THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: January 12, 2021 (public hearing)

Subject: Approval of Civil Service Board Substantive Rules

Staff Resource(s): Shannon Barrett, Interim Human Resources Director; John Maddux, Deputy City Attorney.

Action Requested: Approval of Civil Service Board Substantive Rules

Background:

- The Asheville Civil Service Act provides that the Civil Service Board ("CSB") "shall make . . . substantive rules for promoting efficiency in the classified service of the City."
- The act further provides that the City Council, after giving members of the classified service and citizens of Asheville an opportunity to be heard at a public hearing, shall act upon the proposed rules and amendments, which become effective upon approval by a majority vote of the Council.
- On December 3, 2020, the CSB voted to approve substantive rules clarifying important aspects of the City's personnel administration and the Board's jurisdiction, including definitions of terms (such as demotion, discharge, due process,and suspension), important to the City's personnel administration and the Board's standard of review for grievance hearings.

Pro(s):

- Will provide employees, the City, and members of the Board with clarity about the types of employment actions falling under the Board's jurisdiction, as well as the standards the Board uses when determining whether a complaint of employment action is justified.

Con(s):

- None

Fiscal Impact:

- None

Suggested Motion:

- Motion to approve the substantive rules as adopted by the Civil Service Board on December 3, 2020.

Attachment(s)

- Resolution w/Substantive Rule

RESOLUTION NO. 21-____

RESOLUTION APPROVING AND ADOPTING CIVIL SERVICE SUBSTANTIVE RULE

WHEREAS, Section 4 of Chapter 303 of the 2009 Session Laws authorizes the Civil Service Board of the City of Asheville ("the Civil Service Board") to make and amend substantive rules for promoting efficiency in the classified service of the City of Asheville; and

WHEREAS, on the 3rd day of December, 2020, the Civil Service Board adopted "Substantive Rule 1, Civil Service Board Jurisdiction"; and,

WHEREAS, Section 4 of Chapter 303 of the 2009 Session Laws requires that before such substantive rule can become effective, members of the classified service and citizens of Asheville must be provided an opportunity to be heard at a public hearing, and the rule must be approved by a majority vote of the Asheville City Council; and,

WHEREAS, a duly noticed public hearing concerning the proposed rule was held before the Asheville City Council on January 12, 2021;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The attached substantive rule proposed by the Civil Service Board on December 3, 2020, is hereby approved.

Read, approved and adopted this 26th day of January, 2021.

_____ _____

City Clerk Mayor

Approved as to form:

_____

City Attorney

CIVIL SERVICE BOARD

SUBSTANTIVE RULE 1

Civil Service Board Jurisdiction

A. Authority and Purpose.

Subject to amendment and approval by the Asheville City Council, the Asheville Civil Service Board (the "Board"), shall make substantive rules for promoting efficiency in the classified service of the City of Asheville ("the City"), pursuant to Sections 4 and 5 of the Asheville Civil Service Act (hereinafter the "Act").

As provided in the Act, the purpose of this rule is to define the scope of the Board's jurisdiction with respect to employee grievances.

B. Definitions

The following definitions shall apply when the Board exercises its authority to hear employee grievances pursuant to Section 8 of the Act:

1. **Classified Service**

Personnel as defined in Section 3 of the Act, as amended, except for personnel within a probationary period as defined by this rule.

2. **Demotion**

Involuntary and permanent reassignment into a position in a lower pay grade. Demotion does not include any personnel action whereby the employee remains in the same pay grade, including but not limited to, changes relating to responsibility, supervision, worksite, schedule, or assignment.

3. **Discharge**

Involuntary and permanent separation from employment with the City due to violation of a City policy or unsatisfactory work performance. Discharge does not include involuntary and permanent separation due to the elimination of a position or any form of constructive termination.

4. **Due Process**

Notice of allegations and an opportunity to be heard by a department director prior to a decision to discharge, demote, suspend, or transfer the employee against their will. If a department, by departmental policy, utilizes a disciplinary matrix, due process shall also include discipline that accords with that matrix.

5. **Entitled**

An absolute right to a promotion to a position within the classified service or a raise in pay automatically due an employee based on time in service, achievement of

certification, or placement on a ranked eligibility list. No employee is entitled to any promotion or raise in pay that is subject to discretionary approval by a department director, the Human Resources department, the City Manager, or City Council.

6. **Suspension**

Involuntary and temporary unpaid leave of more than fourteen (14) calendar days imposed due to violation of a City policy or unsatisfactory work performance.

7. **Transfer**

Involuntary and permanent reassignment into a position in a different City department.

C. Grievance Hearing Standards

1. For purposes of determining whether a complained of employment action is justified, the City must demonstrate that the decision complained of was just, right, or valid.

2. An employment action is *per se* justified upon a showing that an employee violated a City or departmental policy, rule, or code of conduct, and received due process as defined by this rule.

3. Review of a department director's decision that an employee violated a City or departmental policy, rule, or code of conduct will be according to an abuse of discretion standard.

4. Abuse of discretion shall mean a decision that is clearly unreasonable, erroneous, or arbitrary.

5. The burden of proving the Board has jurisdiction over a complained of employment action belongs to the employee.

6. An employee's failure to timely exhaust any administrative remedy available under City ordinance or policy deprives the Board of jurisdiction.

D. Probationary Employees

1. Probationary employees are not members of the classified service as defined by the Act.

2. Newly hired, rehired, promoted, or voluntarily transferred employees shall be probationary employees for a period of 365 calendar days following their first date of service.

3. Any employee considered a probationary employee due to a promotion shall not possess the right to a grievance hearing before the board based on a demotion to a lower pay grade. Otherwise, such employees shall enjoy all other rights to a hearing possessed by members of the classified service under the Act and these rules.