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## CORRECTIVE ACTION

### I. INTRODUCTION

The City of Boise's corrective action procedures are designed to provide City departments a standardized process to communicate expectations and prevent a recurrence of undesirable employee behavior. Outlined below are the progressive steps of the City's discipline procedure. The City of Boise reserves the right to combine or skip steps depending on the facts of each situation and the nature of the offense. Some of the factors that will be considered are whether the offense is repeated despite coaching, counseling or training; the employee's work record; and the impact the conduct and/or performance has on the work group or organization.

This regulation applies to full and part-time regular employees who have satisfactorily completed their probationary period of employment. The regulation does not apply to probationary employees, temporary employees, elected officials, at-will employees, members of boards and commissions appointed by the Mayor and/or Council, or any independent contractors. All bargaining unit employees and all Boise Police Department employees shall refer to their department's internal rules regarding discipline.

Bargaining unit employees may elect to utilize the appeal portion of this regulation, or may elect to utilize a grievance procedure contained in their collective bargaining contract, but not both. If an employee chooses to utilize this appeal procedure, all applicable time periods shall be met or the ability to use this procedure shall be waived.

### II. DISCIPLINE

Discipline is typically administered in a progressive manner so that the least amount of corrective action needed is used to correct the employee's conduct. However, as determined by the City, the discipline issued will depend on the seriousness of the behavior, which could include termination as the first disciplinary step. All matters involving discipline will remain confidential to the extent possible.

An employee subject to discipline is allowed to have a personal consultant present during an investigatory meeting that could lead to discipline, and during a disciplinary meeting. However, the employee's request to have a consultant present cannot unreasonably delay an investigative or disciplinary meeting. The consultant is allowed

to confer with an employee, but may not speak for the employee or interfere with the investigatory process or disciplinary procedure.

While an employee's alleged inappropriate conduct is being investigated, supervisors in conjunction with Human Resources, are authorized to place an employee on a non-disciplinary administrative leave with pay.

For purposes of this regulation, a "working day" shall mean Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., excluding City recognized holidays.

For purposes of this regulation, a "Department Director" or "supervisor" also includes a designee.

### III. VERBAL OR WRITTEN WARNING

The following process shall be followed when issuing a verbal or written warning.

The supervisor will discuss the deficiency with the employee and give them an opportunity to explain their actions. If the supervisor feels discipline is warranted, they will follow up with the employee either verbally or in writing outlining the deficiency and the action necessary to correct it. If the warning is verbal, the supervisor should document the conversation, including the date and what direction was given to the employee.

If the supervisor issues a written warning, the supervisor shall retain documentation of the warning in their site based file. A written warning will include a location for the employee to sign indicating receipt of the document. If an employee refuses to sign the document, the supervisor will notify the employee of the contents of the document and indicate in writing on the document that the employee refused to sign it. The supervisor will give the employee the signed written warning and keep a signed copy in the employee's site based file. Within five (5) working days of receiving a written warning, the employee may write a rebuttal that will be attached to the warning in the site based file.

Verbal and written warnings are not subject to appeal under any City process or regulation, including the Problem Solving regulation.

### IV. FORMAL WRITTEN REPRIMAND

If the employee fails to take corrective action after receiving prior discipline, or the offense is deemed serious enough, or the cumulative nature of past disciplinary actions justify it, an employee may be issued a formal written reprimand via the following procedure:

- A. The employee will receive a Notice of Intent to Discipline outlining what the employee allegedly did, referencing any policies or regulations, rules, laws, or previous directives that the employee allegedly violated, a statement that discipline may be issued if a violation is found, and sets forth a time to discuss the contents

- of the letter.
- B. The meeting to discuss the contents of the Intent to Discipline letter will include the supervisor or designee, and the employee. At the meeting, the employee will be informed of the information supporting the allegations and will have an opportunity to share any relevant information. If the employee fails to attend the meeting, the supervisor will base the decision on the available information.
  - C. The supervisor will consider all of the information and make a decision. If the information is conflicting, a credibility determination may be made by the supervisor. If the supervisor issues a formal written reprimand, the reprimand shall minimally include the following: summary of the deficiency or offense and supporting facts, a summary of the employee's response, a notification of formal written reprimand and location for the employee to sign indicating receipt of the document, such as:

**My signature below acknowledges receipt and understanding of this document; it is not intended to represent my agreement with the City of Boise's decision regarding this matter:**

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**Employee Signature**

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**Date**

The signed document is given to the employee and a signed copy is placed in the employee's official personnel file located in Human Resources.

- D. Within five (5) working days of receiving the formal written reprimand, the employee may write a rebuttal that will be attached to the reprimand. A formal written reprimand is not subject to appeal under any City process, including the Problem Solving regulation.

V. **SUSPENSION**

If the employee fails to take corrective action after receiving prior discipline, or the offense is deemed serious enough, or the cumulative nature of past disciplinary actions justify it, an employee may be suspended without pay via the following procedures:

- A. The employee will receive a Notice of Intent to Discipline outlining what the employee allegedly did, referencing any policies and regulations, rules, laws, and/or previous directives that the employee allegedly violated, a statement that discipline may be issued if a violation is found, and will arrange a time to discuss the contents of the letter.
- B. A meeting will be conducted with the supervisor, the employee, and a Human Resource representative. At the meeting, the employee will be informed of the information supporting the allegations and will have an opportunity to share any relevant information. If the employee fails to attend the meeting, the supervisor will base the decision on the available information.
- C. The supervisor will consider all of the information and make a decision. If the evidence is conflicting, a credibility determination may be made by the supervisor. If the supervisor decides to suspend the employee, the supervisor will notify the employee in writing of the following: terms of the suspension, reasons and support for the suspension, expected corrective action, and the employee's appeal option. The document will have a location for the employee to sign indicating receipt as indicated in section IV of this regulation. The signed document will be given to the

employee and a signed copy will be placed in the employee's personnel file located in Human Resources. Within five (5) working days of receiving the suspension letter, the employee may write a rebuttal that will be attached to the suspension letter or appeal the suspension as outlined below.

- D. The suspension will become effective unless the employee within five (5) working days after receiving the suspension letter provides a written appeal to the Department Director and to Human Resources. The appeal shall minimally include the specific rationale of why the employee disagrees with the suspension, must specify the relief sought, and include a copy of the suspension letter. If the employee appeals, the imposition of discipline will be held in abeyance pending the outcome of the appeal. The employee may voluntarily waive their right to appeal.
- E. Within five (5) working days of receiving the written appeal, the Department Director will issue a written decision either upholding, overturning, or modifying the suspension recommendation. The Department Director's response constitutes the final decision and the matter shall be considered closed.
- F. At the Department Director's discretion, a meeting may be scheduled with the parties to hear additional evidence before issuing the final decision. If this additional meeting occurs, the final decision will be issued within five (5) working days of the meeting.
- G. If the Department Director is the person who originally imposed the discipline, an appeal by the employee shall be sent directly to the Mayor or designee, who will follow the above process and respond to the appeal in lieu of the Department Director. The Mayor or designee's response constitutes the final decision and the matter shall be considered closed.

## VI. TERMINATION

If an employee fails to take corrective action after receiving prior discipline, or the offense is deemed serious enough, or the cumulative nature of past disciplinary actions justify it, an employee may be terminated for cause. An employee who has failed to satisfy the conditions of a Position Alignment plan may also be terminated for cause. Terminated "for cause" means that information exists to reasonably conclude that the employee engaged in conduct that violated a policy, regulation, procedure, or supervisory directive, and/or failed to perform in a satisfactory manner. The termination for cause requirement does not apply to a layoff or reduction in force.

The termination process is described below:

- A. The employee will receive a Notice of Intent to Discipline letter explaining what the employee allegedly did, referencing any policies and regulations, rules, laws, and/or previous directives that the employee allegedly violated, will include a statement that discipline may be issued if a violation is found, and will arrange a time to discuss the contents of the letter.
- B. A meeting will be conducted with the supervisor, the employee, and a Human Resource representative. At the meeting, the employee will be informed of the basis supporting the allegations and will have an opportunity to share any relevant information. If the employee fails to attend the meeting, the supervisor will base the decision on the available information.
- C. The supervisor will consider all of the information and make a decision. If the evidence is conflicting, a credibility determination may be made by the supervisor.

If the supervisor proceeds with termination, the supervisor will notify the employee in writing of the reasons and support for the termination, and will notify the employee of their right to appeal. If hand delivered, the document will have a location for the employee to sign indicating receipt as indicated in section IV of this regulation. The signed document will be given to the employee and a signed copy is placed in the employee's personnel file located in Human Resources. If the document is not hand delivered, the document shall identify the form of delivery to the employee.

- D. The termination will become effective immediately and the employee will be removed from the City's payroll.

## VII. APPEAL PROCESS FOR TERMINATIONS

An employee, within five (5) working days after being terminated, may appeal the termination by submitting a written appeal and request a post-termination hearing to Human Resources on the City's Appeal Form (See Exhibit). The written appeal shall be received in Human Resources within this five (5) day time period. Failure to comply with this time requirement shall constitute a waiver of any rights under this procedure.

The post-termination hearing will provide:

- A. an opportunity to confront and cross-examine available adverse witnesses,
- B. an opportunity to present witnesses and introduce evidence,
- C. an opportunity to be represented by counsel or other representative, and
- D. an impartial hearing officer.

The City shall contract with and retain a hearing officer who shall preside over the termination hearing. The Hearing Officer, upon receiving notice of the appeal, shall set the matter for hearing within twenty (20) working days of the notice unless otherwise agreed to by the parties, or it is not possible. The Hearing Officer shall send a written notice of the time, date and place of the hearing to the employee or their authorized representative and Human Resources at least five (5) working days before the hearing date. The five (5) day notice may be waived and the hearing may be held sooner provided all parties mutually agree to the date and time of the hearing.

At least three (3) working days prior to the hearing, both parties will each provide to the other, the names and nature of the testimony of all witnesses, and copies of all documentary evidence each side plans to introduce at the hearing. Terminated employees will have access to materials in their official personnel file.

The hearing shall be public unless either party requests a closed hearing. When a closed hearing is requested only the employee and their representative, the employee's supervisor and department leadership, representatives from the City Attorney's Office and Human Resources, and parties involved in the administration of this procedure shall be permitted to attend the hearing. Witnesses, except when actually testifying, and observers will be excluded from attendance at a closed hearing. The hearing shall be informal and technical rules of evidence shall not apply other than as set forth in Idaho Code §67-5251(1-4). A verbatim record of the proceedings shall be maintained. If any party to the proceedings requests a copy of the record, the requesting party shall pay the cost of the copy of the record.

The Hearing Officer shall make written findings of fact, conclusions of law and an Order

following the conclusion of the hearing, a copy of which shall be sent to the employee and to Human Resources no later than ten (10) working days after the conclusion of the hearing.

The Hearing Officer is the final authority in making a determination of whether cause existed to terminate the employee. Upon a determination that cause did not exist, the Hearing Officer shall have the authority to order reinstatement of the employee to their former position and/or may order such other remedy as they determine to be appropriate. The Hearing Officer may uphold, reverse, or change the discipline imposed. The decision of the Hearing Officer does not supersede any other management rights of the City.

A decision reached by the Hearing Officer shall be final and conclusive between the parties unless, within thirty (30) days of the filing of such decision, either party appeals the decision to a court of competent jurisdiction. If reinstatement of an employee is directed by the Hearing Officer, the employee can be reinstated unless reinstatement is stayed by a proper order of a court of competent jurisdiction. Any appeal to a court of competent jurisdiction shall be pursuant to the laws of the State of Idaho.

A terminated employee's pay ends on the effective date of the termination. If an employee is reinstated by the order of the Hearing Officer, the employee's pay will be reinstated from the time it was terminated to the time of the reinstatement order, unless directed otherwise by the Hearing officer. If the terminated employee is reinstated and had opted to continue medical insurance coverage under COBRA, the employee will be reimbursed for all applicable premiums, if any, paid from the date of termination.

The following are general provisions pertaining to the appeal process:

- A. Human Resources shall receive copies of all related documents and maintain an official departmental file. Files directly related to the proceedings and maintained by Human Resources shall be confidential and not be subject to public review.
- B. Any witness who is an employee of the City shall be excused from his or her duties for a reasonable amount of time to participate in this procedure.
- C. In the event a disciplinary action cannot be feasibly handled under this procedure, it shall be the responsibility of the City's Legal Department to decide if a different procedure should be followed and to specify what that procedure shall be.
- D. The Hearing Officer may allow that any hearings related to this procedure be conducted by telephone.

#### VIII. DEMOTIONS, REASSIGNMENTS AND RELOCATIONS

The City of Boise reserves the right to modify its disciplinary measures as appropriate. Factors that are considered in modifying discipline include an employee's work record, length of service, and other mitigating circumstances. Modifications to disciplinary measures listed in this regulation can include, but are not limited to, demotion and/or reassignment to another available position and/or work location within the department.

As an alternative to the disciplinary measures described in this regulation, or in addition to the disciplinary measures described in this regulation, the supervisor may elect to demote and/or reassign an employee to another position and/or work location.

If this occurs, after issuing a Notice of Intent to Discipline letter and meeting with the employee to allow them to provide relevant information, the supervisor will consider all of the evidence and make a decision. If the evidence is conflicting, a credibility determination may be made by the supervisor. The supervisor will then notify the employee in writing of the terms of the demotion, reassignment, and/or relocation. The document will have a location for the employee to sign indicating receipt as indicated in section IV of this regulation. The signed document will be given to the employee and a signed copy will be placed in the employee's personnel file located in Human Resources.

Demotions and/or reassignments or relocations that occur due to misconduct or performance issues may be appealed to the Department Director in accordance with the following process:

- A. Within two (2) working days after receiving the demotion, reassignment, and/or relocation letter, the employee provides a written appeal to the Department Director and to Human Resources. The appeal shall minimally include the specific rationale of why the employee disagrees with the demotion, reassignment and/or relocation, must specify the relief sought, and shall include a copy of the demotion, reassignment, and/or relocation letter. The imposition of demotion and/or reassignment will be held in abeyance pending the outcome of the appeal unless the employee voluntarily waives his or her right to appeal.
- B. Within two (2) working days of receiving the written appeal, the Department Director or designee, will issue a written decision upholding, overturning, or modifying the demotion and/or reassignment/relocation recommendation. The Department Director or designee's response constitutes the final decision and the matter shall be considered closed.
- C. At the Department Director's discretion, he or she may schedule a meeting with the parties to hear additional evidence before issuing the final decision. If this additional meeting occurs, the final decision will be issued within two (2) working days of the meeting.
- D. If the Department Director is the person who originally imposed the demotion, reassignment and/or relocation, an appeal by the employee shall be sent directly to the Mayor or designee, who will follow the above process in lieu of the Department Director to respond to the appeal. The Mayor or designee's response constitutes the final decision and the matter shall be considered closed.

Note: Demotions, reassignments, and/or relocations that occur as a result of a reduction in force, reorganization, or other business reasons not associated with employee performance or conduct, are NOT appealable.

## IX. INVESTIGATIONS

When information alleging misconduct of a serious nature is brought to the attention of a supervisor, he or she shall ensure that it is properly investigated. For the purpose of this regulation serious nature is defined as misconduct that if substantiated, would constitute a violation significant enough to result in formal discipline up to and including termination.

If the alleged misconduct involves harassment or discrimination of a protected class status, as identified in the City's Equal Employment Opportunity policy and

regulation, Human Resources shall be consulted. The procedures available under this regulation shall not preempt or supersede any legal procedures or remedies otherwise available to a victim of discrimination or harassment under state or federal law.

All investigations must be conducted in a fair and impartial manner. If an administrative investigation uncovers credible evidence of a crime under state or federal law, the proper law enforcement agency will be notified.

Depending on the circumstances, at the completion of the investigation the claimant may be notified of its conclusion and provided a brief overview of the findings. No discipline or other personnel actions will be disclosed.

#### X. ROLES AND RESPONSIBILITIES DURING AN INVESTIGATION

In most cases, a member of the involved department's management team should conduct the investigation with the assistance of Human Resources. However, the Department Director or the Mayor's office may request Human Resources lead the investigation and determine next steps. In any case it is recommended that a second person, preferably from Human Resources, accompany the primary investigator during interviews with the complainant, respondent, and witnesses so that information obtained during the interviews can be corroborated.

For allegations involving the conduct of Boise police personnel, the Boise Police Department's Office of Internal Affairs will be assigned as lead investigator unless otherwise requested by the Department Director or the Mayor's office.

The City of Boise requires as a condition of employment that all employees, supervisors, and managers fully cooperate with investigations. This includes, but is not limited to:

- A. Answering all questions completely and truthfully
- B. Not withholding information or evidence
- C. Not covering up or disposing of evidence

In addition to being obligated to fully cooperate with investigations, employees are not to interfere with investigations in any way. This includes, but is not limited to, disclosing the nature and/or subject of the complaint or investigation to others, contacting (directly or through others) potential witnesses to seek information, influence their statements, or solicit support. Interference also includes involving, or attempting to involve, individuals who did not participate or witness the incident or are not otherwise involved in the investigation.

#### XI. CONFIDENTIALITY

All inquiries, complaints, and investigations are treated confidentially to the extent possible. Information is revealed strictly on a need-to-know basis. However, the identities and statements of all the parties involved in an investigation may be revealed as a result of the investigatory or appeal process.

Employees who are interviewed as a part of an investigation are expected to keep



the nature of the investigation confidential. This includes not sharing information about the investigation or their interview with others.

The City will maintain all complaints, reports, statements, notes and memoranda generated during the course of an investigation in a separate file in Human Resources. Such material will be deemed confidential and access to the separate files will be limited. However, any discipline issued will be documented in an employee's personnel file in accordance with the requirements of this regulation.

## XII. RETALIATION

The City of Boise strictly prohibits any form of retaliation against an employee who reports a concern in good faith, participates in any portion of an investigation, hearing, or any other form of administrative review. Retaliation includes, but is not limited to, adverse employment actions, direct or indirect threats, teasing, taunting, negative or derogatory comments about or to the person, silent treatment, or refusal to work with the person. Retaliation also includes informing others about the complaint, portraying the claimant and/or witnesses in a negative light, or soliciting support for one side versus the other. All incidents of retaliation shall be reported to Human Resources immediately.

## XIII. RIGHT TO MANAGE

Nothing in this regulation is intended to circumscribe or modify the City of Boise's existing right to manage including:

- A. Direct the work of its employees.
- B. Maintain the efficiency of operations.
- C. Hire, promote, transfer, assign and retain employees' position within the City.
- D. Take actions as deemed necessary to carry out the duties of the City in emergencies.
- E. Determine the methods, means and personnel by which operations are to be carried out.
- F. To deviate from any procedure outlined in the regulation as circumstances warrant.