Introduced 5/8/2014

ORDINANCE NO. 14-327

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, that Section 13 of Ordinance No. 04-315 (Personnel Policies and Procedures Manual), as adopted and approved on December 16, 2004, as amended, is hereby further amended as follows:

13 CONDUCT AND DISCIPLINARY POLICY

13.1 EMPLOYEE CONDUCT

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

13.2 CORRECTIVE ACTION

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

13.3 EMPLOYEE AND SUPERVISOR RESPONSIBILITIES

(A) It is the duty of each employee to correct any deficiency in performance, conduct, or attitude on their own initiative or when called to such employee's attention, and to make every effort to avoid conflict with the personnel rules and regulations.

(B) It is the responsibility of every supervisor to discuss improper or inadequate performance with the employee in order to correct deficiencies and to avoid the need to exercise disciplinary action. However, failure of a supervisor to carry out this responsibility shall not preclude the discipline of an employee. Where appropriate, an employee should be disciplined in an increasingly progressive manner, the step of progression normally being:

(1) Oral Reprimand
(2) Written Reprimand
(3) Imposed Probation
(4) Suspension
(5) Termination

In certain circumstances, demotion may be considered in lieu of termination.

The factors that may be considered by a Department Head and/or other designated official in determining the appropriate level of discipline may include, but are not limited to, the circumstances giving rise to the disciplinary action, the employee's work history, length of employment, current job performance, and the existence of past official disciplinary actions. A Department Head and/or other designated official may, when making or reviewing a disciplinary decision, review and consider the past discipline of an employee, whether or not that employee was working in another division or department of the City at the time of being disciplined. While progressive discipline should be used as a constructive measure for the correction of the conduct of an employee, where the nature and severity of the offense dictate otherwise, any of the progressive steps noted above may be omitted.

(C) When infractions do occur, it shall be the policy of the City of Huntsville that its disciplinary procedure be specific and structured so that the type of action involved, and not the individual, is the controlling factor in determining the level of discipline required.

(D) Where determined by the Mayor to be in the best interest of the City, the Mayor may appoint, in writing, a Department Head, other than the employee's Department Head, to investigate alleged misconduct on the part of the employee; and, if determined to be warranted, to pursue disciplinary charges against the employee in accordance with the policies and procedures contained in this section. In such circumstances, if it is determined that there is cause for discipline after an informal hearing, where appropriate, or as a result of a Finding of Facts by a Hearing Officer, then the Mayor or the appointed Department Head, subject to the approval of the Mayor, may impose discipline on the employee.

13.4 DISCIPLINARY POLICY

An employee may be placed on imposed probation, suspended, demoted, or terminated in accordance with this Conduct and Disciplinary Policy. This policy and the procedures set forth herein shall be applicable only to regular, full-time employees and shall not be afforded to probationary employees, temporary employees, part-time employees, or special status employees. However, in the event termination is being considered for a regular, part-time employee, including a regular, part-time plus the Federal Affordable Care Act (ACA) employee, such disciplinary action must be in accordance with Section 13.6 (F) of this policy.

As a non-disciplinary measure, an employee may be placed on Administrative Leave, in accordance with Section 10.11 herein, if disciplinary action is being considered by the Department Head.

13.5 CAUSES FOR DISCIPLINARY ACTION

The following are examples of causes for disciplinary action, but are in no way restrictive as to the reasons which may form a valid basis for disciplinary action:

(A) Indictment for, conviction of, or the commission of, an act which would constitute, (1) a felony or (2) a crime involving moral turpitude; conviction of, or the commission of an act which would constitute, a misdemeanor which reflects unfavorably upon the employee's character or his/her effectiveness in the job;

(B) Conduct unbecoming an employee, while on or off duty, which tends to bring discredit upon the City and its employees; which adversely affects the morale or efficiency of, or public respect for, the employee's assigned department; or which otherwise threatens order, safety, or health;

(C) Incompetence, malfeasance, or misfeasance in the performance of duties;

(D) Neglect or inefficiency in the performance of duties;

(E) Violation of the City of Huntsville and/or departmental rules and regulations;

(F) Acts of insubordination, including, but not limited to, refusal to obey legitimate orders, delay or failure to carry out assigned work, disrespect, insolence, and like behavior;

(G) Tardiness;

(H) Unauthorized absences;

(I) Unauthorized use, misappropriation, destruction, theft, or conversion of public property or private property;

(J) Neglect or carelessness resulting in damage to public property, or injury to another human being, and/or failure to report accidents or personal injury;

(K) Political activities in violation of the legal regulations governing municipal employees;

(L) Disregard of safety rules and regulations;

(M) Falsification, misrepresentation, or suppression of any information including, but not limited to, employment application, employee reports, records, or time cards required by or supplied to any governmental agency including, but not limited to, the City of Huntsville;

(N) Refusal to fully and truthfully answer questions of a supervisor or other designated individual during an inquiry, interrogation, hearing, or court proceeding;

(O) Threatening, intimidating, coercing, or otherwise interfering with other employees in the execution of their duties;

(P) Possessing, drinking, using, or being under the influence of alcoholic beverages or drugs while on duty or otherwise violating the Drug and Alcohol Policies contained in Section 18 of this manual;

(Q) Unauthorized access to, disclosure of, or inappropriate use of protected health information or other privileged or confidential information;

(R) Wrongful use of sick leave or failure to otherwise comport with the Sick Leave Policy contained in Section 10.7 of this manual;

(S) Defamation;

(T) Harassment as defined by Section 3.3 of another city employee or of a private citizen while on duty;

(U) Submission of fraudulent claims;

(V) Unauthorized possession, storage, or concealment of firearms, other weapons, explosives, or other dangerous materials on an employee's person or in City desks, file cabinets, lockers, vehicles, or in any other City property or equipment;

(W) Sleeping during duty/work hours;

(X) Failure to obtain or maintain a license or certificate required as a condition of employment;

(Y) Gambling or gambling related conduct during work hours or on City property, including, but not limited to, inviting or soliciting a gambling wager and attempting to collect or collecting on a gambling debt;

(Z) Violations of Procedures and Standards Relating to City-Owned Information Technology Equipment as provided in Section 22.2 of this Personnel Manual; and,

(AA) Habitual, or repetitive, acts of misconduct, violations of policy, and/or infractions of rules and regulations.

13.6 TYPES OF DISCIPLINARY ACTION

(A) Oral Reprimand

The Department Head, and/or other designated official, may orally reprimand an employee when the employee fails to maintain desirable standards or violates the policies, rules, or regulations of the department, or the City of Huntsville. Whenever grounds for disciplinary action exist and the Department Head, and/or other designated official, determines that more severe action is not necessary, the Department Head, and/or other designated official, may orally communicate to the employee the Department Head's, and/or other designated official's, observation of the deficiency or misconduct and the required corrective action. Written notice of the oral reprimand should be maintained in the departmental file of the employee, however, it is not necessary that such notice be forwarded to the Human Resources Department.

(B) Written Reprimand

The Department Head, and/or other designated official, may issue an official written reprimand to an employee, if the seriousness of the offense calls for action greater in severity than an oral reprimand, or if previous counseling discussions or oral reprimands have not produced the desired result. In making a determination as to the type of disciplinary action warranted, the Department Head, and/or other designated official, will proceed as follows:

(1) Investigation and discussion with employee

Before any action is taken against an employee, the Department Head, and/or other designated official, will make such inquiry or investigation of the facts in the case as he/she considers necessary. The employee will be advised of the reasons for considering disciplinary action and allowed the opportunity to respond.

(2) Decision

After full consideration of the facts, the Department Head, and/or other designated official, will take one of the following actions:

(a) If the facts of the case do not support the allegation, the employee shall be notified orally of such decision and advised that the matter is considered closed;

(b) If the facts of the case support the allegation, but the Department Head, and/or other designated official, believes a written reprimand is not necessary to correct the situation, the Department Head, and/or other designated official, shall conclude the matter by a discussion with the employee. During the discussion, the employee shall be reprimanded orally and warned that in any future case stronger action may be required;

(c) If the facts of the case support the allegation, and the Department Head, and/or other designated official, believes a written reprimand is sufficient to correct the situation, the employee shall be notified of the decision by a written reprimand; or,

(d) If the facts of the case support the allegation, but the Department Head, and/or other designated official, believes a written reprimand is not sufficient to correct the situation, stronger disciplinary action shall be commenced by the Department Head and/or other designated official.

(3) Notice of Written Reprimand

The written reprimand should be in writing, dated, and delivered to the employee. The notice of written reprimand should contain the following information:

(a) Nature of the action;

(b) Specific reason(s) for the written reprimand;

(c) References to any discussion(s) held with the employee, including the date, time, and place;

(d) The employee's explanation as given during the discussion(s);

(e) Conclusions;

(f) Warning that future infractions could result in more severe disciplinary action; and,

(g) Where appropriate, recommendations for corrective action.

A copy of the written reprimand should be placed in the employee's departmental file with a copy to the Human Resources Department for maintenance in the employee's personnel file. In addition, within three (3) days of the receipt of a written reprimand, an employee may submit to his/her Department Head, or the other designated official, a written response to the written reprimand. Such response shall be placed in the departmental file with a copy to the Human Resources Department for maintenance in the employee's personnel file.

(4) Rights, privileges, benefits as result of a Written Reprimand

A written reprimand shall not affect the rights, privileges, or benefits of an employee to which he/she may have been entitled prior to such discipline; however, a Department Head, or the other designated official, is not precluded from considering the disciplinary action during future promotional processes. Further, the restoration of rights as provided for herein shall not mean that a Department Head, and/or other designated official, is precluded from considering the existence of the reprimand in future disciplinary actions against the employee.

(C) Imposed Probation

The Department Head, and/or other designated official, may place an employee on imposed probation in lieu of or in conjunction with another form of disciplinary action, if the seriousness of the offense calls for action greater in severity than an oral or a written reprimand, or if previous counseling discussions or oral or written reprimands have not produced the desired result. Imposed probation may be used as discipline where the employee demonstrates substandard performance, poor attendance, poor compliance with City of Huntsville and/or departmental rules and regulations, or in other instances of misconduct as determined to be appropriate by the Department Head, and/or other designated official. An employee may be placed on imposed probation, for cause, for no more than six (6) months, after notice and hearing before the Department Head, and/or other designated officials.

(1) Notice of Hearing

An employee shall be given advance written notice of a departmental hearing, which shall include the date of the hearing, the grounds for the proposed disciplinary action, and a statement that the employee shall be allowed, during the hearing, to present an oral or written statement in his/her defense. (The employee shall be given at least twenty-four (24) hours advance written notice of the hearing). A copy of the notice shall be filed with the Department of Human Resources for placement in the employee's personnel file.

(2) Hearing

The hearing shall be conducted informally before the Department Head, and/or other designated official, and may include any supervisory personnel deemed necessary by the Department Head, and/or other designated official, at the time and place designated in the notice. Any attending officials may, at their sole discretion, question the employee. At the hearing, the employee may submit a written response or may respond orally to the allegations of misconduct. If the employee presents a written response, a copy of such shall be filed in the Department of Human Resources for placement in the employee's personnel file.

Should the employee elect to waive the right to a hearing, such waiver shall be in writing and signed by the employee. Waiver of the right to a hearing, or the failure of the employee to waive his/her right to a hearing, shall not prevent the Department Head, and/or other designated official, from proceeding with appropriate disciplinary action based on the information before him or her.

(3) Decision

After full consideration of the facts, the Department Head, and/or other designated official, will take one of the following actions:

(a) If the facts of the case do not support the allegation, the employee shall be notified orally of such decision and advised that the matter is considered closed;

(b) If the facts of the case support the allegation, but the Department Head, and/or other designated official, believes imposed probation is not necessary to correct the situation, the Department Head, and/or other designated official, shall conclude the matter by a discussion with the employee. During the discussion, the employee shall be reprimanded orally or issued a written reprimand, and warned that in any future case stronger action may be required;

(c) If the facts of the case support the allegation, and the Department Head, and/or other designated official, believes imposed probation is sufficient to correct the situation, the employee shall be notified of the decision; or,

(d) If the facts of the case support the allegation, but the Department Head, and/or other designated official, believes imposed probation is not sufficient to correct the situation, stronger disciplinary action shall be commenced by the Department Head and/or other designated official.

(4) Notice of Imposed Probation

The notice of imposed probation should be in writing, dated, and delivered to the employee. The notice should contain:

(a) Nature of the action;

(b) Specific reason(s) for the imposed probation;

(c) References to any discussion(s) held with the employee, including the date, time, and place;

(d) The employee's explanation as given during the discussion(s);

(e) Conclusions;

(f) Warning that future infractions could result in more severe disciplinary action; and,

(g) Where appropriate, recommendations for corrective action.

A copy of the imposed probation notice shall be filed with the Department of Human Resources and placed in the employee's personnel file.

(5) Rights, privileges, benefits as result of Imposed Probation

During the term of the imposed probationary period, all paid leave will continue to accrue as provided in Section 10 of this policy. However, the Department Head, and/or other designated official, may deny an employee who is on imposed probation the use of his/her accrued annual, compensatory, or deferred holiday leave. In addition, during the term of an imposed probationary period, the employee is not entitled to a step progression in salary.

At the end of a satisfactory completion of the imposed probationary term, which includes the receipt of a "satisfactory" or better performance evaluation, the employee shall be considered in good standing with the department and as an employee for the City of Huntsville, and shall be restored to all rights, privileges, and benefits he/she had prior to said period of imposed probation; provided, however, the restoration of all rights, privileges, and benefits shall not preclude the consideration of the disciplinary action during future promotional processes. Further, the restoration of rights as provided for herein shall not mean that a Department Head, and/or other designated official, is precluded from considering the existence of the imposed probation in future disciplinary actions against the employee.

Failure of an employee to satisfactorily complete an imposed probationary term may result in more severe disciplinary action, as provided in this Section 13.

(D) Suspension for Ten Workdays or Less

An employee may be suspended from duty and pay for a period of time not to exceed ten (10) workdays (or the equivalent thereof) for cause,

after notice and a departmental hearing before the Department Head, and/or other designated official, who may request that other supervisory officials participate. With regards to Section 13.6 (D) of this policy, the other designated official who may be selected to conduct the departmental hearing must be within two levels of supervision from the Department Head.

(1) Notice of Hearing

An employee shall be given advance written notice of a departmental hearing, which shall include the date of the hearing, the grounds for the proposed disciplinary action, and a statement that the employee shall be allowed, during the hearing, to present an oral or written statement in his/her defense. (The employee shall be given at least twenty-four (24) hours advance written notice of the hearing.) A copy of the notice shall be filed with the Department of Human Resources for placement in the employee's personnel file.

(2) Hearing

The hearing shall be conducted informally before the Department Head, and/or other designated official, and may include any supervisory personnel deemed necessary by the Department Head and/or other designated official, at the time and place designated in the notice. Any attending officials may, at their sole discretion, question the employee. At the hearing, the employee may submit a written response or may respond orally to the allegations of misconduct. If the employee presents a written response, a copy of such shall be filed in the Department of Human Resources for placement in the employee's personnel file. Should the employee elect to waive the right to a hearing, such waiver shall be in writing and signed by the employee. Waiver of the right to a hearing, or the failure of the employee to waive his/her right to a hearing, shall not prevent the Department Head, and/or other designated official, from proceeding with appropriate disciplinary action based on the information before him or her.

(3) Decision

After full consideration of the facts, the Department Head, and/or other designated official, will take one of the following actions:

(a) If the facts of the case do not support the allegation, the employee shall be notified orally of such decision and advised that the matter is considered closed;

(b) If the facts of the case support the allegation, but the Department Head, and/or other designated official, believes a suspension is not necessary to correct the

situation, the Department Head, and/or other designated official, shall discuss the matter with the employee. During the discussion, the employee shall be reprimanded orally, issued a written reprimand, or placed on imposed probation; and, the employee shall be warned that in any future case, stronger action may be required;

(c) If the facts of the case support the allegation, and the Department Head, and/or other designated official, believes a suspension of ten (10) work days or less is sufficient to correct the situation, the employee shall be notified of the decision. In addition, such an employee may also be notified that he/she is placed on imposed probation; or,

(d) If the facts of the case support the allegation, but the Department Head, and/or other designated official, believes a suspension of ten (10) work days or less is not sufficient to correct the situation, stronger disciplinary action shall be commenced by the Department Head and/or other designated official.

(4) Notice of Suspension

The notice of suspension should be in writing, dated, and delivered to the employee. The notice should contain:

(a) Nature of the action;

(b) Specific reason(s) for the suspension;

(c) References to any discussions held with the employee, including the date, time, and place;

(d) The employee's explanation as given during the discussion(s);

(e) Conclusions;

(f) Warning that future infractions could result in more severe disciplinary action; and,

(g) Where appropriate, recommendations for corrective action. The effective date of the suspension, shall not be less than seven (7) calendar days after the delivery of the decision by the Department Head and/or other designated official.

A copy of the suspension notice shall be filed with the Department of Human Resources and placed in the employee's personnel file.

(5) Rights, privileges, benefits as result of Suspension

At the time the suspended employee returns to work, said employee shall be considered in good standing with the department and as an employee for the City of Huntsville, and shall be restored to all rights, privileges, and benefits he/she had prior to said suspension, subject to the modifications of employment based on imposed probation, if applicable. Provided, however, the restoration of all rights, privileges, and benefits shall not preclude the consideration of the disciplinary action during future promotional processes. Further, the restoration of rights as provided for herein shall not mean that a Department Head, and/or other designated official, is precluded from considering the existence of the suspension in future disciplinary actions against the employee.

(E) Suspension for More than Ten Working Days, Demotion, or Dismissal

An employee, for cause, may be suspended without pay for more than ten (10) working days, demoted, or dismissed, after notice and a formal hearing. (This section does not apply to demotions pursuant to Section 9.4 (A)(3).) The Department Head shall notify the affected employee in writing of the charges against him/her. A copy of the notice shall be furnished to the Director of Human Resources. The Director of Human Resources shall cause a hearing date to be set within thirty (30) days before an impartial Hearing Officer selected from a pool of eligible persons designated by the City Council.

The affected employee shall be notified in writing of the date, time, and place of the hearing, the charges against him/her, that he/she has the right to representation, and the right to present evidence before the Hearing Officer. The employee shall be given not less than ten (10) days notice of the initial hearing date, time, and place, unless the employee knowingly and willingly waives such notice, in writing. Such waiver is discouraged by this policy and should be permitted only where the notice requirement would work a hardship on the employee. Prior to the scheduled hearing, the Department Head may revise, amend, or withdraw the Request for Formal Hearing and, in the case of a revision or amendment, either the Department Head or the employee may request that the Hearing Officer continue the hearing to a later date. The Hearing Officer has the discretion to grant or deny such a request. In the event of a withdrawal of a Request for a Formal Disciplinary Hearing, the Department Head may reinitiate the action at any time by filing a subsequent Request for Formal Disciplinary Hearing with any revisions or amendments deemed appropriate by the Department Head.

At a formal hearing, all testimony shall be given under oath and recorded but not transcribed unless a court of competent jurisdiction orders a review. The recording shall be made under the supervision of the Director of Human Resources. No other tape or video recordings of the hearing will be permitted. The Hearing Officer shall carefully

consider all testimony, evidence, and exhibits offered in support or denial of such charges, and shall certify a Finding of Facts, in accordance with Section 13.7, to the Director of Human Resources. The Director of Human Resources shall deliver a copy of the certified Finding of Facts to the Department Head and the affected employee.

The Mayor or the Department Head shall determine whether the facts, as found by the Hearing Officer, are cause for discipline, and shall discipline the affected employee in an appropriate manner consistent with such Finding of Facts; and, when appropriate, consistent with the provisions of Section 18, Drug and Alcohol Policies. In the event that a Department Head recommends termination as the disciplinary action, the approval of the Mayor must be obtained. Any disciplinary action imposed, with the reason(s) therefore, shall be in writing and delivered to the affected employee, with a copy delivered to the Director of Human Resources for placement in the employee's personnel file. The effective date of a disciplinary action, except for termination, shall not be less than seven (7) calendar days after the delivery of the decision by the Mayor or the Department Head.

Such disciplinary action shall be reviewed by the City Council, as soon as is practicable, upon application by the affected employee. The application shall be made in writing to the Director of Human Resources within seven (7) days of the delivery of the decision to the affected employee and shall state the reason(s) the employee believes the disciplinary action taken is inconsistent with the Finding of Facts made by the Hearing Officer. Failure of the employee to state said reason(s) shall be a cause for rejection of the appeal.

The Director of Human Resources shall immediately notify the President of the City Council when an appeal has been filed. The City Council shall notify the Director of Human Resources of the date, time, and place set for the review hearing. The Director of Human Resources shall then notify the affected employee and his/her Department Head of same. The employee shall acknowledge, in writing, receipt of the notice to the Director of Human Resources on a form provided by the Director of Human Resources. If all City Council members are not present on the date and time scheduled for the hearing, the employee or Department Head shall, upon request, be entitled to a continuance until such time as all City Council members are present.

At the time and place scheduled for the hearing, the City Council shall consider such proof and argument presented by the parties as to whether the disciplinary action is inconsistent with the Finding of Facts as certified by the Hearing Officer. The certified Finding of Facts made by the Hearing Officer shall be accepted by the City Council as being true and accurate. The City Council shall render a decision within thirty (30) days after the hearing. The City Council may affirm or alter, either by imposing greater or lesser degree of discipline upon the employee, the disciplinary action taken against the employee. In order to alter the disciplinary action taken, a majority of those members elected to the City Council must be

reasonably satisfied from the evidence presented that such action was not appropriate. If the City Council is unable, by a majority of those members elected to the City Council, to alter the disciplinary action taken, then the decision of the Department Head or the Mayor regarding the disciplinary action shall stand unmodified.

(F) Termination of a Regular, Part-Time Employee

A regular, part-time employee, including regular, part-time plus the Federal Affordable Care Act (ACA) employee, may be terminated for cause by the Department Head, subject to the approval of the Mayor and the Director of Human Resources, without a formal disciplinary hearing, with no right of review from such action. Such employee is entitled to notice and an informal hearing before the Department Head and/or other designated official.

(1) Notice of Hearing. An employee shall be given advance written notice of a hearing before the Department Head, and/or other designated official, which shall include the date of the hearing, the grounds for the proposed disciplinary action, and a statement that the employee shall be allowed, during the hearing, to present evidence in his/her defense. A copy of the notice shall be filed with the Department of Human Resources for placement in the employee's personnel file.

(2) Hearing. The hearing shall be conducted informally before the Department Head and/or other designated official at the time and place designated in the notice. The employee's response may be oral or in writing. If the employee presents a written response, a copy of such shall be filed in the Department of Human Resources for placement in the employee's personnel file. Should the employee elect to waive the right to a hearing, such waiver shall be in writing and signed by the employee. During the hearing, the employee is permitted to have a licensed attorney and/or a consultant present and to confer with such licensed attorney and/or consultant. However, the employee's licensed attorney and/or consultant will not be permitted to participate directly in the proceedings.

(3) Notice of termination. The notice of termination should be in writing, dated, and delivered to the employee. The notice should contain:

(a) The nature of action;

(b) The specific grounds for the action taken; and,

(c) The effective date of the action taken.

The Department Head, and/or other designated official, shall report promptly, in writing, to the Director of Human Resources any such action taken against a regular, part-time employee or regular, part-time plus ACA employee. A copy of the termination notice and supporting documentation shall be filed with the Department of Human Resources and placed in the employee's personnel file.

13.7 HEARING OFFICER RESPONSIBILITIES

The City of Huntsville shall use local attorneys licensed to practice law in the State of Alabama as Hearing Officers in formal disciplinary proceedings. No person shall participate as the Hearing Officer in any matter if such attorney has personal or financial interest therein.

The Hearing Officer shall hear evidence presented in support or denial of the charges against the employee subject to disciplinary action, and render a certified Finding of Facts regarding the specific charges, within ten (10) calendar days, to the Director of Human Resources. Failure of the Hearing Officer to submit the Finding of Facts within the prescribed time shall not affect the outcome of the disciplinary action nor confer on the employee the right to invalidate any disciplinary action. The Hearing Officer shall decide issues of fact, only. The Hearing Officer shall not determine if the facts, as found by such Hearing Officer, constitute a violation or violations of the policies contained in this manual. The Hearing Officer shall not determine if the findings are cause for discipline or the degree of discipline, if discipline is warranted.

13.8 REQUEST FOR RECONSIDERATION

Within three (3) business days from the receipt of the Finding of Facts, the affected employee or the Department Head may submit to the Director of Human Resources a written request for a reconsideration based upon alleged errors in the Finding of Facts or when it is alleged that the Hearing Officer has exceeded his/her authority by drawing conclusions as to the disciplinary violation(s) or outcome. The request shall state with specificity the basis for the request and, if a factual error is alleged shall limit discussion to evidence presented at the formal hearing. The non-requesting party may submit a response, to the Director of Human Resources, to the request within two (2) business days of receipt. The Director of Human Resources shall forward both the request for reconsideration and any response thereto to the Hearing Officer. It shall be the sole discretion of the Hearing Officer whether to modify the Finding of Facts based on the request and any response to such request.

13.9 EMPLOYEE REPRESENTATION DURING DEPARTMENTAL HEARING

During the informal departmental hearing, an employee is permitted to have a licensed attorney and/or a consultant present and to confer with such licensed attorney and/or consultant. However, the employee's licensed attorney and/or consultant will not be permitted to participate directly in the proceedings.

13.10 ADMINISTRATIVE PROCEDURE

All hearings shall be conducted in an orderly manner to ascertain all relevant facts within a reasonable period of time, while according fairness and impartiality to all parties. Testimony before the Hearing Officer and City Council shall be given under oath. The Hearing Officer shall preside over the hearing before him/her. The President or President Pro Tem of the City Council shall preside over hearings before the City Council. The City Council shall retain legal counsel, independent of the City Attorney's Office, to advise it in these regards. No person so retained shall serve as legal counsel to the City Council in any matter if such person has a personal or financial interest therein, or if such person has a conflict of interest with the City Council or the City of Huntsville.

In hearings before the Hearing Officer, the burden of proof shall be on the party filing the charges. In hearings before the City Council the burden of proof shall be on the employee requesting the review of the disciplinary action. The burden of proof standard to be used by the Hearing Officer is that of substantial legal evidence, which is defined as relevant evidence that a reasonable mind would view as sufficient to support a determination.

(A) The order of presentation of evidence at the hearing before the Hearing Officer shall be as follows:

(1) Opening statement of the Department Head, or his/her representative of choice, presenting the charges against the employee;

(2) Opening statement of the employee, or his/her representative of choice, against whom charges have been filed;

(3) Evidence and testimony presented on behalf of the Department Head with cross-examination by the employee, or his/her representative of choice;

(4) Evidence and testimony presented on behalf of the employee with cross-examination by the Department Head, or his/her representative of choice;

(5) Rebuttal evidence and testimony presented on behalf of the Department Head with cross-examination by the employee, or his/her representative of choice. Rebuttal evidence and testimony may only address issues raised by the employee in the

presentation of evidence, and may not be used to raise any new issue before the Hearing Officer;

(6) Closing remarks by the Department Head, or his/her representative of choice; and,

(7) Closing remarks by the employee, or his/her representative of choice.

The parties may waive opening and closing remarks.

(B) The order of presentation before the City Council shall be as follows:

(1) Brief statement by the employee, or his/her representative of choice, as to why the disciplinary action taken against such employee is inconsistent with the Finding of Facts made by the Hearing Officer;

(2) Brief statement by the Department Head, or his/her representative of choice, in rebuttal thereto;

(3) Evidence and testimony presented on behalf of the employee related solely to the issue of whether or not the disciplinary action taken against such employee is inconsistent with the Finding of Facts made by the Hearing Officer. No evidence or testimony shall be presented by the employee, or his/her representative of choice, which relates to, or is connected in any way with, the facts which were, or should have been, presented at the hearing before the Hearing Officer;

(4) Cross-examination by the Department Head, or his/her representative of choice;

(5) Evidence and testimony presented by the Department Head, or his/her representative of choice, which is subject to the same restrictions and limitations as set forth in (3) above;

(6) Cross-examination by the employee, or his/her representative of choice;

(7) Rebuttal evidence and testimony presented on behalf of the employee with cross-examination by the Department Head, or his/her representative of choice. Rebuttal evidence and testimony may only address matters raised by the Department Head, or his/her representative of choice, in the presentation of evidence permitted under this section, and may not be used to raise any new matters before the City Council;

(8) Closing remarks by the employee, or his/her representative of choice; and,

(9) Closing remarks by the Department Head, or his/her representative of choice.

The parties may waive opening and closing remarks.

(C) The following administrative rules shall apply to hearings before the Hearing Officer and/or before the City Council:

(1) Each hearing should begin with an explanation of the order of presentation, as hereinabove set forth;

(2) The employee is permitted to have a licensed attorney and/or another individual present and to consult with both individuals. However, only one of the individuals will be permitted to participate directly in the proceedings as the employee's representative of choice. Such individual(s) will serve at the employee's own expense and such individual(s) may not act as a witness for the employee;

(3) If the employee intends to be represented by or consult with a licensed attorney and/or another individual at the hearing before the Hearing Officer, then he/she shall provide written notice of such, including the name of the attorney and/or the other individual, to the Department of Human Resources, at least five (5) working days prior to the hearing date. Failure to provide the written notice within the required time frame shall result in a forfeiture of the employee's right to a representative and/or consultant;

(4) If the employee intends to be represented by or consult with a licensed attorney and/or another individual at the hearing before the City Council, then he/she shall provide written notice of such, including the name of the attorney and/or the other individual, to the President (or President Pro Tem, in the absence of the President) of the City Council, at least five (5) working days prior to the hearing date. Failure to provide the written notice within the required time frame shall result in a forfeiture of the employee's right to a representative and/or consultant;

(5) The Department Head may be represented by a member of the City Attorney's staff and/or a representative of choice. However, the Department Head shall be present at all hearings before the City Council. The Department Head shall be present unless a waiver of attendance is granted by the President (or President Pro-Tem, in the absence of the President) of the City Council upon request;

(6) The employee may compel the attendance of any City employee as a witness at the hearing before the Hearing Officer by requesting such attendance through the Department of Human

Resources, in writing, at least five (5) working days prior to the hearing date;

(7) The employee may compel the attendance of any City employee as a witness at the hearing before the City Council, subject to the limitation of this section, by requesting such attendance through the President (or President Pro-Tem, in absence of the President) of the City Council, in writing, at least five (5) working days prior to the hearing date;

(8) At the request of the Department Head, the Hearing Officer, or the attorney for the City Council, the Hearing Officer or the attorney for the City Council may require the employee to show cause as to the need for the witnesses requested by such employee. At such show cause hearing, the Department Head may appear through a representative. The employee is required to attend the show cause hearing; and, in the event the employee fails to attend the show cause hearing, the employee's requests for witnesses are deemed to be automatically withdrawn.

At the show cause hearing, the employee may present argument as to why a witness' presence is necessary at the hearing. None of the witnesses requested by the employee are required to be present at the show cause hearing, and such witnesses, if they do appear, shall not be compensated by the City of Huntsville for their attendance at the show cause hearing.

If, in the opinion of the Hearing Officer or the attorney representing the City Council, as appropriate, presence of a requested witness is not required, then such witness may be dismissed by the Hearing Officer or the attorney for the City Council, as appropriate, prior to the disciplinary hearing.

If there is insufficient time to conduct a show cause hearing between the date the employee's notice of requested witnesses is received and the date of the disciplinary hearing before the Hearing Officer or the City Council, as appropriate, then the disciplinary hearing may be rescheduled by the Hearing Officer or the attorney for the City Council, as appropriate, at the request of either party to the disciplinary proceedings;

(9) Legal rules of evidence shall not be strictly applied to any hearing under this section; however, the presiding officer at any hearing hereunder may, in his/her discretion, exclude any evidence which he/she deems to be irrelevant to the issues before the hearing body;

(10) Any documents or written evidence must be either certified by an appropriate official or verified by testimony of a person with actual knowledge of the authenticity of the document or written evidence. However, the parties are encouraged to agree in advance to the authenticity of documents or written evidence where possible, to conserve time at the hearing and so as not to

require the attendance of otherwise unnecessary witnesses at the hearing;

(11) Requests for postponement or continuances of hearings must be for good cause shown and approved by the presiding officer;

(12) The appearance of the employee shall be required at the hearing before the Hearing Officer and the City Council. Failure of the employee to appear before the Hearing Officer shall be treated as an admission by the employee that he/she is guilty of the charges against him/her. If the employee fails to make an appearance in a hearing before the City Council, then such failure to appear shall be deemed an automatic withdrawal of the application for review;

(13) Decisions of the presiding officer concerning the conduct of the hearing shall be final;

(14) The order of presentation set forth for hearings before the Hearing Officer and the City Council may be revised by the presiding officer with the consent of the parties in the case;

(15) Except as protected by his/her Fifth Amendment rights, an employee's failure to respond to an inquiry or investigation or to testify at the request of the Department Head may result in further disciplinary action. In the event the employee that is the subject of disciplinary proceedings invokes his/her Fifth Amendment rights as to any material issue, the presiding official may consider the invocation in making his/her determination; and,

(16) Any hearing under this section may be closed to the public at any time at the request of the Hearing Officer, or any party involved, except that a hearing before the City Council may be closed to the public only as provided under Alabama Open Meetings Act, Title 36, Chapter 25A, Code of Ala. 1975, as such may be amended from time to time.

ADOPTED this the _____day of May, 2014.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the _____ day of May, 2014.

_____
Mayor of the City of Huntsville,
Alabama

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: May 8, 2014

Action Requested By: Human Resources

Agenda Type: Ordinance

Subject Matter:

Ordinance to amend Section 13 of Ordinance 04-315, Personnel Policies and Procedures, for modification to the Conduct and Disciplinary Policy.

Exact Wording for the Agenda:

Ordinance to amend Section 13 of Ordinance 04-315, Personnel Policies and Procedures, for modification to the Conduct and Disciplinary Policy.

Note: If amendment, Please state title and number of the original

Item to be considered for: Introduction

Unanimous Consent Required: Yes

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

This action is requested to modify the Conduct and Disciplinary Policy.

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: _____

Date: May 5, 2014