

# PERSONNEL RULES & REGULATIONS MANUAL

## SECTION 1400 DISCIPLINARY ACTIONS

### **Section 1401. Introduction**

The City of Gaithersburg recognizes that the success of City government in providing quality and efficient public services directly correlates with appropriate employee conduct and performance. Employee behavior which is positive and supportive of the goals of effective municipal management is fully encouraged. On occasion, the work behavior, production, or personal conduct of an employee may fail to meet acceptable standards of performance or is inconsistent with the goals and needs of the City. Supervisors are responsible to bring such situations to the attention of the employee in a timely manner with the goal of correcting the unacceptable behavior. If such behavior continues, disciplinary action may be issued.

### **Section 1402. Purpose**

The purpose of this policy is to establish procedures for informing an employee of conduct or performance below acceptable standards, to give an employee fair warning and counseling so that individual expectations are understood, to provide supervisors with corrective action guidelines, and to provide for appropriate documentation of the actions taken. All City of Gaithersburg employment is "at will" and nothing contained in this policy negates or supersedes the "at will" policy or creates an employment contract.

### **Section 1403. Applicability**

All City employees are subject to disciplinary action. Such discipline may include, but is not limited to, oral reprimand/counseling, written reprimand, suspension, demotion, loss of pay, or dismissal.

All disciplinary actions against sworn law enforcement officers shall be administered under the Law Enforcement Officers' Bill of Rights (Public Safety Article of the Annotated Code of Maryland, Section 3-101, et seq.).

### **Section 1404. Cause for Disciplinary Action**

Causes for disciplinary action shall include, but not be limited to, the following:

- a. Incompetence, inadequate performance, or nonperformance of assigned duties.
- b. Neglect of duty or negligence in performance of duty causing a substantial risk of personal injury or damage to property.
- c. Possession, distribution, or use of illegal drugs or intoxicants in the workplace; reporting for work under the influence of intoxicants; the misuse of legal drugs which create a substantial risk of injury to self or others or which impair work performance; a positive drug/alcohol test or refusal to take a drug/alcohol test.
- d. Habitual or excessive absence or tardiness, or abuse of sick leave privileges.
- e. Absence from duty without authorization or failure to notify one's supervisor when unable to report to work on time.
- f. Conviction of a felony, or conviction of any crime where the conviction would tend to impair effectiveness as a City employee or tend to bring discredit or reproach upon the City or department involved.
- g. Violation of City safety rules or policies.

- h. Violation of the provisions of federal or state law, or the City Charter, ordinances, this Manual, or any other City rules or regulations including department-specific policies during working hours.
- i. Discourteous treatment of the public or City officials or employees, offensive conduct or language or conduct unbecoming a City employee; behavior or actions on the part of the employee, either on or off duty, which hinder or jeopardize the successful operation of the City, undermine teamwork and cooperation among City employees, or undermine the public confidence in the City or its employees.
- j. Insubordination, willful disobedience, or failure to follow a lawful supervisory directive.
- k. Negligence or carelessness with money or other property of the City.
- l. Inappropriate or unauthorized personal use of City resources, including, but not limited to, tools and equipment, materials and supplies, vehicles, facilities and grounds, work time, and information resources and technologies.
- m. Falsification, alteration, or destruction of City documents or intentional destruction of City property.
- n. Unauthorized use or disclosure of confidential information.
- o. Dishonesty, including giving false information or withholding information on personnel documents, benefit forms, accident reports, etc., or making false claims or misrepresentations to obtain benefits.
- p. Fraud in securing employment.
- q. Falsification of time and attendance records.
- r. Physical violence, including engaging in acts of bodily harm or threatening to inflict bodily harm, physical intimidation, harassment, verbal or written threats of violence.
- s. Using or threatening or attempting to use personal or political influence in securing promotion, transfer, change of rate of pay or nature of work, or other status or condition of employment.
- t. Inducing, or attempting to induce, an officer or employee in the service of the City to commit an unlawful act or to act in violation of any lawful department or official regulation or order.
- u. Taking for personal use any fee, gift, or other valuable thing in the course of work or in connection with it, when such gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons.
- v. Any other act which is detrimental to the good order, discipline, and repute of the City or the City service.

**Section 1405. Disciplinary Action Responsibilities**

In general, supervisors shall consider the following elements in determining when and how to implement disciplinary action:

- a. **Notice**  
Employees shall be informed of rules and regulations on performance standards and/or misconduct and the consequences of sub-par performance or committing a workplace infraction.

- b. **Reasonableness**  
Rules and regulations pertaining to performance standards and/or misconduct shall be reasonable and pertinent to the job/workplace.
- c. **Investigation**  
All investigations concerning an employee's performance and/or misconduct shall be performed in a fair, objective, and timely manner.
- d. **Equitable Treatment**  
Similar instances of poor performance and/or misconduct shall receive similar treatment in terms of discipline; however, disciplinary actions may be increased for repeated violations.
- e. **Preponderance of Evidence**  
Discipline shall be based upon a strong supporting body of evidence, rather than speculation and/or unfounded information.
- f. **Proportional**  
Discipline issued shall be proportional to the poor performance and/or misconduct committed.
- g. **Progressive and Corrective**  
Excluding serious and other egregious offenses, discipline issued should be progressive in nature (i.e., verbal, written, etc.) and clearly display corrective attempts to remedy the employee's performance through training and/or counseling (i.e., re-training, EAP, etc.).

#### **Section 1406. Investigation Procedures; Administrative Leave**

When an immediate supervisor becomes aware of evidence of the need for employee discipline, he/she shall investigate the circumstances of the misconduct or lack of performance and make a determination that there is sufficient evidence of misconduct or lack of performance, prior to deciding upon the type of disciplinary action to be recommended or taken. Documentation of the discipline investigation or of the conduct shall be required on the part of the immediate supervisor in order to establish appropriate records. The Human Resources Department will be available to assist in such investigations.

In cases where investigations of a more substantial nature are required, the following types of review shall be administered:

- a. **Administrative Review**  
Investigations of non-criminal violations conducted in the absence of immediate or conclusive evidence involving any City employee. These investigations shall be conducted by the Department Head and the Human Resources Director or designees, who shall obtain sufficient information, including documentation and/or sworn statements, in order to determine the necessity or level of disciplinary action. The Human Resources Director or designee shall assume responsibility for acquiring any necessary sworn statements. Administrative investigations shall be conducted expeditiously.
- b. **Criminal Investigations**  
Investigations conducted when criminal violations are allegedly committed by any employee of the City. These investigations shall be conducted by the City Police or other appropriate law enforcement agency, in collaboration with the Human Resources Director.

In instances where an investigation of serious, unlawful, and/or other extreme misconduct is necessary, and there is reasonable concern that a crime has occurred, a criminal investigation shall be conducted.

During the investigation of an incident of employee misconduct or other performance violation, the City Manager may place an employee on administrative leave with full pay and benefits. Such leave

will be for the length of the pending investigation. Placement on administrative leave occurs when the nature of the incident creates an environment that compromises the employee's or other employees' safety or ability to effectively perform job duties, or otherwise adversely impacts the interests of the City.

If disciplinary measures are not recommended after the investigation, the administrative leave period shall not be considered as disciplinary in nature. A document confirming a favorable determination as to the matter should be made a part of the employee's personnel file.

#### **Section 1407. Disciplinary Action Procedures**

The City of Gaithersburg promotes a policy of progressive and corrective discipline, i.e., discipline which gradually increases depending upon the severity and/or frequency of the infractions. The goal is to put the employee on notice of unacceptable conduct and to give the employee a reasonable opportunity to modify his/her behavior.

Progressive disciplinary action, including but not limited to oral reprimand/counseling, written reprimand, suspension, demotion, and dismissal, is preferred when circumstances support its use. Oral reprimands/counseling and written reprimands should be utilized as an element to motivate employees to choose behavior conducive to the individual's growth, development, and most importantly, to insure the successful operation of the City and its services. However, the City is not obligated to follow progressive steps of discipline in every instance; management reserves the right and prerogative to make disciplinary decisions based on repeated occurrences of varying incidents, past performance, or severity of the incident. Certain misconduct is considered so contrary to the public interest that dismissal shall be the only appropriate disciplinary measure.

The City retains the right to treat each occurrence on an individual basis without creating a precedent for situations which may arise in the future. This case-by-case method is designed to take individual circumstances and/or mitigating factors into account. These provisions are not to be construed as a limitation upon the retained rights of the City, but are to be used as a guide.

Appropriate progressive disciplinary action will be determined as outlined in the procedures below after considering the severity of the offense, previous infractions, time intervals between offenses, effectiveness of prior disciplinary actions, overall work performance and teamwork, etc. All disciplinary action taken must be properly documented as described in the procedures outlined below. The failure of an immediate supervisor and/or Department Head to document and/or take disciplinary action for misconduct, or the failure to forward completed disciplinary documents to the Human Resources Department, shall serve as grounds for disciplinary action.

Guidelines for administering progressive disciplinary actions are as follows:

a. **Oral Reprimand/Counseling**

An oral reprimand/counseling is used to correct minor misconduct or performance problems where more severe disciplinary action is not warranted and to counsel the employee on improvements expected. Counseling serves as a warning against further repetition of employee behavior. The consequences of not correcting the misconduct or performance problems will result in more progressive disciplinary action.

The supervisor shall complete a written record of discussion summarizing the oral reprimand/counseling. The employee should be asked to sign and date the written record of discussion. The employee's signature acknowledges receipt of the written record of discussion and indicates that the employee understands what was communicated during the discussion. The employee's signature does not indicate that the employee agrees with the disciplinary action. If the employee declines to sign the written record of discussion, the Department Head should note "employee declined to sign" on the notification, add his/her initials and the date. The written record of discussion shall be forwarded to the Human Resources Department for retention in the employee's personnel file, with a copy provided to the Department Head and the employee. The employee may submit comments in a separate document for inclusion in the record.

b. **Written Reprimand**

A written reprimand may be issued by the supervisor for continued misconduct, performance problems of a minor nature, or for more serious matters that do not warrant suspension or other advanced disciplinary action. The written reprimand shall include a complete description of the incident(s) of misconduct, inappropriate behavior, work habits, or performance which require improvement; previous records of discussion; a time frame within which the employee must correct or improve his/her behavior; and a warning that future violations or failure to correct the misconduct or performance problems will result in further disciplinary actions up to and including dismissal.

The employee should be asked to sign and date the written reprimand. The employee's signature acknowledges receipt of the written reprimand and indicates that the employee understands what was communicated in the written reprimand. The employee's signature does not indicate that the employee agrees with the disciplinary action. If the employee declines to sign the written reprimand, the Department Head should note "employee declined to sign" on the notification, add his/her initials and the date. The written reprimand shall be forwarded to the Human Resources Department for retention in the employee's personnel file, with a copy provided to the Department Head and the employee. The employee may submit comments in a separate document for inclusion in the record.

c. **Suspension**

A disciplinary suspension is a temporary removal from job duties and responsibilities with loss of pay. Suspensions are used to discipline employees for serious misconduct or performance problems, or for repeated and uncorrected minor misconduct or performance problems. Disciplinary suspensions may be up to 10 working days based upon the circumstances surrounding the employee misconduct or performance problems. If the suspension is for more than one day, it shall be issued on a consecutive working day basis.

An employee on disciplinary suspension shall continue to receive all fringe benefits except the employee shall not earn annual and sick leave during the period of suspension.

1. **Suspension – Three Working Days or Less**

Suspensions of three working days or less may be issued by the Department Head and do not require the approval of the City Manager. The immediate supervisor should discuss the potential suspension of an employee with their Department Head and the Human Resources Director prior to a written recommendation for suspension of three working days or less.

If a suspension of three working days or less is determined, written notification of the suspension shall be provided to the employee by the Department Head. The written notification shall include the reason(s) for the action, the effective date and the duration of the suspension and an explanation of the employee's right to file a grievance pursuant to Section 1700 of this Manual (Grievance Procedures). It shall also include a statement that future violations will result in further disciplinary action up to and including dismissal.

The employee should be asked to sign and date the written notification of the suspension. The employee's signature acknowledges receipt of the written notification and indicates that the employee understands what was communicated in the written notification. The employee's signature does not indicate that the employee agrees with the disciplinary action. If the employee declines to sign the written notification, the Department Head should note "employee declined to sign" on the notification, add his/her initials and the date. The written notification shall be forwarded to the Human Resources Department for inclusion in the employee's personnel file, with a copy provided to the employee, the immediate supervisor, the Department Head, and the Finance & Administration Director for payroll purposes. The employee may submit comments in a separate document for inclusion in the record.

2. **Suspension – More than Three Working Days**

Suspensions of more than three working days require the approval of the City Manager. The immediate supervisor should discuss the potential suspension of an employee with their Department Head and the Human Resources Director prior to a written recommendation for suspension of more than three working days. If a suspension of more than three working days is recommended, the Department Head shall submit a written recommendation to the City Manager. The recommendation shall include the specific reason(s) for the action and the basis of the recommendation; and a copy shall be provided to the employee. The employee shall also be notified in writing of his/her right to request a meeting with the City Manager to discuss the disciplinary action recommended and present any pertinent information prior to the City Manager's review and final action (see Section 1408).

The employee shall be notified in writing of the City Manager's final action regarding the suspension by the Department Head. If the suspension is approved by the City Manager, the written notification to the employee shall include the reason(s) for the action, the duration of the suspension, and an explanation of the employee's rights to appeal the suspension. It shall also include a statement that future violations will result in further disciplinary action up to and including dismissal.

The employee should be asked to sign and date the written notification of the suspension. The employee's signature acknowledges receipt of the written notification and indicates that the employee understands what was communicated in the written notification. The employee's signature does not indicate that the employee agrees with the disciplinary action. If the employee declines to sign the written notification, the Department Head should note "employee declined to sign" on the notification, add his/her initials and the date. The written notification shall be forwarded to the Human Resources Department for inclusion in the employee's personnel file, with a copy provided to the employee, the immediate supervisor, the Department Head, and the Finance & Administration Director for payroll purposes. The employee may submit comments in a separate document for inclusion in the record.

Suspensions of more than three working days shall be served (a) after the employee has relinquished his/her right to appeal the suspension; or (b) after the appeals process, as set forth in Chapter 17 of the Gaithersburg City Code entitled "Personnel," has been completed and the City Manager's decision to suspend the employee has been affirmed by the City Council. The Department Head will notify the employee in writing of the effective date of the suspension, if applicable.

d. **Demotion**

A demotion consists of an employee being involuntarily removed from a higher job classification to a lower job classification in a lower pay grade with a corresponding reduction in salary as determined by the City Manager. Although not limited to such instances, demotions may occur in some cases because of an inability to fulfill the duties of the higher level job classification in a satisfactory manner, or a failure to comply with employment conditions, such as loss of a certification or license required for performing essential job functions. A demotion may occur in conjunction with other forms of disciplinary action. A demotion requires the approval of the City Manager.

The immediate supervisor should discuss the potential demotion of an employee with their Department Head and the Human Resources Director prior to a written recommendation for demotion. If demotion is recommended, the Department Head shall submit a written recommendation to the City Manager. The recommendation shall include the specific reason(s) for the action and the basis of the recommendation; and a copy shall be provided to the employee. The employee shall also be notified in writing of his/her right to request a meeting with the City Manager to discuss the disciplinary action recommended and present any pertinent information prior to the City Manager's review and final action (see Section 1408).

Written notification of the City Manager's final action regarding the demotion shall be provided to the employee by the Department Head. If the demotion is approved, such notice shall include the reason(s) for the decision, the employee's new classification title, the new pay range and pay rate, the effective date of the demotion and an explanation of the employee's rights to appeal the

demotion. It shall also include a statement that future violations will result in further disciplinary action up to and including dismissal.

The employee should be asked to sign and date the written notification of the demotion. The employee's signature acknowledges receipt of the written notification and indicates that the employee understands what was communicated in the written notification. The employee's signature does not indicate that the employee agrees with the disciplinary action. If the employee declines to sign the written notification, the Department Head should note "employee declined to sign" on the notification, add his/her initials and the date. The written notification shall be forwarded to Human Resources for inclusion in the employee's personnel file, with a copy provided to the employee, the immediate supervisor, the Department Head, and the Director of Finance & Administration for payroll purposes. The employee may submit comments in a separate document for inclusion in the record.

e. **Dismissal**

The disciplinary dismissal of an employee is the permanent involuntary removal from employment with the City and occurs when the misconduct or performance problem is severe in nature, or not corrected following lesser forms of discipline. At such time all employee benefits cease, except as otherwise provided by law or City policy. Dismissal requires the approval of the City Manager.

The immediate supervisor shall provide thorough documentation and discuss recommendations for an employee's dismissal with their Department Head and the Human Resources Director. If dismissal is recommended, the Department Head shall submit a written recommendation to the City Manager. The recommendation shall include the specific reason(s) for the action and the basis of the recommendation; and a copy shall be provided to the employee. The Employee shall also be notified in writing of his/her right to request a meeting with the City Manager to discuss the disciplinary action recommended and present any pertinent information prior to the City Manager's review and final action (see Section 1408).

Written notification of the City Manager's final action regarding the dismissal shall be provided to the employee by the Department Head in person; however, if attempts to deliver the notification in person are unsuccessful, notification shall be sent via U.S. certified mail to the most recent address on record in the employee's personnel file. The notification shall include the effective date of and reasons for the dismissal, documentation upon which the Department Head relied in formulating the recommendation, and an explanation of the employee's rights to appeal the dismissal. A copy of the dismissal notification will be placed in the employee's personnel file and forwarded to the Director of Finance & Administration for payroll purposes.

At the time of dismissal, employees are required to surrender to their Department Head or designee all City property which may be in their possession or custody and all other conditions for separation must be complied with prior to issuance of final paycheck.

**Section 1408. City Manager Review/Final Action**

Before taking final action on a recommendation for suspension of more than three working days, demotion, or dismissal of an employee, the City Manager shall provide the employee an opportunity to present his/her response to the recommended disciplinary action, provided that an employee may be suspended prior to such opportunity when, in the City Manager's judgment, immediate suspension is required.

Within five business days of receipt of the Department Head's recommendation for suspension of more than three working days, demotion, or dismissal, the employee may request in writing a meeting with the City Manager to discuss the disciplinary action recommended and present any information appropriate to respond to the reason(s) for disciplinary action set forth in the written recommendation. If a meeting with the City Manager is requested by the employee, it shall be scheduled within five business days of the City Manager's receipt of the request. If no meeting is requested by the employee within the stated time limits, the City Manager shall proceed with review of the recommendation.

Within 10 business days of reviewing the information provided by the Department Head and the employee, if applicable, the City Manager shall take final action by approving the proposed disciplinary action, overruling the proposed disciplinary action, or modifying the proposed disciplinary action. The employee shall be notified of the City Manager's final action in the manner indicated in Section 1407 (c.2), (d), and (d) of this Manual.

### **Section 1409. Grievances & Appeals**

#### **a. Grievances**

All classified employees, except for sworn law enforcement officers and employees who have not successfully completed their probationary period (as defined in this Manual), are eligible to utilize the grievance procedures process set forth in Section 1700, Grievance Procedures, to file a grievance concerning any form of disciplinary action up to and including suspension of three working days or less. Grievances of disciplinary actions against sworn law enforcement officers shall be administered under the Law Enforcement Officers' Bill of Rights (Public Safety Article of the Annotated Code of Maryland, Section 3-101 *et seq.*).

#### **b. Appeals**

All classified employees, except for sworn law enforcement officers and employees who have not successfully completed their probationary period (as defined in this Manual), who have been suspended for more than three working days for a single event or for a total of more than three working days in a one-year period, demoted, or dismissed are eligible to file an appeal of the City Manager's final action pursuant to Chapter 17 of the Gaithersburg City Code, Personnel Ordinance, Section 17-9, entitled "Filing of Appeal," which states:

"a. All classified employees who have successfully completed their probationary period and have been suspended for more than three working days for a single event or for a total of more than three working days in a one-year period, demoted, or dismissed from employment may file an appeal in writing to the Personnel Review Board and may request a hearing thereon. Such appeal shall state the pertinent facts relative to the action which is being appealed and shall be signed by the employee and filed with the Personnel Review Board within five work days after receipt by the employee of final action on such suspension, demotion, or dismissal."

"b. This section shall not apply to sworn law enforcement officers as all disciplinary actions against sworn law enforcement officers shall be administered under the Law Enforcement Officers' Bill of Rights (Public Safety Article of the Annotated Code of Maryland, Section 3-101, *et seq.*)"

### **Section 1410. Disciplinary Probation**

Disciplinary probation is for a defined period of time, up to but not exceeding 12 months in length, that an employee's conduct or performance must be maintained within clearly defined and agreed to levels. Probation can occur simultaneously with other forms of discipline. An employee placed on disciplinary probation shall receive a written notice stating the beginning and ending dates of the probation period. The notice or agreement shall also include the standard of conduct or performance that the employee must achieve during the period, the dates to review the employee's progress, and the consequences of the employee's failure to satisfy the agreed upon standards

### **Section 1411. Employee Assistance Program**

In addition to the disciplinary actions, the supervisor should be mindful of the fact that on occasion, problems, difficulties, and/or stresses on or away from the job can adversely impact an employee's ability to perform their assigned duties or conduct themselves properly on the job. Therefore, supervisors may exercise the option of **suggesting** or **requiring** an employee to meet with the Employee Assistance Program. This meeting will give the employee an opportunity to express and reveal non-job related problems in a confidential setting and perhaps find assistance to resolve those problems. Supervisors need to know that the Employee Assistance Program is not limited to alcohol and drug abuse problems. Personal counseling in order to deal with personal crises such as financial problems, marital

problems, parental problems, and any other life stressors can be effectively addressed through the Employee Assistance Program.

If a supervisor observes a significant adverse change in an employee's behavior and there are no apparent signs of alcohol or drug abuse, it would be wise for the supervisor to suggest or, if deemed appropriate, to require that the employee meet with the Employee Assistance Program Coordinator.