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UNSATISFACTORY PERFORMANCE AND DISCIPLINE POLICY

I. POLICY

While every employee should strive to achieve the highest level of job performance and conduct possible, it is the responsibility of each employee to maintain at least the standard level of job performance and conduct which is acceptable to his/her supervisor.

When the personal conduct or performance of an employee falls below a desirable standard, supervisors should point out deficiencies to the employee at the time they are observed. Immediate disciplinary action may occur whenever it is appropriate and in the best interest of the town. Whenever feasible, the practice of progressive discipline should be applied. However, the suggested progressive disciplinary is not a prerequisite for an employee's termination.

Absolutely no **explicit or implicit right to continued employment** is intended, or shall be interpreted to exist in this or any other town policy. *This policy does not modify the status of employees as "employees at will" or, in any way, restrict the town's right to bypass the disciplinary procedure suggested.*

Discipline will be administered without regard to race, color, religion, sex, national origin, age, disability, sexual orientation or other non-performance-related factors.

All disciplinary action shall be executed under the scope of the Town Manager's direct or delegated authority. The Town Manager may remove, with or without cause and at will, any employee of the town not appointed by the Town Board or otherwise where the power is limited by law.

This policy shall apply to all persons holding a paid position as an employee of the town, except the Town Manager, Town Attorney, a member of any appointed or volunteer board or committee, or any others that may be hired or appointed by the Town Board. For this purpose, and subject to exceptions set out herein, employees shall be defined as those employees in departments and offices for which the Town Board serves as the final budget authority.

II. PURPOSE

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

III. PROVISIONS

A. General Provisions

Human Resources should be consulted at any time a Department Head wishes to pursue a disciplinary action other than counseling or warnings (oral or written). The Department Head may change the order of the disciplinary steps, and/or may choose not to utilize each step, depending on the facts of the case. Nothing herein shall preclude the Department Head from using alternative discipline procedures where those procedures have been approved by Human Resources and the Town Manager. Nothing herein shall preclude the Town Manager from suspending, demoting or dismissing an employee without notice.

B. Unsatisfactory Job Performance

Unsatisfactory job performance includes any aspect of the employee's job performance that does not meet the expectations of the Department Head or Town Manager. Examples of unsatisfactory job performance include, but are not limited to the following:

- (1) Demonstrated inefficiency, negligence, or incompetence in the performance of duties.
- (2) Careless, negligent, personal or improper use of town resources, such as time, finances, vehicles, property and equipment.
- (3) Physical or mental incapacity to perform duties.
- (4) Discourteous treatment of the public or other employees.
- (5) Absence without approved leave.
- (6) Repeated improper use of leave privileges.
- (7) Habitual pattern of failure to report for duty at the assigned time and place.
- (8) Failure to complete work within time frames established in work plan or work standards.
- (9) Failure to meet work standards over a period of time.
- (10) Creates a hostile work environment for other employees.
- (11) Failure to acquire or maintain any certification or licenses required to perform the essential job functions as defined in the job description.
- (12) Other performance issues that in the opinion of the Town Manager require disciplinary action.

In some instances, examples listed above may be considered detrimental specifically by public safety departments (i.e. police and fire departments).

Normally employees receive counseling, coaching, or warnings before disciplinary actions result from unsatisfactory job performance but some kinds of job performance are very serious, such as extremely unsafe behavior. In those cases, disciplinary action (suspension, demotion, possible termination) may occur after a single incidence and without prior warning.

C. Detrimental Conduct

Detrimental personal conduct includes behavior of such a serious nature that 1) the functioning of the town may be or has been impaired; 2) the safety of person or property may be or has been threatened; and /or 3) a law may have been violated. Examples of such conduct include, but are not limited to the following:

- (1) Engaging in acts of dishonesty, fraud, theft or sabotage;
- (2) Conviction of a felony or the entry of a plea of nolo contendere thereto;
- (3) Falsification of, destroying, or making a material omission on forms, records or reports including timesheets, employment applications, personnel records, customer records or other town documents, for personal profit or benefit.
- (4) Willful misuse or gross negligence in the handling of Town funds;
- (5) Willful or wanton damage or destruction to property;
- (6) Willful or wanton acts that endanger the lives and property of others;
- (7) Possession of unauthorized firearms or other lethal weapons on the job;
- (8) Brutality in the performance of duties;
- (9) Reporting to work intoxicated or under the influence of non-prescribed drugs.
- (10) Engaging in incompatible employment or serving a conflicting interest;
- (11) Request or acceptance of gifts in exchange for favors or influence;
- (12) Conduct that the town manager feels reflects adversely on the employee, program/department or town.
- (13) Engaging in such other behaviors as the Town Manager determines may be inconsistent with the ordinary and reasonable rules of conduct necessary to the welfare of the town, its employees or citizens.

- (14) Harassment or intimidation of an employee or the public with threatening or obscene language and/or gestures;
- (15) Violation of the town's non-discrimination and /or anti-harassment policy;
- (16) Failure to follow safety or security policies, procedures and regulations.
- (17) Stated refusal to perform assigned duties or flagrant violation of work rules and regulations; or
- (18) Disclosure of confidential information.

Detrimental personal conduct is so serious and unacceptable that severe discipline (disciplinary suspension, demotion, termination) may be imposed after the first incidence and without oral warning or counseling, written warning and/or Personnel Improvement Plan.

D. Progressive Discipline

Depending on the circumstances, unsatisfactory job performance should generally follow the steps outlined below.

Oral and Written Warnings

Step One: *Oral Warning or Counseling*

Where appropriate, unsatisfactory job performance or inappropriate conduct may be addressed by an oral warning or counseling to see if it can be corrected without becoming a disciplinary issue. Oral warning and counseling are an attempt to help an employee make job or conduct corrections.

Oral warnings should be documented by the employee's supervisor and kept in the employee's performance evaluation file. This will not be included in the personnel file maintained by Human Resources.

Step Two: *Written Warning and Performance Improvement Plan (PIP)*

The written warning usually follows an oral warning or counseling and serves as notification to the employee that the employee's conduct, performance or attendance is below the standards that are expected. It also serves as notice that corrected performance must take place immediately in order to avoid disciplinary suspension, demotion or dismissal.

Written warnings shall provide the following information:

- (1) The specific employee act(s) and dates which demonstrated the unacceptable behavior or conduct.
- (2) The expected behavior or conduct.

- (3) That such act(s) must not be repeated.
- (4) That further action will result if the employee fails to show and maintain satisfactory improvement.

Step Two Continued: *Performance Improvement Plan (PIP)*

A performance improvement plan must be included with written warning. It shall consist of timely discussions between the Department Head and the employee with the following provided in writing:

- (1) The specific unacceptable deficiency in the employee's performance or conduct, with documentation, if available, of previous warnings;
- (2) The necessary improvement;
- (3) The period of time in which improvement must occur;
- (4) A statement that further consequences, including dismissal or demotion, will result if the employee fails to show and maintain satisfactory improvement;

A copy of the written warning and PIP will be given to the employee. The written warning and PIP becomes part of the employee's personnel file which is maintained by Human Resources. Employees may, however, provide a written response/rebuttal that will be attached to the written warning and PIP in the personnel file maintained by Human Resources. Additionally, the employee will be required to acknowledge the receipt of the written warning and PIP. Written warnings and PIPs may not be appealed through the grievance process.

Step Three: *Disciplinary Suspension*

If performance does not improve by oral warning or counseling, written warning which includes a Personal Improvement Plan or if the employee's conduct is considered detrimental, the employee may be placed on disciplinary suspension.

Disciplinary suspensions are for the purpose of communicating the seriousness of the performance deficiency, not for the purpose of punishment, and should not generally exceed three scheduled working days for non-exempt employees (up to 24 hours for general employees, 36 hours for law enforcement and 72 hours for fire protection personnel). Employees that are considered exempt shall be suspended for one full work week in accordance with FLSA requirements to maintain exempt status. All disciplinary suspensions are unpaid unless otherwise determined by the Town Manager. The employee may be told to leave Town property and to report back to his/her supervisor at a specific date/time. In specific circumstances, employees may be asked to surrender town issued equipment while on suspension.

Furthermore, the employee shall be given a *Notice of Disciplinary Action - Suspension* and shall have the right to respond to the Department Head to the alleged charges within two (2) calendar days of

receiving the document. The response/rebuttal to the suspension that will be attached to the notice in the employees personnel file. Suspensions may be appealed through the grievance procedure.

E. Investigative Suspension

Suspensions pending the result of an internal affairs investigation are not disciplinary, and may be either paid or unpaid, depending upon the circumstances. If the investigative suspension is unpaid, the employee *may* be allowed to use accumulated leave balances. Upon completion of the investigation or proceedings, the employee may be eligible to resume work under terms and conditions specified by the Town Manager and Department Head.

F. Demotions

- (1) Demotions result in employees being moved into jobs with lower responsibility levels and/or lower classification. Pay rates after a demotion will be reviewed on a case-by-case basis.
- (2) The employee shall be given a written *Notice of Disciplinary Action - Demotion* which sets forth the reason for the demotion.
- (3) *The Notice of Disciplinary Action - Demotion* will be maintained in the employee's personnel file in Human Resources. The employee may provide a written response/rebuttal to the demotion that will be attached to the notice in the personnel file.
- (4) Demotions may be appealed through the grievance process.

G. Dismissals

Dismissals Result in Termination of Town Employment.

Prior to initiating a dismissal, the Department Head or his/her designee shall confer with Human Resources and present all the relevant facts, circumstances and information. Human Resources will review the information and discuss available options, including whether the employee will be suspended with or without pay, pending the outcome of the proposed dismissal. Human Resources shall review the information and discuss available options and their consequences with the respective Department Head. It is the responsibility of the Department Head to decide whether to initiate a dismissal and to communicate this decision to the Human Resources. Any information relating to dismissal will be communicated to the Town Manager. The Town Manager is responsible for the dismissal of any town employee.

Step One: The employee shall be given a *Notice of Pre-Dismissal Hearing* and the employee shall have the right to provide a written or oral response at the scheduled hearing. The hearing shall occur within two business of providing the notice to the employee unless the employee waives such response or the particular circumstance requires a different period. Additionally, the notice will note the time and location of the hearing.

Additional Information: The Notice of Pre-Dismissal Hearing should include an explanation of why the dismissal is proposed, such as alleged policy violations, so the employee may adequately respond. The hearing will be conducted by Human Resources along with other persons deemed necessary to the process (i.e. Department Head).

Pre-Dismissal Hearing: At the hearing, the employee presents his/her response in writing to the proposed dismissal to the Department Head or designee. The Town Manager or his/her designee shall notify the employee of his/her decision within two business days of receiving the employee's response/rebuttal.

Additional Information: If the hearing results in the dismissal of the employee by the Town Manager, the employee will be provided a Notice of Dismissal setting forth the specific acts or omissions for the dismissal. The Notice of Dismissal will be made publically available. The employee will receive his/her final paycheck for hours worked. A non-exempt employee also will receive any accrued compensatory time. Any accrued vacation or sick time will not be paid out unless authorized by the Town Manager. The employee will also be able to purchase his/her health insurance in accordance with COBRA provisions.

Appeal: If the employee would like to appeal the decision, it is the employee's responsibility to reference the grievance procedure.

Cross Reference: Grievance Procedure

H. Criminal Offenses (Work Related)

If, during the course of any disciplinary investigation, the possibility exists that an action of an employee is considered a criminal offense, the town manager and/or his designee will determine if the criminal investigation will be conducted by the town's police department or an outside law enforcement agency with jurisdiction over the alleged offense. Additionally, it will be determined by the town manager and/or his designee (with consultation with chosen law enforcement agency and the District Attorney's Office) if the employee will receive a Garrity interview (commonly referred to as a Garrity warning). Garrity interviews will be given by Department Head and/or his designee. If the Department Head is the subject of the investigation, the Town Manager and/or designee will conduct the interview. All interviews will be electronically recorded.

Garrity Interview: This interview is intended to inform an employee that he or she is being required to answer questions as part of an administrative investigation but that such answers are not a waiver of the employee's Fifth Amendment protection against self-incrimination. The imposition of discipline, in whatever form, shall in no way preclude a

further sanction imposed against an employee in subsequent criminal or civil proceedings.

If the employee is given the Garrity interview, the employee is required to cooperate fully in the investigation. Any failure on the part of the employee to cooperate fully in the investigation shall be considered insubordination. Failure on the part of a supervisor to administer the Garrity interview is not a defense for the failure or refusal to truthfully answer questions and cooperate fully in the disciplinary action.

I. Criminal Offenses (Non-Work Related)

Conviction of any felony or the entry of a plea of nolo contendere to a felony will be cause for discipline, up to and including dismissal. Conviction of any offense, that affects the ability of an employee to perform his or her job as an employee who has contact with the general public, may be cause for disciplinary action, up to and including dismissal.

IV. DEFINITIONS

A. Demotion: A demotion occurs when an employee voluntarily or involuntarily moves to a different position that is in a lower salary range or official rank.

B. Department Head: The individual who is directly responsible for the operation and administration of a department.

C. Disciplinary Action: Disciplinary actions are sanctions that are imposed because of an employee's job performance or conduct such as written reprimand, performance improvement plan, disciplinary suspensions, without pay, involuntary demotion, and dismissal.

D. Disciplinary Suspension: Disciplinary suspension is a penalty and is therefore unpaid. Suspensions are used for a range of offenses, from certain types of preventable accidents to insubordination, failure to pass a random drug test, or failing to follow town or department policies, and usually range from one day to a week, although longer suspensions may be appropriate in some cases.

E. Employee: Any person working for the Town; but not independent contractors, committees, or volunteers.

F. Exempt Employee: An exempt status employee is one who is not covered by the minimum wage and overtime pay provisions under the Fair Labor Standards Act (FLSA) defined by Regulations 29 CFR Part 541.

G. Employee, Non-Exempt: An employee who is covered by the minimum wage and overtime pay provisions under the Fair Labor Standards Act (FLSA) defined by Regulations 29 CFR Part 541.

H. Supervisor: A person working in a position that is responsible for the work activities, evaluation and disciplinary action of an employee or a group of employees

I. Termination, or Dismissal, Involuntary: The end of an employee's employment with the town, initiated by the town.

V. SCOPE

As of October 23, 2017 this policy replaces and supersedes any previous policies or unwritten policies or practices covering the same subject.

VI. AUTHORIZATION



Jamie Justice
Town Manager