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CITY OF UKIAH
RULES GOVERNING EMPLOYEE DISCIPLINE

I. General Rules

A. Application

These rules apply to full-time, regular City employees in the classified service who have successfully completed their introductory period.

All other City employees may be disciplined without reference to these provisions, including Department Heads who are not part of the classified service. Such employees have no property interest in their employment, express or implied, and serve at the will and pleasure of the appointing authority.

B. Types of Discipline

Discipline may be imposed in one of the following ways:

- a) Oral reprimand.
- b) Written reprimand.
- c) Suspension with or without pay.
- d) Demotion.
- e) Termination.

C. Grounds for Discipline

Discipline may be imposed whenever good cause exists. It is not possible to define all the factors which constitute good cause. The following are examples of circumstances where discipline may be imposed.

- a) Theft.
- b) Insubordination.
- c) Substance abuse affecting job performance.
- d) Failure to report to work without proper excuse.
- e) Incompetence or other failure to properly discharge duties.
- f) Abuse of sick leave.
- g) Conduct outside working hours that directly and adversely affects the employee's ability to perform his duties or the City's legitimate interests as an employer.
- h) Falsification of records, either the application for employment or other records after employment.
- i) Fighting or horseplay between employees.
- j) Violation of any City or departmental rules governing employee conduct.

- k) Intentional misconduct or gross negligence or recklessness causing personal injury or property damage.

D. Progressive Discipline

The City will endeavor, where appropriate in the judgment of management, to use progressive discipline. A typical progressive sequence of disciplinary actions by the City may include oral reprimand, written reprimand, suspension without pay, demotion and discharge. Not every case warranting discipline will utilize each type of penalty in the sequence. The penalty and its severity will depend on such factors as the nature of the employee's duties, the conduct warranting discipline, the employee's length of service with the City, the employee's previous conduct and disciplinary record and the employee's willingness and ability to change his or her behavior.

E. Types of Discipline Explained

1. Oral Reprimand

An oral reprimand is a verbal statement to the employee that certain conduct is inappropriate. A written record of the date and circumstances of the reprimand will be kept by the person giving the reprimand and a copy of this record shall be provided to the employee. This record will not be included in the employee's personnel file.

2. Written Reprimand

A written reprimand is a formal written communication to the employee describing improper conduct. When the employee has received one or more oral reprimands, that fact may be stated in the written reprimand.

A copy of the written reprimand shall be placed in the employee's personnel file.

3. Suspension without Pay

An employee may be suspended without pay. Absent unusual circumstances, the maximum suspension will be sixty (60) days. Misconduct warranting discipline exceeding a sixty (60) day suspension will normally result in termination.

During suspension an employee will not accrue sick or other paid leave or vacation. The employee will continue to receive other benefits not related to salary, e.g., health and life insurance coverage.

4. Demotion

A “demotion” is the movement of an employee from one class or step to another class or step having a lower maximum base rate of pay.

5. Termination

Termination is the most severe form of discipline.

II. DICIPLINARY PROCEDURE

A. Reprimand

The Department Head shall meet with an employee regarding the reprimand after it is issued. If the reprimand is in writing, the employee shall receive a copy thereof from the Department Head or his or her designee. The Department Head or his or her designee shall insure that a copy of the reprimand is placed in the employee’s personnel file, and the employee shall be notified of such action. The employee shall be given a reasonable opportunity not to exceed 14 calendar days to prepare a written response to such reprimand which shall be maintained in the employee’s personnel file. For good cause shown, an employee response may be filed after the fourteenth day following the employee’s receipt of the written reprimand. Other than such written response, there shall be no right to appeal or contest a reprimand.

B. Suspensions and Terminations

1. Short-term suspension of 5 shifts or less.

Department Heads or their designees shall have the authority to impose suspensions of up to 5 (five) working shifts (three 24-hour shifts for employees in the fire department (“short-term suspensions”) on employees within their department who are eligible for overtime under the Fair Labor Standards Act (“FLSA”). Employees who are exempt from the overtime provisions of the FLSA (“exempt employees”) are subject to suspensions of less than 5 days only if such suspensions will not violate the salary test under the FLSA. In cases where a short term suspension will violate the salary test, the department heads may order deducted from an exempt employee’s accrued vacation leave an equivalent amount of time in lieu of a short term suspension. All employees subject to such suspensions shall be entitled to notice and an opportunity for a hearing as described in subsections a – c, below.

a. Notice.

Prior to the effective date of the suspension the employee shall be personally served with a written notice containing the following information:

- (1) a copy or statement of charges upon which the suspension is based;
- (2) a description of the facts supporting the suspension;
- (3) the length of the suspension;
- (4) the proposed effective and termination dates of the suspension;
- (5) copies of any documents or other writings upon which the Department Head or his or her designee relies in imposing the discipline.
- (6) A statement that the employee may respond to the Department Head, either orally or in writing within fourteen (14) calendar days of the date that the notice is served upon him or her.

In emergencies the Department Head may provide the notice required by Subsection a (above) after the effective date of the suspension. An "emergency" shall exist if the Department Head concludes that harmful consequences may result if an employee is not suspended immediately. In the event of an emergency suspension, the notice to the employee shall state the facts upon which a finding of emergency was based.

b. Hearing before Department Head.

(i) Consideration of response.

The Department Head shall consider any written or oral response from an employee in determining whether to revoke or reduce the suspension or to impose a lesser discipline such as a written reprimand.

(ii) Report of consideration.

Within seven (7) calendar days of receiving the employee's response the Department Head shall personally serve the employee with a written report of his or her decision. If the employee is not available at the Civic Center, the Department Head shall send by certified mail a copy of the decision to the employee's home address within said seven (7) days. A copy of the decision, including all notices and other documents served on the employee and all

documents submitted by the employee or otherwise considered by the Department Head in reaching his or her decision, shall be delivered to the Personnel Director. The written decision shall include a notice that if the employee is still subject to suspension and remains dissatisfied with the decision, he or she can appeal the decision to the City Manager who shall have the authority to uphold, reverse or modify the decision of the Department Head and impose such discipline as he or she determines is justified by the evidence presented. The employee must submit the request in writing to the City Manager's office within fourteen (14) calendar days of the date the notice is personally served on or mailed to the employee. The employee's notice of appeal must state the reasons for the appeal and the justification for changing the Department Head's decision. The City Manager shall not consider any appeal that does not satisfy the requirements of this section or consider any reason for changing the Department Head's decision not described specifically in the employee's written request for an appeal.

c. Appeal to the City Manager.

The City Manager shall conduct an informal hearing within fourteen (14) calendar days of the date he or she receives the written request therefore. Orally or in writing he or she shall notify the Department Head and the employee of the date, time and place of the hearing. By agreement of the City Manager and the employee the hearing may be continued for no more than thirty (30) calendar days. The employee may be represented at the hearing. He or she may produce any evidence or argument he or she desires, as long as such evidence or argument addresses grounds for appeal set forth in the written request for an appeal. The City Manager shall maintain a written record of the hearing, and may, but need not, electronically or stenographically record it. At his or her own expense the employee may arrange to stenographically or electronically record the hearing, if the City Manager does not do so. At the conclusion of the hearing, if the City Manager shall either announce his or her decision orally or take the matter under submission. In either case, he or she shall have personally served on the employee or mail by certified mail to the employee's home address his or her written decision. That decision shall be final for the City of Ukiah. The decision shall state the date on which it becomes final and shall notify the employee that under Code of Civil Procedure Section 1094.6 the employee has a right to challenge the decision in Superior Court, if that challenge is filed with ninety (90) days of the date the decision becomes final.

2. Suspensions of between six (6) and ten (10) shifts.

The procedures in this section govern suspensions without pay of any officer or employee for not more than ten (10) working shifts (five 24-hour shifts for shift employees in the fire department) in any consecutive 12 month period.

a. Notice.

Not less than fourteen (14) calendar days prior to the effective date proposed for a suspension of between six (6) and ten (10) working shifts (between four and five 24-hour shifts for shift employees in the fire department), the Department Head shall have personally served on or mail by certified mail to the employee's home address a notice that complies with the requirements of section II.B.1.a, governing notice for short-term suspensions, except as to Item (6), providing a right to respond to the Department Head imposing a short-term suspension. Instead, Item 6 of the notice under this subsection shall include the date, time and place of the hearing before the Department Head as provided in subsection b, below.

b. Hearing before department head.

Not less than seven (7) nor more than ten (10) calendar days after service or mailing of the notice described in subsection (a), above, the Department Head shall conduct a hearing at which the employee may appear and be heard. By agreement of the employee and the Department head, the hearing may be continued for a period not to exceed thirty (30) calendar days. The Department Head shall maintain a written record of the hearing and may, but need not, record the hearing electronically or stenographically. The employee and/or his or her representative may present at such hearing such arguments and evidence as he or she deems appropriate. At the conclusion of the hearing or within fourteen (14) calendar days thereafter, the Department Head shall make a final determination of the charges against the employee, the factual basis for imposing discipline, the length of the suspension, the proposed effective and termination dates of the suspension and the identity of any writings not previously identified upon which the Department Head relies in imposing the suspension. A copy of the decision, including all documents served on the employee, submitted by the employee or otherwise considered by the Department Head in reaching his or her decision shall be served on the Personnel Director.

c. Notice of hearing.

Within fourteen (14) calendar days after the conclusion of the hearing conducted before the Department Head under subsection (b), above, but in any case prior to the effective date of the discipline, the Department Head shall have personally served on the employee or mailed by certified mail to the employee's home address a notice setting forth the Department Head's final determinations as described in subsection (b), above, governing the hearing before the Department Head. In addition to notifying the employee of any changes in the

initial Notice of Suspension issued under subsection (a), the Department Head's final decision and/or Notice of Suspension shall notify the employee that he or she is entitled to appeal the decision of the Department Head to the City Manager, if the employee files a written request therefore with the City Manager's office within fourteen (14) calendar days of the date of service or mailing of the decision. The employee's written request of an appeal must state the reasons for the appeal and the grounds or justification for changing the Department Head's decision. The City Manager shall not consider any appeal that does not satisfy the requirements of this section or consider any reason for changing the Department Head's decision not described in the employee's request for an appeal. If the employee files a timely and adequate notice of appeal, the effective date of the suspension shall be delayed until the City Manager issues his or her decision as provided in subsection d, below.

d. Hearing before City Manager.

Within fourteen (14) calendar days of the request therefore, the City Manager shall conduct an evidentiary hearing at which the claimant may appear personally with representation of his choice. The employee and the City Manager may agree to extend the hearing date a maximum of thirty (30) calendar days. At his or her option the City Manager may assign a hearing officer to conduct the hearing.

(i) The Hearing.

The City Manager or his or her designee shall conduct the hearing as follows:

- A)** Testimony shall be taken under oath, but the oath need not be administered by a notary public.
- B)** The person imposing discipline has the burden of proof. That burden is to show by preponderance of the evidence that the act(s) for which discipline was imposed were, in fact, committed.
- C)** The normal order of proof, unless varied by the person conducting the hearing or by agreement of the parties, shall be:
 - a)** Opening statement(s), if desired. (The employee may reserve until his rebuttal).
 - b)** Management case.
 - 1)** direct testimony
 - 2)** cross examination

3) redirect

c) Employee rebuttal.

1) direct testimony

2) cross examination

3) redirect

d) Management rebuttal.

e) Closing arguments.

D) The rules of evidence do not apply. Any relevant evidence, including hearsay, may be admitted if it is the type of evidence upon which reasonable men and women may rely in the conduct of serious affairs. Hearsay, standing alone, may not be used to prove a material fact. The City Manager or hearing officer may exclude irrelevant or cumulative evidence. He or she may exclude any document not reasonably shown to be authentic.

Objections to evidence may be made by either party and ruled on by the person conducting the hearing.

E) A hearing shall be electronically recorded and/or stenographically reported.

F) No witness, except rebuttal witnesses, shall be allowed to testify and no evidence, except rebuttal evidence, shall be admitted in evidence, unless the opposing party has been furnished with the witness's name, address and telephone number, if known, and a copy of the document or other evidence at least, five (5) working days prior to the hearing. For good cause shown, the hearing officer or City Manager may determine that the testimony or evidence should be admitted.

(ii) Decision in hearing conducted by City Manager

After the conclusion of the hearing conducted by the City Manager, the City Manager shall have personally served on or mail by certified mail to the employee a written decision. The decision shall make findings of fact based exclusively on the evidence presented at the hearing, and specify the discipline imposed and the date(s) when the discipline will become effective. The decision shall state the date on which it becomes final and shall notify the employee that

under Code of Civil Procedure Section 1094.6 the employee has a right to challenge the decision in Superior Court, if that challenge is filed within ninety (90) days of the date the decision becomes final.

(iii) **Decision in hearing conducted by hearing officer.**

If the hearing is conducted by a hearing officer assigned by the City Manager, the hearing officer shall prepare a recommended decision for the City Manager within fourteen (14) calendar days after the conclusion of the hearing. The City Manager shall adopt, modify or reject the recommended decision. If he or she rejects the decision, he or she may prepare a new decision based on the record or he or she may conduct such new or additional hearings as he or she deems appropriate. The final decision adopted by the City Manager shall comply with the requirements of subsection ii.

3. Suspensions of more than ten (10) shifts, terminations and other disciplinary actions.

The rules in this section shall apply to suspensions of more than ten (10) working shifts (five 24-hour shifts for shift employees in the fire department) in a period of 12 consecutive months, demotions, terminations or other disciplinary actions not subject to procedures specifically provided in other sections of these regulations.

a. Notice and hearing prior to appearance before Civil Service Board.

Prior to imposing discipline under this section II.B.3, the City shall conduct a “Skelly” hearing by following the procedures set forth in sections II.B.2.a – II.B.2.c, governing suspensions of between 6 and 10 days, except that:

- (i) the City Manager rather than the Department Head shall preside at the Department Head hearing conducted under section IIB.2.b, using the procedures specified in that subsection rather than the procedures in section II.B.2.d. The Department Head may participate in the hearing, but the City Manager shall conduct the hearing and render the decision. The evidentiary hearing procedures in section II.B.2.d shall be used by the Civil Service Board, if the employee appeals the City Manager’s decision;
- (ii) the employee shall have a right to appeal the City Manager’s decision to the Civil Service Board.

(iii) the notice as described in section II.B.2.c shall:

(1) Provide all of the information required by section II.B.2.a;

(2) notify the employee that he or she has a right to appeal the City Manager's decision to the Civil Service Board within fourteen (14) calendar days of the date the City Manager's decision is served upon the employee by filing a written Notice of Appeal with the Personnel Officer. The employee's Notice of Appeal must state the reasons for the appeal. The Civil Service Board shall not consider an appeal that does not state the specific grounds for appeal and shall not consider any reason for reducing or eliminating the discipline imposed by the City Manager not set forth in the Notice of Appeal.

(3) be personally served on the employee or mailed to him or her by certified mail at his or her last known address by the Civil Service Board.

(iv) The City Manager shall prepare the notice described in subsection (iii) hereof and deliver said notice to the Personnel Officer for scheduling the hearing and delivering the notice to the employee.

(v) At least 10 calendar days in advance, the Personnel Officer shall have personally served on the employee or mail by certified mail to the employee's home address notice of the time, date and place of the hearing before the Civil Service Board.

(vi) Prior to the hearing before the Civil Service Board, the Personnel Officer shall furnish to each member of the Board a copy of the City Manager's decision, including copies of all documents served on the employee.

The discipline shall become effective as stated in the City Manager's decision and shall remain in effect unless reversed or modified by the Civil Service Board.

b. Hearing before the Civil Service Board.

The Civil Service Board shall conduct the hearing according to the procedures set forth in section II.B.2.d, or according to such other procedures, consistent with this resolution, as may be adopted from time to time by the Civil Service Board. Upon application to the Personnel Officer the Civil Service Board shall issue such subpoenas, signed by the Mayor and attested by the City Clerk as the employee or the employee's representative or the City Attorney or other

ADDENDUM “E”

attorney representing management in the hearing shall request to compel the attendance of witnesses or the production of documents at the hearing before the Civil Service Board, provided the Personnel Officer receives the request at least five (5) calendar days prior to the scheduled hearing date. The City Attorney shall represent the decision of the City Manager at the hearing, and shall present evidence and argument in support of that position. The City Manager may elect independent representation, in which case, the City Attorney shall represent the Civil Service Board at the hearing, unless he or she has advised the Department Head and/or City Manager during earlier proceedings concerning the employee and the proposed discipline. After the hearing, the Board may uphold, reverse or modify the City Manager's decision and impose such discipline as the Board determines is appropriate based on the evidence presented at the hearing. If the Board reduces or reverses the discipline imposed on the employee by the City Manager, the employee shall receive as soon as is administratively feasible that portion of his or her compensation lost prior to the effective date of the Board's decision, if any.

The decision of the Civil Service Board shall comply with the requirements set forth in section II.b.2.d (ii), including the notice under Code of Civil Procedure Section 1094.6, and be final for the City.