



**CITY OF WATAUGA – PERSONNEL, ADMINISTRATION AND FINANCIAL POLICIES AND PROCEDURES MANUAL**

<b>POLICY TITLE</b>	<b>Discipline Process</b>
<b>INITIAL EFFECTIVE DATE</b>	<b>March 28, 2016</b>
<b>LAST REVISION DATE</b>	<b>Replaces <i>Section 12.1, 12.2, 12.3, 12.5, 18.16 and 19.1</i> of the Personnel, Administration and Financial Policies and Procedures Manual approved on February 24, 2014.</b>
<b>POLICY NUMBER</b>	<b>11.01</b>

**OBJECTIVE** The purpose of this policy is to establish clear guidelines for correcting and preventing job performance deficiencies and misconduct, and for administering employee disciplinary action.

**SCOPE** This policy applies to all employees. Police Officers and Fire Fighters are subject to the applicable provisions of Texas Local Government Code Chapter 143, the Rules of the City of Watauga Firefighters and Police Officers Civil Service Commission, and the general and special orders of the Police and Fire Departments, which may incorporate some or all of the provisions of this policy.

**POLICY**

**A. Discipline Policy**

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 the standard level of job performance and conduct which is acceptable to their 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 the deficiencies are observed. Immediate disciplinary action may occur when appropriate and in the best interest of the City. Whenever possible, progressive discipline should be applied. However, 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, sexual orientation, 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 where that power is otherwise limited by charter or state law.

## **B. Types of Discipline**

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

1. Oral warning;
2. Written reprimand;
3. Performance Improvement Plan;
4. Suspension;
5. Demotion; or
6. Dismissal

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

The Department Director 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 supervisors 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 supervisor.
- c. Should oral warnings be given to an employee in written form, the employee may submit written responses/rebuttals to be attached to the oral warnings. Written responses/rebuttals must be submitted within ten (10) business days of receiving the oral warning.

### **2. Written Reprimands**

- a. Written reprimands shall be presented and a copy given to the employee 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 disciplinary 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 the employee's permanent personnel file and shall be forwarded, along with any employee responses/rebuttals, to Human Resources.

### 3. Performance Improvement Program (PIP)

- a. When the job performance of an employee falls below an acceptable standard, the supervisor may place the employee on a Performance Improvement Program (PIP).
- b. PIPs may not be appealed. The employee may, however, submit written responses/rebuttals for attachment to the PIP. 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 their department.
- c. **See Policy 4.07 Performance Improvement Plan**

### 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. Suspension without pay for more 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. Nothing in this policy prohibits more severe discipline for these policy violations.
- c. As notice, an employee shall be given a Notice of Disciplinary Action and shall have the right to respond to the Department Director to the alleged charges before the suspension becomes effective **(See: Section C)**.
- 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 this policy **(See: Section D)**.
- f. 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

- a. Demotions result in employees being moved into jobs with lower responsibility levels and/or lower pay rates. The decision to demote employees for disciplinary purposes should be in writing, with a copy given to the employee and the original retained in the official personnel file. As notice, an employee shall be given a Notice of Disciplinary Action and shall have the right to respond to the Department Director to the alleged charges before the demotion becomes effective **(See: Section C)**.
- b. Demotions may be appealed in accordance with this policy **(See: Section D)**.
- c. Pay rates after a demotion will be reviewed on a case-by-case basis. The job classification and compensation plan and the current approved pay rate under

the fiscal year budget for the position will be reviewed and approved by the Department Director and approved by the City Manager.

## **6. Dismissals**

- a. Dismissals result in termination of City employment.
- b. Prior to initiating any dismissal action, the Department Director shall confer with the Human Resources Director 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.
- c. The Human Resources Director will review the information and discuss available options and their consequences with the respective Department Director.
- d. It is the responsibility of the Department Director to decide whether to initiate a dismissal and to communicate the decision to the Human Resources Director.
- e. As notice, an employee shall be given a Notice of Disciplinary Action and shall have the right to respond to the Department Director within two (2) business days of receiving the dismissal document. **(See: Section C)**
- f. Dismissals may be appealed in accordance with policy **(See: Section D)**

## **C. Notice of Disciplinary Action and Employee Response**

When suspension, dismissal, or involuntary demotion of an employee, other than an at-will employee, is thought to be necessary, the Department Director will take the following steps:

- a. The Department Director will consult with the Human Resources Director and conduct a thorough investigation. The Human Resources Department is available to assist in the investigation, if requested by the Department Director.
- b. The Department Director will inform the Director of Human Resources of the impending involuntary demotion, suspension, or dismissal prior to any further action.
- c. Prior to meeting with the employee about a proposed disciplinary action, the Department Director, in consultation with the Human Resources Department, will prepare a charge letter setting out the provision(s) of the Discipline policy, City policy, personnel policy, or departmental rule/regulation believed to have been violated by the employee. The charge letter must include the specific facts related to the alleged violation. The charge letter will be delivered to the employee either in person, or by certified mail (the letter will be considered delivered three business days after the date it was mailed).
- d. The Department Director will provide the employee the opportunity to respond within two (2) business days hours after receipt (or delivery) of the charge letter. The employee may choose to respond either orally, in writing, or both.
- e. Failure of the employee to respond will not affect the disciplinary action or the employee's right to appeal.
- f. Based on the investigation and response of the employee, if any, the Department Director will take such disciplinary action, if any, as the Department Director feels appropriate in accordance with this policy.
- g. Except for oral warnings and written reprimands, the notice of disciplinary action will be given (or sent as certified mail) to the employee in the form of a letter, along with instructions on the employee's right to appeal under this policy. When an employee is not at the work place, notice may be given by mailing the action

letter to the employee's last known address, in which case the disciplinary action becomes effective upon mailing.

- h. If the Department Director decides to dismiss the employee, they will immediately inform the Director of Human Resources and refer the employee to the Human Resources Department.
- i. NOTE: While Department Directors are encouraged to follow these steps, failure to follow these steps (except for the charge letter and opportunity to respond) will not negate the disciplinary action.

#### **D. Appeal Process**

1. The appeal procedure does not apply to an employee during the probationary period.
2. An employee who chooses to appeal a suspension, demotion, or dismissal must submit the appeal to Human Resources within ten (10) business days from the date of the letter notifying the employee of the effective action.
3. All appeals will be heard by the City Manager or his/her designee.
4. 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.
5. If an employee does not respond within the prescribed time limits, they will have exhausted their option to appeal.

#### **E. Administrative Leave**

1. When an investigation is initiated against an employee that could result in serious disciplinary action, the employee may be placed on paid or unpaid administrative leave with the approval of the Director of Human Resources. Placement on paid or unpaid leave during the investigation process will only be done when it is in the best interest of the City. The Department Director should instruct the employee that they are being placed on paid or unpaid administrative leave pending an investigation.
2. An employee on paid administrative leave will follow the instructions of the Department Director in regard to regularly checking with the supervisor and will remain available as required.

#### **F. Criminal Offenses**

1. 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 they have all rights afforded to any person subject to a criminal investigation and shall specifically be given the "Garrity" warning.
2. 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.

3. Information obtained from an employee during a disciplinary investigation following the administration of the “Garrity” warning may not be used in any criminal prosecution.
4. In the event the department determines that a criminal investigation is necessary, the Police Chief or their 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.
5. When an employee is under investigation for a crime or official misconduct, or is awaiting hearing or trial in a criminal matter, their Department Director will review the facts of the alleged conduct to determine whether it will interfere with the employee’s performance of the job functions. Depending on the type, nature, and severity of the alleged conduct, the employee may be placed on administrative leave with or without pay, or be subject to disciplinary actions, including but not limited to suspension, demotion, or termination. 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.

#### **G. Civil Service Employees**

Disciplinary and Appeal procedures for Civil Service employees are governed under Chapter 143 of the Local Government Code and the Local Civil Service Rules.

#### **H. 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