

Section 3: Compensation & Performance

Policy #4: Discipline

Effective Date: July 1, 2011

I. 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.

II. Scope

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 the exceptions set out herein, Town employees shall be defined as those employees in departments and offices for which the Town Board serves as the final budget authority.

III. Background

None

IV. Definitions

None

V. Legislation

None

VI. Policy

While it is desired that every employee 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 process 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 procedures suggested.

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

All disciplinary actions shall be exercised 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 Commissioners, or otherwise where the power is limited by law.

VII. Provisions

A. General Provisions

Human Resources should be consulted at any time a Department Director wishes to issue a disciplinary action other than an oral warning or written reprimand. The Department Director 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 Director from using alternative discipline procedures where such procedures have been approved by the Human Resources Director and Town Manager. When appropriate, and after consulting with Human Resources, Department Directors may initiate referrals to the Employee Assistance Program in conjunction with disciplinary action.

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 Director. 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 or improper use of Town property or 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) Failure to acquire or maintain any certifications or licenses required to perform the essential job functions as defined in the job description.
- 11) Other performance issues that in the opinion of the Town of Mooresville require disciplinary action.

C. Inappropriate Conduct

Inappropriate 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 persons or property may be or has been threatened; and/or 3) a law may have been violated. Examples of inappropriate conduct include, but are not limited to the following:

- 1) 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.
- 2) Unauthorized possession of Town of Mooresville or employee property, gambling, carrying unauthorized weapons or explosives, or violating criminal laws on Town of Mooresville premises.
- 3) Fighting, throwing things, horseplay, practical jokes or other disorderly conduct which may endanger the well-being of any employee or Town operations.
- 4) Engaging in acts of dishonesty, fraud, theft or sabotage.
- 5) Threatening, intimidating, coercing, using abusive or vulgar language, or interfering with the performance of other employees.
- 6) Insubordination or refusal to comply with instructions. Failure to perform reasonable duties which are assigned.
- 7) Unauthorized or inappropriate use of Town material, time, equipment or property.
- 8) Damaging or destroying Town property through careless or willful acts.
- 9) Conduct that the Town of Mooresville feels reflects adversely on the employee, program/department or Town.
- 10) Engaging in such other behaviors as the Town determines may be inconsistent with the ordinary and reasonable rules of conduct necessary to the welfare of the Town, its employees or citizens.
- 11) Failure to follow safety or security policies, procedures and regulations.
- 12) Violating the Town's non-discrimination and/or anti-harassment policy.
- 13) Reporting to work intoxicated or under the influence of non-prescribed drugs.
- 14) Illegally manufacturing, possessing, using, selling, distributing or transporting drugs.
- 15) Failure to follow known Federal, State or local laws and regulations.

D. Types of Discipline

Unsatisfactory job performance and inappropriate conduct may be addressed in the following actions.

- 1) Oral warning
 - a. Oral warnings should be documented by the employee's supervisor and kept within the department for performance evaluation and record keeping purposes.

- b. Oral warnings may not be appealed by employees. However, employees who disagree with the counseling action may discuss the basis of disagreement with their Department Director. Should oral warnings be given to employees in written form, they may submit written responses/rebuttals to be attached to the oral warning.
- c. Written responses/rebuttals must be submitted to the supervisor within ten (10) business days of receiving the oral warning.

2) Written reprimand

- a. Written reprimands shall be presented and a copy given to the employees indicating the following:
 - The specific employee act(s) which demonstrated the unacceptable conduct or behavior.
 - The expected conduct or behavior.
 - That such act(s) must not be repeated.
 - That further action will result if the employee fails to show and maintain satisfactory improvement.
 - Signed acknowledgment of receipt of the written reprimand by employee.
- b. Written reprimands may not be appealed by employees; however, employees may submit responses/rebuttals for attachment to written reprimands. Responses/rebuttals must be submitted to the supervisor within ten (10) business days of receiving the written reprimand.
- c. Written reprimands become a part of employees' permanent personnel files and shall be forwarded, along with any employee responses/rebuttals, to Human Resources.

3) Performance Improvement Plan

- a. When the job performance of an employee falls below an acceptable standard, the Department Director may place the employee on a Performance Improvement Plan (PIP). The PIP shall consist of timely discussions between the Department Director and the employee with the following provided in writing:
 - The specific unacceptable deficiency in the employee's performance;
 - The necessary improvement;
 - The period of time in which improvement must occur; and

- A statement that further consequences will result if the employee fails to show and maintain satisfactory improvement.
- b. PIPs may not be appealed. Employees may, however, submit written responses/rebuttals for attachment to the PIP.
- c. Written responses/rebuttals must be submitted to the supervisor within ten (10) business days of receiving the PIP.
- d. The original PIP shall be maintained in Human Resources, with a copy given to the employee and one retained by his/her department.

4) Suspension

- a. Suspensions result in time off without pay. An employee may be suspended without pay for a period of not less than one work shift.
- b. Prior to issuing a suspension for an exempt employee, the Department Director must consult with Human Resources to ensure compliance with the Fair Labor Standards Act.
- c. Employees who are exempt under the FLSA can be suspended without pay for full work week increments (40, 80, 120 hours, etc). Suspension without pay for less than a full workweek is allowed where there is a serious workplace misconduct or violation of safety rules of major significance. Examples of serious workplace misconduct include, but are not limited to, sexual harassment, violence, drug or alcohol violations, or violations of state or federal laws.
- d. As notice, an employee shall be given a Proposed Notice of Disciplinary Action (Suspension) and shall have the right to respond to the Department Director to the alleged charges within two (2) business days of receiving the document.
- e. Suspensions become permanent parts of the disciplinary record maintained in the employee's permanent personnel file in Human Resources.
- f. Suspensions may be appealed in accordance with the Town's Grievance policy.
- g. When an employee is under investigation for a crime or official misconduct, or is awaiting hearing or trial in a criminal matter, he/she may be suspended. These suspensions shall be without pay for the duration of the investigation or proceedings when such suspension would be in the best interests of the Town.

- h. Upon completion of the investigation or proceedings, the employee may be eligible to resume work under terms and conditions specified by the Town Manager.

5) Demotions

Demotions result in employees being moved into jobs with lower responsibility levels and/or lower pay rates. Pay rates after a demotion will be reviewed on a case-by-case basis.

- a. The decision to demote employees for disciplinary purposes should be written, with a copy given to the employee and the original retained in the official personnel file.
- b. As notice, an employee shall be given a Proposed Notice of Disciplinary Action (Demotion) and shall have the right to respond to the Department Director to the alleged charges within two (2) business days of receiving the document.
- c. Employee Action Forms must be completed and sent to Human Resources.
- d. Demotions may be appealed in accordance with Town's Grievance policy.

6) Dismissals

Dismissals result in termination of Town employment.

- a. Prior to initiating any dismissal action, the Department Director or his/her designee shall confer with the Human Resources Department and present all relevant facts, circumstances and information, including whether the employee will be placed on administrative leave with pay or without pay pending the outcome of the proposed dismissal.
- b. The Human Resources Department will review the information and discuss available options and their consequences with the respective Department Director or his/her designee.
- c. It is the responsibility of the Department Director or his/her designee to decide whether to initiate a dismissal and to communicate the decision to the Human Resources Department.
- d. As notice, an employee shall be given a Proposed Notice of Disciplinary Action (Proposed Dismissal) and shall have the right to respond to the Department Director to the alleged charges within two (2) business days of receiving the dismissal document.
- e. Dismissals may be appealed in accordance with Town's Grievance policy.

E. Notice of Proposed Disciplinary Action and Employee Response

- 1) A supervisor or Department Director who is considering disciplinary action shall prepare a notice of proposed disciplinary action to the employee. For the purposes of this section, "disciplinary action" means suspension, demotion and/or dismissal. The Notice of Proposed Disciplinary Action should include an explanation of why the discipline is proposed, such as alleged policy violations, so the employee may adequately respond. The Notice of Proposed Disciplinary Action shall also establish an opportunity for the employee to meet with the supervisor within two (2) business days from the date of the proposed disciplinary action.
- 2) A regular employee who receives a Notice of Proposed Disciplinary Action may respond with any relevant facts that might affect the proposed disciplinary action. The employee's response/rebuttal must be submitted within two (2) business days from the date of the proposed disciplinary action. This written response should be made through the supervisor.
- 3) The employee response may be presented orally during the meeting established in the Notice of Proposed Disciplinary Action. The employee may also present a response in writing as supplemental information to the meeting. If the employee does not provide additional information at the meeting or does not provide a written response providing adequate reason why the proposed action should not be taken, the proposed disciplinary action will be finalized.
- 4) The Department Director will review the employee's response/rebuttal and determine whether the basis for the proposed disciplinary action still supports a conclusion to take the proposed action.
- 5) The Department Director shall notify the employee of his/her decision within five (5) business days of receiving the employee's response/rebuttal. If the decision of the Department Director is to take the proposed disciplinary action, the employee should be provided a Notice of Disciplinary Action that will include information on the employee's right to file a grievance.
- 6) Whatever pay status the employee was in at the time of the proposed disciplinary action will continue until the response is completed.
- 7) The response period is concluded on the day the Department Director makes a decision on the proposed disciplinary action.
- 8) Upon dismissal, the employee will receive his/her accrued vacation leave in accordance with Human Resources procedures, in addition to his/her final paycheck for hours worked. A non-exempt employee also will

receive any recorded compensatory time. The employee will also be able to purchase his/her health insurance in accordance with COBRA provisions.

F. Criminal Offenses (Work Related)

- 1) If, during the course of any disciplinary investigation, the possibility exists that the employee may be charged with a criminal offense, the employee shall have the full benefit of the Fifth Amendment protection against self-incrimination. Once the possibility of a criminal offense exists or becomes known to the supervisor, prior to further questioning of the employee, such employee shall be informed that he/she has all rights afforded to any person subject to a criminal investigation and shall specifically be given the "Garrity" warning. The "Garrity" warning 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.
- 2) Once the employee has been given the "Garrity" warning, the employee is required to cooperate fully in the disciplinary investigation. Any failure on the part of the employee to cooperate fully in the disciplinary investigation shall be considered insubordination. Failure on the part of a supervisor to administer the "Garrity" warning is not a defense for the failure or refusal to truthfully answer questions and cooperate fully in the disciplinary action.
- 3) A criminal investigation may be requested by the Department Director or town manager at any point before, during, or after a disciplinary investigation.
- 4) In the event the Department Director or town manager determines that a criminal investigation is necessary, the police chief or his/her designee shall be notified, regardless of the complainant's predisposition concerning the filing of criminal charges. The police department shall follow its normal departmental procedures in investigating the potential criminal complaint and may, at the discretion of the police chief, assign such investigation to another law enforcement entity, as may be appropriate. 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. Any sanctions imposed in criminal or civil proceedings against an employee shall not preclude the imposition of administrative sanctions. In the event that it an employee of the police department is the subject of a criminal investigation, the State Bureau of Investigation or other outside law enforcement agency

with jurisdiction over the alleged offense, will be asked to conduct the investigation.

G. Criminal Offenses (Non-Work Related)

- 1) In the event an employee is charged with a drug or alcohol related offense, he/she must notify the appropriate supervisor by the next regularly scheduled work day of such charge.
- 2) In the event an employee is charged with any misdemeanor or felony related to fraud, theft, violence, injury to persons, assault, stolen property, domestic violence, child abuse, damage or destruction of property, an offense involving a minor, any type of sex related offense, obscenity-related offense, or the illegal use or possession of firearms or other lethal weapons, he/she must notify the appropriate supervisor by the next regularly scheduled work day of such charge.
- 3) Upon notification of any criminal charges faced by an employee, the employee may be placed on an unpaid suspension for a period of time to determine appropriate action.
- 4) Failure to inform the employee's supervisor of such charges will be cause for disciplinary action, up to and including dismissal.
- 5) 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.
- 6) Conviction of any offense, whether or not such offense is reportable under this section, 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.

VIII. Authorization

Approved by:

Erskine Smith
Town Manager

July 1, 2011
Date