



## **CITY OF NEW BRAUNFELS POLICIES AND PROCEDURES**

### **PROCEDURE(S): PERFORMANCE MANAGEMENT AND DISCIPLINARY PROCEDURES**

**EFFECTIVE DATE: MAY 20, 2019**

**REVISION DATE(S):**

## **PERFORMANCE MANAGEMENT AND DISCIPLINARY PROCEDURES**

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

A Firefighter or Police Officer covered by Chapter 143 of the Texas Local Government Code is strictly governed by that statute and their respective department policies and is not governed by this policy.

### **PROGRESSIVE DISCIPLINE**

Generally, the forms of discipline start at the lowest level and progress to a higher level; however Manager/Supervisors and Department Directors may immediately administer a higher level of discipline, including termination, without prior warning or consultation, depending on the seriousness of the offense and/or conduct. Additionally, the disciplinary action can include more than one type of discipline. Whenever possible, Managers/Supervisors should inform an employee about his/her deficient conduct or performance, outline what is expected of him/her, and may give the employee sufficient time to improve his/her job performance and/or conduct before administering a suspension without pay, demotion, or 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.

#### **A. Types of Progressive Discipline**

Unsatisfactory job performance and/or inappropriate conduct may be addressed in the following actions:

1. Verbal Counseling
2. Written Counseling



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3. Performance Improvement Plan (PIP)
4. Suspension
5. Demotion, Transfer or Dismissal.

Human Resources should be consulted at any time a Department Head wishes to issue a disciplinary action other than a verbal or written counseling. 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.

#### A. Verbal Counseling

Used for the first infraction of improper conduct of a minor magnitude; the employee should be aware of the nature of the violation and the improvement expected. The verbal counseling should be documented by the department using the [Disciplinary Action Form](#) and kept within the department for performance evaluation and record keeping purposes. Disciplinary Action Forms used for verbal counseling shall not be sent to Human Resources. The verbal counseling documentation shall be kept on record within the employee's department for a period not to exceed twelve [12] months unless the employee receives additional disciplinary action during the twelve [12] month period.

A verbal counseling may not be appealed by employees. However, employees who disagree with the counseling action may discuss the basis of disagreement with their Department Heads. Employees may also submit written responses/rebuttals to be attached to the verbal counseling. Written responses/rebuttals must be submitted within ten (10) business days of receiving the verbal counseling.

#### B. Written Counseling

This action is normally administered for two [2] or more minor infractions or the first time that an infraction of a more serious magnitude occurs using the Disciplinary Action Form. The Disciplinary Action Form shall describe the deficiency or infraction involved, review any information



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concerning previous verbal counseling's, outline the behavior that is expected in the future, and state the likely consequences for further unsatisfactory performance or conduct. The original of the written counseling shall be signed by both the Supervisor and employee [the employee will be provided a copy of the written counseling] and forwarded to the Human Resources Department to be filed in the employee's Human Resources File.

A written counseling may not be appealed by employees; however, employees may submit responses/rebuttals for attachment to a written counseling. Responses/rebuttals must be submitted to Human Resources within ten (10) business days of receiving the written counseling. A written counseling becomes a part of employees' permanent personnel files and shall be forwarded, along with any employee responses/rebuttals, to Human Resources.

#### **C. Performance Improvement Plan**

When the job performance of an employee falls below an acceptable standard, the Department Head may place the employee on a [Performance Improvement Plan \(PIP\)](#). The PIP shall consist of timely discussions between the Department Head and the employee with the following in writing:

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

PIPs may not be appealed. Employees 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 his/her department.

#### **D. Suspension**

Suspensions result in time off without pay. An employee may be suspended without pay for a period of



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not less than one work shift. Prior to issuing a suspension for an exempt employee, the Department Director 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 work week is allowed where there is serious workplace misconduct or violation of safety rules of major significance.

An employee may be suspended without pay for up to a maximum of thirty [30] working days within a twelve [12] month period beginning with the first day of the first suspension. The suspension shall be administered by the employee's Department Director. A written notice of the suspension that describes the deficiency or infraction involved and that states the likely consequences of further unsatisfactory performance and/or conduct will be prepared, signed by the Department Director and the employee, and a copy given to the employee. The original of the written suspension form shall become permanent parts of the disciplinary record maintained in the employee's personnel file in Human Resources. Suspensions may be appealed in accordance with City policy.

### **E. Demotion or Dismissal**

An employee may be demoted, and such demotion shall include a reduction in pay. The employee's Department Director shall administer the demotion. A written notice of demotion shall describe the deficiency or infraction involved and states the likely consequences of further unsatisfactory performance and/or conduct. The written demotion form shall be signed by the Department Director and the employee, and a copy given to the employee. The original of the written disciplinary demotion form shall be filed in the employee's Human Resources File, but the employee shall not be disqualified from consideration for later pay increases or promotion based upon performance if pay for performance criteria are met.

In the interest of good discipline, an employee may be dismissed from City service. Such action is usually reserved for a most severe violation of a rule, regulation, policy, procedure or law; for continued occurrences of minor offenses; or for failing to correct behavior that has resulted in previous disciplinary action. Prior to initiating any dismissal action, the Department Director or his/her designee shall consult with the Human Resources Department 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. A written notice of



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dismissal describing the deficiency or infraction involved will be signed by the employee's Department Director or Human Resources Director and given to the employee. A copy of the notice of dismissal shall be filed in the employee's Human Resources File.

In addition to the Progressive Discipline procedures, employees may be subjected to additional disciplinary actions which are described below:

1. Mandatory Counseling, Training, Medical Assistance
2. Disciplinary Probation
3. Restitution Discipline
4. Procedure for Criminal Activity

#### **F. Mandatory Counseling, Training, Medical Assistance**

If the employee's personal life situation, medical problems, lack of skills, or other factors cause him/her to lose value as an employee so that he/she is performing in an unsatisfactory manner, the employee may be directed to seek aid in one of the above forms or be scheduled for additional training. The employee will be advised that if the employee fails to seek counseling, training, or medical assistance after being mandated to do so, he/she may be terminated. The written directive for assistance or training shall be signed by the Supervisor and the employee. A copy of the directive shall be given to the employee and the original will be forwarded to the Human Resources Department to be filed in the employee's Human Resources File or medical file if appropriate.

#### **G. Disciplinary Probation**

An employee may be placed on disciplinary probation for a period up to one [1] year. A written notice of the disciplinary probation that describes the deficiency or infraction involved and that states the likely consequences of further unsatisfactory performance and/or conduct will be prepared, signed by the Department Director and/or Designee and the employee, and a copy given to the employee. A non-civil service employee on disciplinary probation will not receive a pay increase. Once the employee is no longer on disciplinary probation and the employee has a successful evaluation, he/she



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may receive a pay increase under the established pay plan guidelines. The original of the written disciplinary probation form shall be filed in the employee's Human Resources File.

#### **H. Restitution Discipline**

When an employee acts in such a manner that causes damage or destruction to City property, the employee may be required to reimburse the City for the cost of repairs or replacement of the equipment.

#### **I. Procedure for Criminal Activity**

When disciplinary action is being contemplated as a result of an employee's involvement in criminal activity, an investigation, separate and apart from the investigation being made or made by the law enforcement agency, will be made and any disciplinary action will be based on the separate investigation. The separate investigation can incorporate official or public documents made available by the law enforcement investigating agency.

### **GRIEVANCE PROCEDURE**

The Grievance Procedure allows employees to appeal disciplinary action to a higher level of management for review. The level to which a disciplinary action can be appealed depends on the type of disciplinary action and whether the employee receives disciplinary action that results in loss of compensation, suspension or termination. An employee shall comply with any disputed conduct, policy or practice until such dispute is resolved. Public safety employees are governed in accordance with Chapter 143 "Municipal Civil Service" of the Local Government Code and the City of New Braunfels Firefighter's and Police Civil Service Commission Rules and Regulations [please reference Local Rules]. **THIS POLICY DOES NOT ALTER THE AT-WILL EMPLOYMENT RELATIONSHIP BETWEEN THE CITY AND THE EMPLOYEE.**

#### **A. Non-Disciplinary Actions: Transfers, Reassignments, etc.**



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An employee may be transferred, reassigned, demoted without loss of pay, ordered to receive counseling, psychological aid or evaluation, a physical, mental, or medical evaluation, or additional training or to repeat training already received. Such actions are not considered to be disciplinary and cannot be appealed. Any testing or evaluation will be performed at City expense.

### **B. Levels of Appeals**

A verbal, oral and/or written reprimand by a Supervisor or Department Director cannot be appealed. Employees may submit a rebuttal to be filed in his/her Human Resources file. Any disciplinary action resulting in loss of pay, reduction in salary, or termination will be determined by the employee's Department Director, with or without the recommendation of the employee's Supervisor, and may be appealed to a grievance panel for recommendation to the City Manager. The City Manager's decision on any appeal is final. A Department Director's decision to place an employee on disciplinary review is final and cannot be appealed.

### **C. Appeal Process**

1. Only full-time employees are eligible to appeal upon completion of his/her six [6] month initial review period. The appeal process deals with those disciplinary actions resulting in loss of pay, suspension, reduction in salary, or termination.
2. If the decision of the Department Director results in lost compensation, reduction in pay, or termination, the aggrieved employee may submit his/her grievance [appeal] in writing to the Human Resources Director within ten [10] working days of the day he/she received the Department Director's determination. The grievance or appeal shall include a recitation of pertinent facts, details, restitution sought, and possible solutions.
3. The Human Resources Department shall review the request for a formal hearing on the grievance and may request additional information from either the employee and/or the department. The City Manager shall make a decision with regard to the request within five [5] working days after receipt of the request. In the event the City Manager is absent, he/she will make a decision on the request within five [5] working days after returning to the workplace.



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4. If the request for a formal hearing is granted by the City Manager, a hearing panel shall be appointed as outlined below to conduct the hearing within a reasonable time after the request has been granted considering the availability of the panel members, employees, and any other individual requested to appear before the panel.

#### **D. Documentation and Witnesses**

If the grievant has any documentation for the panel to possibly consider, it must be received by the City Secretary's Office at least five [5] working days before the date of the hearing. The panel is under no obligation to consider documents or witnesses beyond the five [5] working days. If the grievant intends to present any witnesses their full name[s] and daytime contact information must be submitted in writing and received by the City Secretary's Office at least five [5] working days before the date of the hearing.

#### **E. Hearing Panel**

If the request for formal hearing is granted by the City Manager, the City Manager will appoint a hearing panel consisting of the following:

1. At least two [2] Department Directors from departments other than the department where the employee worked at the time of the action giving rise to the grievance.
2. One [1] employee employed at the level of Division Manager or above in a department other than the department where the employee worked at the time of the action giving rise to the grievance; and
3. One [1] employee at any level of employment who is not employed within the same department as where the employee worked at the time of the action giving rise to the grievance.
4. The employee may appoint one City employee to serve on the hearing panel provided that such employee is not a witness or involved in the disciplinary action.

#### **F. Hearing**





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The hearing shall not be recorded. No recording devices of any type are allowed to be used during the hearing.

1. If an employee engages an attorney to represent him/her, he/she will advise the Human Resources Department or City Secretary's Office [i.e., documents and/or witnesses] of this fact at least five [5] working days in advance. Failure to provide timely notice to the Human Resources Department may result in a re-scheduling of the hearing, as determined by the Human Resources Director.
2. An employee should present his/her own case. An employee may elect to have an attorney represent him/her in the proceedings.
3. These hearings are not subject to the Texas Open Meetings act and therefore they are not open to the public, including the media. The grievant is only allowed to have his/her attorney present during the proceedings. Witnesses will be allowed into the hearing only while they testify and answer the panel's questions.
4. Each side will be given equal opportunity to present their case and any witnesses may be questioned by the panel only. No cross examination of the other parties witnesses will be allowed. Presentations shall be limited to relevant facts that are generally capable of being substantiated. The grievant has the burden of proof and therefore shall go first.
5. Within five [5] working days of the conclusion of the hearing, the hearing panel shall submit a recommendation on the disciplinary action to the City Manager for his/her review and final determination.

### **G. Decision**

The hearing panel will make a recommendation to the City Manager. The City Manager shall make a decision on the disciplinary action within a reasonable time after receipt of the hearing panel's recommendation within five [5] - ten [10] working days in the event the City Manager is absent. The City Manager's decision can sustain the disciplinary action of the Department Director, overrule the action of the Department Director, sustain the decision of the Department Director and increase or decrease any punishment, and/or modify the type[s] of disciplinary action levied by the Department Director. The City Manager's decision shall be in writing and a copy shall be given to the employee



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and his/her representative, if applicable. The City Manager's decision shall be final and non-appealable.

#### **H. Notification to the Human Resources Department**

Department Directors shall forward to the Human Resources Department the originals of any documentation concerning disciplinary actions, except verbal reprimands, including notices for hearings with employees on proposed disciplinary action. A written summary of the proceedings of the hearing panel to include any minority opinion, and all disciplinary decisions shall be sent to the Human Resources Department for filing in the employee's Human Resources File.

#### **I. Human Resources Role/Hearing**

The Human Resources Department will coordinate the scheduling of the hearing to include: proper notifications to all parties; answer all inquiries from the grievant regarding procedures; and, will be available during the hearing, if appropriate to respond to policy questions.