

ARTICLE X. - DISCIPLINARY ACTIONS AND NONDISCIPLINARY SUSPENSIONS

Sec. 54-341. - Disciplinary actions.

It is the policy of the city to resolve employee problems as they develop and, whenever possible, before they actually develop, through counseling, proper supervision, training, and informal dialogue. This approach is intended to accommodate individual differences in employees as well as allow employees to make corrective changes in their behavior and performance patterns for both the benefit of themselves and the city. However, if informal discussions are unsuccessful, disciplinary action shall be taken in accordance with this article. The city manager is exempt from coverage under this article.

(Ord. No. 2012-178, § 1, 11-27-12)

Editor's note— Ord. No. 2012-178, § 1, adopted November 27, 2012, amended § 54-341 to read as set out herein. Former § 54-341 pertained to general policy; exemption of city manager and was derived from Ord. No. 1994-43, art. X, § 1, adopted July 26, 1994.

Sec. 54-342. - By whom imposed and reason therefore.

- (a) *Authority to take action; cause.* Disciplinary action may be taken against an employee by that employee's department head, with the concurrence of the human resources director, except that only the city manager may suspend an employee for more than three working days or dismiss an employee. Subject to section 54-160, all disciplinary actions taken against an employee must be for "cause". Failure in performance of duties, violations of law, ordinance, rules or regulations, failure in personal conduct, or failure to meet or maintain required conditions of employment constitute cause.
- (b) *Police personnel.* Employees who fall under the jurisdiction of the police civil service board are subject to the conditions and protection as provided by section 42 of the Charter.
- (c) *Suspensions.* All disciplinary suspensions are without pay and are measured in actual work days.

(Ord. No. 2012-178, § 1, 11-27-12)

Editor's note— Ord. No. 2012-178, § 1, adopted November 27, 2012, amended § 54-342 to read as set out herein. Former § 54-342 pertained to imposition of disciplinary action and was derived from Ord. No. 1994-43, art. X, § 2, adopted July 26, 1994 and Ord. No. 1997-42, § 2, adopted August 26, 1997.

Sec. 54-343. - Warnings before disciplinary action.

Whenever practical, before disciplinary action is taken, an employee shall be counseled and warned that a particular course of conduct or pattern of performance will result in disciplinary action, and all efforts should be made to assist the employee in improving his/her conduct or performance. The human resources director shall require proof of counseling and warnings, in writing, whenever feasible before disciplinary action is taken.

(Ord. No. 2012-178, § 1, 11-27-12)

Editor's note— Ord. No. 2012-178, § 1, adopted November 27, 2012, amended § 54-342 to read as set out herein. Former § 54-342 pertained to warnings prior to taking disciplinary action and

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was derived from Ord. No. 1994-43, art. X, § 3, adopted July 26, 1994 and Ord. No. 1997-42, § 2, adopted August 26, 1997.

Sec. 54-344. - Notification of disciplinary action.

Before any discipline is imposed, an employee shall be informed by his/her department head of the precise nature of the discipline, the reasons for the discipline, and the date and time the discipline is to become effective. Whenever practical, this notification shall be given in writing before the discipline is imposed, and, if this is not possible, then the written notification shall be given to the employee as soon thereafter as is feasible.

(Ord. No. 1994-43, art. X, § 4, 7-26-94; Ord. No. 2012-178, § 1, 11-27-12)

Sec. 54-345. - Effective date and time—Disciplinary action.

Except when the department head determines that any delay in the imposition of discipline would diminish its effectiveness or would be detrimental to the city, employees or others, the department head shall provide the employee with at least three working days' notice before the proposed disciplinary action is to take effect.

(Ord. No. 2012-178, § 1, 11-27-12)

Editor's note— Ord. No. 2012-178, § 1, adopted November 27, 2012, amended § 54-345 to read as set out herein. Former § 54-345 pertained to effective date of disciplinary action and was derived from Ord. No. 1994-43, art. X, § 5, adopted July 26, 1994.

Sec. 54-346. - Procedures for recommendations—Disciplinary actions.

- (a) *Authority of department heads and supervisors.* A department head may recommend and take disciplinary action with the concurrence of the human resources director that is not more severe than suspension for three working days. Supervisors may take, with the concurrence of the department head, disciplinary action in the form of oral and written warnings.
- (b) *Recommendations to city manager.* A department head may recommend that disciplinary action that is solely within the prerogative of the city manager (suspension for more than three working days and upward in severity) be taken. Such a recommendation shall first be made in writing and sent along with supportive documentation to the human resources director for review.

Upon review completion, the human resources director will forward the recommendation to the city manager for approval or disapproval. At this point, a copy of the recommendation shall be given to the affected employee. If the recommendation is for dismissal, it shall contain a proposed dismissal date, which shall not be less than five work days after a copy of the recommendation is furnished to the affected employee.

- (c) *Continuation of suspension pending outcome of appeal.* Should a department head suspend an employee for three work days and recommend that the employee be dismissed, the city manager may continue the suspension pending the outcome of any appeal. The department head shall notify the employee in writing of the city manager's decision at the earliest possible time that the suspension is being continued.

(Ord. No. 2012-178, § 1, 11-27-12)

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Editor's note— Ord. No. 2012-178, § 1, adopted November 27, 2012, amended § 54-346 to read as set out herein. Former § 54-346 pertained to recommendation of disciplinary action and was derived from Ord. No. 1994-43, art. X, § 6, adopted July 26, 1994 and Ord. No. 1997-42, § 2, adopted August 26, 1997.

Sec. 54-347. - Emergency suspension.

- (a) When it is determined by the department head that any employee has committed an extremely serious violation of ordinance, policy or procedure, or that the best interest of the city would be served given a certain circumstance, the department head may impose an emergency suspension on the employee. Such suspensions will originate as non-disciplinary suspensions with pay and will last no longer than one working day.
- (b) Should the department head impose an emergency suspension, the human resources director and the city manager are to be notified of the suspension and the reasons for the suspension as soon as feasible, but no later than 24 hours after the suspension took effect.
- (c) Should a disciplinary action arise out of the circumstances which brought on the emergency suspension, then all procedures shall be governed by this article.

(Ord. No. 1994-43, art. X, § 7, 7-26-94; Ord. No. 1997-42, § 2, 8-26-97; Ord. No. 2012-178, § 1, 11-27-12)

Sec. 54-348. - Appeal of disciplinary action.

- (a) An employee may appeal any disciplinary or proposed disciplinary action subject to section 54-342, to the city manager. The appeal may be decided by the city manager after a review of any written documents submitted by the appellant and the department head who imposed the discipline, or at the request of the appellant, department head, or city manager, a hearing may be held in accordance with section 54-349.
- (b) An appeal shall be perfected within three work days after the employee receives notice of the proposed disciplinary action or, if the disciplinary action becomes effective immediately (without the three-day delay provided for in section 54-345), within three work days after such disciplinary action becomes effective.
- (c) An appeal is perfected by an appellant filing with the city manager a written notice of appeal, briefly stating the action appealed and the reasons for the appeal. A copy of this written notice of appeal shall be furnished by the appellant to the respective department head and the human resources director.
- (d) If the discipline has not taken effect at the time an appeal is perfected, then the appeal automatically stays the proposed disciplinary action until after the appeal is decided. Should discipline already be in effect as provided for by section 54-345, the city manager may elect to stay the disciplinary action until after the appeal is decided.
- (e) An appeal shall be considered by the city manager at the earliest convenient time, but not later than ten working days after the appeal is filed.

(Ord. No. 1994-43, art. X, §§ 8—11, 7-26-94; Ord. No. 1997-42, § 2, 8-26-97; Ord. No. 1997-43, § 1, 8-26-97; Ord. No. 1997-44, § 1, 8-26-97; Ord. No. 2012-178, § 1, 11-27-12)

Sec. 54-349. - Disciplinary hearing.

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- (a) If the appellant, department head or the city manager requests a disciplinary hearing, an oral hearing shall be held. The hearing shall be closed to the public.
- (b) The appellant and the respective department head shall be given at least three working days' notice of the date, location and time of the hearing, in writing, by the human resources director.
- (c) Unless the appellant is a department head, the department head shall present the reasons why the discipline imposed or to be imposed is justified. The department head may introduce any evidence of documentation deemed appropriate. The employee (appellant) shall then have an opportunity to ask questions, present evidence, including oral or witness testimony, or otherwise attempt to convince the city manager that the disciplinary action is not justified.
- (d) The appellant may be represented by counsel.
- (e) If the appellant is a department head, then the city manager shall present to the department head the reasons for the discipline, and the department head shall then have the opportunity to respond in the same manner as other appellants.
- (f) All disciplinary hearings shall be attended by the city manager, human resources director, the respective department head, the appellant and his/her counsel (if any). The city attorney shall attend those hearings which involve separation and any other hearings at the request of the city manager. All hearings will be tape recorded in full in order that a complete record of the hearing may be maintained.

(Ord. No. 2012-178, § 1, 11-27-12)

Sec. 54-350. - Decision of disciplinary actions.

- (a) The city manager shall decide the appeal as expeditiously as possible, and, in particular, every effort shall be made to decide any appeal of disciplinary action that has not yet taken effect before the proposed effective date of such action.
- (b) The city manager may take any action with respect to disciplinary appeals that he deems appropriate, consistent with this ordinance, including, but not limited to, increasing or decreasing the disciplinary sanction. Should the city manager permit the appellant to remain an employee of the city, he may require the appellant to serve such additional period of probation as he/she may deem appropriate. The city manager shall inform the appellant and the respective department head of his/her decision and the reasons for it, in writing.
- (c) The city manager may impose probationary periods as part of the discipline process. During such periods, the employee shall be considered as any new employee on probation except for provisions limiting leave benefits.
- (d) If any employee has been suspended and the city manager finds the suspension to have been unwarranted, then the employee shall be entitled to receive all lost wages and benefits.
- (e) If the city manager sustains an employee's appeal (at least in substantial part), the city manager may authorize partial or full payment by the city of reasonable fees incurred by the employee for legal representation.

(Ord. No. 2012-178, § 1, 11-27-12)

Sec. 54-351. - Finality of decision.

The decision of the city manager shall be conclusive and final, and there shall be no further appeal.

(Ord. No. 2012-178, § 1, 11-27-12)

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Sec. 54-352. - Non-disciplinary suspension.

- (a) With the approval of the city manager, a department head may impose a non-disciplinary suspension (with or without pay) on any employee who has been accused of some action which, if the accusation is substantiated, would constitute cause for disciplinary action. There may be no appeal from a non-disciplinary suspension.
- (b) If a non-disciplinary suspension is imposed, the employee shall be notified in writing:
 - (1) That the suspension is non-disciplinary;
 - (2) That the suspension is temporary in nature (for example, pending the outcome of a criminal trial or internal investigation);
 - (3) What the accusations or allegations are that triggered the non-disciplinary suspension; and
 - (4) Why a non-disciplinary suspension has been imposed in this particular case.
- (c) If it is determined (through a criminal trial, internal investigation or otherwise) that the charges are not substantiated, then the employee shall be reinstated with full recovery of any lost wages or benefits.
- (d) If it is determined that the charges are substantiated, then appropriate disciplinary action may be taken in accordance with this article. If an employee has been suspended without pay pending the outcome of the investigation and the employee is not dismissed and the discipline imposed is less severe than the suspension without pay the employee has already experienced, the employee may be entitled to partial recovery of lost wages or benefits, according to the discipline imposed.

(Ord. No. 1994-43, art. X, § 12, 7-26-94; Ord. No. 2012-178, § 1, 11-27-12)

Editor's note— Ord. No. 2012-178, § 1, adopted November 27, 2012, created a new §§ 54-349—54-351 renumbered §§ 54-349—54-351 as §§ 54-352—54-354.

Sec. 54-353. - Role of human resources department.

Throughout the disciplinary and non-disciplinary procedure, the role of the human resources department shall be to advise all parties of their rights and responsibilities under this ordinance and other related policies, to be a clearinghouse for information and decisions, to give notice to all parties, to assist in drafting statements and to resolve conflicts in procedures.

(Ord. No. 1994-43, art. X, § 13, 7-26-94; Ord. No. 1997-42, § 1, 8-26-97; Ord. No. 2012-178, § 1, 11-27-12)

Editor's note— See note at § 352.

Sec. 54-354. - Coverage.

The city manager may take disciplinary action against or impose non-disciplinary suspensions against any employee, including department heads. In taking such actions against department heads, the city manager shall be guided to the extent feasible by the procedures set forth in this article.

(Ord. No. 2012-178, § 1, 11-27-12)

Editor's note— Former § 54-354 pertained to authority of city manager and was derived from Ord. No. 1994-43, art. X, § 14, adopted July 26, 1994. See note at § 352.

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Secs. 54-355—54-380. - Reserved.