

SECTION 8:

CORRECTIVE ACTION

I. Generally.

- A. The City strives to use progressive corrective action to provide each employee the opportunity to correct unacceptable behavior using the lowest degree of disciplinary intervention. However, the City reserves the right to combine or skip steps depending on the particular facts of each situation and the nature of the offense.
- B. All corrective action shall be documented, with a copy forwarded to the Human Resources Department and the affected employee.

II. Grounds for Corrective Action. Following is a non-exhaustive list of grounds for corrective action:

- Conviction of a felony, a crime involving moral turpitude, or a crime that impacts an employee's ability to perform her or his job
- Discourtesy to another employee or to a member of the public
- Violence or threats of violence
- Discrimination or harassment, sexual or otherwise
- Dishonesty
- Falsification of documents or records, including an employment application
- Failure to perform job duties
- Insubordination
- Misuse of City property or funds
- Neglect of duty
- Negligence
- Prohibited political activities
- Violation of the City's and/or Department's policies, rules, or regulations
- Misuse of leave
- Unauthorized absenteeism
- Unauthorized tardiness
- Any act, error, or omission detrimental to the mission of the City
- Any action, on or off the job, that brings discredit to the City

III. Appeal of Certain Corrective Actions.

A. Eligibility.

- 1. Only full-time, non-probationary employees may appeal disciplinary actions as set forth in this policy.

2. Part-time, seasonal, temporary, and probationary employees are at-will and may not appeal any disciplinary action.
3. Employees who serve at the pleasure of the City Manager or City Council are at-will and may not appeal any disciplinary action.
4. Any employee who held appeal rights prior to the revision of this policy will continue to have appeal rights so long as the employee continues to serve in her or his position.

B. Non-Appealable Actions.

1. Verbal Counseling: A verbal counseling shall be documented and documents a conversation between an employee and the employee's supervisor, including the date the counseling took place, the parties to the conversation, and the content of the conversation.
2. Letter of Instruction: A letter of instruction advises an employee of performance deficiencies and sets forth or clarifies performance expectations.
3. Written Reprimand: A written reprimand advises an employee of performance deficiencies, outlines a corrective action plan, and advises the employee that further disciplinary action may be taken if the issue is not corrected.
4. Administrative Leave with Pay: The City may place an employee on leave with pay pending an investigation into allegations of misconduct. Administrative leave with pay is not disciplinary in nature. Such leave shall not exceed 30 calendar days, absent written approval of the City Manager. Employees are expected to abide by the City's policies and any instructions while on administrative leave.
5. Reductions in Force: Reductions in force are not disciplinary in nature and are not appealable.

C. Appealable Actions.

1. Suspension without Pay: A suspension without pay is the involuntary removal of an employee from the workplace for a period of time. A suspension without pay shall not exceed 30 working days.
2. Disciplinary Demotion. A disciplinary demotion is the movement of an employee to a lower position classification as a result of a

disciplinary decision. This may include, but is not limited to, a reduction in position level, rank, pay, or responsibilities.

3. Termination: Termination is the involuntary removal of an employee from City employment.

IV. Pre-Disciplinary Process for Appealable Actions.

A. Generally.

1. The following process shall be followed when taking an appealable action against an eligible employee.
2. Prior to each step in the process, the Department Head shall consult with the Human Resources Director and the City Attorney.

B. Notice of Intent to Discipline.

1. Prior to taking disciplinary action, the Department Head shall issue a written notice of intent to discipline to the employee, setting forth the proposed disciplinary action, the reason for the proposed disciplinary action, the rules, policies, and/or procedures implicated, and the date, time, and location for the pre-disciplinary conference.
2. If a suspension without pay is proposed, the notice shall indicate the anticipated duration.

C. Pre-Disciplinary Conference.

1. The employee's supervisor, the employee's Department Head, and a human resources representative shall meet with the employee at the place and time set forth in the notice of intent to discipline. The purpose of the pre-disciplinary conference is to allow the employee an opportunity to respond, verbally or in writing, to the allegations and intended disciplinary action.
2. The employee may choose to have a co-worker attend the pre-disciplinary conference. The co-worker may serve only as a silent observer.
3. The information presented by the employee during the pre-disciplinary conference shall be considered by the Department Head in determining the appropriate discipline, if any.

4. An employee's failure to attend the pre-disciplinary conference or otherwise respond within the time set forth in the notice of intent to discipline shall constitute a waiver her or his right to do so.

D. Disciplinary Decision.

1. Following the pre-disciplinary conference, the Department Head shall issue her or his written decision.
2. The written decision shall identify the disciplinary action to be imposed, if any, the dates of the disciplinary action, the reason for the disciplinary action, the rules, policies, and/or procedures implicated, and any instructions the employee is to follow. The disciplinary action shall also set forth the employee's appeal rights, if any.
3. The Department Head shall brief the City Manager after issuing the disciplinary decision.

V. Appeal Process.

A. Initiation of the Appeal Process.

1. Should the Department Head's disciplinary decision result in an appealable action, the employee may appeal the decision to the Personnel Board.
2. The employee must file a written appeal with the Human Resources Director within seven calendar days of the Department Head's written disciplinary decision. The appeal must include the grounds for appeal and the relief sought. The employee must also indicate whether he or she will be represented by legal counsel during the appeal process.
3. Upon receipt, the Human Resources Director shall forward the appeal to the City Manager, the City Attorney, and the Department Head.
4. The Human Resources Director shall work with the employee, City Attorney, and Personnel Board to arrange the hearing. The parties shall use reasonable efforts to hold the hearing within 60 calendar days of the request for an appeal.
5. The employee may withdraw her or his appeal at any time. Once an appeal is withdrawn, the appeal process cannot be reinstated.

B. Representation of the Parties.

1. The employee may represent herself or himself or be represented by legal counsel.
2. If the employee has retained legal counsel, communication will be directed to the employee's attorney.
3. The City may be represented by the City Attorney or an attorney or representative acting on the City's behalf.
4. Each party is responsible for its own attorneys' fees.
5. The Personnel Board will be represented by legal counsel at any pre-hearing conference and the hearing. The Board may enter executive session for the purpose of obtaining legal advice from its counsel.

C. Pre-Hearing Submissions, Disclosures, and Procedures.

1. All parties involved, including board members and employees, shall keep the information disclosed to them confidential.
2. At least 14 calendar days prior to the hearing, each party shall disclose the following to the other party:
 - a. a statement of how much time the party anticipates needing to present its case, including for an opening statement, the examination of witnesses, and a closing argument;
 - b. a list of all witnesses the party intends to call at the hearing and a brief summary of the witness's anticipated testimony;
 - c. a one-page summary of the issues to be presented at the hearing; and
 - d. all exhibits the party intends to introduce at the hearing, along with a table of contents identifying each exhibit.
3. At least 10 calendar days prior to the hearing, each party shall deliver seven sets of the items identified in Section V(C)(2) in three-ring binders to the Human Resources Department for delivery to the Personnel Board's Secretary.
4. In its discretion, the Personnel Board may set a pre-hearing conference to discuss any issues identified by the Board or the parties.

5. The Personnel Board shall not have authority to issue subpoenas. City employees, who are timely disclosed as witnesses, will be made available to testify at the hearing.

D. Hearing Procedures.

1. Except for hearings involving sworn peace officers, an appeal hearing shall be closed to the public, unless the employee requests in writing that it be held in a public session. Hearings involving sworn peace officers shall be open to the public, unless the officer has requested that the hearing be closed.
2. The hearing shall be recorded.
3. The hearing shall proceed as follows:
 - a. The Personnel Board Chairperson shall excuse all non-party witnesses from the hearing room.
 - b. The City or its legal representative will make an opening statement.
 - c. The employee or his or her legal representative will make an opening statement.
 - d. The City or its legal representative will present its witnesses, who will be subject to examination, cross-examination, and re-direct.
 - e. The employee or his or her legal representative will present her or his witnesses, who will be subject to examination, cross-examination, and re-direct.
 - f. The City or its legal representative will present any rebuttal witnesses, who shall be subject to examination, cross-examination, and re-direct.
 - g. The employee or his or her legal representative will make a closing argument.
 - h. The City or its legal representative will make a closing argument.
4. Testimony shall be given under oath or affirmation administered by the Personnel Board Chairperson.
5. The hearing shall be informal without strict adherence to the rules of evidence. Nonetheless, the Personnel Board may exclude irrelevant, untimely disclosed, or otherwise improper evidence.
6. The Personnel Board may question the witnesses.

7. If the employee fails to attend the hearing, the employee's appeal shall be forfeited and the Department Head's disciplinary decision shall stand.
8. The City bears the burden of proof, by a preponderance of the evidence, in establishing the propriety of the disciplinary action imposed.

E. Post-Hearing Deliberations.

1. At the conclusion of the hearing, the Personnel Board will convene in executive session to deliberate and discuss the evidence presented. The executive session shall be attended only by the Board members present during the hearing and the Board's counsel and Secretary.
2. When the Board's deliberations conclude, the Board shall vote in an open meeting on a recommendation to the City Manager. The Board may recommend any of the following actions:
 - a. Uphold the Department Head's disciplinary decision.
 - b. Reinstatement of the employee to her or his position with backpay and restored benefits.
 - c. Impose lesser discipline.
3. The Board's recommendation shall be based on the majority vote of the Board members present for the hearing.
4. The Board shall make its recommendation based solely on the evidence presented at the hearing.
5. Within seven calendar days, the Board shall send a written recommendation to the City Manager, including the facts it relied upon and findings. The recommendation shall be provided to Board counsel, the employee, the City's legal counsel, the Department Head, and the Human Resources Director.
6. The Board shall not discuss any aspect of the appeal outside the appeal process.

- F. Any part of this Section V may be adjusted to comply with any statutory or contractual rights applicable to certain employees, including pursuant to the Peace Officer Bill of Rights.

VI. The City Manager's Decision.

- A. Except as required by A.R.S. § 38-1101 et seq., the City Manager shall accept the Board's factual findings and recommendation unless the findings and recommendation are clearly erroneous. The determination of whether the factual findings and recommendation are clearly erroneous rests within the sole discretion of the Manager, however, any decision by the Manager that deviates from the factual findings and recommendation of the Board shall include a detailed statement of reasons for doing so.
- B. The City Manager will issue the final decision in writing within seven calendar days of receipt of the Personnel Board's recommendation. A copy of the final decision shall be provided to each party, the Personnel Board, and forwarded to the Human Resources Department for inclusion in the employee's personnel file.
- C. The City Manager's decision is final and non-appealable.