

## **RULE 5 - DISCIPLINARY AND APPEAL PROCEDURES**

### **Section 1. Notice of Disciplinary Action of Dismissal, Demotion or Suspension**

- A. If a Department Director determines that a classified, regular employee should be dismissed, demoted, or suspended, the Department Director shall prepare a written pre-disciplinary notice which shall state the specific reason(s) and supporting evidence for the disciplinary action with sufficient specificity to enable the employee to understand the reasons for the action. The pre-disciplinary notice shall be coordinated with the Human Resources Director. The notice generally shall be provided in person to the employee. If circumstances preclude personal delivery to the employee, then the notice shall be mailed by certified mail to the most recent known address. A signed receipt from the employee shall be attached to a copy of the pre-disciplinary notice and filed with the Human Resources Director.
  
- B. Within three (3) working days from the date the pre-disciplinary notice is personally delivered to the employee, the employee may respond to the Department Director stating why the proposed disciplinary action should not be taken. If the pre-disciplinary notice is mailed to the employee, the employee shall have five (5) work days to respond from the date the notice is mailed. The response shall be submitted in writing by the employee. At the Department Director's discretion, the employee may be permitted to provide a verbal response instead of the required written response. Within three (3) working days after receipt of the employee's response, the Department Director shall review the pre-disciplinary notice and the employee's response and determine whether there are reasonable grounds to believe that the reasons for disciplinary action are true and support the proposed action. If the Department Director requires more time to make a determination, the Department Director may request through the Human Resources Director an extension from the City Manager. If the Department Director determines that there are not reasonable grounds for the proposed disciplinary action, the Department Director shall submit to the employee and the Human Resources Director a written withdrawal of the pre-disciplinary notice. The withdrawal of the notice does not preclude the Department Director from taking any other disciplinary action authorized by the Personnel Rules.
  
- C. If the Department Director determines that there are reasonable grounds for disciplinary action, the Department Director shall provide the employee with a final notice. The final notice shall state the specific reason(s) for the disciplinary action with sufficient specific information to enable the employee to understand the reasons for disciplinary action. Alternatively, the final notice may incorporate the pre-disciplinary notice by reference and

such incorporation shall constitute sufficient specific information concerning the reasons for disciplinary action. Such notice shall be coordinated with the Human Resources Director and personally delivered to the employee or mailed by certified mail to the most recent known address. Service is complete upon mailing. A signed receipt from the employee shall be attached to a copy of the final notice and filed with the Human Resources Director. All classified regular employees may avail themselves of the appeal procedure as provided in this Rule.

## **Section 2. Dismissal**

The Department Director may determine the dismissal of an employee is warranted for disciplinary purposes in accordance with Section 5 of the Rule. Written notice of the dismissal shall be coordinated with the Human Resources Director and provided as set forth in Section 1 of this Rule. All classified regular employees may avail themselves of the appeal procedure provided by the Rule if dismissed.

## **Section 3. Involuntary Demotion**

- A. The Department Director may demote an employee whose ability to perform the required duties falls below the minimum requirements of the classification or for disciplinary purposes in accordance with Section 5 of this Rule. Written notice of the demotion shall be coordinated with the Human Resources Director and provided as set forth in Section 1 of this Rule.
- B. An employee who is demoted to a class with a lower salary grade shall be paid at a rate fixed by the Department Director in coordination with the Human Resources Director. The demoted employee shall be assigned a new classification date effective upon demotion. All classified regular employees may avail themselves of the appeal procedure provided by the Rule if involuntarily demoted.

## **Section 4. Suspension Without Pay**

- A. The Department Director may suspend an employee without pay at any time for disciplinary purposes in accordance with Section 5 of this Rule. Suspension without pay shall not exceed thirty (30) consecutive calendar days, nor shall any employee be suspended without pay for more than thirty (30) work days in any twelve (12) month period. Employees of exempt status, as defined by the Fair Labor Standards Act (FLSA), may not be suspended without pay for periods of less than one (1) workweek, except

as provided under the FLSA for violations of significant workplace conduct or safety rules, and regulation, and policies

- B. The employee shall be notified of any suspension without pay in writing as set forth in Section 1 of this Rule. All classified regular employees may avail themselves of the appeal procedure provided by this Rule if suspended without pay.

### **Section 5. Reasons for Disciplinary Action Up to and Including Dismissal**

- A. The tenure of every employee in the City service shall be contingent upon acceptable conduct and satisfactory performance of duties.
- B. The following shall constitute grounds for dismissal, demotion or suspension:
  - 1. The employee is incompetent or inefficient in the performance of assigned duties.
  - 2. The employee has displayed an improper or abusive attitude; or the employee displayed improper or abusive conduct which resulted in, or caused a risk of physical harm, injury, or damage to another person or to property.
  - 3. The employee can no longer perform the essential duties of the job and reasonable accommodations cannot be made.
  - 4. The employee has violated any lawful or official rule, policy, regulation, or order, or failed to obey any lawful and reasonable order given by a supervisor with authority to issue such order.
  - 5. The employee has taken for personal use a fee, gift, or other valuable item(s) in the course of assigned duties, or in connection with assigned duties. However, recognition of individual employee achievement, in the form of letters of recognition or plaques, which have only intrinsic value, are allowed if approval by the Department Director is obtained.
  - 6. The employee has used, threatened to use, or attempted to use, political influence for personal gain or for any other person in securing employment benefits or advantages.
  - 7. The employee has violated the City's Drug-Free Workplace Policy as announced by the City Manager.

8. The employee has been convicted of a felony, or a misdemeanor involving moral turpitude when such conviction would be detrimental to the conduct of the employee's City business.
9. The employee has made a false statement, written or oral, attempting to conceal any past or present criminal activity.
10. The employee, through negligence or willful conduct, has caused damage to public property or waste of public supplies or funds.
11. The employee has been absent without approved leave.
12. The employee has engaged in unauthorized activities which are not job related on City time, or on City property, or has used City property for personal gain.
13. The employee has directly or indirectly received or paid any assessment, subscription or contribution for the purpose of electing any candidate to a municipal public office or political party on City property or during working hours.
14. The employee has engaged in improper political activities as prohibited by Rule 1 Section 16.
15. The employee has abused sick leave privileges.
16. The employee has engaged in conduct which might bring discredit to the City service.
17. The employee has falsified City records.
18. The employee has lied about a job related matter or made a material misrepresentation during an investigation.
19. The employee has stolen city property.
20. The employee has engaged in the surreptitious recording of conversations of other City Employees.
21. The employee has engaged in any other conduct of equal gravity to the reasons enumerated in this rule.

## **Section 6. Appeals Procedure**

- A. A regular classified employee who has completed the probationary period may appeal any dismissal, demotion, or suspension to the City Manager and the Merit System Board by submitting the appeal in writing to the City Manager through the Human Resources Director. The appeal shall be made within five (5) workdays of receipt of the written notice of dismissal, demotion, or suspension if the notice has been personally delivered to the employee. If the notice has been sent by certified mail to the employee, the employee shall also have five (5) work days to appeal from the date the notice is mailed. Any dismissal, demotion, or suspension shall take effect on the date indicated in the dismissal, demotion, or suspension order despite any pending appeal. The appeal procedure shall normally be a two-step process. However, the City Manager may at any time refer the appeal directly to the Merit System Board.
  - 1. The City Manager, or designee, shall first review and make a decision on the appeal in accordance with the Disciplinary Review Group procedures described in this Rule.
  - 2. If the employee is not satisfied with the City Manager's decision resulting from disciplinary Review Group Process, the employee may further appeal to the Merit System Board following the procedures in this Rule.
- B. No appeal shall be considered if more than five (5) workdays have elapsed from the date of the written notice of dismissal, demotion or suspension if the notice is personally delivered to the employee, or five (5) work days from the date any such notice is mailed if not personally delivered.

### **Section 7. Disciplinary Review Group Process**

- A. The purpose of the Disciplinary Review Group is to review appeals of disciplinary actions involving dismissal, demotion, or suspension of regular employees and provide the City Manager with as much information on personnel appeals as is possible prior to the City Manager, or designee, rendering a decision on the appeal. The Disciplinary Review Group shall consist of three persons, as indicated below:
  - 1. The Human Resources Director, or designee, shall act as President of the Disciplinary Review Group. In the event the Human Resources Director has a conflict of interest in regard to an appeal to be heard, the City Manager shall appoint a senior member of the staff, who has no direct connection with the appeal to be heard, to serve as Alternate President.

2. A member of the Employee Council or other employee organization as provided by Memorandum of Understanding. Except as otherwise provided in a Memorandum of Understanding, the member will be selected on a rotational basis from among those members of the Employee Council who have volunteered to serve on the Disciplinary Review Group. An Employee Council member may not serve on the Disciplinary Review Group if the member has a direct connection with, or works in the same Department as, the employee whose appeal is being heard.
  3. One Department Director, reporting directly to the City Manager, who is assigned to a department other than the employee's department and who has no direct connection with the employee whose appeal is to be heard. The City Manager shall designate the Department Director.
- B. The duties of the Disciplinary Review Group are to conduct internal, administrative reviews of appeals filed by any employee subject to these rules regarding dismissal, demotion, or suspension. The Group shall forward a written report including a recommendation, if any, to the City Manager, or designee.
  - C. If a written notice of appeal is timely filed in accordance with this Rule, the Disciplinary Review Group President shall convene a review within twenty (20) workdays of the notice of appeal. The review shall be private and shall not be an adversarial proceeding. Neither the employee nor any supervisor requested to appear at the disciplinary review proceeding shall be permitted representation at the proceedings. The Disciplinary Review Group shall be an administrative function of the City Manager's office.
  - D. The President shall notify, in writing, the other Disciplinary Review Group members, the employee, the employee's Department Director, the City Manager, and any other person the group wants to call to ascertain the facts, of the time, place, and location of the review.
  - E. The Disciplinary Review Group shall meet individually with the employee and any other persons the group wants called. In addition, Department Directors will be provided the opportunity to present information at the Disciplinary Review Group proceeding if they would like to do so. Each person shall be given the opportunity to present their understanding of the facts to the challenged disciplinary action and shall answer any questions asked by the Disciplinary Review Group.
  - F. Within ten (10) work days following the completion of the review, the Disciplinary Review Group shall furnish the employee and the City Manager, or designee, with a report of the review and its recommendations.

If circumstances preclude completion of such a report within ten (10) work days, the Disciplinary Review Group President may request an extension of no more than five (5) work days from the City Manager.

- G. Within ten (10) workdays following the issuance of the Disciplinary Review Group's report, the City Manager, or designee, shall review the report and issue a written decision. The City Manager, or designee, may extend the time limit for the decision by giving written notice to the employee. A copy of this decision shall be given to the Department Director and the employee or the employee's representative. If the decision is personally delivered to the employee, the employee shall sign and acknowledge receipt of the decision. If notice of the decision is mailed, it will be sent certified mail requiring a return receipt. Service is complete upon mailing. The City Manager, or designee, may defer a decision and refer the appeal directly to the Merit System Board.
- H. If the employee is dissatisfied with the City Manager's decision, the employee may appeal the decision to the Merit System Board within three (3) work days after the decision is personally delivered to the employee, or the employee's representative, or within five (5) work days after the notice is mailed if mailed to the employee, or the employee's representative, rather than personally delivered. An appeal shall be made by filing a written request with the Human Resources Director. Filing may be accomplished by e-mail, facsimile, hand-delivery, or U.S. Mail but must be received by the Human Resources Director within the required time frames. The Human Resources Director, or designee, shall transmit the request for appeal to the Chairperson of the Merit System Board and the City Manager by e-mail or U.S. Mail. The transmittal shall include a description of the actions taken by the Disciplinary Review Group and the City Manager, or designee. A copy of the Disciplinary Review Group's report and recommendations, if any, will accompany this transmittal.

### **Section 8. Merit System Board Hearing Process**

- A. The City of Chandler Charter Merit System Board shall be established in accordance with Section 4.02 of the City of Chandler Charter and Merit System Board Rules of Procedure.
- B. The functions of the Merit System Board shall be:
  - 1. To conduct appeal hearings involving dismissal, suspension, or demotion of regular employees as provided by these Rules.

2. To review amendments and changes to these Rules and submit recommendations to the City Manager upon request of the City Manager.
  3. Upon request of the City Manager, to investigate and make recommendations on any matter of personnel policy.
- C. Within five (5) work days of the receipt of a validly filed appeal, the Board Chairperson shall decide whether or not to appoint a Hearing Officer to hear the appeal. If the Chairperson does not refer the matter to a Hearing Officer within five (5) work days of receipt of the appeal, the matter shall be deemed to be heard by the Board.
  - D. When an appeal is referred to the Merit System Board for hearing, the Board Chairperson shall use best efforts to schedule the hearing at the earliest possible mutually convenient time. Except as provided herein and in the Merit System Board Rules of Procedure, the hearing shall be scheduled to commence within sixty (60) work days after the appeal was filed, unless both parties agree in writing to a later date. The hearing may be conducted in one or more meetings and for good cause may be continued by the Board Chairperson as long as necessary to assure fair treatment of all parties.
  - E. The employee may present the appellant's case but shall have the right to be represented by legal counsel of the employee's choosing, which shall be at the employee's expense. The City Attorney, or designee, shall represent the Department Director and City in support of the disciplinary action.
  - F. Within five (5) work days of the issuance of a Scheduling Order in accordance with the Merit System Board Rules of Procedure, the board Secretary shall provide written notice to the employee, the employee's representative, the City Attorney, the City Manager, and the Mayor and City Council of the time, place, and location of the hearing.
  - G. The Merit System Board appeal proceedings shall be conducted in accordance with the Merit System Board Rules of Procedure. All Merit System Board hearings shall comply with Arizona Open Meetings Law and Public Records Law.
  - H. Within seven (7) work days of the conclusion of the Merit System Board Hearing regarding the employee's appeal, the Board's Findings and Advisory Opinion shall be transmitted to the City Manager. Copies shall be provided to the employee, Human Resources Director, and City Attorney.



- I. Following receipt of the Merit System Board's Findings and Advisory Opinion, the City Manager shall render a written, dated decision to the employee, the City Attorney and the Department Director. A copy of the decision shall be provided to the employee's representative, the Human Resources Director, and the Merit System Board. The City Manager may include in the decision an order for the reinstatement of any or all back pay and/or allowances which may be due the employee because of the dismissal, suspension, or demotion. There is no appeal from this decision. The decision shall normally be issued within ten (10) work days after receipt of the Merit System Board's recommendation unless circumstances preclude the City Manager from making a decision within that time frame.

## **Section 9. Hearing Officer**

The Chairperson of the Merit System Board may appoint a person who is not a City employee to serve as hearing officer for any appeal to the Merit System Board. Hearing officers shall conduct proceedings as set forth in the Merit System Board Rules of Procedure.

Revised – November, 2013 – Resolution No. 4728  
Revised – September 2011 – Resolution No. 4536  
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Revised – August 1999 – Resolution No. 3401  
Revised – May 1995 – Resolution No. 2313  
Revised – June 1993 – Resolution No. 2152  
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Revised – December 1989 – Resolution No. 1778  
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