

CITY OF PLANO POLICIES AND PROCEDURES

216.000

Department Name: Human Resources Manual

Procedure: Disciplinary Process

Effective Date: 11/01/96

Revision Date(s): 07/01/02, 04/01/06, 01/01/07, 07/01/07, 04/01/09, 04/13/09, 01/01/10

I. Purpose

It is the intent of this policy to establish clear guidelines for correcting and preventing job performance deficiencies and misconduct, and for administering employee disciplinary action.

A firefighter or police officer covered by Chapter 143 of the Local Government Code is strictly governed by that statute and their respective department policies, and is not governed by this policy.

II. Policies and Procedures

While it is desired that every employee strive to achieve the highest level of job performance and conduct possible, it is the responsibility of each employee to maintain at least the standard level of job performance and conduct which is acceptable to his/her supervisor.

When the personal conduct or performance of an employee falls below a desirable standard, supervisors should point out deficiencies to the employee at the time they are observed. Immediate disciplinary action may occur whenever it is appropriate and in the best interest of the City. Whenever possible, the practice of progressive discipline should be applied. However, the suggested progressive disciplinary process is not a prerequisite for an employee's termination.

Absolutely no ***explicit or implicit right to continued employment*** is intended, or shall be interpreted to exist in this or any other City policy. This policy does not modify the status of employees as "employees at will" or, in any way, restrict the City's right to bypass the disciplinary procedures suggested.

Discipline will be administered without regard to race, color, religion, sex, national origin, age, disability or other non-performance-related factors.

All disciplinary actions shall be exercised under the scope of the city manager's direct or delegated authority. The city manager may remove, with or without cause and at will, any employee of the City not appointed by the city council, or otherwise where the power is limited by charter or state law.

A. Types of Discipline

Unsatisfactory job performance and inappropriate conduct, including poor attendance may be addressed in the following actions:

1. Oral warning;

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2. Written reprimand;
3. Performance Improvement Program;
4. Suspension;
5. Demotion, Transfer or Dismissal.

Human Resources should be consulted at any time a department head ¹ wishes to issue a disciplinary action other than an oral warning or a written reprimand.

The department head may change the order of the above disciplinary steps, and/or may choose not to utilize each step, depending on the facts of the case.

Nothing herein shall preclude the department head from using alternative discipline procedures where such procedures have been approved by the city manager.

When appropriate, and after consulting with Human Resources, department heads may initiate referrals to the Employee Assistance Program in conjunction with disciplinary action.

1. Oral Warnings
 - a. Oral warnings should be documented by department heads and kept within the department for performance evaluation and record keeping purposes.
 - b. Oral warnings may not be appealed by employees. However, employees who disagree with the counseling action may discuss the basis of disagreement with their department heads. Should oral warnings be given to employees in written form, they may submit written responses/rebuttals to be attached to the oral

¹ The term "department head" as referenced in this policy shall mean the department head or any subordinate manager or supervisor designated by the department head.

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warnings. Written responses/rebuttals must be submitted within ten (10) business days² of receiving the oral warning.

2. Written Reprimands

a. Written reprimands shall be presented and a copy given to the employees indicating the following:

(1) The specific employee act(s) which demonstrated the unacceptable conduct or behavior.

(2) The expected conduct or behavior.

(3) That such act(s) must not be repeated.

(4) That further action will result if the employee fails to show and maintain satisfactory improvement.

(5) Signed acknowledgment of receipt of the written reprimand by employee.

b. Written reprimands may not be appealed by employees; however, employees may submit responses/rebuttals for attachment to written reprimands. Responses/rebuttals must be submitted to Human Resources within ten (10) business days of receiving the written reprimand.

c. Written reprimands become a part of employees' permanent personnel files and shall be forwarded, along with any employee responses/rebuttals, to Human Resources.

3. Placement in a Performance Improvement Program (PIP)

When the job performance of an employee falls below an acceptable standard, the department head may place the employee on a Performance Improvement Program (PIP). The PIP shall consist of timely discussions between the department head and the employee with the following provided in writing:

a. The specific unacceptable deficiency in the employee's performance;

² "Business Days" as referenced in this policy shall mean Monday through Friday, 8:00 a.m.-5:00 p.m.

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- b. The necessary improvement;
- c. The period of time in which improvement must occur; and
- d. A statement that further consequences will result if the employee fails to show and maintain satisfactory improvement.
- e. PIPs may not be appealed. Employees may, however, submit written responses/rebuttals for attachment to the PIP.
- f. Written responses/rebuttals must be submitted within ten (10) business days of receiving the PIP.

The original PIP shall be maintained in Human Resources, with a copy given to the employee and one retained by his/her department.

4. Suspensions

- a. Suspensions result in time off without pay. An employee may be suspended without pay for a period of not less than one work shift.
- b. Prior to issuing a suspension for an exempt employee, the department head must consult with Human Resources to ensure compliance with the Fair Labor Standards Act.

Employees who are exempt under the FLSA can be suspended without pay for full work week increments (40, 80, 120 hours, etc). Suspension without pay for less than a full workweek is allowed where there is a serious workplace misconduct or violation of safety rules of major significance. Examples of serious workplace misconduct include, but are not limited to, sexual harassment, violence, drug or alcohol violations, or violations of state or federal laws.

- c. As notice, an employee shall be given a Notice of Disciplinary Action (Suspension) and shall have the right to respond to the department head to the alleged charges before the suspension becomes effective (**See:** Section 7 below).
- d. Suspensions become permanent parts of the disciplinary record maintained in the employee's permanent personnel file in Human Resources.
- e. Suspensions may be appealed in accordance with City policy.

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- f. When an employee is under investigation for a crime or official misconduct, or is awaiting hearing or trial in a criminal matter, he/she may be suspended. These suspensions shall be without pay for the duration of the investigation or proceedings when such suspension would be in the best interests of the City.

Upon completion of the investigation or proceedings, the employee may be eligible to resume work under terms and conditions specified by the city manager.

5. Demotions

Demotions result in employees being moved into jobs with lower responsibility levels and/or lower pay rates. Pay rates after a demotion will be reviewed on a case-by-case basis.

- a. The decision to demote employees for disciplinary purposes should be written, with a copy given to the employee and the original retained in the official personnel file.
- b. As notice, an employee shall be given a Notice of Disciplinary Action (Demotion) and shall have the right to respond to the department head to the alleged charges before the demotion becomes effective (**See:** Section 7 below).
- c. Personnel Action Forms (Appendix A) must be completed and sent to Human Resources.
- d. Demotions may be appealed in accordance with City policy.

6. Dismissals

Dismissals result in termination of City employment.

- a. Prior to initiating any dismissal action, the department head or his/her designee shall confer with the Human Resources representative and present all relevant facts, circumstances and information, including whether the employee will be placed on administrative leave with pay or without pay pending the outcome of the proposed dismissal.
- b. The Human Resources representative will review the information and discuss available options and their consequences with the respective department head or his/her designee.

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- c. It is the responsibility of the department head or his/her designee to decide whether to initiate a dismissal and to communicate the decision to the Human Resources representative.
 - d. As notice, an employee shall be given a Notice of Disciplinary Action (Proposed Dismissal) and shall have the right to respond to the department head to the alleged charges within two (2) business days of receiving the dismissal document. (**See:** Section 7 below)
 - e. Dismissals may be appealed in accordance with City policy.
7. Notice of Proposed Disciplinary Action and Employee Response
- a. A supervisor or department head who is considering disciplinary action shall prepare a notice of disciplinary action to the employee. For the purposes of this section, "disciplinary action" means suspension, demotion and/or dismissal. The Notice of Disciplinary Action should include an explanation of why the discipline is proposed, such as alleged policy violations, so the employee may adequately respond. The Notice of Proposed Disciplinary Action shall also establish a meeting time with the employee within two (2) business days from the date of the proposed disciplinary action.
 - b. A regular employee who receives a Notice of Proposed Disciplinary Action may respond with any relevant facts that might affect the proposed disciplinary action. The employee's response/rebuttal must be submitted within two (2) business days from the date of the proposed disciplinary action. This written response should be made through Human Resources to the department head.
 - c. The employee response may be presented orally during the meeting established in the Notice of Proposed Disciplinary Action. The employee may also present a response in writing as supplemental information to the meeting. If the employee does not provide additional information at the meeting or does not provide a written response providing adequate reason why the proposed action should not be taken, the proposed disciplinary action will be finalized.
 - d. A regular employee who is subject to disciplinary action of Suspension, Demotion, or Dismissal may have a representative

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present during the response meeting scheduled by the City. The representative is not permitted to participate in the response meeting, i.e. the representative is not allowed to speak or advocate on behalf of the employee. Any costs associated with the representative shall be the employee's responsibility.

- e. Human Resources will determine whether a Human Resources or City Attorney's office representative should be present at this meeting.
- f. The department head will review the employee's response/rebuttal and determine within five (5) business days whether the basis for the proposed disciplinary action still supports a conclusion to take the proposed action.

The department head shall notify the employee of his/her decision within five (5) business days of receiving the employee's response/rebuttal. If the decision of the department head is to take the proposed disciplinary action, the employee should be notified of the appeal procedure.

- g. Whatever pay status the employee was in at the time of the proposed disciplinary action will continue until the response is completed.
- h. The response period is concluded on the day the department head makes a decision on the proposed disciplinary action.
- i. Upon dismissal, the employee will receive his/her accrued vacation leave and applicable sick leave in accordance with Human Resources procedures, in addition to his/her final paycheck for hours worked. A non-exempt employee also will receive any recorded compensatory time. The employee will also be able to purchase his/her health insurance in accordance with COBRA provisions.

B. Criminal Offenses

If, during the course of any disciplinary investigation, the possibility exists that the employee may be charged with a criminal offense, the employee shall have the full benefit to assert the Fifth Amendment against self-incrimination. Once the possibility of a criminal offense exists or becomes known, the employee shall be informed that he/she has all rights afforded to any person subject to a criminal investigation and shall specifically be given the "Garrity"

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warning as set forth in Appendix C of this policy. A criminal investigation may be ordered by the department instead of or in addition to a disciplinary investigation. Once the employee has been given the "Garrity" warning, the employee is required to cooperate fully in the disciplinary investigation. Any failure on the part of the employee to cooperate fully in the disciplinary investigation shall be considered insubordination. Information obtained from an employee during a disciplinary investigation following the administration of the "Garrity" warning may not be used in any criminal prosecution.

In the event the department determines that a criminal investigation is necessary, the police chief or his/her designee shall be notified and shall begin an official police investigation, regardless of the complainant's predisposition concerning the filing of criminal charges.

The police department shall follow its normal departmental procedures in investigating the potential criminal complaint and may, at the discretion of the police chief, assign such investigation to another law enforcement entity, as may be appropriate.

The imposition of discipline, in whatever form, shall in no way preclude a further sanction imposed against an employee in subsequent criminal or civil proceedings. Any sanctions imposed in criminal or civil proceedings against an employee shall not preclude the imposition of administrative sanctions.

C. Appeals

1. Appeal Rules

Employees who are suspended, demoted or dismissed from city service may appeal decisions in accordance with the following rules.

- a. Employees who are dismissed for non-disciplinary reasons, such as incapacity, will use the same appeal process as for disciplinary dismissals.
- b. Employees who are terminated by the city as a result of a reduction in force may not appeal decisions of department heads.
- c. All requests, responses and decisions to appeal must be in writing. An employee who chooses to appeal may have a representative at the appeal hearing. The representative may participate in the hearing and speak on behalf of the employee. Any costs associated with the representative shall be the employee's responsibility.

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- d. If an employee does not respond within the prescribed time limits without obtaining an extension from Human Resources, the employee will have exhausted his/her option to appeal.
- e. An employee who has not completed his/her initial probationary period may not appeal.

2. Appeal Process for Suspensions, Demotions or Dismissals

- a. An employee who chooses to appeal a suspension, demotion or dismissal must submit the completed appeal form (Appendix B) to Human Resources within five (5) business days from the date of the letter notifying the employee of the effective action.
- b. All appeals will be heard by the city manager or his/her designee.
- c. An employee's appeal can result in modification of the original disciplinary action. Consequently, the Personnel Action Form (Appendix A) dismissing the employee and the Personnel Requisition intended to replace the employee shall be withheld pending final appeal-process disposition. Upon receipt of notification that the appeal process has been completed, the department shall submit the forms necessary to finalize the action.

D. Confidentiality

Any dissemination of information related to a disciplinary action or subsequent inquiry of any employee's separation from employment must be coordinated with Human Resources.

E. Performance and Conduct Expectations

Following are examples of expectations for appropriate work performance and conduct. It is the employee's responsibility to meet all work-related expectations. If he/she does not, disciplinary action may be appropriate.

Some of the specific examples listed below may fit under more than one of the broader categories. This section provides guidelines only, and is not intended to be an exhaustive or all-inclusive list.

- 1. Each employee is responsible for performing his/her job in an efficient and safe manner. Each employee is expected to:
 - a. Observe all safety laws, rules, procedures and regulations;

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- b. Use city-provided equipment in a careful manner, in accordance with city and departmental safety procedures;
 - c. Safeguard the City's property and interests;
 - d. Not violate the city's substance abuse procedure;
 - e. Maintain all required licenses and certificates necessary to perform his/her job;
 - f. Notify supervisor of work-related accidents in accordance with city procedures.
2. Each employee is responsible for conducting himself/herself in a manner that is respectful of others and worthy of respect from his/her co-workers. Each employee is expected to:
- a. Not harass or discriminate based upon sex, race, color, religion, creed, age, disability or national origin;
 - b. Not engage in speech or behavior which is rude, abusive, insolent or offensive toward a citizen, supervisor or fellow employee;
 - c. Be truthful in all aspects, including: procuring employment through honest representation of his/her personal history, qualifications and physical condition; providing truthful reports, claims and testimony; not soliciting or accepting favors, gifts, items or services for personal gain; not soliciting or accepting bribes; and use of leave;
 - d. Conduct himself/herself, both on and off duty, in a manner that is a credit to his/her department and the city.
3. Each employee is responsible for complying with the laws, regulations and policies of the United States, State of Texas, City of Plano and his/her department. Each employee is expected to:
- a. Respect the property of the City of Plano, citizens and fellow employees (for example, not stealing or vandalizing);
 - b. Not possess or use firearms, weapons or hazardous materials on city time or property, unless authorized to do so;
 - c. Make lawful and ethical decisions;

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- d. Treat privileged and/or sensitive information confidentially, unless otherwise authorized.
4. Each employee is responsible for utilizing provided time, tools, equipment and vehicles in accordance with city and/or department guidelines. Each employee is expected to:
 - a. Properly safeguard, maintain and account for city property in accordance with city procedure;
 - b. Utilize computer systems and software only in a lawful manner and as authorized;
 - c. Use city time, equipment and personnel for city business, unless authorized to do otherwise.
 5. Each employee is responsible for complying with the attendance guidelines and work hours of his/her position. Each employee is expected to:
 - a. Report to work at the appointed time and place;
 - b. Work his/her full shift, unless otherwise authorized;
 - c. Be at work ready to perform all duties within the work period;
 - d. Use city time for city business;
 - e. Work any shift and location as assigned;
 - f. Take leave only with proper approval and notice;
 - g. Be available for working overtime with proper notice and/or responding to emergencies as required.
 6. Each employee is responsible for maintaining acceptable work performance. Each employee is expected to:
 - a. Use care and caution when performing work duties;
 - b. Understand the performance requirements for the position;
 - c. Maintain open, two-way communication;

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- d. Clarify directions with supervisor if unclear;
- e. Not engage in horseplay, loafing or sleeping on the job (unless otherwise authorized to do so, such as with fire fighters working 24 hour shifts);
- f. Comply with all lawful orders of a supervisor;
- g. Meet all work-related expectations, whether as an individual contributor or team member.

III. Appendices

- A. Personnel Action Form
- B. Disciplinary Appeal Form
- C. Garrity Warning

PERSONNEL ACTION FORM

WORK GROUP _____
 RULE ELEMENT 1 _____
 RULE ELEMENT 2 _____
 RULE ELEMENT 3 _____
 RULE ELEMENT 4 _____
 RULE ELEMENT 5 _____

Name		Telephone	Sex
Address			
Fund No.	Cost Center	Social Security No.	Employee ID #
Date of Hire	Date of Birth	ID Card Access Level	

PROMOTION, DEMOTION OR TRANSFER

FROM:

Job Code/Position No.	
Title	
Pay Group	Cost Ctr
Department Name	
Hrly Salary	Grade
Regular	Temporary
Full-time	Part-time
	<input type="checkbox"/> TMRS Eligible
	<input type="checkbox"/> Not TMRS Eligible

APPOINTMENT

TO:

Job Code/Position No.	
Title	
Pay Group	Cost Ctr
Department Name	
Hrly. Salary	Grade
Regular	Temporary
Full-time	Part-time
	<input type="checkbox"/> TMRS Eligible
	<input type="checkbox"/> Not TMRS Eligible
Reports To:	Position Number:
Old Position's	<input type="checkbox"/> Decrease
Headcount Chg	<input type="checkbox"/> Increase
	<input type="checkbox"/> Remain the same

PERFORMANCE INCREASE, PAY DECREASE OR PAY ADJUSTMENT

Date of Last Increase	
From: Hrly Salary	Grade
Performance Increase (%)	

Title	
To: Hrly Salary	Grade
Performance Award (Lump Sum) \$	

LEAVE OF ABSENCE OR SUSPENSION (Check "✓" Leave classification)

Placed on:	<input type="checkbox"/> Leave of Absence	<input type="checkbox"/> Suspension	Effective Date
Return from:	<input type="checkbox"/> Leave of Absence	<input type="checkbox"/> Suspension	Effective Date
Nature of Leave	Duration		

SEPARATION (Check "✓" Separation classification)

Title	Hrly Rate		
<input type="checkbox"/> Retirement	<input type="checkbox"/> Dismissal	<input type="checkbox"/> Layoff	<input type="checkbox"/> Disability
<input type="checkbox"/> Resignation	<input type="checkbox"/> Deceased	<input type="checkbox"/> End of Temporary Work	
Change to Position	<input type="checkbox"/> Decrease	<input type="checkbox"/> Increase	<input type="checkbox"/> Remain the Same

Effective date: _____ Last Date Worked: _____
 Remarks: _____

ACCOUNTING USE ONLY

Benefits:							
Regular Hrs	_____	@	_____	Comp Time	_____	@	_____
Overtime Hrs	_____	@	_____	Longevity	_____	@	_____
Sick Leave	_____ hrs	@	_____	Ins Refund	_____	@	_____
Vacation	_____ hrs	@	_____	Other (Specify)	_____	@	_____
Total							_____

Division Manager _____ Date _____
 Department Head _____ Date _____
 Human Resources Generalist _____ Date _____

Director of Human Resources _____ Date _____
 Executive Director _____ Date _____
 City Manager _____ Date _____

DISCIPLINARY APPEAL FORM

DATE: _____

TO: _____

FROM: _____

Employee Name and Title *(Please Print)*

EMPLOYEE #: _____

In accordance with HR procedures, I wish to appeal my:

- _____ Suspension (copy of documentation attached)
- _____ Demotion (copy of documentation attached)
- _____ Dismissal (copy of disciplinary/incapacity memo attached)

for the following reasons (may attach extra statements):

Employee Signature

Home Address:

City, State & Zip Code

Telephone Number

GARRITY WARNING

(Garrity v. New Jersey, 385 US 493 [1967])

I wish to advise you that you are being questioned as part of an official investigation by the City. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office.

You are entitled to all the rights and privileges guaranteed by the laws and constitution of this state and the United States Constitution, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to disciplinary charges which could result in your dismissal from employment with the City. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings, except as allowed by law. However, these statements may be used against you in relation to subsequent disciplinary charges.

I acknowledge that I have been given the above "Garrity" warning.

Employee Signature

Witness Signature

Date

Date