

# City of Mission Viejo Personnel Policy

**Subject:**     **DISCIPLINE**

**Statement of Intent:**

To provide guidelines for imposing disciplinary action upon regular City employees. This policy shall not apply to at-will or probationary employees, or contract workers. The City expects employees to conform to established policies, procedures and rules. Employees are also expected to perform their assigned duties in an efficient, effective, and competent manner. When it is necessary to formally address and correct employee behavior and/or performance, the City may impose disciplinary action.

**Policy:**

1. Disciplinary measures may be taken for any good and sufficient cause. The extent of the disciplinary action taken shall be commensurate with the offense, provided that the prior employment history of the employee may also be considered pertinent. Cause may include violation of the Personnel Ordinance, or of these Policies and Procedures, or any department or Personnel rules and/or regulations; any act of insubordination (failing to follow the direct lawful order of a supervisor) or act detrimental to the public service of the City or any departmental policy or failure to adhere to or follow policies and rules; insulting or demeaning the authority of a supervisor or manager or displaying discourteous treatment of the public or other employees; refusal or inability to comply with the duties of the position occupied by the employee, including inefficiency; or any other type of misfeasance, malfeasance or nonfeasance relating to the employee's duties, office or position.
2. The types of disciplinary actions included under this Policy are Verbal Reminders, Written Reminders, Contemplation Leave, Time-Off Without Pay, Involuntary Demotion, Reduction in Pay, and Termination. For each type of disciplinary action, certain steps and due process procedures must be followed.
3. Unless a particular situation requires immediate action, a supervisor who is considering a disciplinary action should discuss the circumstances of the situation with the Human Resources Division before taking any action so that disciplinary issues may be addressed in a consistent manner on a city-wide basis..
4. Each case where discipline may be imposed is unique and turns on its own set of facts. Therefore, progressive discipline shall be considered, but is not a mandate. A supervisor is not required to take disciplinary actions in sequential order. Depending upon the specific circumstances of the violation, the supervisor should determine which action(s) is (are) appropriate.

5. Disciplinary Action may, but is not required to, be taken in progressive steps as follows:

a. Counseling: Counseling is not itself discipline, but it generally precedes a supervisor's use of progressive discipline. Counseling includes any informal discussion with an employee that is designed to assist the employee with developing his/her skills, abilities, or conduct, and is not punitive in nature. The supervisor counsels the employee on ways to correct performance deficiencies. The discussion may clarify standards, evaluate the employee's strengths and weaknesses, seek information, or solve problems. Ideally, counseling will achieve the goal of remedying problems quickly before they require more severe discipline. Even though most counseling is done verbally, supervisors should document counseling in some manner for possible use in the employee's performance evaluation or in support of further disciplinary action. Counseling may not be appealed under this policy.

b. Verbal Reminder: A verbal reminder is different than counseling in that it provides express notice that an employee's performance or behavior must be improved or further discipline will be imposed. The supervisor holds a meeting with the employee to define the areas in which improvement is required, establish goals leading to this improvement, and inform the employee that failure to improve will result in more serious disciplinary action.

A verbal reminder shall be memorialized in writing and retained in the supervisor's possession for documentation. A verbal reminder may not be appealed under this policy.

c. Written Reminder: A written reminder is a formal notice to an employee that further disciplinary action will be taken unless his/her behavior or performance improves to the expectations set by the employee's supervisor. The supervisor holds a meeting with the employee and provides the employee with a written statement that describes the specific reasons for the reminder and direction to correct the situation. Employees who have received written reminders are entitled to the following due process:

i. A meeting with the supervisor to discuss the contents of the written reminder.

ii. The opportunity to present a written response to the written reminder and to have their written response considered before the written reminder is permanently placed in the employee's personnel file.

iii. The employee has ten (10) business days from receipt of the written reminder in which to write a response to it and/or request to informally meet with the supervisor to discuss its contents. The supervisor will then consider it and based on that consideration, either withdraw the written reminder or submit it to the Human Resources Division to be placed in the employee's personnel file. The employee's written

response, if any, will be attached to the written reminder and placed in his/her Personnel file.

- iv. The decision of the supervisor is final and there are no additional appeal rights under this policy.
- d. Contemplation Leave: An employee may be placed on a one (1) day Contemplation Leave with pay to allow the employee time to consider whether he/she can and will meet the expectations of the supervisor. In considering a Contemplation Leave, the supervisor will follow all of the steps listed under the Written Reminder section of this policy. In addition, the supervisor will include in the memo to the employee an explanation that the purpose of the Contemplation Leave is for the employee to decide whether he/she intends to consistently meet the expectations of the supervisor in his/her future performance. The employee will be directed to prepare a written statement explaining how he/she will meet the supervisor's expectations if he/she decides to return to work after the Contemplation Leave.

When the employee returns from the Contemplation Leave, he/she will meet with the supervisor and explain how he/she intends to take steps to meet the expectations of the supervisor. The supervisor will review the statement prepared by the employee and, if necessary, modify it to assure that it meets the needs of the City. The employee shall be warned that failure to comply with the expectations of the supervisor as per the agreement may be grounds for discipline up to and including termination. The employee's memo and any related documentation shall be placed in the employee's personnel file.

If the employee returns from the one-day Contemplation Leave without a written statement, the supervisor should document this fact and place a copy of the documentation in the employee's personnel file. The supervisor may then proceed with further disciplinary action for the employee's failure to follow the direct order of the supervisor.

- e. Time-Off Without Pay: An employee may be given Time-Off Without Pay for up to thirty (30) calendar days.

When placing an employee on Time-Off Without Pay for five (5) or fewer days, the supervisor shall follow all of the steps listed under the Notice of Intent to Impose Discipline (Section 6) and Pre-disciplinary Hearing (Section 7) sections of this policy.

When placing an employee on Time-Off Without Pay for greater than five (5) days, the supervisor shall follow all of the steps listed under the Notice of Intent to Impose Discipline (Section 6), Pre-disciplinary Hearing (Section 7) and Appeal Rights (Section 8) sections of this policy. An employee has the right to appeal a disciplinary action that imposes Time-Off Without Pay for greater than five (5) days.

- f. Involuntary Demotion: A demotion is involuntarily moving the employee into a lower-paying classification. Demotion is appropriate when an employee's incompetence at a higher skill level or supervisory level is the source of the performance problem(s).

Failure to meet the requirements of promotional probation is not considered a disciplinary demotion. When demoting an employee, the supervisor shall follow all of the steps listed under Notice of Intent to Impose Discipline (Section 6), Pre-disciplinary Hearing (Section 7), and Appeal Rights (Section 8) of this policy.

- g. Reduction in Pay: An employee's base pay may be reduced, either indefinitely or for a specified period of time. When reducing the base pay of an employee, the supervisor shall follow all of the steps listed under Notice of Intent to Impose Discipline (Section 6), Pre-disciplinary Hearing (Section 7), and Appeal Rights (Section 8) of this policy.
- h. Termination: Termination is the permanent removal of an employee from service. When it is necessary to terminate an employee, the supervisor shall follow all procedures for Notice of Intent to Impose Discipline (Section 6), Pre-disciplinary Hearing (Section 7), and Appeal Rights (Section 8) of this policy.

#### 6. Notice of Intent to Impose Discipline

- a. Notice of Intent Required. A Notice of Intent shall be given to the employee whenever the City intends to discipline by Time-Off Without Pay, Reduction in Pay, Demotion, or Termination.
- b. Delivery of Notice of Intent. When a Notice of Intent is required, the notice shall be given to the affected employee either by delivery of the notice to the employee in person; or by placing the Notice of Intent in the United States Mail, first class, postage paid, and by Certified Mail, return receipt requested, in an envelope addressed to the employee's last known home address. It shall be the responsibility of the employee to inform the Human Resources Division, in writing, of his/her current home address and of any change in such address, and the information so provided shall constitute the employee's "last known address." Such personal delivery or mailing shall be conclusively presumed to provide actual notice to the affected employee.
- c. Content of Notice of Intent. The Notice of Intent shall inform the employee of the disciplinary action intended and the effective date of the intended action. Further, it shall set forth the nature of the infraction(s), any previous disciplinary actions taken, and how the employee's conduct has had an adverse impact on the City's or department's operation.

Whether delivery is made in person or by mail, the Notice of Intent shall contain "statement of delivery or mailing" indicating the date on which the Notice of Intent was personally delivered or deposited in the United States

Mail. Such date of delivery or mailing shall be the "date of issuance" of the Notice of Intent.

- d. Written Response to Notice. The employee shall be entitled to respond in writing to the Notice of Intent. The City Manager, or a designee, must receive such response, within five (5) business days from the date of issuance of the Notice of Intent. After review of an employee's timely response, if any, the City Manager, or a designee, shall notify the employee of any action to be taken. Such action to be taken may not include discipline more severe than that described in the Notice of Intent; however, the City may reduce such discipline without the issuance of a further Notice of Intent.
7. Pre-disciplinary "Skelly" Meeting/Conference: An employee who receives a Notice of Intent may request a meeting/conference on the Notice of Intent. The request for such a meeting/conference shall be delivered to the City Manager, or a designee, within five (5) business days of the issuance of the Notice of Intent. Upon the receipt of a request for a meeting/conference, the City Manager, or a designee, shall schedule a meeting/conference to take place within ten (10) business days with the employee and supervisor to review the proposed action and allegations.
    - a. A pre-disciplinary meeting/conference is not an evidentiary hearing. Rather, it is the employee's opportunity to respond to the proposed discipline and/or to offer any mitigating factors he/she believes the decision maker should consider before the discipline is finalized.
    - b. Suspension With Pay Pending Pre-disciplinary Meeting/Conference. An employee may be placed on suspension with pay before the meeting/conference is conducted as well as after the meeting/conference while the employee is waiting for a determination of the City Manager, or a designee, of the disciplinary action.
    - c. Final Determination. Within five (5) business days following the conclusion of the meeting/conference, the City Manager, or a designee, shall issue and deliver to the employee a written statement of his/her decision to sustain, modify, or reject the proposed disciplinary action.
  8. Appeal Rights. Regular employees may appeal disciplinary actions or suspensions exceeding five (5) days, reduction of pay, demotions, or termination to the City Council, or its designee, by filing a written request to the City Manager, or a designee, within ten (10) business days after service of Notice to Impose Disciplinary Action. Within fifteen (15) business days thereafter, the City Council, or its' designee, shall conduct an administrative evidentiary hearing on the matter and may continue the hearing where appropriate. Within ten (10) business days of the close of the hearing, a written statement of decision shall be issued. The decisions of the Council shall be final and binding.
    - a. The hearing shall not be conducted in accordance with the technical rules relating to evidence and witnesses, but shall be conducted in a manner most

conducive to the determination of the truth. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in a court of law.

- b. Hearsay evidence may be used for the purpose of explaining any direct evidence but shall not be sufficient in itself to support a finding, unless it would be admissible over objections in civil actions.
  - c. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.
  - d. Irrelevant evidence and unduly repetitious evidence shall be excluded.
  - e. An Employee who retires after termination waives his/her right to an administrative evidentiary hearing.
  - f. An employee's failure to attend the administrative evidentiary hearing constitutes a waiver of the hearing.
9. Placement in Personnel File. Official disciplinary action documents shall be placed in the employee's personnel file in the Human Resources Division.
10. Employee Acknowledgment. Whenever a disciplinary action is taken, it shall be documented and the employee may be asked to acknowledge the document by signing that he has received a copy. If the employee does not sign the memo, the supervisor will write, "Employee Refused to Sign" on the bottom of the memo and initial and date the notation.
11. Investigatory Leave. An employee may be placed on an Investigatory Leave with pay to allow his/her supervisor time to fully review the facts of an alleged violation.
12. Serious Violations. If the employee knew or should have known that his/her behavior was in clear violation of an City rule, policy or practice, or was in violation of a state or federal law, or created a potential or real threat to the safety of himself, other employees, or the public, the employee may be removed from the work place immediately without pay, pending an investigation of the incident. Such removal shall not exceed twenty-four (24) hours at which time the employee may be given a Notice of Intent to impose discipline. Violations in this category include, but are not limited to, possession, sale, use or being under the influence of alcohol or illegal drugs during work hours or in the work place, fighting, abusing other employees or citizens, stealing property or funds or willfully destroying City property (see Work Rules).
13. Any time limitations or requirements as set forth under this policy may be extended or changed by mutual agreement of the parties.

**Administration:**

In accordance with City of Mission Viejo Municipal Code chapter 2.60 “Personnel System”, this Personnel Policy is deemed not to have a direct financial impact on the City. The City Manager may implement and amend this policy subject to prior City Attorney legal review and approval, and City Council review.

**Adopted:** By City Council -September 11, 1989 -Res. No. 89-92.

**Revised:** By City Manager – January 1, 2015. (Reviewed by City Council — January 19, 2015 — Resolution No. 15-04.)