

CITY OF LEON VALLEY

**PROCEDURE MANUAL
DISCIPLINARY ACTION**

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SECTION I – Purpose

The purpose of this procedure manual is to assist Department Heads and supervisors in impartially and fairly administering the disciplinary action policy to all employees of the City of Leon Valley. All supervisory and managerial personnel who participate in the investigatory or disciplinary process are expected to comply with these procedures and will be held personally accountable for such compliance. Nothing in these procedures, however, is intended to be construed in any manner as a contract or guarantee of employment or of the terms of employment of any City employee.

SECTION II – General Policy

It sometimes becomes necessary to counsel or discipline an employee who has not observed published rules or policies or has otherwise engaged in conduct contrary to the best interest of the City and the public. Except in cases where the employee's misconduct warrants immediate dismissal, the objective of disciplinary action should be to appraise the employee of what aspects of his conduct are unacceptable; to inform the employee of the corrective action required; to motivate the employee to maintain acceptable levels of conduct and performance; and to provide the employee a reasonable opportunity for corrective action. Often, these objectives can be accomplished through oral admonishment and constructive recommendation. In some instances and employee's failure to respond to verbal correction may warrant more serious and impressive forms of discipline, up to and including dismissal.

Employees are employed with the City of Leon Valley on an "at will" basis. This means that with regard to such employees, nothing shall be construed to constitute a contract of employment, either expressed or implied nor shall anything be construed to modify the employment-at-will relationship which exists between the City and its employees. Neither the offer or acceptance of employment or the establishment or maintenance of operating policies or procedures by the City of Leon Valley creates a contract of employment except as may be expressly approved in writing by the City Council and the employee. Absent an express written contract with an individual employee, no employee is entitled to job tenure. Although, it is intended that the relationship between the City and its employees will grow and be in the best interest of both the employee and the City, the relationship is terminable at any time at the will of either the employee or the City Manager.

In accordance with the Local Government Code, if the City Secretary or Chief of Police is to be terminated, City Council must confirm the decision to terminate the employee(s)

SECTION III – Grounds for Disciplinary Action

The reasons for which disciplinary action may be taken against an employee of the City include but are not limited to the following: illegal, unethical, abusive or unsafe acts; violation of City or departmental rules, regulations, policies or procedures; acts of discrimination or sexual harassment; insubordination; inefficiency; neglect or abandonment of duties, abuse of policies on leave, or of other benefits; tardiness or absence without leave; dishonesty or falsification of official documents or records; using or being under the influence of drugs or alcohol on the job; waste, damage or unauthorized use of City property or supplies; unauthorized use or disclosure of official information; and unauthorized or improper use of official authority. It is virtually impossible to list all forms of action or inaction that could subject an employee to discipline. The City retains the authority to impose discipline for other forms of unacceptable conduct.

Chapter 143 of L.G.C. requires that before a complaint or charge against a firefighter or police officer may be considered by a supervisor the complaint or charge must be placed in writing and signed by the person making the complaint. A copy of the signed complaint must be presented to the affected employee within a reasonable time after the complaint is filed and before any disciplinary action may be taken against the employee. Thus, if a complaint is made by a private citizen, a signed statement must be obtained from the citizen and a copy provided to the employee. Similarly, a supervisor wishing to discipline a firefighter or police officer must promptly give the affected employee a signed statement of the conduct for when disciplinary action is being considered.

To assist supervisors in handling disciplinary actions equitably and fairly, several of the common rules infractions are discussed below:

1. **Absenteeism** – Chronic or excessive absenteeism and / or tardiness is a commonly accepted basis for disciplinary action. The real problem has been to determine when absenteeism is excessive. Consider the following factors: the length of time during which an employee's attendance record has been bad; the reasons for the absences; the nature of the job; the attendance record of other employees; and the supervisor's attempts to correct the problem.
2. **Insubordination** – Insubordination can take either of two forms: a refusal or deliberate failure to follow a specific, reasonable order of a supervisor; or vulgar or abusive language directed toward a supervisor. The courts rarely overturn disciplinary action for insubordination except that an employee may refuse to commit an act punishable by the criminal law.
3. **Damaging City Property** – If the act is deliberate and there are no extenuating circumstances, a discharge may be appropriate. The value of the property does not have much bearing on the penalty to be fixed.

4. **Intoxication, Alcoholism & Drug Dependency** – If the City program for which the employee works is subsidized with federal funds, an employee’s abuse of alcohol or mind-altering substances may in some circumstances be viewed as a handicap protected against discrimination by federal law. Even on federally assisted programs, however, discharge may be warranted where the employee’s usage of drugs or alcohol:
 - a. Results in an inability to perform the work;
 - b. Is chronic with no sign of efforts at rehabilitation; and / or
 - c. Results in frequent absenteeism as a result of usage.
5. **Incompetence** – Although clearly a legitimate basis for dismissal, incompetence does not normally rise to the level of “misconduct” because the employee’s failing is not normally deliberate or intentional. Disciplinary warnings and reprimands would therefore be appropriate, but a suspension without pay would be ineffective. Before recommending a dismissal for incompetence, the supervisor should give due consideration to the availability of any additional job training which might assist the employee to better perform their job.
6. **Disrespectful Attitude** – Few things are likely to annoy a supervisor more than the employee who consistently replies with a flip or sour remark when performing their job. However, it often is difficult to draw a line between defiance or disrespect and provoked response. This is especially true when investigating citizen complaints of disrespect by an employee. It is not at all rare for a supervisor to tolerate this situation and then finally blow up with the “last straw”. Perhaps the best approach to handling an employee who repeatedly flirts with insubordination is to pick a period relatively free from stress and warn them calmly but firmly to mend their ways. Prior to any serious disciplinary action, the employee should be clearly warned that management’s patience has run out.

SECTION IV – Policies / Procedures

A. Administrative Responsibilities

1. **City Employees** – All City employees shall be responsible for following the procedures as outlined in this section. They are also expected to maintain acceptable standards of conduct, efficiency, and economy in their work for the City.

2. **City Manager** – As chief administrative officer of the City, the City Manager will ensure that procedures are implemented in accordance with the provisions outlined in this section.
3. **Department Head** – All Department Heads shall be responsible for maintaining discipline and enforcing the operating policies and procedures of the City of Leon Valley as set forth in this and other departmental manuals. Department Heads may impose all types of disciplinary action except dismissal of an employee. The City Manager has reserved for himself or herself the authority to dismiss an employee. If a Department Head wants to terminate an employee, a recommendation indicating this must be sent to the City Manager. Each Department Head is also responsible for establishing a formalized chain of command through which disciplinary actions will be processed. This chain of command will be posted in a visible area within each department.
4. **Supervisory Personnel** – When the personal conduct of an employee falls below a desirable standard, supervisors should point out deficiencies to the employee at the time they are observed. Immediate formal action may occur whenever the best interest of the City requires it. A supervisor, other than the Department Head, may only impose the following disciplinary actions: oral warning, oral reprimand, or written reprimand. However, an Assistant Department Head, when acting on behalf of the Department Head, may impose all disciplinary actions except for those reserved to the City Manager.

B. Steps in Disciplinary Process

1. In reaching a decision as to what discipline should be recommended, the supervisor should consider such factors as the type and severity of the offense(s), the employee's work record, and any mitigating circumstances which may be relative to the situation.

All or a combination of the following disciplinary measures may be taken depending on the particular circumstances surrounding an offense or accumulation of offenses. An employee should be given warning with time to improve, whenever justified, prior to suspension or termination. Unless the particular situation dictates otherwise, handling of the offense(s) should be approached utilizing the recommended steps of progressive discipline listed below.

2. **Oral Warning or Reprimand** – The oral reprimand identifies all violations and indicates areas of needed improvement. A written record of this warning must be maintained within the employee’s department. When an oral reprimand is given, the employee should be told directly of the action being taken. Employees are to be informed that the action being administered is an oral warning or reprimand.
3. **Written Reprimand** – A written reprimand shall be given for serious policy, procedural, or conduct infractions or in instances where a verbal warning for a particular minor infraction has already been given and the infraction has occurred again or in situations where verbal warnings have been given for the commission of more than one type of infraction and another infraction has occurred.

A written reprimand may become a permanent part of the disciplinary record maintained in the official employee personnel file if approved by the City Manager. Otherwise, a written reprimand and all supporting documentation will be maintained at the departmental level.

If a written reprimand is issued, the employee must sign the reprimand to acknowledge receipt of the warning; if the employee refuses to sign, the statement “refused to sign”: will be entered into the employee’s signature space and management witnesses initial the notation.

4. **Probation** – An employee may be placed on probation for a period of three to six months due to a single event or as the result of multiple infractions of rules, regulations and policies of the City. An employee’s failure to correct the misconduct or other factor(s) for which the probation is imposed or the employee’s participation in any other form of misconduct may result in the immediate dismissal of the employee, even though the City will not normally treat such misconduct, by itself, as a dischargeable offense.

An employee may also be placed on probation because of a less than fully satisfactory rating on his Performance Evaluation Report. An employee on this type of probation will be transferred / demoted or terminated if he does not make sufficient progress in correcting deficiencies noted on the evaluation(s).

5. **Suspension Without Pay** – A suspension results in time off without pay for a period of not less than one hour but not more than thirty calendar days.

When an employee is suspected of a violation of a city, state, or federal law, rule, or policy, which, if proven, would justify disciplinary action, but an investigation

determining the exact nature and extent of the violation is in progress or incomplete, the employee may be placed on leave without pay pending the outcome of the investigation and the imposition of disciplinary action. However, documentation of the action will become a permanent part of the employee's personnel file only if it is concluded after an investigation that the employee engaged in the suspected or alleged misconduct. If it is found that the employee did not violate City policy for which they were placed on leave for, the employee will be reinstated with back pay for the time spent on leave without pay status.

6. **Demotion / Transfer** – An employee may be demoted to a position of lower classification or transferred to a different job within the same department as a disciplinary measure.
7. **Dismissal** – This is the final step in progressive discipline and results in termination of the individual's employment with the City. A dismissal becomes a permanent part of the disciplinary record maintained in the official employee personnel file.

The policy of progressive discipline will in no way prevent the supervisor, Department Head or City Manager from taking appropriate disciplinary action when the severity of the offense or offense(s) warrants such action. These procedures are available to regular employees only and do not apply to temporary, seasonal, part-time and employees who are on their initial probationary period with the City.

C. **General Appeal Information**

An employee who chooses to appeal a disciplinary action may have a representative assist, accompany or represent him at any step during the appeals process.

Since it is important that appeals be resolved as rapidly as possible, time limits, as set out in the following paragraphs, shall be considered a maximum and every effort shall be made to expedite the process. However, the limits may be extended or shortened at any or all steps if both parties agree in writing. In the event either party cannot agree, the City Manager shall have the discretion to shorten or extend the time limits. In the event the last day of a time limit falls on a weekend or a City holiday, the time limit shall include the next work day. In all instances, consecutive calendar days will be counted (excluding Saturday, Sunday, and City holidays) in arriving at the length of the time interval.

An appeal not responded to within the time limits prescribed by the appropriate representative at each step shall be considered a violation of this policy for which the representative may be subject to disciplinary action.

1. Appeal of Oral or Written Reprimand

An employee who chooses to appeal an oral or written reprimand should submit the completed appeal form to the next higher level of supervisor above the supervisor who imposed the disciplinary action within five calendar days of the date he receives the disciplinary action. The supervisor shall render a decision within five (5) calendar days after receiving the appeal. This process can be repeated up the Departmental chain of command until the Department Head has rendered a decision. This decision is final and not appealable.

If the Department Head personally imposed the disciplinary action, the employee has the option of appealing directly to the City Manager. The City Manager shall render a decision within five (5) calendar days after receiving the appeal. This decision is final and not appealable.

If the City Manager intends to impose the disciplinary action, the employee has the option of discussing the disciplinary action directly with the City Manager. After this discussion, the decision of the City Manager is final and not appealable.

2. Appeal of Probation, Suspension Without Pay & Demotion / Transfer

a. Appeal on action imposed by Assistant Department Head

An employee who chooses to appeal a probation, suspension without pay or demotion / transfer should submit the completed appeal form to the Department Head within five calendar days of the date he or she receives the disciplinary notice. The Department Head shall meet with the employee to hear the appeal within five (5) calendar days after receiving the appeal and shall render a decision within five (5) calendar days after the meeting.

The employee has the option of appealing the decision made by the Department Head directly to the City Manager. The employee should submit the appeal form to the City Manager within five (5) calendar days after the rendering of the decision by the Department Head. The City Manager will meet with the relevant parties as determined by the City

Manager to hear the appeal and render a decision in a reasonable period of time. The decision is final and not appealable.

b. Appeal on Action Imposed by Department Head

If the disciplinary action is imposed directly by the Department Head, the employee has the option of appealing directly to the City Manager. The City Manager shall meet with the employee to hear the appeal and shall render a decision within five (5) calendar days after the meeting. This decision is final and not appealable.

c. If the City Manager intends to impose the disciplinary action, the employee has the option of discussing the disciplinary action directly with the City Manager. After this discussion, the decision of the City Manager is final and not appealable.

3. Appeal of Dismissal

If an employee is to be terminated by the City Manager, the employee has the option of discussing the termination directly with the City Manager. After this discussion, the decision of the City Manager is final and not appealable.

4. Temporary, Seasonal, Part-time & Probationary Employees – Appeal Rights

a. Except as provided in section b below, a probationary, temporary, seasonal, or part-time employee may be disciplined or dismissed being afforded the right to respond or appeal.

b. If the conduct giving rise to the discipline or, dismissal falls within one of the following categories, appeal procedures shall be afforded.

1. If the conduct constitutes the exercise of a constitutional right and if the Department Head attempts to discharge the employee for this activity the Department Head must demonstrate that the exercise of the constitutional right has resulted in an impairment of the efficiency of the City.

2. If it has been recommended that the employee be dismissed and the conduct charged has been publicized to the extent that the good name, reputation, honor or integrity of the employee is brought into dispute.

Examples include but are not limited to: dishonesty, criminal activity, immoral conduct or incompetency.

Among the purposes of affording appeal rights are to permit the probationary, temporary, seasonal or part-time employee to record for future employment any facts in mitigation of the alleged conduct and / or to refute or rebut public allegations concerning the conduct. The City may proceed with the dismissal even though appeal rights are exercised.

SECTION V – Guidelines for Supervisors When Considering Disciplinary Action

A. Steps to take in Disciplinary Cases

1. Get All the Facts

Get a complete statement from all persons involved. If a disciplinary suspension or dismissal appears probable, obtain affidavits or signed statements from the material witnesses.

NOTE: Article 143 of the L.G.C. requires that before a complaint or charge against a firefighter or police officer may be considered by a supervisor the complaint or charge must be placed in writing and signed by the person making the complaint. A copy of the signed complaint must be presented to the affected fireman or policeman within a reasonable time after the complaint is filed and before any disciplinary action may be taken against the affected employee. Thus, if the complaint is made by a private citizen, a signed statement must be obtained from the citizen and a copy provided to the employee. Similarly, a supervisor wishing to discipline a firefighter or police officer must promptly give the affected employee a signed statement of the conduct for which disciplinary action is being considered.

2. Weigh the Evidence

Fit the facts together. Consider whether statements by witnesses are both factual and credible, or have been tainted by bias or emotion. If there are inconsistencies in evidence or insufficient facts, investigate further.

3. Give the Employee a Chance to Respond

Although you need not disclose the identities of witnesses or the precise content of their statements, inform the employee of the apparent facts and allow him to respond. You may choose to disbelieve or reject the employee's explanation, but on the other hand, the employee may alert you to facts or circumstances you had not known or had not considered.

4. **Decide On a Course of Action**

Determine whether facts warrant disciplinary action and, if so, the severity of discipline warranted. Determine that the intended discipline is consistent with (a) City and departmental policies and (b) disciplinary action imposed upon employees in the same or similar misconduct in the past. If a supervisor does not have the authority to impose a type of disciplinary action recommended, the appropriate paperwork should be referred up the chain of command to the level which can impose the action.

5. **Take Action**

Oral Warning or Reprimand

Speak to the employee in private; another management witness may be present. Be firm but considerate and understanding. Be specific (when, what, where, how, rule violated, etc.)

Written Reprimand

Be specific. Cite appropriate rules or regulations. Specify previous warnings or reprimands, if any.

Probation

Be specific. Be sure there is a sound basis for the action. Cite appropriate rules or regulations, and prior infractions, if any. Inform the employee of the terms of probation.

Suspensions, Demotions, Dismissal

Be sure there is a sound basis for the action. Prepare charges and specifications. Follow proper documentation and notification procedures.

B. Strive for Fairness & Uniformity

The importance of uniform, consistent enforcement and application of disciplinary rules, regulations, and procedures cannot be overemphasized. The basic test under the employment discrimination laws is NOT whether the employee actually committed the offense for which they were charged. Such information is certainly relevant, but the test for unlawful discrimination is one of “comparative treatment”: that is, how was the present employee treated in comparison to similarly situated employees who committed the same or similar offense in the past? If the present employee is to be disciplined more severely than prior offenders, the employee may succeed in overturning the action unless management can present credible, non-discriminatory reasons for the difference in treatment.

C. Proving Guilt

If a dismissal or other disciplinary action is challenged before an agency or in court, the City will normally be called upon to produce evidence that the employee committed the offense for which they were disciplined. The City’s true motivation for the action taken will be determined by an analysis of the facts and circumstances actually known to the City “at the time it acted”. Thus, all relevant facts must be gathered and documented BEFORE discipline is imposed, not afterward. Efforts to build up a good case by extensive research after disciplinary action has been taken will often be unsuccessful and may, because of their timing, actually be viewed as evidence of an attempt to “cover up” an original, unlawful motivation.

D. Determining What Discipline is Appropriate

The following is a list of factors taken into consideration by courts in determining the validity of contemplated disciplinary action.

1. Did the employee know or have reason to know that their conduct, performance or behavior violated a specific rule?
 - a. Was this the kind of behavior which a reasonable person in the employee’s shoes could reasonably expect to result in discipline?
 - b. Did the employee violate law?

2. Could the employee reasonably be expected to know that their behavior, performance or conduct was improper?
3. Did the employer conduct a reasonably thorough, fair and objective investigation, weighing the evidence on both sides of the question?
 - a. Was the investigation completed before the disciplinary decision was made?
 - b. If the employee was suspended pending completion of the investigation, was the suspension necessary? Was consideration given to keeping the employee on duty while the investigation was underway?
 - c. Can it be shown that no participants in the decision to impose discipline acted hastily or on the spur of the moment?
 - d. Did management consider all the relevant factors that influenced or contributed to the employee's behavior?
4. Did the employer have substantial evidence on which to base a conclusion that the employee committed the offense of for which they were accused?
5. Can the supervisor reasonably demonstrate that action taken against the employee was not discriminatory as compared to treatment of other employees under similar circumstances and / or situations?
6. Was the decision to impose disciplines, as well as the severity of the discipline, the result of a neutral assessment of the facts, or was it unduly influenced by a personal dislike of the employee?
7. Was the offense reasonably related to the requirements of the job or merely a personal indiscretion committed during off-duty hours and having no material effect on the employee's duties to the City?

SECTION IV – Record Keeping Requirements

The Notice of Disciplinary Action form and Disciplinary Action Appeal form will be utilized to comply with the record keeping requirements of this Manual. A copy of these forms is attached.

CITY OF LEON VALLEY

DISCIPLINARY ACTION APPEAL FORM

DETERMINATION OF APPEAL:

A. NEXT HIGHER LEVEL OF SUPERVISION (if Applicable):

Upon consideration of the material presented to me, the following action(s) will be taken:

SIGNATURE: _____ TITLE: _____ DATE: _____

EMPLOYEE ANSWER (If Applicable):

- () I wish to appeal the disciplinary action to the next higher level of supervision.
- () I do not wish to appeal the disciplinary action to the next higher level of supervision.

EMPLOYEE'S SIGNATURE: _____ DATE: _____

B. ASSISTANT DEPARTMENT HEAD (If Applicable):

Upon consideration of the material presented to me, the following action(s) will be taken:

SIGNATURE: _____ DATE: _____

EMPLOYEE'S ANSWER:

- () I wish to appeal the disciplinary action to the next higher level of supervision.
- () I do not wish to appeal the disciplinary action to the next higher level of supervision.

EMPLOYEE'S SIGNATURE: _____ DATE: _____

B. DEPARTMENT HEAD:

Upon consideration of the material presented to me, the following action(s) will be taken:

SIGNATURE: _____ DATE: _____

CITY OF LEON VALLEY

NOTICE OF DISCIPLINARY ACTION

EMPLOYEE'S NAME: _____ DEPT: _____ DATE: _____

Detail of infractions(s) for which disciplinary action is being taken:

Date(s) of oral/written warning(s)/reprimand(s): _____

Effects of oral/written warning(s)/reprimand(s): _____

EMPLOYEE'S REMARKS REGARDING VIOLATION:

(The absence of any statement by the employee indicates agreement with the report as stated.)

EMPLOYEE'S SIGNATURE: _____ DATE: _____

The following disciplinary action is being taken: _____

SUPERVISOR'S SIGNATURE: _____ DATE: _____

EMPLOYEE RESPONSE:

() I wish to appeal the disciplinary action to the next higher level of supervision, if applicable.

() I do not wish to appeal the disciplinary action to the next higher level of supervision.

EMPLOYEE SIGNATURE: _____ DATE: _____