



## PERSONNEL POLICIES AND PROCEDURES MANUAL

Dated – March 2014

Issued – August 2015

### ARTICLE V DISCIPLINARY ACTIONS, DEMOTIONS, DISMISSALS AND SEPARATIONS

- 5.1 Policy** - Whenever the performance, work habits or personal conduct of an employee becomes unsatisfactory his or her supervisor shall inform him or her promptly of such deficiency and give him or her counsel and assistance. Discipline should be appropriate to the seriousness of the incident. A specific incident may justify severe disciplinary action without delay upon the first offense.

Each employee is expected to comply with instructions, established policies, procedures, rules and regulations, and accepted standards of personal conduct. If an employee's performance of duty or personal conduct is unsatisfactory because of neglect or failure to comply with these requirements, appropriate disciplinary action shall be taken pursuant to these Rules.

- 5.2 Grounds** - No disciplinary action shall be taken without reasonable grounds, or cause for such action. By way of illustration, but not limitation, the following shall constitute reasonable grounds for discipline:

- (1) Unsatisfactory attendance or tardiness. Misuse or abuse of sick leave.
- (2) Abuse or misuse of City time, such as:
  - a. Unauthorized time away from work area or
  - b. Failure to notify the supervisor promptly of completion of assigned work.
- (3) Use of obscene or abusive language.
- (4) Receipt of a moving traffic violation while using a City or other public use vehicles.
- (5) Inadequate or unsatisfactory job performance. Incompetence, unwillingness or failure to render satisfactory service to the Department Head or designee.
- (6) Violation of safety rules, policies or regulations.
- (7) Insubordination or failure to follow supervisor's instructions, or to perform assigned work or otherwise comply with applicable established written policy.
- (8) Reporting to work when under the influence of or when ability is impaired by alcohol or the unlawful use of controlled substances.
- (9) Leaving the work site without permission during working hours.
- (10) Failure to report to work without proper notice to supervisor. Failure to report to work due to arrest or incarceration.
- (11) Unauthorized use or misuse of City property or records.
- (12) Absence or leave in excess of three working days without appropriate notice, or without satisfactory explanation.
- (13) Use of alcohol or unlawful use or possession of controlled substances while on the job.
- (14) Material falsification of any City records, such as, but not limited to: vouchers, reports, insurance claims, time records, leave records; or other official City documents; or employment application.
- (15) Willfully or negligently damaging or defacing City records or equipment or City or employee property.
- (16) Theft or unauthorized removal of City records, equipment, or City employee property.
- (17) Commit or threat to commit an act of violence or fighting in the workplace.
- (18) Violation of the City's Substance Abuse Policy or Sexual Harassment Policy.
- (19) Sleeping during scheduled work hours (except by departmental policy for Fire personnel on 24 hour tours).
- (20) Participating in any kind of work slowdown, sit-down, or similar concerted interference with City operations.
- (21) Unauthorized possession of firearms, dangerous weapons or explosives.
- (22) Criminal violations other than minor traffic violations occurring on the job or off the job which are related to job performance and 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.



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- (23) Operating a City vehicle without a valid operator's permit or without authorization.
- (24) Violation of the City's Administrative Regulations, Personnel Policies & Procedures or Department Standard Operating Procedures (SOPs).
- (25) Conduct unbecoming an employee of the City, tending to bring the City service into disrepute. .

**5.3 Types of Discipline** - The disciplinary measures normally available to Department Heads and their delegated subordinates shall be: (1) verbal reprimand, (2) written reprimand, (3) suspension, (4) disciplinary demotion and (5) dismissal. The Department Head or designee is required to consult with the Department of Human Resources for approval before initiating any demotion, and suspension (more than 5 working days) or dismissal. The Department Head or designee is advised that justification for any action taken is their sole responsibility. Unless otherwise noted in these Policies, all discipline becomes effective on the date designated by the Department Head or designee.

**5.4 Documentation** - All disciplinary actions shall be reduced to writing (except a verbal reprimand), with copies placed in the employee's official personnel file in the Department of Human Resources.

- (1) **Notice to Employee** - Prior to suspension, disciplinary demotion or dismissal of an employee, he or she shall be notified in writing of the reasons for the specific charges, violations, or infractions.
- (2) **Pre-disciplinary Conference** - Prior to suspension, disciplinary demotion, or dismissal the Department Head or designee shall provide the employee with an opportunity for a pre-disciplinary conference.
  - a. During the conference, the employee shall be given an opportunity to respond to the specific charges, violations, or infractions that form the grounds for the proposed disciplinary action as stated in the written notice previously provided to the employee.
  - b. The Department Head or designee may interview other persons who may have direct knowledge of the situation based on information provided by the employee. Interviews shall take place separate from the pre-disciplinary conference.
  - c. The Department Head or designee may review documents as part of the pre-disciplinary conference process to include but not limited to video and audio tapes and printouts from electronic media (GPS, cell phones, etc).
  - d. The pre-disciplinary conference shall only include the Department Head or designee, other city officials deemed necessary by the Department Head or designee and the employee.
  - e. At the request of either party, Human Resources may attend for policy interpretation, but shall not be considered representative of either party.
  - f. Neither party is allowed to record the proceedings or bring any recording devices to the conference.
- (3) **Employee status during an investigation and or disciplinary review** - Pending the resolution of an investigation or disciplinary review, the Department Head or designee shall place the employee on leave without pay if any of the following occur:
  - a. The employee's presence is determined to be a threat to the City, his or her supervisor or fellow employees or city property or equipment.
  - b. The employee is alleged to be in violation of the City's Substance Abuse Policy.
  - c. There are allegations of workplace violence, unlawful harassment, unlawful discrimination or retaliation.
  - d. The employee is part of an external investigation and his or her presence is determined to be a threat to the City, his or her supervisor or fellow employees. .



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Notwithstanding the aforementioned categories, nothing herein shall limit the Director of Human Resources or designee's discretion to place any employee on leave without pay or administrative leave or allow the employee to remain in his or her position or a modified position pending disciplinary actions or the completion of an investigation.

- (4) **Employee Status for Alleged Criminal Conduct** - Pending the resolution of any alleged criminal conduct the Department Head or designee shall place the employee on leave without pay if any of the following occur:
- a. The employee is formally charged with a criminal offense and is incarcerated (The employee may also be subject to unauthorized absence [Z time] and thus be in violation of Personnel Policies.)
  - b. The employee's ability to perform his or her job is impacted.
  - c. The investigation is hampered by the employee's presence at work.
  - d. There is a risk to the city or interference with the city's ability to conduct business.
  - e. There are allegations of theft, fraud, or embezzlement of City property or services (this shall include property leased to the City or otherwise in the possession of the City).
  - f. The employee is charged with a misdemeanor crime involving marijuana, drug paraphernalia or any controlled substance.
  - g. The employee is charged with any felony crime.

Notwithstanding the aforementioned categories, nothing herein shall limit the City Manager or designee's discretion to allow the employee the use of vacation leave or to authorize administrative leave pending disciplinary action or pending the legal adjudication process upon written request by the employee.

The approval of the Director of Human Resources or designee is required for administrative leave or leave without pay exceeding five (5) working days unless authorized by the City Manager or designee for the time exceeding the five (5) working days (56 hour Shift Fire Personnel shall be eligible for up to three (3) working days).

Leave without pay due to alleged criminal conduct may not exceed sixty (60) days. Regardless of the status of any criminal investigation or process the Appointing Authority or designee may initiate disciplinary charges against the employee under these Policies at any time, up to and including termination based upon the facts of evidence of conduct that prompted the criminal investigation or process.

As required by the Fair Labor Standards Act, exempt employees shall be placed in leave without pay in increments of a full work day if the behavior of the employee constitutes serious workplace misconduct as indicated above or as determined by the Director of Human Resources. If the conduct of the exempt employee does not fall in one of the aforementioned categories, that exempt employee shall be placed in leave without pay in increments of full work weeks.

- (5) **Employee Record of Action** - Following any pre-disciplinary conference the employee shall receive in writing, within five (5) working days, the findings of the pre-disciplinary conference. Upon receipt of any findings, the employee may, within five (5) working days, attach a written correspondence for inclusion in the record.



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(6) **Department Disciplinary Recommendation** - Each disciplinary action that requires the approval of the Director of Human Resources or designee shall be supported in writing by a memorandum endorsed by the Department Head or designee and forwarded to the Director of Human Resources or designee within five (5) working days of the pre-disciplinary conference. All supporting documents shall accompany the agency disciplinary recommendation.

**5.5 Verbal Reprimand** - As a disciplinary action a discussion between the supervisor and the employee wherein employee is advised and cautioned with reference to unsatisfactory work performance or misconduct. A verbal reprimand does not require written notice to the employee.

**5.6 Written Reprimand** - An employee may be reprimanded by any one of his or her supervisors. Each such reprimand shall be confirmed in writing from the person imposing the reprimand on the employee, with a copy being placed in the employee's personnel file in the Department of Human Resources, delivered to the employee and sent to the Department Head or designee. This writing shall provide reasons for the reprimand and specific examples of violations, infractions, performance issues or personal conduct. The employee may attach written correspondence for inclusion in the record within five (5) working days of receipt of a written reprimand.

**5.7 Suspension** - As a disciplinary measure, the Department Head or designee may suspend an employee for such period of time as may be reasonable and appropriate under the circumstances. All suspensions shall be deemed disciplinary actions and shall be without pay. The Department Head or designee is required to consult with the Department of Human Resources before initiating any suspension of more than five (5) working days (56 hour Shift Fire Personnel shall be eligible for up to three (3) working days).

The Department Head or designee shall provide written notice of a pre-disciplinary conference to the employee. The suspension becomes effective on the date approved by the Department Head or designee after completion of the pre-disciplinary conference and associated timeframes.

The Director of Human Resources or designee shall be responsible for approving, revising or denying any suspension that exceeds five (5) working days.

As required by the Fair Labor Standards Act, non-exempt employees shall be suspended in hourly increments. Exempt employees shall be suspended in weekly increments; however, if the behavior of an exempt employee constitutes serious workplace misconduct as noted above in Personnel Rule 5.2 and 5.4 or as determined by the Director of Human Resources or designee, the exempt employee shall be suspended in increments of a full work day.

**5.8 Disciplinary Demotion** - As a disciplinary measure, the Department Head or designee may recommend that an employee be demoted to a lower classification. Before such action is effective, the Department Head or designee shall investigate the circumstances, shall provide the employee with a pre-disciplinary conference and written notice of his or her recommendation. The Department Head or designee is required to consult with the Department of Human Resources before initiating any demotion.

The salary of an employee demoted for cause shall be reduced by the Department Head or designee at least 5% in the new pay range, not to exceed the maximum salary of the new pay range.

An employee, who cannot successfully complete the adjustment period following a disciplinary demotion, shall be dismissed from the City's service.

**5.9 Dismissal** - Before an employee may be dismissed he or she shall be informed in writing of the reasons for his or her proposed dismissal and be given an opportunity for a pre-disciplinary conference and shall be conducted by the Department Head or designee. The Department Head or designee is required to consult with the Department of Human Resources before initiating any dismissal.



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Department Heads may be involuntarily separated for performance or disciplinary reasons in accordance with these Policies. Probationary employees and employees who serve at the will of the City, shall be dismissed in accordance with Rule 3.16.

- 5.10 Forfeiture** - Any officer, appointee of the council or employee of the City who shall be convicted by a final judgment of any court from which no appeal has been taken or which has been affirmed by a court of last resort on a charge involving moral turpitude or any felony or any misdemeanor involving possession of marijuana or any controlled substances may forfeit his or her office or employment. The employee shall lose all rights of employment and future employment with the City service, and the employee shall have no right of appeal. Prior to the Department Head or designee initiating a determination of forfeiture, a review by the City Attorney's Office is required.
- 5.11 Separation from City Service** - For the purpose of these Policies, the separation of one's status as an employee of the City shall be referred to as a separation. The types of separation shall include *but is not limited to* the following: (1) resignation, (2) disability retirement, (3) retirement, (4) reduction-in-force, (5) job abolishment (6) disciplinary dismissal, (7) forfeiture, (8) failure to return to work after the exhaustion of authorized leave, (9) disability separation, and (10) death.

**Date and Notice of Separation** - An employee's official date of separation is typically his or her last day in active pay status. If an employee is on approved sick leave, worker's compensation, or leave without pay when separated, the effective date of separation will be the actual date of separation designated by the employee and approved by the Department Head or designee and not necessarily the last day in active pay status. Notice of the effective date and the reasons for every separation shall be reported in writing by the Department Head or designee to the Department of Human Resources.

- (1) **Resignation** - An employee may leave the City service voluntarily. When such action takes the form of a written resignation, a copy shall be forwarded to the Department of Human Resources. If it is determined that a reported resignation was not voluntary, the Department Head or designee shall treat the separation as a dismissal under these Policies and notify the employee of his or her rights. An employee may withdraw his or her resignation before the effective date with the approval of the Department Head or designee. Where written resignation is not obtained, the Department Head or designee shall notify the employee in writing that his or her verbal resignation is accepted and forward a copy to the Department of Human Resources.
- (2) **Disability Retirement** - If an employee qualifies under the rules of the Virginia Retirement System, he or she may apply for disability retirement. Persons retiring under this Policy shall be considered as voluntarily separating from the City service.
- (3) **Retirement** - Whenever an employee meets the conditions set forth in the Virginia Retirement System Regulations, he or she may elect to retire and receive all benefits earned under the Retirement Plan. Persons retiring under this Policy shall be considered as voluntarily separating from the City service.
- (4) **Reduction in Force** - The involuntary separation of an employee from a position if it has been determined that positions will no longer be required or that funds will not support certain positions.
- (5) **Job Abolishment**- The elimination of a classification due primarily to considerations of efficiency and effectiveness. Affected employees shall be governed by the reduction-in-force provisions.
- (6) **Disciplinary Dismissal** - Each employee is expected to comply with instructions, established policies, procedures, rules and regulations, and accepted standards of conduct. If an employee's performance of duty or inappropriate conduct is unsatisfactory because of neglect or failure to comply with these requirements, appropriate disciplinary action shall be taken pursuant to these Policies leading up to and



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including dismissal.

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- (7) Forfeiture - Any officer, appointee of the council or employee of the City who shall be convicted by a final judgment of any court from which no appeal has been taken or which has been affirmed by a court of last resort on a charge involving moral turpitude, or any felony, or any misdemeanor involving possession of marijuana or any controlled substances may forfeit his or her office or employment.
- (8) Failure to return to work after the exhaustion of authorized leave – An employee who is considered on an unauthorized absence for three (3) consecutive work days or in the Fire Department (for members who work 24 hour duty tours) two (2) consecutive tours twenty-four (24) hour tours, shall be dismissed.
- (9) Disability Placement/Separation - Upon supported and certified medical evidence, an employee may be separated for service or non-service related disability when he or she cannot perform the required duties because of physical or mental impairment without reasonable accommodation as defined by the American Disabilities Act as amended. Employees shall be given a fifteen (15) calendar days written notice prior to the separation date.
- (10) Death - Separation shall be effective as of the date of death. Each Department Head or designee shall establish and maintain within his or her agency appropriate procedures to be followed in the event of any employee's death while on duty. Notwithstanding a person who deceases while at work will be paid for the full-day.

**5.12 Reduction-In-Force** - A Reduction in Force (RIF) occurs when changing priorities, budgetary constraints, or other business conditions require abolishment of positions as determined by the City Manager or designee. And approved by City Council. A RIF can also occur when a classification changes so significantly that the employee is no longer able to perform the required duties.

- (1) Selection for RIF - If a reduction in force is necessary, such employees shall be released in accordance with these Rules in the following order:
  - a. Non-Provisional status employees performing the same work must be terminated before any employee with a probationary or tenured appointment, provided that a probationary or tenured employee can perform the temporary employee's tasks.
  - b. Probationary status employees performing the same work must be terminated before any employee with a tenured appointment, provided that a tenured employee can perform the probationary status employee's tasks.
  - c. Tenured status employee is based on the following factors (factors are not in priority order):
    - (i) Which positions are most vital to the department in the delivery of service.
    - (ii) Relative skills, knowledge and productivity of employees.
    - (iii) Performance evaluation rating.
    - (iv) Length of continuous City service.
- (2) Placement Options - The Department of Human Resources will review all vacant positions to identify valid vacancies that can be used as placement options during the RIF. All final placements are at the discretion of the City Manager, with due consideration to the factors within this policy. In order to be considered for placement, the employee must be performing at the "satisfactory" performance level in accordance with the evaluation system. The options considered for placement will be based on the following order:
  - a. Same Classifications Specification vacancies -
    - (i) Transfer to a vacant position in the same classification specification in the employee's current agency.



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- (ii) Transfer to a vacant position in the same classification specification in another city agency.
  
- (iii) If based upon the above-defined-criteria for placement, the status of two or more tenured employee's is identical, the order of transfer, demotion or layoff, shall be determined by the Director of Human Resources or designee through a computerized random selection process.
  
- b. Lower level vacancies (alternative placements to a lower classification)
  - (i) Demoted to a vacant position in a lower classification specification in the employee's current agency.
  - (ii) Demoted to a vacant position in a lower classification specification in another city agency. If based upon the above-defined-criteria for placement, the status of two or more tenured status employees is identical, the order of transfer, demotion or layoff, shall be determined by the Director of Human Resources or designee through a computerized random selection process.
  - (iii) An employee demoted due to reduction-in-force shall have his or her salary governed by the City's Pay Plan. In no event shall the demoted employee's salary exceed the maximum amount of the new pay range.

If a placement option is identified, the Department of Human Resources shall notify the employee in writing that a placement is being offered with a reasonable deadline by which the employee must respond. Employees who do not accept an offered placement by the date specified in the written offer shall be deemed separated on the date they declined the offer or if no response, on the date of the deadline in which to respond.

- (1) Exceptions - When a Department Head or designee determines that a certain employee who holds tenured status is essential to the efficient operation of the agency in which he or she is employed because of special skills, knowledge or abilities and wishes to retain such employee, the Department Head or designee shall file with the Director of Human Resources or designee a request in writing setting forth, in detail, the specific skills, knowledge and abilities possessed by the employee and the reasons why such employee is essential to the effective operation of the agency. If the Director of Human Resources or designee approves the request, such employee may be retained.
  
- (4) Lay-off/Termination - If after all the above steps have been exhausted and tenured status employees are to be laid off/terminated, such employees shall receive fifteen (15) calendar days written notice prior to the effective termination date.

An employee who may be in the process of another administrative procedure (i.e. grievance, EEO complaint, disciplinary action, etc.) is still covered under the reduction in force procedure. If such employee is laid off, he or she will be entitled to continue to pursue the other administrative procedure if he or she so chooses. However, it will be done in the status resulting from the effect of the reduction in force policy and it will not change the impact of the layoff.

**5.13 Reinstatement** - Reinstatement status applies only to those tenured status employees who have (1) resigned in good standing, (2) apply for reinstatement within thirty (30) calendar days of the date of their separation, (3) their position having remained unfilled, and (4) now meet the minimum qualifications for the position, and then only if such reinstatement is approved by both the Department Head or designee and the Director of Human Resources or designee. Seniority for employees reinstated shall be computed from the original date of employment.

- (1) Pay of Reinstated Employees - Upon reinstatement, an employee's pay, employment date and all benefits shall remain unchanged and be restored.