



Standards of Conduct Administrative Policy #10

August 2017

I. POLICY

This policy is intended to keep employees and management equally aware of each employee's responsibility of maintaining a positive and productive work environment. This policy applies to all city employees. The intention of this policy is to clarify the city's position concerning standards of conduct and performance, appropriate corrective action, and progressive discipline.

II. STANDARDS OF CONDUCT

Timely and Regular Attendance - Planned use of leave time should be arranged with your supervisor in advance. Unexpected use of time should be reported as promptly as possible to your supervisor prior to the beginning of the employee's work schedule. Employees are expected to work any assigned overtime, unless excused by the appropriate manager.

Dependable Application of Time - Employees are expected to apply themselves to their assigned duties during the full schedule for which they are being compensated, except for reasonable time provided for meals and personal needs.

Satisfactory Work Performance - Employees are expected to meet established performance standards. Conditions or circumstances, as they become known, which will prevent employees from performing normally or completing their assigned task, should be reported to the appropriate manager. Likewise, unclear instructions or procedures should be brought to the attention of your supervisor.

Use of City Equipment, Facilities, and Information - City equipment (all property owned, leased, or controlled by the city, including but not limited to vehicles, computers, tools, devices, and materials), facilities, and information, are to be used only for work-related purposes, unless otherwise authorized. Theft of city property of any kind may result in criminal prosecution in addition to disciplinary action.

Conflict of Interest - Employees shall conduct city business with the highest standards of integrity and shall not officially act in regards to any contract, transaction, or other matter in which the employee may have a personal interest, individually or through a family member, in violation of the State and Local Government Conflict of Interests Act, or do any act in violation of the Ethics in Public Contracting (City Code Sections 12-280 et seq.). Employees shall not solicit nor accept nor receive any personal payment, gift, favor, service or gratuity for the performance of their official duties. This should not be construed to prohibit acceptance of a token or memento of a particular occasion, the value of which is less than \$ 20.00.

Safety - The city and certain departments have established safety rules, regulations, and procedures. Employees are required to know and observe all such rules, regulations, and procedures. Employees are required to observe all traffic laws. Employees in positions requiring a Commercial Driver's License (CDL) shall observe all laws and policies applicable to CDL holders. Employees shall immediately report to their supervisor any situation or condition, such as the loss, suspension, revocation of a driver's license or any other job-related license or certification, or any condition which may interfere with the employee's regular performance of duties. The city also requires employees to immediately notify their supervisor of any on-the-job injury or accident.

Off-duty Conduct - The city does not prescribe employee conduct off-the-job. However, any conduct on or off-the-job which affects the employee's credibility, effectiveness, performance, or ability to fully carry out the responsibilities of city employment and any conduct which is prejudicial to the interests, reputation, or operations of the city of Portsmouth are subject to disciplinary action.

III. PROGRESSIVE DISCIPLINE

It is important to note that although the process is a progression of increasingly more serious actions, each action (verbal discussion, Group Offenses to includes suspensions and terminations) may be used based on nature of the infraction and still be part of the progressive disciplinary process. The Director of Human Resource Management or designee shall be consulted prior to taking any formal disciplinary action.

A. Verbal or Written Counseling

The employee is advised and cautioned by a supervisor or department head about unsatisfactory work performance or misconduct. Verbal discussion may be reduced to writing in a counseling memorandum and will not be considered formal discipline. Counseling is generally the initial attempt to correct less severe performance or conduct violations; however, it is not a prerequisite to disciplinary action for subsequent offenses. All verbal and written letters of counseling are not grievable.

B. Suspensions

A suspension is temporarily prohibiting an employee from performing his duties as a result of the employee's unsatisfactory job performance or misconduct. A suspension seriously impacts departmental productivity and the employee's pay.

1. Duration

Disciplinary suspensions shall be without pay and shall not exceed ten (10) work days for a Group II violation or twenty (20) work days for suspensions in lieu of termination.

2. Overtime Exempt Employees

Overtime exempt employees may be suspended for any duration within the above limits for violations of written rules and policies governing workplace conduct applicable to all employees; otherwise, the suspension must be for a full work week. Also, overtime exempt employees cannot be suspended for less than a full work week for job performance issues.

C. Demotions

A disciplinary demotion can occur as an intermediate form of discipline or as an alternative to termination and in situations where progressive discipline has been unsuccessful to correct unsatisfactory job performance or misconduct. The employee's salary will be reduced to a level within the salary range of the city's Classification & Pay Plan.

D. Terminations

An involuntary separation for acts and/or behavior of such a serious nature that the first occurrence should justify termination or for unsatisfactory job performance or misconduct of a less serious nature which continues after progressive discipline has been imposed for prior poor work performance or misconduct.

IV. TYPES OF OFFENSES & SPECIFIC ACTION

The following procedures will set forth guidelines for determining the severity of the offenses of misconduct. The offenses listed in this policy are not intended to be all inclusive but instead serve as guidelines. It is expected that many, if most, infractions will not be specifically listed in this policy. Failure to correct behavior, performance, or conduct after commission of a Group I or II offense will result in further progressive disciplinary action.

A. Group I Offenses

These offenses include misconduct that is less severe in nature, but which requires corrective action in the interest of maintaining a well-managed, respectful, and productive work environment. Examples of Group I offenses include:

- Unsatisfactory attendance or excessive tardiness as defined by the individual departments;
- Abuse of City time such as use of City time for non-work related activity, personal business, or abuse of sick leave;
- Inappropriate or unauthorized use of City equipment, facilities, or information;
- Unsatisfactory job performance
- Disruptive behavior; including rudeness, inappropriate language or gestures, or uncooperativeness toward others;
- Refusal to work reasonable overtime;
- Failure to comply with the Fair Labor Standards Act (FLSA); and
- Improper operation of a City vehicle or equipment

Corrective Action: The prescribed disciplinary action for each violation is five (5) disciplinary points and a written reprimand in the employee's personnel file. Supervisors must discuss a Group I offense with the employee and advise the employee of the need for correction. Depending upon the severity and nature of the offense, the employee may, in lieu of being cited for a Group I offense, be subject to verbal or written counseling. If the condition is not resolved by verbal discussions, the employee must be given a written counseling to document the failure to correct the stated offense.

B. Group II Offenses

Group II offenses constitute misconduct which is more severe in nature. Disciplinary actions for Exempt employees shall be in compliance with the Fair Labor Standards Act (FLSA). Examples of Group II offenses include:

- Continued unsatisfactory job performance;
- Failure to follow a supervisor's verbal or written instructions, perform assigned work, or otherwise comply with applicable city or departmental policy, rules, regulations, or directives, except for refusal to cooperate with respect to alcohol and drug testing which is a Group III Offense;
- Violating safety procedures (not a threat to life);
- Leaving the worksite without permission during work hours;
- Workplace harassment or other prohibited discriminatory conduct;
- Failure to report to work as scheduled without proper notification;
- Violating confidentiality when city and department policies, regulations, or rules have been published or which the employee is expected to know;
- Use of obscene or offensive language or gestures when dealing with other employees, supervisors, or the public;
- Negligence in the performance of job responsibilities including the negligent operation of a city vehicle or equipment; and
- Unauthorized use or misuse of city property or information;

Corrective Action: The prescribed disciplinary action for each violation is ten (10) disciplinary points and a written reprimand in the employee's personnel file, and may also include a suspension without pay for 1 – 10 days with the concurrence of the department head.

C. Group III Offenses

The offenses included in this group are more serious in nature. Examples of Group III offenses include:

- Accumulation of three (3) Group II offenses within a rolling twelve month period;
- Unauthorized possession or use of firearms, dangerous weapons, or explosives while working or on any city property except in accordance with Code of Virginia, Section 15.2-915;
- Absence or leave in excess of five (5) working days without prior authorization;
- Withholding information, or making false or misleading statements;
- Failing to fully cooperate during an administrative investigation, or interfering with an administrative investigation;
- Falsification, misuse, concealment, or alteration of records, including but not limited to vouchers, reports, time and leave records, or other city documents;
- Gross negligence in the performance of job responsibilities;
- Behavior which is considered unethical, or unprofessional conduct with clients, citizens, program participants, or other employees;
- Overt or implied threats or coercing of employees, supervisors, subordinates or the public, including but not limited to incidents of bodily contact;
- Unauthorized possession or use of alcohol or a controlled substance on the job; operating city equipment, including vehicles, while under the influence of alcohol or a controlled substance;
- Positive controlled substance or alcohol test; refusal to cooperate fully with respect to alcohol/substance abuse testing policy as defined by the city's Alcohol, Illegal Drugs and Controlled Substances policy will result in termination;

- Violating safety procedures where there is a threat to life;
- Participating in or encouraging any type of strike, work slowdown, sit-down, or similar interference with city operations;
- Acts of violence or fighting;
- Theft, actual or attempted, of city assets, equipment, or the property of others;
- Deliberately destroying or reckless use of city equipment or the property of others;
- Improper or unlawful conduct on or off the job which affects or tends to affect the employee's relationship to the job, or the employee's credibility, effectiveness or ability to full carry out the responsibilities of the job, or which negatively affects the image or operations of the city government; and
- Insubordination; intentional refusal to comply with directions, instructions, policies, directives, rules, regulations, or a lawful order of an employee or supervisor with higher authority.

Corrective Action: The prescribed disciplinary action is termination. If the department head determines that extenuating circumstances exist and the employee otherwise has a satisfactory record of job performance and conduct, the department head with the concurrence of the Director of Human Resource Management or designee, has the option to impose twenty (20) disciplinary points and a twenty (20) day suspension without pay, and/or demotion, in lieu of termination.

V. **DISCIPLINARY ACTION FOR POINT ACCUMULATION**

In addition to the prescribed disciplinary action for each instance of misconduct, the following action is prescribed for the accumulation of disciplinary points:

- Employees who accumulate thirty (30) disciplinary points within any rolling twelve (12) month period will be terminated.
- Employees who accumulate thirty-five (35) disciplinary points within any rolling twenty-four (24) month period will be terminated.

Points shall accrue at the time the disciplinary action is taken, not when the misconduct occurs or the date that any appeal from the disciplinary action is decided at the various steps of the grievance process (even if the disciplinary action is modified). The date of the original letter or memoranda which notifies the employee of the disciplinary action is the date that points accrue.

Transition Period for Implementation of this revised policy – Employees who currently have two (2) Group II offenses on the date of adoption of this policy and subsequently commit any Group II or III offense within the above time periods will be terminated.

VI. **CORRECTIVE ACTION GUIDELINES**

Disciplinary action will be taken to correct or discourage unsatisfactory behavior or performance. The following principles will be observed when considering disciplinary action:

- Management shall consider prior disciplinary actions taken against the employee, including the date, severity, and circumstances of the prior actions.
- The disciplinary action shall be situationally appropriate and shall be consistent with the expectations of the position.
- Management shall consider the special needs of the department, and the seriousness of the employee's behavior or performance.

- Employees are responsible and accountable for knowing the performance or behavioral expectations of the city and their department.
- In determining the severity of the disciplinary action, the supervisor should establish whether there has been repetition of the same or similar performance or behavior.

VII. DISCIPLINARY PROCEDURES

Any alleged violation of the city's or a department's Standards of Conduct, rules, policies, directives, or for continued failure to meet job performance standards or expectations shall be investigated. The employee shall be provided the opportunity to respond before disciplinary action is taken. Departments have flexibility in the investigation of disciplinary matters in a manner appropriate to the alleged misconduct.

In addition to the city-wide procedures below, the Fire Department shall comply with Title 9.1 of the Code of Virginia, Firefighters and Emergency Medical Technicians Procedural Guarantee Act, and the Police Department shall comply with Title 9.1 of the Code of Virginia, Law Enforcement Officers Procedural Guarantee Act.

A. Immediate Administrative Suspension With Pay Pending Departmental Investigation:

An employee may be immediately suspended from work with pay pending completion of a disciplinary investigation into misconduct (committed on or off duty) with the prior approval of the affected department head and the Director of Human Resource Management or designee, if it is determined that the employee's continued presence on the job is deemed to be a substantial and immediate threat to the efficient operation of the city government or the employee's department, or to the welfare of the public, or to other city employees or to the administrative investigation.

However, in most cases, an employee should not be placed on administrative suspension and should be able to continue performing all or a portion of his/her regular job duties, or be given modified job duties which may be temporarily assigned during this period, depending on the situation.

When an employee is placed on administrative leave with pay and the department head has established one or more meeting dates related to the administrative investigation during the employee's regular work hours which the employee may reasonably be expected to attend, and the meeting date is postponed at the employee's request, the employee will not be paid past the original established date. Likewise, paid administrative leave will cease if an employee does not attend the meeting. If a meeting date is postponed by the department head, then the employee will remain on administrative leave with pay until the date of the meeting. If the meeting is commenced but is adjourned, the employee will remain on administrative leave with pay until the meeting is concluded. If subsequent termination action is taken, the effective date of the termination will be the date of the disciplinary action.

B. Immediate Suspension Without Pay Pending Departmental Investigation:

An employee may be immediately suspended from work without pay only when a finding of probable cause that a crime has been committed by the employee has been made by a judge, magistrate, or grand jury, AND the employee's continued presence on the job is deemed to be a substantial and immediate threat to the efficient operation of the city government or employee's department, or to the welfare of the public, or to other city employees. Such a

suspension without pay may be imposed if the above conditions are met, and with the prior approval of the affected department head and the Director of Human Resource Management or designee, after consultation with the City Attorney's Office.

1. Duration

The administrative suspension without pay shall end if the above conditions cease to exist (e.g. the employee is no longer deemed to be a substantial and immediate danger to the aforementioned persons or entities) or until completion of the city's administrative investigation provided the employee is returned to work.

2. Grievable

The administrative suspension of an employee without pay under this subsection is immediately grievable. Steps I and II of the grievance procedure shall be waived. A meeting at step III within the required time period shall be limited to the issue of the continued suspension without back pay. At the employee's option, the issue of the suspension without pay may be combined in a timely grievance filed later by the employee concerning the underlying disciplinary action, if any.

3. Back Pay

If the employee is not subsequently terminated following the completion of the administrative investigation, the City Manager or designee may order full, partial, or no back pay. The City Manager or designee shall not be bound by the outcome of any criminal court case but may refer to such outcome and findings in making a final decision.

VIII. PROCEDURES FOR TAKING DISCIPLINARY ACTION

- A. Disciplinary action may be taken only by the department head or the department head's designated representative. This policy is intended to promote consistency in the application of discipline and to grant employees the opportunity to respond to allegations at a high level of management before action is taken. However, supervisors below the level of the department head or the designated representative have a major responsibility for administering the Standards of Conduct (and also performance issues) and disciplinary procedures. Supervisors monitor and enforce the Standards of Conduct and, in most instances, will determine if an action will be processed through the disciplinary process. Supervisors are often assigned responsibility for investigating alleged misconduct and performance issues. Supervisors are responsible for providing input and making recommendations to department heads and designated representatives and such recommendations are to be considered in the determination of what disciplinary action to take, if any.
- B. In large departments, or those with several levels of management, the department head may designate lower levels of management to handle less severe misconduct and performance issues and to take appropriate disciplinary or corrective action, if any. In cases involving alleged misconduct and unsatisfactory performance, which may result in suspension, demotion, or termination, the department head shall be personally involved in investigating or overseeing the investigation of the allegations of misconduct and unsatisfactory performance, and determining disciplinary action, if any.

- C. When there is reason to believe misconduct may have occurred, the department head or the department head's designee shall initiate an appropriate investigation to determine the facts surrounding the alleged misconduct or unsatisfactory performance. The department head or designee may personally conduct the investigation or may assign the investigation to another person.
- D. If after review of information developed in the investigation, the department head or designee determines that misconduct or unsatisfactory performance may have occurred and that disciplinary action may be pursued, he/she will inform the employee in writing in a formal written notice of allegations. The employee will be informed in the notice that the employee will be afforded an opportunity to meet with the department head or designated representative in order to respond to the allegations after five (5) work days after receipt of the notice, unless an earlier date has been agreed to by both parties. The allegations should cite the specific instance(s) of misconduct or unsatisfactory performance including the facts underlying the allegations but need not specify specific level(s) of misconduct. The employee shall also be informed in the notice that the employee has a right to present documents and give verbal or written statements at the meeting, and bring witnesses, if desired.
- E. The meeting between the department head or designee and the employee shall be held as soon as practicable, preferably within ten (10) work days of the time the employee is given the notice of the allegations.
- F. The meeting, at which the employee is provided the opportunity to respond to the allegations, is an informal administrative process. It is not a grievance proceeding. The meeting is not a trial and it is not intended that the department's evidence and witnesses be presented. The meeting is not bound by or conducted by court procedures or rules of evidence. The meeting is conducted by the department head or designee who shall determine the procedures by which the meeting will proceed to ensure that the employee has the opportunity to respond to all allegations. The following policies apply to the conduct of the meeting:
 - 1. The meeting shall be between the department head or designee and the employee. A representative from Human Resource Management may also be present. In accordance with the Firefighters and Emergency Medical Technicians (EMT) Procedural Guarantee Act, firefighters and EMTs may have an observer, who is not an attorney present during the meeting with the department head or designee. Attorneys for the city and the employee shall not be present. Supervisors of the employee and other departmental management shall not be present except as necessary to provide information. The employee has the right to present documents, make statements, and present witnesses. If the employee brings witnesses, the witnesses shall be present only while presenting information.
 - 2. Unless the employee and the Department head or designee agree, the meeting shall not be electronically recorded. However, notes may be taken.
 - 3. The department head or designee may continue the meeting if necessary and shall determine when the matter is concluded.
- G. If the employee has waived the right to appear at the meeting, or does not appear, the department head or designee shall base the decision on the information available.


H. Upon conclusion of the meeting, the department head or if appropriate, designee, shall consider all available evidence, including the employee's work record, if appropriate and shall determine appropriate action.

1. If the department head or the designee determines that misconduct or unsatisfactory performance did not occur, or could not be substantiated, the reasons for the decision shall be documented and the matter shall be closed.
2. If the department head or designee determines that misconduct or unsatisfactory performance did occur, the department head or designee shall determine the specific instance(s) of misconduct or unsatisfactory performance, level of misconduct, and the disciplinary action to be taken. In cases in which several violations of the city's or a department's Standards of Conduct, rules, policies or directives arise from the same incident, the department head may assess the appropriate disciplinary action for each separate violation. The department head or designee shall not be bound by the outcome of any court action, but may refer to such outcome and findings in making a final decision.

If the employee was administratively suspended without back pay under Section VII, the City Manager or designee may order full, partial, or no back pay as deemed appropriate under the circumstances.

3. If the meeting was held by a person other than the department head, the department head may review the case with the designee and may elect to meet with the employee before making the final determination of disciplinary action.
4. In cases involving termination, demotion, or suspension and in cases in which misconduct specifically assigned to a level by this policy is processed at a different level, and in cases in which a lesser action than termination is taken due to extenuating circumstances, the department head shall review the case with the Director of Human Resource Management or designee prior to determining disciplinary action.
5. The employee shall be notified in writing of the determination within ten (10) work days after the conclusion of the meeting. However, this time frame may be extended by the department head or designee when necessary to appropriately consider the information, review the case, and prepare a written response.
6. If the meeting was held by anyone other than the department head, the employee may request a meeting with the department head before disciplinary action is administered. The request must be in writing to the department head within seven (7) calendar days of notification of the disciplinary action. This meeting will be conducted as stated above, with the department head notifying the employee of his/her determination within ten (10) work days after the conclusion of the meeting.
7. Upon the final determination of disciplinary action, the employee shall be advised of his/her rights to appeal through the employee Grievance Procedure, if applicable.

Approved:


City Manager