

CITY OF BRANSON, MISSOURI
ADMINISTRATIVE RULES

RULE NUMBER 4 REFERENCING ARTICLE 4 OF THE HUMAN RESOURCES MANUAL
AMENDED 5-1-2010, 1-1-2011, 7-13-2011, 7-10-2012, 7-1-2015, 7-26-2016, 02-27-2018

A RULE PERTAINING TO **CORRECTIVE AND DISCIPLINARY ACTIONS**

Section 1. General

Unclassified employees, such as Directors, the Police and Fire Chiefs, the City Clerk, the Deputy City Clerk, and the City Attorney, as well as part-time, temporary and seasonal employees all serve at the pleasure of the City Administrator and the Board of Aldermen. Therefore, although unclassified employees are required to follow the policies and desired behaviors described in the Human Resources Manual, the provisions for corrective and disciplinary actions set forth in this article shall not be applied to them. Because these provisions do not apply to them, unclassified employees are not entitled to the grievance or appeal rights granted to classified employees. These provisions and protections apply solely to non-probationary and regular classified employees.

Section 2. Disciplinary Action

- A. The City reserves the right to discharge, suspend, demote, or otherwise discipline employees for violations of all laws, Human Resources Articles, Administrative Rules, or department Administrative Rules. The disciplinary process involves four steps of progressive discipline for infractions of a similar nature and which are of a nature not normally serious enough to constitute cause for immediate suspension or dismissal. The seriousness and the level of an offense shall be determined by the Director, the Human Resources Director and the City Administrator. Each step, as noted below, shall be documented and discussed with the employee. The employee should sign and be given a copy of the documentation, such signature being an acknowledgment of the employee having read and understood the disciplinary action, not an acknowledgment that the employee agrees with the disciplinary action. If the employee refuses to provide a signature of acknowledgement, the Director shall have another employee witness the refusal.

The progressive steps are:

- | | |
|-------------------------|---------------------------|
| Step 1: First offense: | Documented verbal warning |
| Step 2: Second offense: | Written warning |
| Step 3: Third offense: | Suspension or Demotion |
| Step 4: Fourth offense: | Dismissal |

B. The progressive disciplinary system listed above is intended to serve as warning to the employee that he or she needs to correct the infractions which are the subject of the progressive disciplinary action and that further incidents will result in suspension or dismissal. The City reserves the right to determine that any violation of any of the other work rules during the course of a progressive disciplinary action may constitute grounds for applying progressive discipline at any level – at the level of a first offense, second offense, third offense or immediate dismissal, depending on the severity of the infraction.

- (1) Employees hired before or on December 31, 2009: Disciplinary action(s) not considered serious enough for immediate dismissal, demotion, or suspension, shall be removed from an employee's personnel file on completion of two years of continuous service free from additional disciplinary actions.

Employees hired after December 31, 2009: All disciplinary actions shall remain a part of the employee's permanent personnel file.

- (2) Directors shall have the right to discipline employees up to and including dismissal, provided however, that all actions to suspend, demote, or dismiss employees shall be subject to all other due process requirements as established in the City's Human Resources Manual. All disciplinary actions that are accepted without appeal by the employee shall require the review and approval of the Human Resources Director and the City Administrator before they are imposed on the employee. If the initial actions are not acceptable to, and appealed by the employee, all dismissals, demotions and suspensions shall require the approval of the City Administrator after the appeals process has been completed or after the time limits for filing an appeal have expired. Supervisory employees shall have the right to initiate progressive disciplinary action with the approval and with the authority of the Director.
- (3) Examples of offenses not normally considered serious enough to warrant immediate suspension, demotion or dismissal are as follows. This list does not constitute a complete and total listing of offenses but is for illustrative purposes only.
 - a. accidental destruction or loss of City property or City records
 - b. improperly using or obtaining leave time
 - c. tardiness
 - d. absence from work area without permission or proper notice

- e. interference with the regular conduct of City business
- f. consistent or continual unavailability for work
- g. negligence or improper conduct leading to damage of public or private property or resources
- h. excessive absenteeism, any absence without notice, or a consistent pattern of sick time usage observed by the director as potential abuse as described in Article 17, Section 15.
- i. engaging in habits which interfere with the individual's or any other employee's performance on the job
- j. disrespectful conduct
- k. violation of any other Human Resources Article, Administrative Rule, work rule or departmental policy, either expressed in writing or verbally by a supervisor
- l. a non-exempt employee recording time worked that results in overtime being paid, flex time being applied, or compensatory time being accrued (i.e., "padding" of the timesheet) without first obtaining supervisory authorization – combined with a situation where no emergency or extraordinary circumstances existed (note: In such situations where an emergency or extraordinary circumstance existed, recording time worked that results in overtime paid, flex time being applied, or compensatory time being accrued, shall not be considered an offense. Such determination of emergency or extraordinary circumstance shall be made by the Director and is not subject to appeal)

(4) Examples of offenses that constitute further investigation, particularly by the Department Head, the Human Resources Director or the City of Branson Safety Officer, which may lead to initiating progressive discipline anywhere from Step 1 through Step 4 in the process, include, but are not limited to:

- a. Safety violations after a specific warning or training
- b. Near miss incidents that could have otherwise resulted in serious injury or destruction of public or private property
- c. Unethical behavior as defined in Article 1

- (5) Examples of offenses which may constitute sufficient cause for immediate suspension, demotion or dismissal are as follows. This list does not constitute a complete and total list of offenses but is for illustrative purposes only. The City reserves the right to determine that any violation of the rules may constitute cause for immediate suspension, demotion or dismissal depending on the circumstances relating to the offense.
- a. dishonesty in any form or degree, or any falsification of records or reports for official use
 - b. theft or inappropriate removal or possession of property or records belonging to the City
 - c. knowingly making false statements or submitting falsified or misleading documents, either partially or in whole, in matters relative to the employment process
 - d. insubordination or other severely disrespectful conduct
 - e. abusive language, written or spoken, or abusive conduct toward a client, citizen or other individual in the community or City employee
 - f. verbal or non-verbal harassment
 - g. disregard for the City's EEO policy prohibiting discrimination
 - h. solicitation or acceptance of money or anything of value to influence decisions in public matters or as a reward for such decisions
 - i. possession of any type of weapon inside any City building or City vehicle; possession of any type of weapon, if brandished and/or used in any non-defensive fashion, while in or around any private vehicle parked on non-leased City property; possession of explosives such as dynamite, C4 or other materials intended for the purposes of "bomb making" in or on City property. This section shall not pertain to law enforcement or military officers in the performance of their duties.
 - j. possession, distribution, sale, consumption or being under the influence of any alcoholic, narcotic or other controlled substance while on City property. Note: this provision is not intended to prohibit employees from having unopened containers of alcohol that were intended as gifts, received as gifts or otherwise not for consumption while on duty. Additionally, this provision is not intended to prohibit an employee from possessing narcotics or other controlled substances that has been prescribed by a licensed

healthcare professional specifically for that employee, where the quantity and dosage compares appropriately to the medication remaining and to the date it was prescribed, and as long as and such employee has notified Human Resources of such prescription.

- k. unauthorized disclosure of confidential information, except where protected by law
- l. assault, battery, fighting or threatening violence in the workplace
- m. unsatisfactory performance or conduct
- n. inappropriate use of any personal media device while on duty, or city issued device at any time. This includes unauthorized taking, displaying, or transmitting of any images or documents, at any time, that are taken by such media device during work hours for any means other than official business of the City of Branson. This also includes recording conversations of other employees without their knowledge or without the prior written permission of the Department Head, the Human Resources Director and the City Administrator
- o. using city vehicles, equipment or property for personal use
- p. continuation of excessive absenteeism or continued sick leave misuse and abuse
- q. ignoring, violating, or failing to observe rules of safety or refusal or failure to employ safe working practices, thereby jeopardizing personal safety, and the safety of others, or causing damage to or destruction of public or private property
- r. ignoring, violating or failing to observe rules of safety involving the use of personal protective equipment as outlined in the safety manual or loss prevention manual
- s. conviction of a felony or misdemeanor involving moral turpitude or assaultive conduct, or a conviction that temporarily or permanently prevents the employee from fulfilling a significant portion of his or her job duties with the City without accommodation (e.g., DUI conviction for an employee who is required to drive a City vehicle; a fraud conviction by an employee who handles taxpayer money; any conviction that requires the employee to be incarcerated for four or more days, etc.).

- t. causing incalculable or irreparable harm to the image or reputation of the employee's role or to the City of Branson through illegal or unethical behavior

C. Process for Serious Disciplinary Actions

If the Director, the Human Resources Director and the City Administrator determine that there are reasonable grounds for serious disciplinary action to be taken against an employee, the Director shall prepare a written notice informing the employee that serious disciplinary action is being considered, giving the employee the specific reasons and information related to the proposed action, and then setting a date and time for the employee to meet and discuss the issue with the Director and Human Resources Director. Once the employee has been given the opportunity to present any further information he or she would like to have considered, either a lesser action or one of the following serious disciplinary actions may be taken.

(1) Dismissal

Dismissal may occur for various reasons; this section of the manual addresses only dismissal for disciplinary reasons. If the Director determines that there are reasonable grounds for dismissal, the Director shall prepare a written dismissal notice which shall state the specific reasons for dismissal with sufficient specific information to reasonably inform the employee of the reasons for dismissal. Such dismissal notice shall be coordinated with the Human Resources Director and then served on the employee or mailed to the employee's most recent known address.

The Human Resources Director shall advise the City Administrator that such action is being taken, but details of such matter will be provided to the City Administrator when the employee is agreeable to the disciplinary action without appeal, after any appeal process has been completed, or if the time limit to appeal the dismissal has expired. This is to ensure that the City Administrator has a fresh, unprejudiced point of view when deciding the outcome of any employee appeal.

A signed confirmation of delivery or mailing from the supervisor or Director shall be attached to a copy of the dismissal notice and filed with the Human Resources Director. If the employee refuses to sign the confirmation of delivery, the Director shall have another employee witness the refusal. All classified regular employees who are dismissed for cause may avail themselves of the appeal procedures of these Rules.

(2) Involuntary Demotion

- a. The Director may demote an employee for performance or disciplinary purposes. Written notice of the demotion shall be coordinated with the Human Resources Director, approved by the City Administrator, and then delivered to the employee on or before the effective date of the demotion. Confirmation of delivery from the supervisor or Director shall be attached to a copy of the demotion and filed with the Human Resources Director. An employee who is demoted to a lower class for which the maximum rate of pay is less than the current rate of pay in the higher class shall be paid at a rate which shall not exceed the maximum rate of the lower class, or exceed the former rate of pay. All classified regular employees may avail themselves of the appeal procedure.
- b. Demotion from Promotion: A promoted employee who fails to perform minimum requirements of the position during the probationary period in the new position may be demoted. No right of appeal shall exist in this case.

(3) Voluntary Demotion

- a. Upon written request of the employee, and with the consent of the Director(s) and the City Administrator, a voluntary demotion may be made to a lower class. If the position for which demotion is intended is in another department, input from both Directors shall be considered. No demotion shall be made to a position for which the employee does not possess the minimum qualifications.
- b. When an employee is voluntarily demoted the salary in the new position shall be established by the Director and the Human Resources Director, and approved by the City Administrator.

(4) Suspension Without Pay

- a. Non-exempt employees: The Director may suspend an employee without pay for disciplinary purposes. The duration of the unpaid suspension shall be agreed upon by the Director and the Human Resources Director, and approved by the City Administrator
- b. Exempt employees: In accordance with Part 541 of the Fair Labor Standards Act (FLSA), an exempt employee may be suspended without pay for disciplinary purposes as follows:
 - i. Unpaid suspensions may be imposed in good faith for infractions of workplace conduct rules, such as rules prohibiting sexual harassment, workplace violence, drug or alcohol use, or violations of state and federal laws. This

provision refers to serious misconduct only and may be imposed pursuant to written policy applicable to all employees. Such disciplinary actions may be made in full day increments only.

- ii. Unpaid suspensions may be imposed in good faith for infractions of safety rules of major significance, such as those related to the prevention of serious danger in the workplace or to other employees. Such disciplinary actions may be made in any amount of time.
 - iii. All other disciplinary suspensions without pay, such as performance or attendance related issues, may be made in full week increments only.
- c. Any suspension without pay shall be ordered in writing after prior coordination with the Human Resources Director and approval by the City Administrator. The order shall contain reasons and duration of the suspension. A copy shall be provided to the employee on or before the effective date of the suspension.
 - d. All classified regular employees may avail themselves of the appeal procedure.

(5) Last Chance Agreements

Last Chance Agreements may be used by Directors as a final effort to influence an employee to change or fix his or her performance or behavioral deficiencies without having to face the consequences of demotion or termination of employment. Last Chance Agreements are used solely at the discretion of the Department Head, and may be used to meet the requirements of notification for serious disciplinary action as set forth earlier in this rule. Last Chance Agreements are not used for egregious performance or behavioral deficiencies that would otherwise be grounds for immediate termination of employment.

A Last Chance Agreement will have:

- a. A description of any and all performance or behavioral deficiencies;
- b. Notification that the employee is facing immediate serious disciplinary action:
 - 1) An offer to forego such immediate disciplinary action if the employee agrees to change performance or behavior to an acceptable level immediately;

- 2) An admonition that unwanted performances or behaviors cannot recur for up to two years from the date of the agreement;
- c. Notification that, should the employee revert to his or her unwanted performance or behavior at any point within the timeframe set forth in the agreement, the employee faces immediate serious disciplinary action; which may fall beyond the timeframe set for any standard three- or six-month corrective probation period;
- d. The Last Chance Agreement meets the requirements of the advance notification of serious disciplinary action as required previously in this Rule in the event the employee reverts to the same unwanted performance or behavior, or begins another kind of unwanted performance or behavior.
- e. Notification that the employee is not required to sign the Last Chance Agreement and may follow the standard progressive discipline process;
- f. Notification that any regular employee may appeal serious disciplinary action as a result of him or her not agreeing to the Last Chance Agreement, or in the event he or she fails to fulfill the requirements of the agreement, if and when such action is taken; and
- g. The employee's and the Director's signature on the form (either a memo or an actual form) indicating they are both committed to each of their respective roles in making sure the agreement is fulfilled.
- h. The employee shall receive a copy of the signed document. Another copy of the agreement will be kept in the employee's department while the original signed agreement will be placed and kept permanently in the employee's personnel file in Human Resources.

Section 3. Administrative Leave

The Director, with approval of the City Administrator, may place an employee on administrative leave with or without pay at any time for the purpose of investigating allegations against the employee which could result in disciplinary action. Any administrative leave shall be ordered in writing after coordination with the Human Resources Director. Administrative leave with pay shall not be considered a disciplinary action and shall not have any appeal rights. After the investigation has been completed, for which the employee was placed on administrative leave, the Director, after coordination with the Human Resources Director, and with the approval of the City Administrator, shall dismiss, demote, suspend without pay or reinstate the employee without prejudice. If the employee is dismissed, demoted or suspended without pay, such action will follow the procedures established in these Rules. If the employee is reinstated without prejudice, all reference to the administrative leave shall be removed from the employee's personnel file.

Section 4. Performance Related Corrective Actions

Each employee of the City shall receive a formal written performance evaluation at least one time a year. The behavior/performance noted in this annual evaluation, a repeated significant performance deficiency, or any other special evaluation may be used to invoke a performance based corrective action.

A. Types of Evaluations Used for Corrective Probation

- (1) Annual Evaluation: When an annual evaluation is conducted and the Director determines that such employee's performance needs improvement with respect to any or all of the duties, tasks, and/or responsibilities set forth in the employee's classification specifications, a corrective probation may be invoked.
- (2) Special Evaluation: At any time during the year when a Director determines that an employee's performance needs improvement with respect to any or all of the duties, tasks, and/or responsibilities set forth in the employee's classification specifications, a special evaluation may be conducted and a corrective probation may be invoked.
- (3) All evaluations shall be performed pursuant to the adopted standards contained within the employee's classification specification.
- (4) An employee receiving a ranking of "needs improvement," "unsuccessful," or other similar verbiage on any evaluation shall be informed in writing of the reasons for the ranking and the areas of improvement needed and shall be given a quarterly period of time to improve his performance to a satisfactory level. The employee shall be considered to be on a probationary status during the corrective probation.

B. Corrective Probation

- (1) Corrective probation shall be invoked in up to two quarterly intervals, which periods shall be considered an opportunity for the employee to improve his or her performance to an acceptable level. The Director shall identify in writing the reasons for the probation and the areas of improvement necessary to improve the employee's performance. Once an employee has been placed on Corrective Probation, they will not be eligible for a yearly increase that appraisal period, even if they successfully complete their Corrective Probation period.
- (2) The employee shall be given an evaluation on the completion of each quarterly probationary period. In the event that an employee's performance has not

improved to a satisfactory level, the Director, with the concurrence of the Human Resources Director, may take the appropriate action of:

- a. demotion to a position of lesser responsibilities within the expected abilities of the employee;
- b. extending the corrective probationary period for another quarterly time period; or
- c. dismissal of the services of the employee.

(3) If, at any point during the corrective probationary period, the Director determines that no improvement has been made, or that other disciplinary action becomes necessary, the Director may, with the approval of the Human Resources Director and City Administrator, immediately impose one of the appropriate actions as outlined by this section.

Section 5. Employee Right to Grieve or Appeal Disciplinary or Corrective Action

Classified employees who have completed their initial probationary period are entitled to avail themselves of the grievance or appeal process as specified in other sections of the Human Resources Articles and Administrative Rules. Evaluations utilized for performance related corrective actions and any decision to invoke probation shall be subject to the grievance procedure only to the extent that factual information on the evaluation can be shown to be incorrect. Decisions regarding corrective probationary status, based on evaluations, shall not be subject to grievance.

The above Administrative Rule is hereby established and adopted in accordance with the Human Resources Manual of the City of Branson, Missouri.

Stanley E. Dobbins, City Administrator

Date