

CITY OF CHESAPEAKE, VIRGINIA

NUMBER: 2.11 (20.7)

ADMINISTRATIVE REGULATION

EFFECTIVE DATE: 12/1/05

**SUBJECT: DEPARTMENT OF HUMAN RESOURCES
DISCIPLINARY POLICY**

SUPERSEDES:8/20/96

I. PURPOSE

To establish a disciplinary policy which provides supervisors with a fair and objective guide for determining the seriousness of an employee's unsatisfactory work performance or misconduct and selecting the appropriate disciplinary action to correct the unacceptable behavior.

II. DEFINITIONS

Verbal Reprimand - A verbal reprimand shall be defined as a discussion between the supervisor and the employee where the employee is advised and cautioned about unsatisfactory work performance or misconduct. Verbal reprimands are not grievable and will not be placed in the employee's personnel file.

Written Reprimand - A written reprimand shall be defined as a written documentation to the employee from the supervisor where the employee is advised and cautioned about his/her unsatisfactory work performance or misconduct. Written reprimands will be placed in the official personnel file in the Department of Human Resources. Written reprimands are not grievable.

Suspension - A suspension shall be defined as temporarily prohibiting an employee from performing his/her duties as a result of the employee's unsatisfactory work performance or misconduct. The suspension period shall be without pay.

Demotion - A demotion shall be defined as a reduction of the pay range of an employee and a change in job duties and responsibilities as a result of the employee's unsatisfactory work performance or misconduct.

Dismissal - A dismissal shall be defined as an involuntary separation from employment initiated by the employing authority as a result of the employee's unsatisfactory work performance or misconduct.

III. APPLICABILITY

All City employees within departments which are under the direction of the City Manager shall be covered under this policy.

IV. POLICY

The City of Chesapeake shall support the practice whereby all part-time, temporary, probationary, and full time employees shall be disciplined by the same process. Where appropriate, disciplinary actions of lesser severity than dismissal shall be taken in an attempt to correct an employee's unsatisfactory work performance or misconduct before a dismissal is initiated. A dismissal may be generally considered as appropriate only when a serious offense of the type outlined in this policy has occurred or where an employee's unsatisfactory work performance or misconduct has continued in spite of efforts to correct that behavior through less severe disciplinary action. Disciplinary action may take any of the following forms and are not necessarily restricted to the order set forth below:

Verbal reprimand
 Written reprimand
 Suspension
 Demotion
 Dismissal

All disciplinary actions, with the exception of the verbal and written reprimand, are appealable through the grievance procedure for those eligible to use the grievance procedure.

Unacceptable conduct has been divided into three types of offenses according to its seriousness. The severity of the discipline chosen by the supervisor must fit the seriousness of the offense. If there are mitigating circumstances, supervisors may reduce the discipline, but they must state their reasons for such action.

Procedural steps for imposing discipline are set out below. The failure of a supervisor to follow these procedural steps will not, by itself, make the discipline invalid or improper, but an employee may separately grieve a supervisor's failure to follow appropriate procedure, provided that such grievance is filed timely. The sole remedy for such grievance shall be correction of the procedural error.

V. TYPES OF OFFENSES

A. GROUP I OFFENSES (Examples Only)

- Incident of unsatisfactory attendance or tardiness
- Incident of abuse of City time
- Incident of obscene or abusive language.
- A moving traffic violation while using City or other public use vehicles.
- Incident of inadequate or unsatisfactory job performance.

B. GROUP II OFFENSES (Examples Only)

Violating safety rules where there is not a threat to life.

Failure to follow supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy.

Leaving the work site without permission during working hours.

Failure to report to work without proper notice to supervisor.

Unauthorized use or misuse of City property or records.

Unauthorized discussion or disclosure of information pertaining to an administrative investigation.

C. GROUP III OFFENSES (Examples Only)

Absence in excess of three (3) working days without appropriate notice, or without satisfactory explanation.

Use of alcohol or unlawful use or possession of controlled substances while working in an official capacity or on City premises or operating City equipment.

Confirmed positive test for drugs and/or positive test for alcohol.

Falsifying any records, such as, but not limited to: vouchers, reports, insurance claims, time records, leave records, or other official City documents.

Willfully or negligently damaging or defacing City records or City or other persons' property.

Theft or unauthorized removal of City records or City or other persons' property.

Acts of physical violence or fighting.

Verbal threats, coercing or any acts of violence directed toward persons associated with the City (to include employees; supervisors, citizens, visitors, etc.)

Engaging in sexual activities while on the job or on City property.

Violating safety rules where there is a threat of bodily harm.

Sleeping during working hours.

Making a material false statement on any forms associated with the job application process.

Making false or misleading statements in any City investigation.

Participating in any kind of work slowdown, sitdown, or similar concerted interference with City operations.

Unauthorized possession or use of firearms, dangerous weapons or explosives.

Criminal convictions for acts of conduct occurring on or off the job which are plainly related to job performance or are of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the department's duties to the public or to other City employees.

Sexual harassment: Making unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature and either (1) making submission to such conduct by another employee an explicit or implicit term or condition of employment, or (2) making another employee's submission to or rejection of such conduct the basis for employment decisions which affect that individual or (3) such conduct has the purpose or effect, even if unintended, of substantially interfering with an individual's work performance or creating a work environment which is intimidating, hostile or offensive to the worker.

Failure to follow supervisors instructions when such failure poses critical problems to the operation of the department.

Operating a City vehicle with a revoked operator's permit.

Any act of discrimination, including harassment or retaliation against an employee for filing a complaint of discrimination or for participating in the complaint of another employee.

VI. TYPES OF DISCIPLINARY ACTION

A. REPRIMANDS

1. Reprimands are given for Group I and Group II Offenses which are less severe in nature but which require correction in the interest of maintaining a productive and well managed work force. The form of the reprimand may be either verbal or written.
2. Verbal Reprimands - Verbal reprimands should be recorded in the supervisor's critical incident file. Normally, they should be removed or destroyed from that file after twelve (12) months have passed unless other incidents occur within that period which indicate ongoing problems with

the employee's behavior or performance. When such additional incidents do occur, the appropriateness of further disciplinary action should be considered.

3. Written Reprimands

- a) Written reprimands are more serious in nature. A copy of all written reprimands must be forwarded to the Department of Human Resources for inclusion in the employee's official personnel file.
- b) Written Reprimands shall become part of the official personnel file until they are approved for destruction by the Director of Human Resources at the request of the concerned Department Head. Those written reprimands which must remain in the official personnel file to comply with other City policies may not be destroyed or removed from the file. All other written reprimands must remain on file for a period of twelve (12) months and may not be destroyed unless the concerned Department Head provides a written statement that the employee's behavior and performance for the entire twelve month period have been such that removal of the written reprimand from the file is warranted.
- c) Written reprimands shall be cumulative in nature and shall remain active until destroyed as provided in b) above. After three (3) reprimands, the supervisor should normally suspend the employee. A fourth active written reprimand will normally result in termination.

B. SUSPENSION

1. Standard Suspension

- a) Suspensions are given for acts and misconduct of a more serious nature, as listed in the Group II and Group III Offenses. Unsatisfactory work performance or misconduct, which continues after discipline has been imposed is also normally considered to be in this category.
- b) Normally, suspensions shall not exceed five (5) workdays in length; however, for exempt employees suspensions shall be for a minimum of five (5) workdays in length in accordance with provisions of the Fair Labor Standards Act. Longer suspensions

may be authorized by the Director of Human Resources where special circumstances warrant.

- c) An additional offense requiring a suspension should normally result in termination. A single suspension coupled with three "active" reprimands should also normally result in termination.

2. Immediate Suspension

Nothing in this policy shall prevent the immediate suspension without pay of an employee whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the employee's department or to the welfare of the public, or where such continued presence could constitute negligence in regard to the department's duties to the public or to other City employees. Such suspension may be imposed in any of the following situations with the prior approval of the affected Department Head and the Director of Human Resources. Where such suspension must be imposed at a time other than normal working hours, the Director of Human Resources shall be notified and consulted at the beginning of the next working day.

a) Suspension Pending Court Action or Official Investigation

An immediate suspension shall be warranted where there is a criminal prosecution or official investigation involving alleged criminal violations that occur on or off the job and are plainly related to job performance or are of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the department's duties to the public and to other City employees.

Upon completion of such court action or official investigation, the employee may be disciplined or removed or may be reinstated with full or partial back pay as the Department Head determines to be appropriate under the circumstances, provided that such action must be based on stated findings and must be consistent with the guidelines of this policy. The Department Head shall not be bound by the outcome of court action or official investigation but may refer to such outcome and findings made in making a final decision. ("Official investigation" shall be interpreted to include only those investigations conducted by Federal, State, or local government law enforcement agencies.)

At any time during the pendency of such investigations or proceedings, the employee may request in writing that the

department proceed with an administrative investigation under the provisions, including the time limits, of 2(b) below. A decision not to charge or discipline an employee at the end of such investigation shall not preclude subsequent action based upon the findings made or action taken in the other investigations or proceedings. Furthermore, the subsequent findings of additional information in other investigations or proceedings may provide the basis for additional charges or discipline.

b) Suspension Pending Department Disciplinary Investigation

An immediate suspension may be imposed pending completion of a disciplinary investigation into misconduct or violation of established work rules; provided, however, that before such a suspension is imposed the Department Head must find that the employee's continued presence on the job would present a substantial and immediate threat to the welfare of the department or the public, or that it could constitute negligence on the part of the City in regard to the department's duties to the public or to other City employees.

If the employee is cleared of any such alleged violations, the employee shall be reinstated and paid for this period of suspension. Where no finding of violation or decision on disciplinary action occurs within 15 working days, the employee shall be permitted to return to work pending a final decision.

If the Department Head decides disciplinary action involving suspension is warranted, the period of suspension pending completion of the investigation shall apply to the period of disciplinary suspension.

3. Suspension in Lieu of Dismissal

Where mitigating factors support a decision to retain an employee in spite of actions by that employee which would normally warrant dismissal, suspension for an extended time period may be imposed; provided however, that prior approval shall be obtained from the Director of Human Resources and that an explanation shall be given for such action in the notice that is provided to the employee. The length of suspension shall be commensurate with the seriousness of the conduct involved.

C. DEMOTIONS

1. Disciplinary demotions can occur as an intermediate discipline or as an alternative to termination in Group II or Group III offenses and in cases

of continued commission of Group I offenses after discipline has been imposed for prior Group I offenses. The salary will be reduced as specified in the City's Demotion Policy.

2. A demotion shall not be used as a disciplinary action if the employee involved cannot qualify for the lower-ranked position or if the demotion would require the displacement of another employee.

D. TERMINATION

An employee's employment is terminated for acts and behavior of such a serious nature that a first occurrence should normally warrant termination, and for unsatisfactory performance or misconduct of a less serious nature which continues after discipline has been imposed for prior poor work performance or misconduct. Examples of Group III offenses are listed in Section V. C., of this policy.

VII. INVESTIGATIONS

A. Questioning of Employees

1. Unless the nature or significance of the acts involved require otherwise, questioning of employees in regard to work-related conduct or performance should occur during the employees' normal work hours.
2. Where the alleged or suspected misconduct involves a Group II or Group III offense, and the employee is alleged to have engaged in the misconduct, or is part of a discrete group of individuals who could have engaged in suspected misconduct, such employee may be required to participate in a polygraph examination as part of the investigatory process. Such requirement may be imposed only after prior review and approval by the Director of Human Resources or the Director's designee. Any requests for use of the Chesapeake Police Department's Polygraph Unit must be in writing and directed to the Chief of Police.
 - a) At the time an employee is directed to participate in a polygraph examination, the employee shall be informed of the following:
 - 1) No questions shall be asked of the employee except those which directly relate to the subject matter of the investigation and those which are necessary to establish the reliability of the examination.
 - 2) No information gained from such an examination may be used against the employee in any subsequent criminal prosecution.

- 3) Participation in the polygraph examination is a condition of continued employment.
 - 4) All questions to be asked during the polygraph test (s) shall be reduced to writing and read to the employee.
 - 5) An employee does not have the right to have legal counsel or any other representative present at the examination.
 - 6) The employee will be informed of the issues to be covered during the polygraph examination and of the information to be reported by the examiner to any other person.
3. All employees shall be expected and required to cooperate in investigations regarding job-related conditions and conduct. Failure or refusal of an employee to cooperate in such investigation shall be grounds for disciplinary action up to and including termination.

B. Alcohol and Drug Testing

The City is committed to having an alcohol and drug free work place. Testing of employees for the presence of alcohol and/or drugs will be done consistent with the provisions of the City's Substance Abuse Policy Administrative Regulation 23.8.

C. Police Officers and Firefighters

Specific procedures for conducting investigations of police officers and firefighters are set out in state statutes. Supervisors in those departments should consult those statutory provisions.

VIII. PROCEDURE BEFORE MAKING A FINAL DECISION ON DISCIPLINE

The Director of Human Resources or designated staff shall be responsible for review **prior** to implementation of all proposed corrective actions involving suspension, demotion or termination of employment, to ensure policy is being consistently applied and to determine if mitigating circumstances exist which would justify modified corrective action.

- A. The following procedures must be followed before imposing a grievable disciplinary action upon a non-probationary full time or part-time employee:
 1. The employee must receive an oral and written Notice of Intent to Take Disciplinary Action, with the employee's supervisor or other management representative attempting to meet with the employee and explain the charges.

2. The Notice of Intent must contain a statement of the reason(s) why discipline is being considered, the type of the offense and an explanation of the evidence supporting the charges. It is not required that witnesses be present to give statements. Their evidence may be relayed to the employee by the supervisor or other management representative.
 3. The employee must have an opportunity to present an oral or written explanation prior to imposing disciplinary action. Even if the employee has been interviewed previously as part of the investigation, once the investigation has been completed and the charges and evidence are reviewed with the employee, the employee should be informed that he or she has the right to respond before a decision on discipline is made. The employee should be told that if he or she needs additional time to develop a response, including collecting documents or asking witnesses to provide information, the employee may have up to five (5) calendar days to do this. The employee does not have the right to have an attorney or other personal representative present when making this response.
- B. The above procedures are not required for part-time or probationary employees. However, supervisors are encouraged to meet and talk with such employees before imposing disciplinary action.
- C. In the case of nonprobationary firefighters and nonprobationary police officers, state statutory provisions regarding the discipline of such employees should be consulted before discipline is imposed.
- D. These procedures shall in no way compromise or infringe upon the authority to immediately suspend an employee pending the outcome of investigations as provided for in Section VI, B.
- E. The written Notice of Intent to Take Disciplinary Action shall be hand-delivered to the employee or mailed by certified mail (return receipt requested). A copy of the notice shall be sent to the Director of Human Resources for inclusion in the employee's official personnel file.

IX. NOTICE OF DISCIPLINARY ACTION

- A. All levels of discipline, except verbal reprimands shall be in written format. These Notices of Disciplinary Action should have the following elements:
1. A statement of the reason(s) for the disciplinary action.
 2. A statement of the employee's oral response and/or the original of the employee's written response.
 3. If the employee has received previous counseling or disciplinary action for this or

similar offense, a statement of the dates, the offense(s), and the action taken to correct the problem in the past.

4. A statement of review of the employee's response along with other information gathered.
 5. A statement of what, if any, disciplinary action is to be taken.
 6. Where appropriate, a warning of what further disciplinary action could result if the situation is not corrected or other performance or conduct problems emerge.
 7. A statement of the employee's right to appeal (if any) in accordance with the City's Grievance Procedure. Police officers shall be informed of their rights to use either the City grievance procedure or the procedure afforded under the Law Enforcement Officers' Procedural Guarantees.
- B. If any notice of discipline fails to contain all of the elements required above, the employee's sole remedy shall be to make a request to the Director of Human Resources that she notice be modified.
- C. Supervisors and management representatives are encouraged to provide written notice to part-time and probationary employees who are disciplined or terminated from employment.

X. MISCELLANEOUS PROVISIONS

- A. **Director's Responsibility:** The Director of Human Resources shall be responsible for the review of all corrective actions involving suspension and/or termination of employment to determine if mitigating circumstances exist which would justify modified corrective action.
- B. **Management Responsibility:** Management is responsible to assure that discipline is administered in a fair and consistent manner.
- C. **Department/Agency Head Responsibility:** Departments/Agencies may from time to time supplement this policy to meet their needs subject to the prior written approval of the Director of Human Resources. Department Heads must insure that all employees receive a copy of this disciplinary policy and any approved supplements.
- D. **Mitigating Circumstances:** Mitigating circumstances include those conditions related to a given offense that would serve to support a reduction of corrective action in the interest of fairness and objectivity. Mitigating circumstances may also include consideration of an employee's long service with a history of satisfactory work performance. Mitigating circumstances will not be applicable to employees with a confirmed positive drug test and/or an alcohol test of .04 or more.

- E. Not All Inclusive: The offenses listed in this policy are not intended to be all inclusive. Accordingly, conduct which in the judgment of the Department/Agency Head, although not listed, seriously undermines the effectiveness of the agency's activities or the employee's performance should be treated consistent with provisions of this policy. A record of such corrective actions must be filed with the Department of Human Resources.

- F. Right to Grieve Disciplinary Actions: All full time and part-time employees who have completed their original entrance probationary period have access to all provisions of the City Grievance Procedure. Temporary, seasonal and probationary employees shall not be eligible to grieve a dismissal, demotion, or suspension for more than five (5) working days. Other grievances may be processed through Step 2 (Department Head). This limited right to grieve is granted in order to encourage an open atmosphere of dialogue between management and all employees, but it is specifically limited to reflect that such employees are subject to demotion, long-term suspension and termination at the will of their appointing authority, and have no property interest in their continued employment unless or until they become full time or part-time non-probationary employees.

Dr. Clarence V. Cuffee, City Manager

Date