



# **CITY OF VISALIA PERSONNEL POLICY**

## **Policy #116**

### **Discipline**

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#### **I. PURPOSE**

To provide a uniform and consistent policy for disciplinary actions relating to regular employees.

#### **II. APPLICABILITY**

##### Policy Coverage

This policy covers all regular employees who have completed their initial probationary period with the City of Visalia.

The following categories of employees can be terminated at-will and have no rights to any of the pre- or post-disciplinary processes or procedures in this policy: 1) hourly employees, 2) initially hired probationary employees, 3) any person who serves pursuant to a contract, and 4) any person who is designated "at-will".

##### Sworn Personnel

Sworn public safety officers and firefighters within the State of California are subject to the Police Officers Bill of Rights and Firefighters Bill of Rights Act, respectively. If this policy is in conflict with a provision of that legislation, the legislation shall be followed in its application to sworn public safety officers within the Visalia Police Department and firefighters within the Visalia Fire Department. Sworn public safety officers should also refer to Police Department Disciplinary Procedures.

#### **III. POLICY**

It is the policy of the City of Visalia, when reasonable, to use positive measures including coaching and counseling and a process of progressive discipline to minimize and/or resolve employee performance or behavioral problems before more serious actions are taken. However, the City reserves the right to deviate from progressive discipline when it believes such action is reasonable, based on the facts and circumstances of a particular situation.

The disciplinary process is a system based upon the premise that disciplinary actions are to be corrective rather than punitive; are progressively more severe; and will fit the nature of the problem.

The goal of the disciplinary process is to minimize employee performance and behavioral problems by informing employees of what conduct will be subject to discipline. It provides employees the opportunity to improve by identifying specific actions they must take in order to meet performance and behavioral standards; and ensures that disciplinary procedures are applied uniformly and consistently, in accordance with City policies, ordinances, and work rules.

Progressive discipline is the process of resolving unsatisfactory or unacceptable performance or misconduct through a sequence of disciplinary actions which may include 1) verbal reprimand, 2) written reprimand, 3) suspension without pay 4) reduction in pay, and 5) substantial disciplinary actions. Substantial disciplinary actions include suspension



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without pay or reduction in pay equivalent to more than forty (40) hours, demotion, and dismissal.

**IV. GROUNDS FOR DISCIPLINE**

Actions which may result in discipline include, but are not limited to:

- Failure to meet reasonable work performance standards and requirements.
- Neglect of duties.
- Failure to cooperate with the implementation and application of the City's Equal Opportunity Employment policy.
- Violation of the City's Harassment, Discrimination and Retaliation Prevention policy.
- Violation of the City's Drug Free Workplace policy.
- Violation of the City's or a department's confidentiality policies, or unauthorized viewing or disclosure of confidential City information by an employee or to any unauthorized person or entity.
- Absence without supervisor's approval of leave from the job; and/or abandonment of position, for three (3) consecutive days, without appropriate notification or authorization.
- Excessive tardiness and/or absenteeism.
- Providing false or misleading information, or other fraud in securing appointment, promotion or maintaining appointment.
- Failure to supply full information as to character, reputation, medical history, or acts which, if known at the time of appointment, might have resulted in a disqualification of the employee for the job to which appointment was made.
- Falsification of a relevant official statement, record or document; making any false statement, omission or misrepresentation of a material fact.
- Improper withdrawal or limitation of service or any action that interferes with or is disruptive of the City's mission of service to the public.
- Insubordination or insulting or demeaning the authority of a supervisor or manager; failure to cooperate with employee's supervisor and/or fellow employees.
- Willful or negligent disobedience of any law, ordinance, City policy, departmental regulation, or superior's lawful order.
- Misappropriation, misuse or damage of public property or waste of public funds or City property through negligent or willful conduct.
- Unauthorized possession or use of illicit narcotics, prescription medication, or alcohol.
- Conduct unbecoming an officer or employee of the City.
- Discourteous treatment of the public or other employees.
- Dishonesty.
- Working overtime without advance authorization.
- Retaliation against an employee who has engaged in a legally protected activity.
- Failure to obtain or maintain any certification, license, or other qualifications necessary to perform the job.
- Failure to notify a supervisor within two business days of any action taken to suspend, revoke, or otherwise negatively affect the employee's driver's license, when driving is necessary to perform the job.
- Engaging in acts of workplace violence or threats, whether direct or implied.



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- Violation of safety rules or practices; failure to comply with OSHA safety standards and City safety policies.
- Theft.
- Altering, falsifying, and/or tampering with time records or other official City records.
- Engaging in conduct that has the potential to endanger the health or safety of the employee or others.
- Unlawful or improper conduct that adversely affects the employee/employer relationship.
- Inappropriate or unauthorized use of City resources, including but not limited to tools and equipment, materials and supplies, vehicles, facilities, work time, and information technologies.
- Use of sick time and/or medical leave in a manner not authorized or provided for pursuant to City policies, Federal and/or State law.
- Conviction of a misdemeanor or felony, where the conviction has a nexus with the employee's duties. Conviction shall be construed to be a plea of nolo contendere or determination of guilt of the accused by a court.
- Unapproved outside employment or activity that violates the City's policy or other enterprise that constitutes an actual or potential conflict of interest with service to the City.
- Any conduct that impairs, disrupts or causes discredit to the City, its service to the public, or the employee's or another's City employment.
- Any action inconsistent with these policies, rules, ordinances or official department rules, including Policy 401, Work Rules.

#### **V. TYPES OF DISCIPLINE**

##### Verbal Reprimand

The verbal reprimand notifies the employee that his/her performance and/or behavior must be improved. Verbal reprimands are usually given by supervisors when counseling has failed to produce the desired changes. A verbal reprimand should be memorialized in writing as documentation of the conversation, but does not become part of the employee's official personnel file unless subsequent action is necessary. Verbal reprimands may not be appealed.

##### Written Reprimand

A written reprimand is a formal notice to an employee of a performance and/or behavior deficiency and that further disciplinary action will be taken unless his/her behavior and/or performance improves. A supervisor may reprimand an employee by issuing a written statement of the specific reasons for reprimand including facts pertaining to the unacceptable performance or conduct and the policies violated. A copy of the reprimand will be retained in the employee's official personnel file in Human Resources, and may not be appealed except as provided for below. The employee has the right to have a written rebuttal attached to the reprimand in the employee's personnel file. The employee has ten (10) days from the receipt of the reprimand to submit a rebuttal.

Sworn public safety officers and sworn firefighters have the right to administratively appeal written reprimands. Sworn public safety officers and sworn firefighters wishing to formally



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appeal a written reprimand must submit a written request to the Police Chief or Fire Chief, respectively, within ten (10) days of receipt of the written reprimand. Unless otherwise agreed, the employee will be provided with an administrative appeal, consistent with the *Skelly* conference procedures described in Section VI(2), before the Police Chief or Fire Chief, or his/her designee, within thirty (30) days. The decision of the Police Chief or Fire Chief or designee to sustain, modify, or dismiss the written reprimand is final. Once an employee has had an opportunity to read and initial any written reprimand prior to entering into a file, the employee shall be given an opportunity to respond in writing to any such written reprimand within thirty (30) days. Any such response shall be attached to and retained with the original reprimand.

#### Suspension

Suspension is the removal of an employee from his/her duties for cause and without pay. Suspensions are ordinarily used in situations involving misconduct for which a lesser action is not sufficient to address the behavior, or for a repeat offense. Documents related to suspension shall become a part of an employee's personnel file when the discipline becomes final. An employee subject to suspension is entitled to prior written notice and an opportunity to respond before final action is taken, as provided in Section VI below.

#### Reduction in Pay

An employee's pay may be reduced as a disciplinary measure. A reduction in pay for disciplinary purposes may take one of two forms: 1) a decrease in salary to a lower amount within the salary range, or 2) a decrease in salary for a fixed period of time. Documents related to a reduction in pay shall become part of the employee's personnel file when the discipline becomes final. An employee subject to a reduction in pay is entitled to prior written notice and an opportunity to respond before final action is taken, as provided in Section VI below.

#### Demotion

Demotion is the removal of an employee from his/her present classification and reassignment to a lower classification. Documents related to demotion shall become a part of an employee's personnel file when the discipline becomes final and will remain as part of the permanent record. An employee subject to demotion is entitled to prior written notice and an opportunity to respond before final action is taken, as provided in Section VI below.

#### Termination

Termination is the permanent removal of an employee from employment for cause. Documents related to termination shall become a part of an employee's personnel file when the discipline becomes final. A terminated employee is entitled to prior written notice and an opportunity to respond before final action is taken, as provided in Section VI below.

The City may choose to allow resignation as an alternative to involuntary termination. No employee can be compelled to resign; resignation must be voluntary. Employees who resign in lieu of accepting disciplinary action have not left employment in good standing and are not eligible for reinstatement or rehire. Employees who are permitted to resign in lieu of involuntary termination voluntarily forfeit all rights to appeal.



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Administrative Leave

A department head, in consultation with Human Resources, may place an employee on administrative leave with or without pay pending a potential disciplinary action. Administrative leave is authorized when the department head believes the employee's continued presence at the work site could have detrimental consequences for City operations, or pending investigation into charges of misconduct.

**VI. PRE-DISCIPLINARY PROCEDURE FOR SUSPENSION, REDUCTION IN PAY, DEMOTION, OR TERMINATION**

The process will not be implemented without prior consultation with the Human Resources Division.

1. Notice of Intent to Discipline

The employee will be provided a written notice of intent to discipline that contains the following:

- a) The level of discipline intended to be imposed;
- b) The specific charges upon which the intended discipline is based;
- c) A summary of the facts upon which the charges are based;
- d) A copy of all written materials, reports, or documents upon which the intended discipline is based, or a statement indicating how this information can be obtained;
- e) Notice of the employee's right to respond to the appropriate authority regarding the charges within ten (10) calendar days from the date of the Notice, either by requesting an informal *Skelly* conference, or by providing a written response, or both;
- f) Notice of the employee's right to have a representative of his/her choosing at the *Skelly* conference, should he/she choose to respond in person; and
- g) Notice that failure to respond at the time and date specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

2. Employee's Response and the *Skelly* Conference

- a) If the employee requests an informal *Skelly* conference to respond in person to the charge(s) in the Notice of Intent, the conference must be scheduled no later than ten (10) calendar days after the date the Notice of Intent is provided to the employee. The conference will be held at a date and time agreeable to both parties. The conference will be an informal meeting with a Department Head or his/her designee, at which the employee has an opportunity to rebut the charges against him/her and present any mitigating circumstances. The Department Head or his/her designee will consider the employee's presentation before final disciplinary action, if any, is imposed.



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- b) The employee's failure to make a verbal response at the arranged conference date and time, or the employee's failure to cause his/her written response to be delivered by the date and time specified in the Notice of Intent, constitutes a waiver of the employee's right to respond prior to the imposition of the discipline. In that situation, the proposed disciplinary action will be imposed on the date specified in the Notice of Intent.

3. Final Notice of Disposition

- a) Within ten (10) calendar days of receipt of the employee's timely written response or within ten (10) calendar days of the informal *Skelly* conference, or if no timely response is provided by the employee, the Department Head or designee will: (1) dismiss the Notice of Intent and take no disciplinary action against the employee, (2) modify the intended disciplinary action, or (3) impose the intended disciplinary action. In any event, the Department Head or designee will prepare and provide the employee with a Notice of Discipline that contains the following:
  - i. The level of discipline, if any, to be imposed and the effective date of the discipline;
  - ii. The specific charges upon which the discipline is based;
  - iii. A summary of the facts upon which the charges are based;
  - iv. A copy of all written materials, reports, or documents upon which the discipline is based or a statement indicating how the information may be obtained; and
  - v. A statement of the nature of the employee's right to appeal, if any.

**VII. APPEAL**

A regular employee may appeal a final notice of substantial discipline by delivering a written answer to the charges and a request for appeal to the City Manager. The written answer and request for appeal must be received no later than ten (10) calendar days from the date of the *Skelly* Officer's decision. A demotion, suspension of more than forty (40) hours, reduction in pay equivalent to the loss of the total sum of more than forty (40) hours regular pay, or termination constitutes substantial discipline for the purpose of this Policy.

**VIII. ADMINISTRATIVE HEARING PROCEDURE**

The following Administrative Hearing Procedure shall apply to an employee's appeal of substantial discipline.

- 1. The employee shall have ten (10) calendar days from the date he/she receives a written Notice of substantial discipline to file a written request to the City Manager for an Administrative Hearing. If the employee fails to file a timely written request to the City Manager for an Administrative Hearing, he/she shall be deemed to have waived his/her right to an Administrative Hearing.



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2. Upon the filing with the City Manager of an appeal, the City shall, within ten (10) calendar days, notify the employee the Hearing of the appeal shall be conducted in accordance with this procedure. A copy of this procedure shall be included with such notice.
3. The Hearing shall be set for the earliest mutually agreeable date, which shall not be less than ten (10) calendar days or more than sixty (60) calendar days from the date the request for appeal was received.
4. If the Hearing Officer mutually selected by the parties to hear the appeal is not available to conduct the Hearing within the time period specified, the parties shall select another Hearing Officer.
5. If the employee fails to appear, either personally or by his/her representative at the time and place set for the Hearing or pursuant to written stipulation of the parties, the appeal shall be dismissed, and the substantial discipline appealed from shall be deemed ratified.
6. The Hearing Officer shall issue subpoenas at the request of either party prior to the commencement of such Hearing. Whenever possible, subpoenas shall be served at least forty-eight (48) hours in advance of the time set for appearance or production of documents. The party requesting the subpoenas shall be responsible for its service.
7. The Hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but Hearings shall be conducted in a manner most conducive to determination of the truth as decided by the Hearing Officer. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence may be excluded. Decisions made by the Hearing Officer shall not be invalidated by any informality in the proceedings, and the Hearing Officer shall not be bound by technical rules of evidence.
8. Verbal evidence shall be taken only on oath or affirmation which shall be administered by the Hearing Officer. All relevant written evidence is admissible.
9. The City has the burden of proving, by a preponderance of the evidence, the facts that form the basis for the charge(s) of misconduct. The employee has the burden of proving, by a preponderance of the evidence, his/her affirmative defense, if any, upon which his/her appeal depends.
10. Copies of the reports and records of any governmental agency, division or bureau, will be accepted as evidence in lieu of the original thereof.
11. The Hearing Officer shall rule on the admission or exclusion of evidence.



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12. Each party may be heard in person or by representative, and may call and examine witnesses, introduce exhibits, and cross-examine and impeach any witness on any matter relevant to the issues. If the employee does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Refusal by any witness or party to submit to examination or to answer relevant questions shall be grounds for fair comment by the party proposing said questions.
13. The right of cross-examination of a physician on his/her written report may be deemed waived where the report of the physician has been filed with the Hearing Officer and served upon the parties at least five (5) days prior to the Hearing, or unless good cause has been shown for not producing the physician. The party submitting such a report shall, if asked by the imposing party, join in requesting the physician to appear at the Hearing; but the party initiating the request shall pay the physician such fee as may be fixed by the Hearing Officer, who may require that it be deposited in advance.
14. The Hearing shall proceed in the following order, unless the Hearing Officer, for good reason, otherwise directs:
  - a. The party imposing discipline shall be permitted to make an opening statement.
  - b. The appealing party shall be permitted to make an opening statement.
  - c. The party imposing disciplinary action shall produce the evidence on his/her/its part.
  - d. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof.
  - e. The parties may then, in order, respectively offer rebutting evidence only, unless the Hearing Officer for good reason, permits them to offer evidence upon their original case.
  - f. Arguments shall be permitted at the discretion of the Hearing Officer.
15. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the Hearing upon motion of either party.
16. No still photographs, moving pictures, or television pictures shall be taken in the Hearing chamber during a Hearing.
17. The Hearing Officer, prior to or during a Hearing, may grant a continuance for any reason he/she believes to be important to its reaching a fair and proper decision.
18. The Hearing Officer may avail himself/herself of advice from legal counsel appointed to him/her for all steps in the proceedings outlined in this Section VIII.
19. The Hearing Officer shall exercise his/her independent judgment to determine relevancy, weight, and credibility of testimony and evidence, and shall base his/her proposed factual findings on the preponderance of evidence.
20. The Hearing Officer shall, applying his/her independent judgment and based upon a preponderance of evidence, recommend the sustaining or rejecting of any or all of the





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factual charges filed against the employee. If, after applying his/her independent judgment and based upon a preponderance of the evidence the Hearing Officer determines the penalty imposed was not reasonable under the circumstances, he/she may recommend sustaining, rejecting, or modifying the penalty imposed against the employee.

21. The Hearing Officer shall render his/her findings and recommendations as soon after the conclusion of the Hearing as possible and in no event later than ten (10) working days after conducting the Hearing, unless otherwise stipulated by the parties. His/her advisory decision shall set forth the recommendations as to each of the charges and the reasons thereof.
22. The decision of the Hearing Officer is advisory only. The proposed decision shall be filed with the City Manager, and shall set forth all findings and recommendations. Copies of the proposed decision shall also be sent to the parties or their respective legal counsel. If a dismissal is not sustained, the proposed decision shall set forth the recommended effective date the employee is to be reinstated, which may be at any time on or after the date the disciplinary action went into effect. If the substantial discipline is not sustained, the proposed decision shall set forth the recommended action.
23. Either the employee or the City may file with the City Manager a written appeal of the Hearing Officer's proposed decision, findings and conclusions within ten (10) working days of the date of the Hearing Officer's proposed decision. The party filing the written appeal shall file the same with the City Manager and shall serve a copy upon the opposing party. The opposing party shall then have five (5) working days to prepare and file a written response to the appeal. The response shall be filed with the City Manager and also served upon the appealing party.
24. A party appealing the proposed decision of a Hearing Officer shall also request the preparation of a transcript for review by the City Manager.
25. The City Manager shall review the proposed decision of the Hearing Officer within ten (10) working days of the later of either: (a) the expiration of the period of time within which to appeal, if no appeal is filed, or (b) the receipt of the appeal and a copy of the transcript. The City Manager shall then promptly issue a written decision. The City Manager may ratify, modify or reverse the proposed decision of the Hearing Officer. The written decision of the City Manager shall be transmitted to the parties and/or their respective legal counsel. The decision of the City Manager shall be a final and binding administrative decision.

**IX. REMOVAL OF DISCIPLINARY DOCUMENTS**

At the conclusion of three (3) years and upon sustained improvement, an employee may request that non-substantial disciplinary documents (written reprimand, and suspension or reduction in pay of 40 hours or less) be removed from the personnel file. Such requests must be submitted in writing to the Human Resources Division.

At the conclusion of five (5) years and upon sustained improvement, an employee may request that substantial disciplinary documents (demotion, suspension or reduction in pay of more than forty (40) hours) be removed from the personnel file. Such requests must be submitted in writing to the Human Resources Division.



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*Applicable Laws: POBOR, FFBOR*