



# CITY OF KINSTON

Subject:  Disciplinary Process	Section:  Human Resources		Review Responsibility:  Director of Human Resources		
	Policy #: 1	Effective Date: 07/27/2015	Rev. #: 3	Revision Date: 06/30/2015	Page: 1 of 9
	Supersedes: 11/01/2004	Prepared By: Gloria Blake <i>Gloria N. Blake</i>	Approved By: Tony Sears <i>Tony Sears</i>		

## 1.0 Purpose

- 1.1 To establish guidelines to ensure equitable application of disciplinary action for all City employees.
- 1.2 Nothing herein is intended nor shall be construed to alter the AT-WILL nature of employment of all City of Kinston employees.

## 2.0 Organizations Affected

- 2.1 All City employees in all departments

## 3.0 Policy

- 3.1 The City of Kinston is committed to the fair treatment of all City employees and will comply with all local, state and federal laws related to the disciplinary process.

## 4.0 Definitions

- 4.1 Oral Warning – A counseling session with the employee in a private setting.
- 4.2 Written Warning – A written form documenting an employee's continuous documented failure in the performance of their duties for which they failed to improve performance as instructed or appropriate conduct.
- 4.3 Disciplinary Conference—A conference with an employee for the purpose of informing the employee that the City is considering disciplinary action and to receive comment or feedback from the employee regarding the recommended disciplinary action. At least two members of management but not more than three shall be in attendance: for example, the supervisor, the department head, and a representative from Human Resources. A disciplinary conference shall be held with an employee prior to a final written warning, disciplinary demotion, or termination.
- 4.4 Disciplinary Suspension Without Pay – Relieving an employee from their duties and responsibilities for a specified period of time without any compensation.
- 4.5 Investigative Suspension With Pay – Relieving an employee from their duties to provide time to investigate, establish facts, and reach a decision concerning an employee's status and/or to protect the safety of persons, including other employees, and property.

Subject: Disciplinary Process	Policy No.: 1	Rev. #: 4	Revision Date: 06/30/2015	Effective Date: 07/27/2015	Page: 2 of 9
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4.6 Disciplinary Demotion – The change in pay grade and/or job title and responsibilities resulting in the reduction of pay imposed as a means of discipline.

4.7 Final Written Disciplinary Warning – A written form documenting the failure of an employee to respond to a Written Warning and/or inappropriate conduct or job performance related issues for which no further warning will be given.

4.8 Dismissal – Termination of employment with the City of Kinston.

4.9 Unsatisfactory Job Performance - Work-related performance that fails to satisfactorily meet job requirements as set out in the relevant position description, work plan, or as directed by the management of the work unit or agency.

4.10 Grossly Insufficient Job Performance—Failure to satisfactorily perform job requirements as set out in the job description, work plan, or as directed by management of the work unit or agency that causes or risks serious adverse impacts to the City or the public. This may include, but is not limited to, when the act or failure to act causes or results in death or serious bodily injury or creates conditions that increase the chance for death or serious bodily injury to an employee(s) or members of the public or to a person(s) for whom the employee has responsibility, or the loss of or damage to city property or funds that result in serious adverse impact on the City and/or work unit.

4.11 Unacceptable Personal Conduct – Conduct falling below the standard of conduct that the City of Kinston expects of its employees and includes, but is not limited to:

- a. conduct for which no reasonable person should expect prior warning;
- b. conduct which the City reasonably believes constitutes a violation of local, state or federal law;
- c. conviction of felony or an offense involving moral turpitude;
- d. conduct that is detrimental to or impacts the employee's service to the City;
- e. conduct unbecoming to a City employee that is detrimental to City service.
- f. the willful violation of known or written work rules, including safety rules;
- g. theft or unauthorized use or misuse of City property;
- h. the abuse of a customer, trainee, inmate or person(s) over whom the employee has charge or to whom the employee has a responsibility;
- i. falsification of a City application or in other employment documentation or record;
- j. unauthorized or excessive absenteeism;
- k. improper use or abuse of leave;
- l. leaving work without permission;
- m. use of City position for personal gain;
- n. willfully engaging in any activity that constitutes a conflict of interest;
- o. withholding or providing false information or refusal to cooperate in the course of an investigation;
- p. unauthorized release or disclosure of confidential information;
- q. inappropriate contact or communication with elected officials;
- r. inappropriate behavior towards or discourteous treatment of the public or other employees;
- s. possession of an unauthorized firearm or other weapon while on City property;
- t. reporting to work under the influence of alcohol or illegal drugs, or consuming the same while at work or on City property;
- u. suspension or revocation of driver's license if required by the position; or

Subject: Disciplinary Process	Policy No.: 1	Rev. #: 4	Revision Date: 06/30/2015	Effective Date: 07/27/2015	Page: 3 of 9
----------------------------------	------------------	--------------	------------------------------	-------------------------------	-----------------

- v. insubordination, which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor.

4.12 Regular Status—An employee who has successfully completed his/her probationary status and who is serving in a budgeted position and receiving benefits such as vacation and sick leave. The term also includes a part-time employee who is serving in a budgeted position and who has completed his/her probationary status and receiving benefits such as vacation and sick leave on a pro-rated basis.

## 5.0 Responsibility

- 5.1 All department heads and supervisors are responsible for following the proper disciplinary process as defined by this document.
- 5.2 The Director of Human Resources or his/her designee shall review all disciplinary action, excluding counseling, to ensure compliance with the established disciplinary process.

## 6.0 Procedures

### 6.1 General

- 6.1.1 Any employee, regardless of occupation, position, or profession may be disciplined by the employee's supervisor or the supervisor's designee. Such action may be taken against a City employee with regular or probationary status.
- 6.1.2 The degree and type of action taken shall be based upon the sound and reasonable judgment of the employee's supervisor or the supervisor's designee in accordance with the provisions of this document. When grounds for disciplinary action exist, the disciplinary actions provided for under this document are: Oral Warning, Written Warning, Disciplinary Suspension Without Pay, Disciplinary Demotion, and Dismissal.
- 6.1.3 An employee may also be suspended with pay pursuant to an investigative suspension. An investigative suspension is non-disciplinary and non-appealable.
- 6.1.4 No employee may be demoted, suspended without pay or dismissed from employment without prior review of the action by the Human Resources Director.

### 6.2 Grounds for Discipline

- 6.2.1 An employee may be disciplined or dismissed pursuant to this document on the grounds hereinafter set forth.
- 6.2.2 Either unsatisfactory or grossly insufficient job performance or unacceptable personal conduct constitutes grounds for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending on the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

Subject: Disciplinary Process	Policy No.: 1	Rev. #: 4	Revision Date: 06/30/2015	Effective Date: 07/27/2015	Page: 4 of 9
----------------------------------	------------------	--------------	------------------------------	-------------------------------	-----------------

## 6.3 Form of Discipline

### 6.3.1 Oral Warning

6.3.1.1 Oral Warnings shall be provided by the employee's supervisor in a private session with the employee. The supervisor shall inform the employee of the particular unsatisfactory performance(s) or unacceptable conduct that is the basis of the oral warning. The supervisor shall include in such discussion specific information concerning the unsatisfactory performance(s) or unacceptable conduct such as dates, times and/or location(s), observations made by witnesses or the supervisor, a summary of previous counseling sessions, if any, held with the employee regarding related issues, and shall provide the employee with feedback on what is expected to improve job performance.

6.3.1.2 Oral Warnings shall be kept in a supervisor and/or department file and are not appealable.

### 6.3.2 Written Warning

#### 6.3.2.1 Written Warnings shall include the following:

- a. Specific deficiencies or conduct that forms the basis for the written disciplinary action including specific examples which constitute evidence.
- b. Specific improvements that must be made to correct the unsatisfactory performance, if applicable.
- c. The time allowed to make said improvements, if applicable.
- d. Consequences of failure to meet corrective actions plan or any other performance or personal conduct.
- e. A brief summary referencing any previous disciplinary actions.

6.3.2.2 A written warning shall be in writing and the supervisor may choose to have the written disciplinary action prepared and provided to the employee during a counseling session.

6.3.2.3 All written disciplinary actions become part of the employee's personnel file and are not appealable.

### 6.3.3 Final Written Warning

6.3.3.1 The Supervisor shall confer with the department head and a Final Written Warning can only be issued with department head approval. The department head shall confer with the Human Resources Director prior to issuance of a Final Written Disciplinary Warning.

Subject: Disciplinary Process	Policy No.: 1	Rev. #: 4	Revision Date: 06/30/2015	Effective Date: 07/27/2015	Page: 5 of 9
----------------------------------	------------------	--------------	------------------------------	-------------------------------	-----------------

6.3.3.2 A Final Written Warning shall be prepared for the employee by both the department head and the supervisor in which specific reasons are included for the action.

6.3.3.3 A disciplinary conference will be conducted with the employee. At this conference, the specific reasons for the action shall be discussed, as well as the necessary improvements and the time allowed to make the improvements, if applicable.

6.3.3.4 The supervisor should have a discussion with the employee of the necessity for the employee's commitment to improved performance and/or conduct. It should be stressed to the employee that a management decision to continue his/her employment with the City will require a commitment to improve performance and/or conduct and that a lack of improvement will result in further disciplinary action up to and including dismissal.

6.3.3.5 As a part of this counseling, management may request the employee take up to a day's leave with pay to consider whether or not the employee wishes to continue his/her employment with the City. This time away shall not be charged to the employee's vacation or sick leave.

#### 6.3.4 Disciplinary Suspension Without Pay

6.3.4.1 If the suspension is for unsatisfactory job performance, the employee must have previously received at least one prior disciplinary action for the same or similar conduct. A suspension on the basis of grossly insufficient job performance or unacceptable personal conduct may be imposed without prior warning or disciplinary action. If circumstances permit, management may hold a disciplinary conference prior to imposing a disciplinary suspension without pay.

6.3.4.2 A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but may not be for more than two work weeks. The length of a disciplinary suspension without pay for any employee who is exempt from the overtime compensation provisions of the FLSA must be for at least one full work week, but may not be for more than two full work weeks.

Subject: Disciplinary Process	Policy No.: 1	Rev. #: 4	Revision Date: 06/30/2015	Effective Date: 07/27/2015	Page: 6 of 9
----------------------------------	------------------	--------------	------------------------------	-------------------------------	-----------------

### 6.3.5 Disciplinary Demotion

- 6.3.5.1 For demotions based on job performance, an employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.
- 6.3.5.2 For demotion regarding personal conduct, an employee may be demoted for unacceptable conduct without any prior disciplinary action. Cause for demotion on the basis of personal conduct does not have to be as serious as cause for dismissal.
- 6.3.5.3 An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice regarding any grievance or appeal rights granted to that employee. The written notice should address how and to what extent the demotion will affect the employee's salary and pay grade, and it is recommended that, if appropriate, a revised job description outlining the employee's revised duties and responsibilities be attached.
- 6.3.5.4 The department head shall have discretion to determine the type and extent of an employee's demotion. The employee may be demoted to a lower classification or salary grade with a corresponding loss in pay depending on the change in classification or salary grades, but in no event less than ten percent (10%). The employee may be reduced to a lower step in the same pay grade with a corresponding loss of pay. In no event shall an employee's pay be lowered below step one of his/her current pay grade, unless the employee is demoted to a lower classification. Prior to the decision to demote an employee for disciplinary reasons, the department head must conduct a disciplinary conference with the employee.

### 6.3.6 Termination – An employee may be terminated for unacceptable personal conduct, grossly insufficient job performance, or failure to correct unsatisfactory job performance.

- 6.3.6.1 A disciplinary conference will be conducted before a termination shall become effective; provided, however, that the effective date of the termination may relate back to the date the termination was recommended.
- 6.3.6.2 A terminated employee will be given a written notice of termination which shall set forth the reasons for the termination and shall inform the employee of their right to appeal.

Subject: Disciplinary Process	Policy No.: 1	Rev. #: 4	Revision Date: 06/30/2015	Effective Date: 07/27/2015	Page: 7 of 9
----------------------------------	------------------	--------------	------------------------------	-------------------------------	-----------------

#### 6.4 Investigative Suspension with Pay

- 6.4.1 An employee may be suspended with pay pending an investigation. An Investigatory Suspension With Pay shall not exceed thirty (30) calendar days. However, a department head may, in the exercise of his/her discretions, extend the period of investigation with pay. The employee must be informed in writing of the extension, the length of the extension, and the specific reasons for the extension.
- 6.4.2 Investigative Suspension with pay of an employee shall not be used for the purpose of delaying an administrative decision of an employee's work status pending the resolution of a civil or criminal court matter involving the employee.
- 6.4.3 An employee who has been suspended for investigatory reasons may be reinstated with up to three (3) day's pay deducted from his/her salary. Such determination is to be based upon management's determination of the degree to which the employee was responsible for or contributed to the reasons for the suspension. This period constitutes a disciplinary suspension without pay as noted above.
- 6.4.4 Placement on investigative suspension with pay does not constitute a disciplinary action and is not subject to appeal.
- 6.4.5 The department head shall notify the employee of the reasons of the investigatory placement in writing and no later than the second scheduled work day after the beginning of the placement.

#### 6.5 Appeal of Final Adverse Actions

- 6.5.1 A City employee who has a final adverse disciplinary action taken against them may file for a formal appeal of the adverse action. For purposes of this section, final adverse disciplinary action means and includes Dismissal, Disciplinary Demotion, or Disciplinary Suspension Without Pay. All other disciplinary actions are non-appealable. Failure by the employee to request an appeal within the time frames established in 6.5.2 and 6.5.3 will result in the loss of all appeal rights granted under this policy.
- 6.5.2 A City employee may appeal a final adverse disciplinary action as follows:
  - 6.5.2.1 Appeal to Department Head – The employee shall make a request in writing for an appeal. The request must be submitted to the department head and the Director of Human Resources and must be received within fifteen (15) working days of the occurrence of the adverse action. The department head will then schedule a formal hearing and inform the

Subject: Disciplinary Process	Policy No.: 1	Rev. #: 4	Revision Date: 06/30/2015	Effective Date: 07/27/2015	Page: 8 of 9
----------------------------------	------------------	--------------	------------------------------	-------------------------------	-----------------

employee in writing of the specific date and time of the hearing. At this hearing, the employee will be able to provide information to the department head regarding the adverse action and reasons for the appeal. All pertinent evidence and information should be submitted in copy form to the department head for consideration. The department head may affirm, reverse, or modify the disciplinary action being appealed and shall transmit the decision to the employee in writing within ten (10) working days.

6.5.2.2 **Appeal to City Manager** – If the employee is not satisfied with the decision made by the Department Head, the employee may request an appeal to the City Manager or his/her designee. The employee must submit a formal appeal request in writing to the Director of Human Resources and the City Manager within fifteen (15) working days of the date of the letter of the Department Head's decision notification. The City Manager or his/her designee will then schedule a formal appeal hearing and inform the employee in writing of the date and time of the hearing. At the hearing, the employee will be able to provide evidence on his/her behalf to the City Manager or his/her designee regarding the adverse action and reasons for the appeal. All pertinent evidence and information should be submitted in copy form to the City Manager or his/her designee. The City Manager or his/her designee may affirm, reverse, or modify the disciplinary action being appealed and shall transmit the decision to the employee in writing within thirty (30) working days.

6.5.3 All Employees entitled to appeal must follow the steps to appeal in the order listed above; provided, however, that in the event the decision in the final adverse disciplinary action being appealed from was initially rendered by the department head, the employee may appeal directly to the City Manager or his/her designee by written request within fifteen (15) working days of the occurrence of the adverse action.

#### 6.5.4 Key Points Regarding These Established Appeal Procedures

6.5.4.1 All time frames must be met. Failure to meet time frames results in loss of appeal rights under this policy.

6.5.4.2 All requests for appeals must be in writing.

6.5.4.3 Only employees in a permanent status have appeal rights under this policy.

Subject: Disciplinary Process	Policy No.: 1	Rev. #: 4	Revision Date: 06/30/2015	Effective Date: 07/27/2015	Page: 9 of 9
----------------------------------	------------------	--------------	------------------------------	-------------------------------	-----------------

6.5.4.4 Employees in probationary or temporary employment situations do not have rights under this policy.

6.5.4.5 The City Manager or his/her designee may, at his/her discretion, allow witnesses to appear at the final hearing. A list of potential witnesses must be submitted to the City Manager or his/her designee at least five (5) working days prior to the scheduled hearing and must provide a brief summary as to why the witness has been asked to appear. Only witnesses addressing facts will be considered. Character witness will not be allowed.

6.5.4.6 Attorneys representing either side may be present at the meeting. The request to have an attorney present must be made in writing at least five (5) working days prior to the scheduled meeting.