work rule or City directive may differ somewhat from similar situations, each offense/occurrence shall be evaluated upon its individual merit. This Rule as outlined herein, is not to be construed as a limitation upon the disciplinary action of the City, but is to be used solely as a guide for disciplinary administrative action.

Consideration shall be given to the severity of the violation/offense, the cost involved, the time interval between violations, the service record and the attitude of the employee towards management.

Administrative disciplinary action shall be processed as provided in Rule 7 of these Rules and Regulations.

(1) Group I:

| | |
|----------------|--------------------------|
| First Offense | Instruction & Cautioning |
| Second Offense | Written Reprimand |
| Third Offense | Written Reprimand |
| Fourth Offense | Suspension |
| Fifth Offense | Demotion |
| Sixth Offense | Dismissal |

- a. Absence from duty without prior permission from the Foreman or Supervisor, except in case of illness or other cause beyond the control of the employee which prevents obtaining prior approval. When advance notice cannot be given, the employee should notify the employee's department (prior to his shift start) of the reasons for his or her absence and the expected time or date of return.
- b. Leaving the working area at any time without permission from the supervisor.
- c. Neglect or carelessness in observance of official safety or departmental rules, or disregard of common safety practices.
- d. Malicious mischief, horseplay, wrestling or other undesirable conduct.
- e. Disregarding job duties by neglect of work or reading for pleasure during working hours.
- f. Tardiness.
- g. Failure to commence work at the beginning of the duty period or leaving work prior to the end of the duty period. All employees are expected to work from the beginning to the end of the duty period and neither arrives late nor leaves early.
- h. Creating or contributing to unsanitary or unsafe conditions or poor housekeeping. (Examples are: Throwing refuse or objects on the floor or out of windows or placing or failing to remove hazardous objects from assigned work area; these examples do not limit the generality of the Rule.)
- i. Use or possession of another employee's working equipment the employee's consent.
- j. Willful failure to punch in or out if required or failure to report for scheduled duty on time or to make required time reports, or neglect or carelessness in punching in or out, or leaving the place of duty or assigned duty without proper permission.

- k. Stopping work or making preparations to leave work, without specific prior authorization, before the lunch period, or for any official break in work, or before the specified quitting time. (Examples are: Washing up or changing clothes before the official quitting time.)
- l. Distracting the attention of others, or causing confusion by unnecessary shouting, catcalls or demonstration on the job.
- m. Where the operations are continuous, an employee shall not leave his or her post assigned duty location at the end of his or her scheduled shift until he or she is relieved by his or her supervisor or his or her relieving employee on the incoming shift.
- n. Failure to report any personal injury or equipment damage immediately to one's supervisor.
- o. Failure to report the loss of a required City identification card immediately to the supervisor and department.
- p. Unsatisfactory work and/or failure to maintain required standards of performance.

(2) Group II:

| | |
|----------------|-------------------|
| First Offense | Written Reprimand |
| Second Offense | Suspension |
| Third Offense | Demotion |
| Fourth Offense | Dismissal |

- a. Leaving the job during regular working hours without notice to and permission from his or her supervisor.
- b. Sleeping during working hours.
- c. Reporting for work or working while unfit for duty.
- d. Being in possession of, or drinking alcoholic beverages on the job.
- e. The use of abusive or threatening language toward subordinates, fellow employees or members of the supervisory force.
- f. Solicitation within the City employment without permission during working hours.
- g. Failure to report an accident in which the employee was involved.
- h. Unauthorized use of City property for private work or performing private work on City time.
- i. Conduct violating morality or common decency.
- j. Unauthorized posting of notices or unauthorized removal of notices, or signs, from bulletin boards on City property.

- k. Distributing or posting written or printed matter of any description in work areas, unless allowed or previously approved for distribution.
- l. Threatening, intimidating, coercing or interfering with employees or supervision of employees at any time.
- m. The making or publishing of false or malicious statements concerning any employee, supervisor, the City or its operation.
- n. Failure to report for overtime work without good reason after being scheduled to work according to departmental overtime policy.

(3) Group III:

| | |
|----------------|------------------------|
| First Offense | Suspension or Demotion |
| Second Offense | Dismissal |

- a. Wanton or willful neglect in the performance of assigned duties or in the care, use or custody of any City property. Abuse, or deliberate destruction in any manner of City property, tools, equipment, or the property of employees.
- b. Punching another employee's time card, altering another employee's time card, or unauthorized altering of his/her own time card.
- c. Falsifying testimony when accidents are being investigated or falsifying or assisting in falsifying personnel status or other records, including production or work performance reports; or giving false information or withholding pertinent information called for in making application for employment, except as modified under the application section.
- d. Making false claims or misrepresentations in an attempt to obtain sickness or accident benefits, worker's compensation, or unemployment compensation payments.
- e. Sale of tickets for pools or bookmaking, or gambling of a similar serious nature.
- f. Stealing or similar conduct, including destroying, damaging or concealment of any property of the City or of other employees.
- g. The use of narcotics or the sale of narcotics.
- h. Fighting or attempting injury to another employee.
- i. Carrying or possession of firearms, explosives or weapons on City property at any time, except for those authorized by the City to carry weapons.
- j. Knowingly harboring a communicable disease such as TB, which may endanger other employees.
- k. Conviction of a felony reasonably related to job duties.

- l. Misuse or removal of information such as blueprints, lists, City records or confidential information of any nature, or revealing such information without prior written authority from the City.
 - m. Instigating, leading, participating in or overtly preparing in any manner for participation in a "strike" as hereafter defined. "Strike" means the concerted failure of employees to report for duty; the concerted absence of employees from their positions; the concerted stoppage of work by employees; the concerted submission of resignations by employees; the concerted abstinence in whole or in part by any part of employees from the full and faithful performance of the duties of employment for the purpose of inducing, influencing, condoning, or coercing a change in the terms and conditions of employment or the rights, privileges or obligations of public employment, or participating in a deliberate and concerted course of conduct which adversely affects the services of the public employer, the concerted failure of employees to report for work after the expiration of a collective bargaining agreement; and picketing in furtherance of a work stoppage.
 - n. Permitting another to use one's City identification, or using another person's identification or altering a City identification card.
 - o. Commission of an act of dishonesty or any dishonest action. Some examples of what is meant by "dishonesty" or "dishonest action" are: theft, pilfering, opening lockers assigned to other employees, opening lunch boxes, tool kits, or other property of the City or of other employees; inserting slugs in vending machines or telephones or securing articles from vending machines without paying the proper change therein; making false statements to secure employment or to secure an excused absence or to justify an absence or tardiness; making or causing to be made, inaccurate or false reports concerning any absence from work; making or joining in a false statement to influence any official action by the City or making a false statement concerning any matter pertaining to work or employment. The foregoing are examples only and do not limit the term "dishonesty" or "dishonest action".
 - p. Engaging in unlawful or improper conduct off the City premises or during non-working hours which affects or which tends to affect the employee's relationship to his/her job, fellow employees, supervisor or the City's products, property, reputation or good will in the community.
 - q. Insubordination by the refusal to perform work assigned or to comply with written or verbal instructions of the supervisory force which the employee may be reasonably expected to perform.
- D. Past Record: Prior infractions of City or departmental rules which occurred more than five (5) years previously shall not be used by management when imposing disciplinary action on an employee, unless it is related to the current charge/violation.
- E. Disciplinary Action:
- (1) Supervisors and/or Department Heads shall endeavor to be uniform in imposing disciplinary action on their employees.

- (2) Verbal warnings and written reprimands may be repeated when it is necessary so long as the discipline is commensurate with the offense.
- (3) Complete documentation of any offense and corrective action taken shall be made by the Department Head and a copy shall be furnished to the Department of Human Resources for file.

7.21 Procedures for Appeal of Suspension, Demotion, Dismissal or Layoff: (For General Employees)

A. Request for Appeal:

A permanent employee who has been suspended, demoted, dismissed, or subject to a layoff, as set forth in Rule 7, may appeal such decision by filing a Request for Appeal with the City Department of Human Resources within ten (10) business days of the City's delivery to the employee of a determination letter. If the employee fails to file the Request for Appeal within the allotted time, he or she waives and forfeits the right to appeal.

B. Limitations on appeals of layoffs:

The decision to layoff a permanent employee may not be appealed when the layoff decision is based on economic or re-organizational reasons. The application of the layoff procedures of the Personnel Rules and Regulations may be appealed in the event of a reduction in force due to economic or re-organizational reasons.

C. Notification to the Employee:

The Department of Human Resources shall notify the employee and the Department Head of the time and place for the hearing.

D. Scheduling of Hearing:

After receiving the Request for Appeal, the City will schedule a hearing to take place within 20 business days from the date the appeal notice was received in the Human Resources Department, unless the parties agree otherwise.

E. Participants in the Hearing:

The employee will present his appeal to the City Manager or designee or City Auditor and Clerk or designee for their respective employees. Other participants in the hearing will include the employee's union representative(s), if any, the Department Head, the Director of Human Resources and/or the City Attorney representative, and counsel for either party if requested.

F. Hearing Process:

The process for the appeal hearing shall be as follows: The employee, or their union representative or counsel, shall state why the employee believes the discipline was wrongly applied. The employee may challenge the facts relied upon by the Department Head in making the decision or may argue that the discipline was disproportionate to the charges.

The Department Head shall then present the department's position, after which the employee may respond. During the hearing the City Manager or designee or City Auditor and Clerk or designee for their respective employees may ask questions of either party.

The City Manager or designee or City Auditor and Clerk or designee shall hear evidence regarding the charges. No material amendments of, or addition to, said charges will be considered by the City Manager or designee or City Auditor and Clerk or designee.

The proceedings shall be as informal as is compatible with the requirements of justice.

The hearing shall be open to the public and noticed pursuant to Ch. 286, Fla. Stats. (Florida Sunshine Law). The employee bringing the appeal shall have the right to appear and to be heard in person and may be represented by counsel or a union representative. The City Manager or designee or City Auditor and Clerk or designee may call other persons he or she considers necessary to aid in establishing the facts.

G. Employee Position Statement, Affidavits and Documents:

The employee may issue a written appeal of five (5) typed pages or less instead of or in addition to presenting a case in person. The employee may also, in either event, submit affidavits from persons with first-hand knowledge of the events at issue on a form provided by the Human Resources Department. All documents submitted by either party must be submitted to the City Manager's or City Auditor and Clerk's office no later than ten (10) business days prior to the Appeal Hearing, with a copy submitted to the Department of Human Resources.

H. City Response:

The City Manager or designee or City Auditor and Clerk or designee shall submit a written response within fifteen (15) business days after the appeal hearing to the employee. Copies shall be sent to the Human Resources Department and to the employee's union, if any. The response of the City Manager or designee or City Auditor and Clerk or designee shall be the City's final decision in the appeal process except in the case of termination, as set forth in Section I below.

I. Further appeal of dismissals:

If the employee is appealing a dismissal, the employee may request an appeal of the decision of the City Manager or designee or City Auditor and Clerk or designee to a hearing officer, provided the Request for Appeal is delivered to the Human Resources Department within the time frame set forth in the City's Response. The hearing officer's decision shall become the final decision of the City in the appeal.

J. Scheduling and selection of hearing officer:

Upon receipt of a Request for Appeal to a Hearing Officer, the Human Resources Department shall schedule a hearing with one of the hearing officers approved by the City (and the Union, if applicable), at a date and time that is agreeable to the parties and their counsel or union

representatives. The Human Resources Department shall endeavor to set the hearing within ninety (90) days of receipt of the Notice of Appeal.

K. Order of Proof:

During the hearing, both parties may present testimony and submit evidence to the hearing officer in support of their respective positions. The City shall have the initial burden of establishing that there was “just cause” for the discipline. Once that is established, the burden shall shift to the employee to establish that the City’s actions were wrong or too severe under the circumstances.

L. Role and Authority of Hearing Officer:

The hearing officer shall rule upon evidentiary and procedural issues during the hearing; shall set time limits for each party to present its case; and shall make such other rulings as are necessary to facilitate the hearing.

The hearing officer shall not be governed by strict rules of evidence but may use the Florida Rules of Evidence as a guide in making determinations.

The hearing officer may request that the parties submit a position statement and a joint stipulation of facts prior to the hearing, as well as a proposed order following the hearing.

The hearing officer shall allow the parties an opportunity to make an opening and closing statement, shall allow them to call and cross-examine witnesses, shall allow them to put on rebuttal testimony when needed.

The hearing officer shall have the power to subpoena and require the attendance of witnesses, the production of pertinent documents, and to administer oaths.

M. Failure of Parties to Appear:

If the employee bringing an appeal shall fail to appear at the scheduled hearing, the hearing officer shall hear the evidence and render a decision thereon. If the Department representative(s) shall fail to appear, and if no evidence is presented in support of charges or specifications, the hearing officer may render a decision by default or may hear the evidence offered by the employee making such appeal and render a decision thereon.

N. Resignation Before Appeal Hearing:

The acceptance by the City Manager or City Auditor and Clerk for their respective employees of the resignation of an employee who has appealed a dismissal action before final action on the part of the hearing officer shall be considered a withdrawal of the appeal, and the separation of the employee concerned shall be recorded as set forth on the Personnel Action Form, and the proceedings shall be dismissed with prejudice and without recommendation. Any employee terminated under such circumstances shall waive all his or her Classified Service rights of Appeal and Hearing.

O. Hearing Officer decision:

The hearing officer shall have fifteen (15) business days from the date of the conclusion of the hearing in which to submit a final order, which includes Findings of Fact and Conclusions of Law, to the City Manager or City Auditor and Clerk, with a copy to the City's counsel, and a copy to the employee and his or her counsel or union representative. An extension of time to submit the final order shall be granted to the hearing officer upon his or her request.

P. Compensation When Appeal is Sustained:

The hearing officer may order reinstatement of the employee with or without back pay, and if back pay is ordered, it may be ordered in full or in part

7.22 Procedure for Appeal of Suspension, Demotion or Dismissal:

(For Civil Service Employees (Police Officers))

Upon receipt by a permanent employee of a Personnel Action Paper providing for his or her suspension, demotion or dismissal as prescribed in Rule 7, the employee may appeal the Board's recommendation within seven (7) working days by requesting the Department of Human Resources to make arrangements with the Civil Service Personnel System Board to place the matter on the Board's agenda for its next regular meeting. Time shall be considered of the essence in making this request.

The Department of Human Resources shall notify the employee and the Chief of Police of the time and place of hearing the appeal.

A. Board Proceedings:

The Board shall hear the appeal within thirty (30) days from the date that such appeal was so filed with the Board by the office of Employee Services of the Department of Human Resources or as soon as practical.

The Board shall hear the evidence upon the charges and specifications as filed by the Chief of Police. No material amendments of, or addition to, the charges or specifications will be considered by the Board and the proceedings shall be as informal as is compatible with the requirements of justice.

The hearing shall be public and the employee making such appeal shall have the right to appear and to be heard in person. The Board may call other persons it considers necessary to aid in establishing the facts.

B. Order of Proof:

The Department Head shall present the problems or evidence in support of the charges or specifications. The employee concerned or his or her representative shall have the right to cross-examine witnesses called against him. The parties in interest may then offer rebuttal evidence. The parties shall have the right to present closing arguments.

C. Evidence and Counsel:

The admission of evidence may, in the discretion of the Board, be determined by the rules applied by the courts in civil cases. The Board shall have the power to subpoena and require the attendance of witnesses, the production of pertinent documents, and to administer oaths. The Board may be represented by the City Attorney or other counsel. The employee concerned may be accompanied or represented by a representative of his or her choice and also be represented by counsel. The Department Head may be represented by the City Attorney's Office or other counsel.

D. Failure of Parties to Appear:

If the employee appealing shall fail to appear, the Board shall hear the evidence and render a decision thereon. If the Department Head shall fail to appear, and if no evidence is presented in support of the charges or specifications, the Board may render a decision by default or may hear the evidence offered by the employee appealing and render a recommendation or decision thereon.

E. Resignation Before Appeal Hearing:

The acceptance by the City Manager of the resignation of an employee who has appealed a dismissal action before final action on the part of the Board shall be considered a withdrawal of the appeal, and the separation of the employee concerned shall be recorded as set forth on the Personnel Action Form, and the proceedings shall be dismissed with prejudice and without recommendation. Any employee terminated under such circumstances shall forfeit all his Classified Service rights and benefits.

F. Board Action:

Civil Service: Within seven (7) calendar days after the completion of the public hearing and any investigation the Board considers necessary, the Board shall render its judgment affirming, reversing or modifying the action of the said department, and the Civil Service Board's decision shall be final.

G. Compensation When Appeal is Sustained:

Whenever any suspension or dismissal is disapproved by the Civil Service Board's final decision and reinstatement is ordered, such person shall receive any salary to which he or she would otherwise have been entitled.

H. Law Enforcement Officers Act:

The complaint procedures in this Rule, insofar as they affect Law Enforcement Officers, shall be deemed to be modified by the provisions of Chapter 74-274, Laws of Florida (Policeman's Bill of Rights Law), as amended. The provisions of the law are deemed to be incorporated as though fully set forth herein.

7.23 Name-Clearing Hearing:

- A. General: All employees, regardless of the status of their appointment, are entitled to a Name-Clearing Hearing upon request, where the conditions described herein of this Rule are met, and the employee is entitled to notice of his or her right whenever he or she has been subject to

disciplinary action resulting in suspension, dismissal, demotion, rejection, during the probationary period, or a coerced resignation. The employees who are entitled to these rights are probationary employees, permanent trainees, temporary employees, promotional probationary employees and permanent employees.

B. Definitions:

- (1) Name-Clearing Hearing: A Name-Clearing Hearing is a hearing that provides a qualifying employee with the opportunity to contradict a charge or accusation that has been made against the employee, in order to show the error in the charge or accusation. A Name-Clearing Hearing is not a hearing that provides an opportunity to challenge the propriety of the City's decision to reject an employee during his or her probationary period, suspend, demote, dismiss or seek a coerced resignation.
- (2) Coerced Resignation: A resignation that occurs in response to a requirement that the employee resign in lieu of rejection during the probationary period, suspension, demotion or dismissal.

C. The Right to Notice: The notice shall be given whenever all the following conditions are present:

- (1) The stated reason(s) for the personnel action has/have a significant bearing on the employee's reputation, or would substantially interfere with the employee's future employment in the same or similar field; and,
- (2) There is a factual dispute as to the truth or falsity of the stated reason(s); and,
- (3) The stated reason(s) is (are) made in connection with or results in the employee's rejection during the probationary period, suspension, demotion, dismissal or coerced resignation; and,
- (4) The stated reason(s) is (are) made or becomes/become a public record pursuant to Florida's Public Records Law, or is made public in any other way.

D. Content of the Notice: At the time of the relevant disciplinary action, under the necessary conditions, the Department Head shall inform the employee of the right to seek a Name-Clearing Hearing. The notice:

- (1) Shall be in writing and
- (2) Shall inform the employee of the nature of the stated charge(s) made public in connection with any of the above personnel actions in sufficient detail to enable the employee to show the error in the statements, and
- (3) Shall state that the employee may request a Name-Clearing Hearing and that such hearing shall only be granted if employee makes such request within the time-frame set forth in the Notice, and

- (4) Shall inform the employee that he or she may submit documents or testimony at the hearing that contradicts the stated charge(s) made in connection with their rejection during the probationary period, suspension, demotion, dismissal or coerced resignation. The notice shall inform the employee that the purpose of the hearing is to factually dispute the statement or charge, and its purpose is not to inquire into or dispute the propriety of the City's decision to reject during the probationary period, suspend, demote, dismiss or seek and accept the resignation of the employee.

E. Hearing:

A qualifying employee may request a stand-alone Name-Clearing Hearing or may present evidence and testimony at a hearing in which the employee is appealing the discipline imposed by the Department Head.

- (1) The person(s) who made the allegedly defaming statement that was made public shall not be a decision maker or member of the deciding tribunal.
- (2) If the employee chooses a stand-alone Name-Clearing Hearing, the composition of the tribunal shall be determined by the Department Head in consultation with the Director of Human Resources. If the employee elects to appeal the discipline imposed by the Department Head, the entity or person that hears that appeal shall also conduct the Name-Clearing Hearing.
- (3) The employee may submit documents and/or testimony to contradict the statement(s) made publicly in connection with the rejection during the probationary period, suspension, demotion, dismissal or coerced resignation of the employee.
- (4) The employee will not be permitted to submit documents and/or testimony for the purpose of questioning or attacking the propriety of the City's decision to reject an employee during his or her probationary period, suspend, demote, dismiss or request and accept the employee's resignation.
- (5) The Department Head, in consultation with the Director of Human Resources, may place a document summarizing the disposition of the Name-Clearing Hearing in the personnel file.
- (6) An employee who qualifies for a Name Clearing Hearing but does not wish to participate in such a hearing may choose instead to place a letter in his or her personnel file contradicting charges or accusations made against the employee provided the employee submits the letter to the Human Resources Department within the time period provided in the Notice for requesting a hearing.