

# City of Hickory

## Disciplinary Action

### Predisciplinary Conference

### Grievance

## Policy and Procedure

### DISCIPLINARY ACTION

#### 1. Policy

All City employees are required to conduct themselves in a professional and productive manner and in compliance with City and departmental policies and rules. Disciplinary action may be taken when an employee fails to perform work at a satisfactory level or engages in conduct that is unacceptable to the City.

#### 2. Representation

The disciplinary action process, predisciplinary conference and grievance conferences shall be closed. No legal or personal representative may accompany the employee at any stage during the above listed processes.

#### 3. Procedures

- A. Performance of Duties – An employee may be reprimanded, suspended, demoted, or dismissed by the department head if he/she fails to perform work up to the standard of the position classification which the employee holds. Before taking such action, the following steps shall be taken:
1. A regular full-time employee whose work is not satisfactory shall be notified in what way his/her work is deficient and what he/she must do if the work is to be satisfactory.
  2. The notice of employee deficiency shall be in writing and copies given to the employee and Administrative Services Director or his/her designee for inclusion in personnel records.
  3. The department head will review the written notice of deficiency with the employee.
  4. The deadline for the correction to be made should be stated in the notice of deficiency and should be a reasonable amount of time.
  5. The department head should make certain that the employee's performance ratings are consistent with the proposed action.

- B. Personal Conduct – An employee may be reprimanded, suspended, demoted, or dismissed when he/she engages in conduct that is unacceptable to the City.
- C. During the investigation, trial or appeal of an employee on any criminal charge, or during the course of any civil action involving an employee, or when suspension would be in the best interests of the employee or the governmental unit, the department head or the manager may suspend the employee without pay. The department head shall confer with the Administrative Services Director or his/her designee on the proposed suspension.
  - 1. During such suspension without pay the employee's pay-related benefits to include sick leave and vacation leave accumulation shall also be suspended.
  - 2. The employee shall be required to pay the full costs of medical and life insurance premiums after the thirtieth (30<sup>th</sup>) day of such suspension; failure to pay premiums will result in the termination of benefits.
  - 3. When such suspension shall be terminated by full reinstatement of the employee, all pay-related benefits shall be reinstated for the period of the suspension as well as the repayment to the employee of the city's portion of medical and insurance premiums and retirement contributions.
  - 4. When such suspension is terminated by dismissal of the employee, the aforementioned pay related benefits shall not be recoverable.

## **PREDISCIPLINARY CONFERENCE**

### **1. Policy**

In accordance with the due process rights afforded by the Fourteenth Amendment to the United States Constitution, the City Manager or appropriate department head will conduct a predisciplinary conference before taking any disciplinary action which would result in the employee's losing a right (money or status) through demotion, suspension without pay for more than five days, or dismissal.

### **2. Employees Affected**

- A. Only regular full-time employees who have completed their new hire probationary period are affected by this policy.

### 3. Procedure

- A. The department head will discuss the situation with the Administrative Services Director or his/her designee prior to conducting the predisciplinary conference.
- B. Provide notice to the employee of the conference, either orally or in written form.
  - 1. It is acceptable to give same day notice, provided that the employee is given notice at least two hours prior to the conference.
  - 2. Schedule the predisciplinary conference during business hours. Business hours, for the purposes of this policy, are defined as Monday through Friday, 7:00 a.m. until 5:00 p.m. If, due to shift work, work away from the office or other scheduling difficulty, the hearing cannot take place during those hours, the Administrative Services Director may grant an exception.
  - 3. The preferred method of delivery of the notice is in writing. A verbal notice is only acceptable if circumstances are such that a written notice cannot be produced. If the notice is verbal, the department head shall follow up with a memo to the employee, confirming that he/she was verbally notified.
  - 4. Tell the employee that you are holding a predisciplinary conference to discuss a proposed personnel action in accordance with the predisciplinary conference policy.
- C. The Administrative Services Director or his/her designee shall serve as a "neutral advisor". This advisor is a witness not only on behalf of the City as to the impartial, informal predisciplinary conference but also serves as a witness to what the employee is told and to the employee receiving a full and fair opportunity to present his/her side of the situation.
- D. Conduct an informal, objective, impartial predisciplinary conference.
  - 1. Present the allegations and provide a full opportunity for the employee to present defenses or reasons against the allegations.
  - 2. Do not make a decision at the end of this predisciplinary conference, and do not have a pre-prepared letter concerning the disciplinary action, since this is perceived under the law as being a preconceived decision. Wait at least 24 hours before making a final decision.
  - 3. Either audio-record the predisciplinary conference or take notes of the conference. The audio recording or notes are the property of the City and will not be given to the employee. The employee may record the meeting as well.
- E. If the final decision is to take disciplinary action, put that decision in writing listing specific reasons for the decision being made. A Notice of Personnel Action form should be used for this purpose. Give a copy of the written decision to the employee and send a copy to the Human Resources Division for inclusion in the employee's personnel record.

F. Notify the disciplined employee that provisions of the formal grievance procedure are available after any suspension, demotion, or dismissal has taken place. The predisciplinary conference does not replace the formal grievance procedure.

#### 4. Penalties for Failure to Conduct a Proper Conference

A procedural due process violation can result in a lawsuit against the City. Remedies under such a lawsuit include back wages. Reinstatement is not a remedy if the employer can prove that the employee would have been dismissed if the proper hearing had been held.

## GRIEVANCE

### 1. Purpose

The grievance policy and procedure provide an adequate and fair means for hearing matters of concern to City employees.

### 2. Employees Affected

This policy applies to all regular, full-time employees who do not fall within a new hire probationary period.

### 3. Definition

A grievance is a claim or complaint based upon an event or condition that affects the circumstances under which an employee works or his/her employment relationship with the city, allegedly caused by misinterpretation, unfair application or lack of established policy pertaining to conditions of work or disciplinary actions. A grievance might involve alleged safety or health hazards, unfair or discriminatory supervisory or disciplinary practices, misapplication of departmental work rules, unsatisfactory physical facilities or equipment, or other complaint related to conditions of work or disciplinary actions.

### 4. Procedures

When an employee has a claim or complaint concerning the conditions of employment or a disciplinary action affecting his/her employment relationship with the city, the successive steps described below are to be taken toward resolution of the matter.

A. The number of days indicated at each step of the grievance procedure should be considered as the maximum number of working days allowed for presentation of and response to the grievance at that level. However, specified time limits may be extended when mutually agreed upon by the parties concerned.

B. All conferences provided for in the grievance procedure shall be held during business hours.

C. Grievance Procedure for Claims or Complaints Concerning Conditions of Work

1. Step One. An employee with a grievance concerning conditions of work shall present the matter to his/her immediate supervisor within ten (10) working days of its occurrence. The employee shall present that they are formally grieving a workplace condition either orally or in writing. The supervisor shall attempt to resolve the matter and shall give the employee an answer, either orally or in writing, no later than five (5) working days after the grievance is presented. The grievance and answer shall be reported to the supervisor's immediate superior.
2. Step Two. If the grievance is not resolved at Step One, the employee may present the grievance in writing to the head of the department within five (5) working days after the supervisor's answer is given or is due. The department head shall confer with the employee about the grievance within three (3) working days after the grievance is presented and shall render a written decision within three (3) working days after the conference is held.
3. Step Three. If the grievance is not resolved at Step Two, the employee may present the written grievance to the City Manager or his/her designee within five (5) working days after the department head's decision is rendered or is due. The City Manager or his/her designee shall confer with the employee about the grievance within five (5) working days after the grievance is presented to him and shall submit his written decision to the employee within ten (10) days after the conference is held.

D. Grievance Procedure for Claims or Complaints Concerning Disciplinary Actions.

1. Step One. A regular, full-time employee with a grievance concerning his/her suspension, demotion, or dismissal may present the matter in writing to the department head within ten (10) working days of its occurrence or his/her knowledge of its occurrence. The department head shall confer with the employee about the grievance within five (5) working days after the grievance is presented and shall render a written decision within three (3) working days after the conference is held.

Exception. A regular, full-time employee who is suspended, demoted or dismissed by the department head or at the direction of the department head may present the matter within ten (10) working days to the Assistant City Manager responsible for oversight of the affected department. The Assistant City Manager shall confer with the employee about the grievance within five (5) working days after the grievance is presented and shall render a written decision within three (3) working days after the conference is held.

The Administrative Services Director or his/her designee shall attend the grievance conference as a neutral advisor. This advisor is a witness not only on behalf of the City as to the impartial, informal grievance hearing but also serves as a witness to what the employee is told and to the employee receiving a full and fair opportunity to present his/her side of the situation.

2. Step Two. The employee may appeal the decision of the department head (or Assistant City Manager in the Exception scenario) to the City Manager by giving written notice of such appeal to both the Administrative Services Director and the

City Manager within a period of five (5) working days after the decision is rendered by the department head, or within eight (8) working days after the conference, whichever is later.

The City Manager, upon receiving the appeal from the employee, shall set an appeal conference within five (5) working days after receiving notice of appeal. At the appeal conference the City Manager shall consider any written information concerning the employee which has been made known to the employee and the department head, together with any written summary of the evidence at the predisciplinary conference before the department head, and shall allow the appealing employee to be heard as to the reasons for appeal. The City Manager shall submit a written decision to the employee within ten (10) working days after the appeal conference, and the City Manager's decision shall be final.

Reissued: December 6, 2011

  
Mick W. Berry, City Manager

Attachments:

- Attachment A - Written Notice of Predisciplinary Conference
- Attachment B - Follow-up To Verbal Notice of Predisciplinary Conference
- Attachment C - Department Checklist for Disciplinary Actions
- Attachment D - Disciplinary Action Form



**ATTACHMENT B**  
**(Follow-up to Verbal Notice of Predisciplinary Conference)**

**Prepare on departmental letterhead**

Office of \_\_\_\_\_  
(DIVISION / DEPARTMENT)

To: \_\_\_\_\_

From: \_\_\_\_\_

Date: \_\_\_\_\_

Subject:       **Notice of Predisciplinary Conference**

This letter is to confirm the verbal notice you received from \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
(NAME AND TITLE) (TIME)  
\_\_\_\_\_ which provided you notice of a Predisciplinary Conference scheduled for you to attend with the  
(DATE)  
\_\_\_\_\_ in the \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_.  
(TITLE AND NAME) (NAME OF ROOM AND BUILDING LOCATION) (DATE) (TIME)

The purpose of the hearing is to present allegations related to your work performance and/or conduct and provide you the opportunity to respond to the allegations. This is a fact-finding meeting pursuant to the City of Hickory Personnel Ordinance, Article 5, Section 10, Employee Performance and Conduct.

In accordance with the City of Hickory Personnel Ordinance and City Policy and Procedure a Predisciplinary Conference is to be held prior to any possible disciplinary action which would result in a coworker's losing a right (money or status) through demotion, suspension without pay for more than five days, or dismissal.

The City reserves the right to take notes and/or audio record the conference and these notes and audio recordings become property of the City and do not have to be given to you. You also have the right to take notes and/or audio record the conference. Legal or personal representatives of any kind may not accompany you to this Predisciplinary Conference.

Sincerely,

\_\_\_\_\_  
(DEPARTMENT HEAD) (DATE)

\_\_\_\_\_  
(Acknowledged by Employee) (DATE)

## ATTACHMENT C

### CITY OF HICKORY PREDISMISSAL/PREDISCIPLINARY ACTION CONFERENCE CHECKLIST

Before taking any disciplinary action which would result in a coworker losing money or status (through suspension without pay for more than five days, demotion, or dismissal), the answers to the questions below should be "yes". This checklist applies to all regular full-time coworkers who have completed their new hire probationary period. If you need any assistance, please contact the Administrative Services Director.

1. Have you discussed the situation with the Administrative Services Director?
2. Have you arranged for the Administrative Services Director or his/her designee to attend the conference as a neutral advisor?
3. Have you notified the coworker of the conference to discuss a proposed disciplinary action? (Same day notice is fine – see attachment A or B).
4. Have you reviewed with the coworker the allegations against him/her?
5. Have you told the coworker what possible disciplinary actions could result from the allegations presented?
6. Have you given the coworker the opportunity to present defenses or reasons against the allegations and possible disciplinary action?
7. Have you listened objectively and impartially to the coworker?
8. Have you taken notes or audio recorded the conference? (The coworker may also audio record the conference).
9. Have you delayed your final decision until after hearing the coworker's reasons for his/her actions? (The final decision should not be made until at least 24 hours after the conference).
10. If the decision is to take disciplinary action, have you given that decision in writing and listed specific reasons for that decision? (See attachment D).
11. Have you informed the coworker of the grievance procedure?

ATTACHMENT D

CITY OF HICKORY

NOTICE OF PERSONNEL ACTION

To: \_\_\_\_\_  
(Name of Employee) (Department/Division)

You are hereby notified that the following action has been taken concerning your employment with the City of Hickory:

Effective Date of Action: \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

REASON FOR ACTION:

**NOTE: A PERMANENT EMPLOYEE WHO IS SUSPENDED, DEMOTED, OR DISMISSED HAS THE RIGHT OF APPEAL IN ACCORDANCE WITH THE CITY OF HICKORY'S GRIEVANCE POLICY.**

\_\_\_\_\_  
(Date) (Acknowledged by Employee)

A copy of this notice is delivered to the employee this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Department Head)

APPROVED: (Required for Demotion)

\_\_\_\_\_  
City Manager