

City of Yuma, Arizona
ADMINISTRATIVE REGULATION

Issued by: **John D. Simonton**
Authority: City Administrator

SUBJECT:

DISCIPLINARY ACTION; MERIT BOARD APPEAL PROCESS

Issued: September 4, 2019

- 1.0 PURPOSE:** This Administrative Regulation sets forth the responsibility of all employees to observe the rules and regulations necessary for the proper operation of City government, by safely and satisfactorily performing their duties of City employment. The objective of disciplinary action is to correct or eliminate problems associated with performance, behavior or conduct.
- 2.0 APPLICABILITY:** This Administrative Regulation shall apply to all employees, with the following exceptions:
- 2.1** Unclassified employees, as defined by City of Yuma Personnel Rules, Section 5.1 which are probationary, temporary, part-time or provisional employees,
- 2.2** At-will employees as identified in the City Charter are not covered under Section 5 (Pre-Disciplinary Response Process), Section 6, (Notice of Disciplinary Action) and Section 8 (Merit System Board Appeal Process).
- 3.0 PROGRESSIVE DISCIPLINE** is defined as a series of increasingly severe actions designed to correct performance, or conduct problems. A process of progressive discipline may be followed to ensure that employees are afforded an adequate opportunity to correct unacceptable performance or conduct. However, in certain instances, the seriousness of the performance or conduct problem may lead to a more severe disciplinary action up to and including immediate dismissal from City employment. Also, The City reserves the right to grant a lesser penalty or clemency for any particular case or violation. Such action does not imply the cancellation of a rule, but is to be interpreted as recognition of an unusual or particular circumstance. Levels of progressive discipline are:
- 3.1 Oral Reprimand:** The verbal notification to an employee of dissatisfaction with job performance, incident of a rule violation or infraction, or misconduct.
- 3.2 Written Reprimand:** A written notification to the employee of dissatisfaction with job performance, incident of a rule violation or infraction, or misconduct. A written reprimand may also serve notice to the employee that unless there is an immediate and sustained improvement and correction in behavior or performance, that more severe disciplinary action will be taken. Written reprimands are placed in the employee's official personnel record, and remain until a decision, (if any) is made to remove the reprimand.
- 3.3 Suspensions:** The temporary separation from City employment without pay for any period of time.
- 3.4 Involuntary Demotion:** An action in which an employee is involuntarily demoted to a lower position which may be based upon either performance and/or conduct issues.

- 3.5** **Dismissal:** The involuntary separation and severance of the employment relationship between the employee and the City of Yuma.
- 4.0** **CONDUCT OR PERFORMANCE WHICH MAY RESULT IN DISCIPLINE:** The City will consider all performance, behavior and conduct issues to determine whether or not disciplinary action may be taken.
- 5.0** **PRE-DISCIPLINARY RESPONSE PROCESS:** Prior to any disciplinary action which results in a suspension, involuntary demotion or dismissal from employment, the employee will be provided the opportunity to respond, either orally or in writing, to the violations listed and action proposed.
- 5.1** The Department Director, or designee, will provide the employee a written notice of the proposed disciplinary action, clearly setting forth the effective date of the disciplinary action and the specific act or acts which constitute the basis for the action and the applicable rules, policies, laws or regulations which were violated.
- 5.2** The Department Director, or designee, will also provide an opportunity for the employee to present reasons why the proposed disciplinary action should not occur. The employee will be given no less than two (2) working days prior to the effective date of the proposed disciplinary action, in which to respond to the notice.
- 5.3** The Department Director will consider the information presented by the employee, when determining whether or not the proposed disciplinary action will be withdrawn, modified or upheld.
- 6.0** **NOTICE OF DISCIPLINARY ACTION:** After completion of the process in Section 5 above, the following actions will occur:
- 6.1** The Department Director will provide to the employee a written determination indicating whether or not disciplinary action will proceed or be modified.
- 6.2** If it is the Department Director's decision to proceed with disciplinary action, the determination will include the basis of the decision and the specific reasons for the disciplinary action.
- 6.3** If the disciplinary action is appealable (under Section 7 below), the employee has the right to request a hearing before the Merit System Board.
- 7.0** **APPEALABLE DISCIPLINARY ACTIONS:** A disciplinary action may be appealed to the City of Yuma Merit System Board when the action involves a Classified employee and the disciplinary action results in one of the following:
- 7.1** Suspension of more than 24 Hours (33.6 hours Fire Suppression) for non-law enforcement employees;
- 7.2** Any suspension for a law enforcement officer, per ARS § 38-1101.3;
- 7.3** Involuntary demotion;
- 7.4** Dismissal from City employment.

- 8.0** **MERIT SYSTEM BOARD APPEAL PROCESS AND TIME LIMITATIONS:** The process for an appeal shall be:
- 8.1** Any eligible employee, who wishes to file an appeal of eligible disciplinary action before the Merit System Board, must do so by filing a Request for Hearing form with the Human Resources office. The Request for Hearing form is available from Human Resources. The form must be filed within fourteen (14) calendar days after the date of receipt of the notice of disciplinary action or within seventeen (17) calendar days after the date of mailing of the notice of disciplinary action.
- 8.2** If, within the fourteen/seventeen (14/17) calendar day appeal period, the employee involved does not file said appeal, the action of the City will be considered conclusive and final, unless substantial good cause for the failure is shown. The Merit System Board Chairman or Hearing Officer will make the determination of “substantial good cause.” This decision will be final.
- 8.3** For any time limits used within this regulation, if the last date falls on a Saturday, Sunday or City holiday, the next City business day shall be the final day.
- 8.4** The Merit System Board is advisory only, and upon completion of an appeal hearing, will submit its written recommendation(s) to the City Administrator. The decision of the City Administrator to modify, revoke or uphold the disciplinary action is final and conclusive.
- 9.0** **NON-APPEALABLE DISCIPLINARY ACTIONS:** Any action which includes oral, written and suspensions of less than the noted hours in Section 7.1 through 7.2 are non-appealable. The decision of the Department Director is final on non-appealable disciplinary actions. Any performance evaluations and correction periods (including conditions imposed as part of the correction period) are also non-appealable.
- 10.0** **SUSPENSIONS FOR OVERTIME EXEMPT EMPLOYEES:** Employees who are Fair Labor Standards Act (FLSA) exempt from overtime payment will not be suspended for less than one full work week (40 hours or 56 hours for fire suppression) for violations of any policy, rule, regulation or law which are not determined to be a major safety violation under the FLSA regulations. However, a suspension may be imposed in one-week increments. A suspension may also be implemented in the form of a reduction in the leave accrual account for the Exempt employee.
- 11.0** **DISCIPLINARY ACTION OF SENIOR STAFF UNCLASSIFIED EMPLOYEES:** Senior Staff Unclassified employees are those employees in positions of a unique nature, administrative policy-making role and/or highly technical job responsibilities, which require a considerable degree of sound judgment and responsibility for decision-making on issues vital to the City, and who by a continued error in judgment could critically and adversely impact the total operation of the City. Any action taken relating to disciplinary matters or dismissal of a Senior Staff Unclassified employee shall only be for cause. All actions shall be thoroughly reviewed by the Department Director, City Attorney, Director of Human Resources, and the City Administrator.
- 12.0** **ADMINISTRATIVE REVIEW RIGHTS OF SENIOR STAFF UNCLASSIFIED EMPLOYEES:**
- 12.1** If a Senior Staff Unclassified employee is dismissed, s/he may request an administrative review before the City of Yuma Merit System Board to review the grounds for dismissal. Such request for review must be in writing and filed with Human Resources within

fourteen (14) calendar days of notice of dismissal. Upon receipt of such request, a review shall be held within sixty (60) calendar days, whenever possible.

- 12.2** Within fourteen (14) calendar days after conclusion of the review, the hearing board will submit a report to the City Administrator setting forth the Board's findings and recommendation.
- 12.3** The City Administrator is not required to take any action on this report and the dismissal of the Senior Staff Unclassified employee will be reaffirmed, unless revoked by the City Administrator, in writing, within fourteen (14) calendar days of receipt of the board's report.
- 13.0** **CITY'S RIGHT TO WAIVE OR AMEND:** When it is deemed in the best interest of the City to do so, the City Administrator, or designee, may waive or amend any portion of this Regulation, not in conflict with the Personnel Rules, City Charter or City Ordinance.