

	PERSONNEL POLICIES AND PROCEDURES		SUBJECT: DISCIPLINARY ACTION
	NUMBER: DIS 1.0	REVISIONS: <u>1</u>	EFFECTIVE DATE: <u>8/07/2017</u>
	SUPERCEDES: <u>10/17/2011</u>	APPROVED AND ADOPTED BY MAYOR AND COUNCIL: A. Max Bacon, Mayor Date City Administrator	

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PURPOSE: To establish and maintain consistent procedures which facilitate the administration of appropriate, prompt disciplinary action with employees whose performance is unsatisfactory or whose conduct or failure to observe City work rules, regulations, policies, or procedures necessitates disciplinary action.

STATEMENT OF POLICY

It is the policy of the City of Smyrna to treat all employees equitably and to administer all policies, rules, and regulations consistently. When a City employee's performance is unsatisfactory, or when an employee violates rules, regulations, policies, procedures, or standards of conduct of the City, appropriate disciplinary action will be taken.

For regular-status employees, (i.e., those who have satisfactorily completed their working-test period), the City endorses the concept of *progressive discipline*. The implementation of this disciplinary action policy, however, should not be construed as preventing, limiting, or delaying the City from taking appropriate disciplinary action against an employee at any of the following levels, *up to and including termination*, where the City, in its sole discretion, finds such action appropriate.

Whenever an adverse action (*i.e., suspension without pay, disciplinary demotion, or disciplinary termination*) is being considered against an employee (~~*i.e., suspension without pay, disciplinary demotion, or disciplinary termination*~~), other than Department Head, consultation with the Human Resources Director and the City Administrator must take place before the adverse disciplinary action is taken. Whenever adverse action is being considered against a Department Head, the City Administrator must consult with the City Attorney and/or the City Council before the adverse disciplinary action is taken. In the event an adverse action is necessary against the City Administrator, City Attorney or City Clerk, such action will be determined and taken by the City Council, with or without consultation with any other parties.

Note: For the purpose of this policy, "regular-status employee" shall refer to employees other than Department Heads.

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Types of Disciplinary Action - Whenever a City employee commits an offense warranting disciplinary action, the employee's immediate supervisor or department head will begin disciplinary action. The level of disciplinary action taken will depend on the severity of the performance problem or the offense committed by the employee as well as the employee's status (i.e., regular or working-test). There are five types of disciplinary action:

1. **Employee Counseling or Oral Reprimand** - The employee is counseled by the immediate supervisor about the employee's performance or conduct in an effort to eliminate possible misunderstandings, to improve job performance, and/or to explain what constitutes acceptable conduct and/or job performance. A *memo of understanding* summarizing what was discussed and agreed upon in the counseling session should be prepared by the immediate supervisor and given to the employee after the session. While this memo will not be placed in the employee's official personnel file in the Human Resources Department, it will be kept in a separate file by

the immediate supervisor or department head for documentation purposes.

2. **Written Reprimand** - The employee receives a written notice of discipline following continuing poor job performance or repeated offenses *OR* the employee receives a written reprimand when the immediate supervisor and/or department head believes that an offense in the first instance is serious enough to warrant issuing a formal written warning without giving an oral reprimand.

The purpose of a written reprimand is to ensure that the employee is fully aware of the seriousness of the misconduct which he or she has committed or of those areas of performance which must be improved. The written warning should also inform the employee of exactly what is expected (thereby enabling the employee to correct performance problems or avoid a recurrence of the incident of misconduct) and what action will be taken if the problem is not satisfactorily resolved. A copy of the written warning should be given to the employee, a copy should be kept by the department, and a copy should be sent to the Human Resources Department for inclusion in the employee's personnel file.

3. **Suspension** - Suspension without pay occurs when an employee fails to correct performance problems after repeated warnings *OR* as the result of an accumulation of minor offenses *OR* as the result of a serious offense or misconduct. Both the Human Resources Director and the City Administrator must be consulted before this action is taken if proposed action is against a regular-status employee.

3. Whenever adverse action is being considered against a Department Head, the City Administrator must consult with the City Attorney and/or the City Council before the adverse action is taken.

4. **Disciplinary Demotion** - Disciplinary demotion occurs when previous efforts to correct performance or conduct problems have failed *OR* the employee has been promoted to a position in which he or she is unable or unwilling to satisfactorily perform the responsibilities of the position and a lower level position for which he or she is qualified is vacant and budgeted (and the concurrence of the respective department head has been obtained). Both the Human Resources Director and the City Administrator must also be consulted before this action is taken if proposed action is against a regular-status employee. Disciplinary demotion is not to be used as a substitute for termination when termination is warranted.

Whenever adverse action is being considered against a Department Head, the City Administrator must consult with the City Attorney and/or the City Council before the adverse action is taken.

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5. **Termination** - Disciplinary termination of employment is the greatest disciplinary penalty the City can impose upon an employee. Such action normally takes place under the following circumstances:

- a) The City has made an attempt to give the employee the opportunity to correct performance or conduct problems and the employee has not satisfactorily responded; *OR*
- b) In the case of an employee who is still on working test and is deemed ~~the department head believes that the employee is~~ unable to satisfactorily complete his or her working test period; *OR*
- c) The employee's misconduct is of such a serious consequence that the City believes it has no practical alternative (including violation of the City's *Drug and Alcohol policy*).

Consultation with the Human Resources Director and the City Administrator should take place before a termination takes place taken if proposed action is against a regular-status employee

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Whenever adverse action is being considered against a Department Head, the City Administrator must consult with the City Attorney and/or the City Council before the adverse action is taken.-

Steps - Immediate supervisors and/or department heads considering possible disciplinary action against an employee shall take the following steps:

1. **Gather all the facts** - Immediately after a specific incident occurs, or immediately after learning of an incident, the immediate supervisor shall obtain complete and detailed information about the incident by privately interviewing the employee involved and, privately and separately, each person who saw or heard what occurred. Every effort should be made at this point to reconcile conflicting statements. If necessary, the immediate supervisor should request that the Human Resources Director assist in the investigation.

If an offense is so severe in nature that ~~the department head believes that the~~ discharge of a regular-status employee is warranted, the ~~employee~~~~department head involved~~ should be immediately suspended~~ed the employee~~ with pay, pending further investigation and review of the incident. This ensures that the ~~investigative party~~~~department head~~ will objectively evaluate the facts and circumstances surrounding the offense before deciding on an appropriate disciplinary action. (Note: *Suspension with pay* would not normally apply to employees who are still on *working test* who may be terminated at any time during their working-test period.)

2. **Prepare a written report** - The immediate supervisor and/or department head shall next write a complete, accurate, and unbiased report describing the problem(s), incident(s), or prohibited conduct. Included in this report will be any other information which is part of the employee's record (e.g., prior warnings, poor attendance records, past performance appraisals, etc.) that may provide additional substantiation of the problem(s) for which the employee is being disciplined.

Ordinarily, no disciplinary action should be taken before the written report is completed. In serious situations where immediate action is required against regular-status employees, suspension with pay pending investigation of the incident should be taken. (In such situations where it is not possible to prepare the report beforehand, the report *must* be prepared within one work day after such action is taken.)

3. **Weigh the evidence** - Review and weigh all the evidence obtained as well as the applicable City policy(s) to determine whether the offense is one that warrants the formal disciplinary action which is being considered. When discipline is called for, consider the following factors before deciding on a penalty:
 - a) How serious is the problem?
 - b) What is the employee's past record?
 - c) Has the employee been disciplined in the past for the same or a similar infraction? If so, how recently was the employee disciplined?

After deciding on the appropriate discipline and before administering the disciplinary action, the immediate supervisor involved should review the details of the incident with the department head to ensure that the department head concurs with the type of disciplinary action recommended. *In cases where suspension, disciplinary demotion, or disciplinary termination are being considered for a regular-status employee, the immediate supervisor and/or department head will review all details with the Human Resources Director and the City Administrator prior to administering the disciplinary action.*

In cases involving Department Heads, such action may be determined and taken by the City Council, with or without consultation with any other parties.

When suspension without pay, disciplinary demotion, or disciplinary termination is pending

Once it has been determined that an *adverse action* (i.e., a disciplinary suspension without pay, a disciplinary demotion, or a disciplinary termination) should be taken, the following notification and process will take place against a regular status employee, the following notification will take place:

A. Regular-Status employees:

The respective department head will give the employee a written notification of the proposed adverse action *at least 15 calendar days* prior to the effective date of the action. The notification will include all the following:

1. The effective date of the proposed action;
2. The specific charges or reasons for the action;
3. A statement informing the employee that he or she may appeal the adverse action to the City Administrator. Such appeal must be in writing to and received by the City Administrator within five (5) business days~~workdays~~ of receiving the notice of proposed adverse action; and
4. A warning that failure to respond to the City Administrator will result in a waiver of all further appeal rights.

*Proposed disciplinary termination adverse actions will result in the employee being placed on administrative leave **without pay** at the time notification is given. If, at any time during the appeal process, the adverse action is amended or overturned, the employee will be reinstated and receive compensation for time lost.

For all other proposed adverse actions, the employee will be expected to perform their regular job duties throughout the appeal process, unless administrative leave (with or without pay) is authorized by the City Administrator.

The City Administrator, after considering the employee's response, will provide the employee a written notification of the decision, ~~on the action to be taken within two (2) work days of the effective date of the action.~~ The notification should also contain a statement informing the employee of his or her opportunity to further appeal the adverse action. (Ref. Personnel Policy DIS 3-0~~See section entitled "Employee Appeals"~~ for further details.)

The administration of disciplinary action shall include the following:

1. Any disciplinary action, including an oral reprimand, shall be administered by the immediate supervisor. Where the seriousness of circumstances dictate, the department head should also be present.
2. Written documentation shall be prepared by the immediate supervisor *regardless* of the level at which the action is being taken.
3. All written warnings and/or letters of reprimand shall be signed by the employee, the immediate supervisor, and the department head. After issuance of the written warning and/or letter of reprimand, the notice shall be forwarded to the ~~department of~~ Human Resources Director for review and signature ~~by the Human Resources Director.~~
4. If the employee refuses to sign, a notation to that effect should be recorded on the written warning and witnessed.
5. Copies of the written warning or letter of reprimand shall be given to the employee, the immediate supervisor, and the Human Resources Director for retention in the employee's personnel file.
6. When a suspension without pay, disciplinary demotion, or disciplinary termination takes place, a Record of Personnel Action form, a Disciplinary Action form, and when the adverse action is a termination a copy of the DOL Separation Notice shall be completed, signed, and forwarded to the Human Resources Director.

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B. Department Heads:

Employment adverse actions of department heads must be done by the city council after a hearing affording due process to the department head at issue. The issue to be determined at the hearing shall be whether the employment should be terminated. Such hearing shall be conducted at a public meeting. The department head shall receive notice of the hearing at least 5 business days prior to the hearing date. After completion of the hearing, the Council's decision will be determined by Council vote. The department head shall receive within five (5) business days, written confirmation of the Council's decision. This decision shall be final.

For proposed adverse actions the City Administrator will give the employee a written notification of the proposed adverse action at least 5 business days prior to the effective date of the action. The notification will include all the following:

1. The effective date of the proposed action;
2. The specific charges or reasons for the action;
3. A statement informing the employee that he or she may appeal the adverse action to the City Council. Such appeal must be in writing to and received by the Mayor within five (5) workdays of receiving the notice of proposed adverse action; and
4. A warning that failure to respond to the Mayor will result in a waiver of all further appeal rights.

The Mayor and City Council will set a date to hear the appeal. After completion of the hearing, the Council's decision will be determined by Council vote. The employee shall receive within five (5) business days, written confirmation of the Council's decision.

The administration of disciplinary action shall include the following:

1. All written warnings and/or letters of reprimand shall be signed by the employee, as well as the City Administrator and/or the Mayor. A copy of the Council decision shall be placed in the employee's personnel file.
2. If the employee refuses to sign, a notation to that effect should be recorded on the written warning and witnessed.
3. Copies of the written warning or letter of reprimand shall be given to the employee, the immediate supervisor, and the Human Resources Director for retention in the employee's personnel file.

Take timely action – If a specific incident is involved, disciplinary action, to be most effective, must be administered as soon as practicable after the incident has occurred. To this extent, immediate supervisors and department heads should try to ensure that all the facts are gathered, the written report is completed, all the evidence is weighed, and the disciplinary action is decided upon and administered in a timely fashion.

In certain situations, the immediate supervisor or department head may believe that disciplinary action is necessary to warn an employee of a specific problem or *pattern* of behavior that must be corrected (such as chronic absenteeism or tardiness), rather than one specific incident. In such situations, the discussion with the employee should take place as soon as the problem or pattern becomes evident and, where possible, before the problem becomes serious in order to allow the employee the opportunity to correct behavior or performance as needed.

Emergency Action - The City ~~Council, City~~ Administrator or the respective department head may take immediate action (as discussed ~~previously in this policy on Page 3 of this policy~~) against an employee under emergency situations. In such cases, the employee ~~(if regular status)~~ may be immediately suspended *with pay* until an investigation can be conducted.*

Examples of emergency situations include, but are not limited to:

- a) Situations in which an employee may be injurious to himself or herself, other City

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- employees, or members of the general public; or
- b) Situations in which an employee may damage public property; or
- c) Situations in which crimes of moral depravity are committed: or

***Violation of the Drug and Alcohol Policy, including but not limited to refusal to submit to or failure of drug screen may constitute immediate termination.**