

	PERSONNEL POLICIES AND PROCEDURES		SUBJECT: DISCIPLINARY APPEALS
	NUMBER: DIS 3-01	REVISIONS: <u>1</u>	EFFECTIVE DATE: May 21, 2012 <u>June 1, 2015</u> 8/7/2017
	SUPERCEDES: <u>May 21, 2012</u>	APPROVED AND ADOPTED BY MAYOR AND COUNCIL: A. Max Bacon, Mayor, _____ Date Eric Taylor, City Administrator, <u>Date</u>	

Formatted: Centered

Formatted: Centered

PURPOSE: To provide a formal review of *adverse actions* and other appealable issues in an attempt to reach fair and equitable decisions in a timely manner.

STATEMENT OF POLICY

It is the policy of the City of Smyrna to provide due process to employees who have a property interest in their jobs and/or those who claim that one of their constitutionally protected rights has been violated.

Discipline involving termination, suspension, demotion involving reduction in salary may begin the appeal process described below. Only regular fulltime non-probationary employees have the right to the appeal process. Working test employees, part-time, temporary/seasonal, and contractual workers *are not eligible* for appeal rights.

The Department Head will notify the City Administrator and Human Resources Director immediately of the intent to take one of the disciplinary actions below:

- Disciplinary suspension without pay – An employee may be suspended without pay for a violation of accepted policies governing performance and/or conduct.
- Disciplinary demotion – An employee may be demoted to a position for which they are qualified in a lower salary range. The demotion will include a minimum reduction in salary of 5%.
- Discharge – An immediate termination of employment of an employee when it is necessary to remove the employee from the workplace.
- Emergency or Immediate Action – The Department Head, with the approval of the City Administrator and/or Human Resources Director, may take immediate disciplinary action against an employee that requires immediate suspension or dismissal. Examples of these situations are commission of a felony, acts of moral turpitude, injurious or dangerous behavior or damage to or destruction of public property.

Appeal Process

While intended to be less formal than a court hearing, an appeals hearing is intended to be orderly. Both the City and the employee may represent themselves during any step of the appeals process or either may choose to be represented by legal counsel.

Step 1 - The department head must advise the employee in writing of the pending disciplinary action.

Step 2 - The employee will have five (5) city business days from the date of the disciplinary action notification in Step 1 to appeal the decision, in writing*, to the City Administrator and

Human Resources Director.

*Any employee who cannot provide a written statement of the appeal due to disability or functional illiteracy may ask for assistance from the Human Resources Director or Manager who will arrange to have assistance provided.

If the employee does not submit an appeal within the 5 business days, the Department Head will administer the disciplinary action as previously determined and the employee will forfeit all other appeal rights.

Step 3 - If timely appeal is received, the City Administrator will schedule a meeting within five (5) business days of receipt of appeal with the employee. In this meeting, the employee will have the opportunity to respond to the pending disciplinary action and provide relevant witnesses. The City Administrator will provide his/her decision in writing to the employee within three (3) business days following the meeting.

Step 4 — Pending suspensions and demotions: ~~If~~ the ~~pending~~ discipline is affirmed by the City Administrator, the employee will be notified in writing of the effective date of the disciplinary action. The decision of the City Administrator shall be the final and binding, without further right to appeal.

Pending terminations: If the discipline is affirmed by the City Administrator, the employee will be notified in writing of the effective date of the disciplinary action and ~~and~~ will include the procedural requirements for further appeal, should the employee choose to do so.

Step 5 — ~~Demotion and/or Termination:~~ The employee will have the option to appeal for a final hearing before either (a) the respective Council Committee; or b) the Mayor and Council. Such appeal must be made in writing to either the Council Committee Chairperson or the Mayor (depending on the appeal option selected by the employee). The employee will have five (5) ~~work~~ business days from the date of the City Administrator's decision to submit an appeal in writing. ~~appeal the decision in writing to the Chairperson of the respective departmental Council committee.~~

The appeal shall contain:

- A *written statement* describing exactly what is being appealed (Note: any employee who cannot provide a written statement of the appeal due to disability or functional illiteracy may ask for assistance from the Human Resources Director who will arrange to have assistance provided): *and*
- The *specific relief* desired.

The Chairperson of the respective Council Committee or Mayor will determine if the issue is appealable, with merit, and properly filed. If appealable, the Council Committee Chairperson will notify the appellant, the other Committee or Council members, the City Administrator, the City Attorney and the Human Resources Director of the *date, time, and place* of the appeals hearing. (If not appealable, the same parties will be notified as to the reason why.)

Council Committee Appeals - While intended to be less formal than a court hearing, the appeals hearing is intended to be orderly. The Council Committee will compile evidence, prepare findings of facts, and arrive at conclusions.

Both the City and the appellant may represent themselves at the appeals hearing or either may choose to be represented by legal counsel.

The Council Committee shall issue its decision within seven (7) calendar days following the appeals hearing to the appellant and provide copies of the decision to the City Administrator, the respective

Formatted: Font: Bold

department head, and the Human Resources Director.

In the event that an adverse action is modified or reversed, the employee may be allowed back pay and benefits as consistent with the modification or reversal. The decision of the Council Committee shall be the final decision of the City of Smyrna.

Mayor/Council Appeals – Appeals to the Mayor and Council will be conducted in a public forum and may be televised. The Mayor (or designee) will compile evidence, prepare findings of facts and arrive at conclusions.

Both the City and the appellant may represent themselves at the appeals hearing or either may choose to be represented by legal counsel.

The Mayor and Council shall issue its decision within seven (7) calendar days following the appeals hearing to the appellant and provide copies of the decision to the City Administrator, the respective department head, and the Human Resources Director.

The decision of the Mayor and Council shall be the final decision of the City of Smyrna.

~~The decision of the Council Committee shall be final and binding, without further right to appeal. The appellant may, within five (5) business days after receiving the Council Committee's decision, appeal the decision in writing to the full Mayor and Council.~~

~~If the employee does not submit an appeal within the 5 days, the Human Resources Director will inform the Department Head to administer the disciplinary action as previously determined and the employee will forfeit all other appeal rights.~~

~~**Step 6** – The Mayor and Council may, at their discretion, either hear the appeal or review the written appeal presented by the employee. The Mayor and Council shall meet to consider the appeal and forward its decision in writing to the employee, the City Administrator, the respective department head, and the Human Resources Director within 15 calendar days of the hearing or meeting. In the event that an adverse action is modified or reversed, the employee may be allowed back pay and benefits as consistent with the modification or reversal. The decision of the Mayor and Council shall be the final decision of the City of Smyrna.~~

Formatted: Font: Bold