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Policy No. 703: Discipline

A. Consultation With Human Resource Department Staff

Supervisors who have questions regarding disciplinary issues should consult with the Human Resource Department and allow them time to review related documentation and to secure legal advice before proceeding with questionable disciplinary procedures. Any new departmental policies intended to reflect the provisions of this Policy should be reviewed by both the Director of Human Resources and Law Director. Department Directors may develop supplemental discipline policies for their Department, in accordance with Policy No. 1001: Policy Modifications, which are not inconsistent with this Policy. With the concurrence of the Director of Human Resources, and with good cause, Department Directors may vary from the procedures to be followed in this Policy.

B. Employee's Right to "Due Process"

Regular full-time Classified Civil Service employees, and regular full-time Unclassified employees covered by applicable bargaining agreements, who have satisfactorily completed their probationary period have a right to "due process" in matters affecting their continued employment. They can be discharged only for cause. All other employees are employed on an "at will" basis at the discretion of the City Manager or his/her designee, and have no right to "due process" in discipline and/or termination matters. However, the City may voluntarily extend some aspects of due process to those employees.

C. Employer's Right-To-Know vs. Employee Self-Incrimination

An employee may be required to answer questions in a hearing which he/she believes to be self-incriminating. The Fifth and Fourteenth Amendments to the Federal Constitution provide employees a privilege against compulsory self-incrimination, but only as it relates to criminal matters. If an employee refuses to answer questions on the basis of self-incrimination, he/she should be advised that failure to answer may result in discipline, up to and including dismissal, but that the answers given and any evidence discovered through such answers cannot be used against him/her in a criminal proceeding.

D. Employee Right to Representation by an Attorney

Any time a City supervisor, or other person acting on behalf of City management, questions a regular full-time or regular part-time employee in an environment which could reasonably be considered as an Administrative Proceeding, Executive Proceeding, Official Investigation or Hearing, the supervisor or representative of management shall advise the employee that he/she has the right to have an attorney present. If only one management representative is

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present and no official recording is being made, the notification of the right to have an attorney present should be in writing. The written notice should be signed by the employee and retained by the management representative.

1. The attorney's role in the predisciplinary hearing/proceeding is limited to advising the employee of his/her rights. The attorney may not examine or cross examine the employee, the management representative, or other witnesses in such a hearing. Hearings before an arbitrator, or the Kettering Civil Service Commission, generally provide the employee's attorney the opportunity to question witnesses.
2. An employee is not always entitled to have an attorney present when being questioned about his/her performance or behavior. Questioning employees about their performance and their behavior is a routine function and expectation of supervision. Simply calling an employee into the office and questioning him/her about his/her activities as an employee does not entitle the employee to representation by an attorney. If, however, the formality of the meeting reaches the point that a recording is made of the meeting, or the meeting is identified by the management representative as an investigation, hearing or formal proceeding, the employee should be advised that he/she may have an attorney present.
3. If the employee is covered by a collective bargaining agreement which calls for the presence of a union representative at different stages of disciplinary procedures, the employee should be told that he/she may have an attorney present at any stage at which the bargaining agreement provides that a union representative may be present.
4. At the level of the immediate supervisor, in processing a disciplinary grievance, the formality of the proceeding is such that the employee does not have the right to have an attorney present. Once the disciplinary grievance reaches the level of the employee's Department Director, however, the formality of the proceedings may reasonably be expected to reach a level where the employee may have the right to have an attorney present, he/she should be advised as such. This applies only to grievances regarding disciplinary issues filed under the provisions of the City's Personnel Policies or under the provisions of a bargaining agreement. If an employee asks to have an attorney present at a level before reaching the Department Director, the grievance should be advanced to the Department Director's level without review at the preceding level. If the employee indicates he/she would like to have an attorney present at the Department Director's level, the Human Resource Department should be consulted.

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E. Types of Discipline

1. Oral Reprimand

- a. **Definition** — An oral reprimand is a reprimand of record which distinguishes it from counseling or a warning.
 - 1) When supervisors issue an oral reprimand, they should clearly identify it as such to the employee and make the employee aware that a note will be placed in his/her Departmental and Human Resource Department file.
 - 2) An oral reprimand is the least severe degree of formal discipline and is to be used for relatively minor infractions.
- b. **Authority** — The authority to issue an oral reprimand rests with all levels of supervision for their specific subordinates, and it is not restricted only to immediate subordinates.
- c. **Appeal** — Oral reprimands are subject to appeal through Policy No. 702: Administrative Grievance Procedure or if the employee is represented by a recognized bargaining unit, through the grievance procedure established by that agreement.
 - 1) Oral reprimands are arbitrable only under the contractual provisions of an applicable bargaining agreement.
 - 2) Oral reprimands are not appealable to the Kettering Civil Service Commission.
 - 3) Oral reprimands are not appealable to the Kettering Board of Personnel Appeals.

2. Written Reprimand

- a. **Definition** — A written reprimand is the second least severe type of disciplinary action of record. The supervisor should make the employee aware that the reprimand is a serious matter and that a copy of it will be placed in his/her Departmental and Human Resource Department file.
 - 1) A written reprimand may be used for a wide range of infractions. It may be used in place of an oral reprimand for a relatively minor infraction when the supervisor believes it would be more effective than an oral reprimand in correcting the undesirable behavior.
 - 2) It may also be used for severe infractions when the supervisor believes it would be in the best interests of the City and/or be more effective

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than removing the employee from the job for a short term suspension in correcting the undesirable behavior of the employee.

- b. **Authority** — The authority to issue a written reprimand rests with all levels of supervision for their specific subordinates, and it is not restricted only to immediate subordinates.
- c. **Content** — A written reprimand may be in any written form felt to be appropriate by the Department Director.
 - 1) All written reprimands should include:
 - a) The name of the disciplined employee;
 - b) A specific description of the violation including specific references to violated rules, if applicable;
 - c) The possible consequences of further undesirable behavior (optional);
 - d) The name and signature of the issuing supervisor; and
 - e) The signature of the employee acknowledging receipt of the reprimand as well as the date the individual received the reprimand.
- d. **Appeal** — Written reprimands are subject to appeal through Policy No. 702: Administrative Grievance Procedure or if the employee is represented by a recognized bargaining unit, through the grievance procedure established by that agreement.
 - 1) Written reprimands are arbitrable only under the contractual provisions of an applicable bargaining agreement.
 - 2) Written reprimands are not appealable to the Kettering Civil Service Commission.
 - 3) Written reprimands are not appealable to the Kettering Board of Personnel Appeals.

3. **Suspension**

- a. **Definition** — A suspension without pay is a severe disciplinary action. First, such an action removes income from the employee to the employee's detriment. Second, the action removes the employee from performing his/her job, to the detriment of the City.
 - 1) The degree of severity of a suspension without pay depends on the duration of the suspension. Suspension without pay would be appropriate for repeated minor infractions or for one or more severe infractions.

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- 2) A suspension may be issued before the supervisor knows all the facts when it is determined that the employee has committed a severe infraction such as stealing, fighting, etc., and time is needed to investigate the incident.
 - 3) The appropriate authority may suspend the employee for as short a period as possible while an immediate investigation of the facts takes place. The appropriate authority should be aware that reimbursement for lost pay to the employee may be necessary if, after the fact, it is determined that a lesser degree of discipline or no discipline at all is appropriate.
 - 4) If the guilt of the alleged offender is questionable, the supervisor may suspend the employee with pay.
 - 5) A suspension, either with or without pay, is often used for the interim between when a Department Director recommends the dismissal of an employee to the City Manager and when the City Manager renders his/her determination.
- b. **Authority** — The duration of the suspension and the circumstances surrounding the suspension determine who has the authority to implement such an action.
- 1) The City Manager (or Acting City Manager) is the only City administrator with the authority to suspend a regular full-time employee for a period in excess of five (5) working days.
 - 2) Through this Policy, the City Manager extends to all Assistant City Managers and Department Directors the authority to issue disciplinary suspensions, either with or without pay, for periods of time not to exceed five (5) working days, to regular full-time employees.
 - 3) Through this Policy, the City Manager extends to each Department Director the authority to act in his/her behalf to suspend and/or hear the appeals of regular part-time and part-time/temporary employees.
 - 4) Also through this Policy, the City Manager authorizes Department Directors to pass on to first-line supervisors the authority to issue suspensions, either with or without pay, for not more than one (1) working day under circumstances where it is impractical to consult with a higher level of authority and immediate action is called for.
 - 5) It is up to the Department Director to determine if, how and to whom, he/she wishes to pass on this authority.
- c. **Procedure and Content**
- 1) Before a regular full-time employee receives a disciplinary suspension without pay of five days or less, he/she should be provided the

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opportunity to receive a hearing before his/her Department Director, or in the absence of the Department Director, the next level management person designated in charge of the Department at that time. If the employee's actions necessitate having him/her leave the workplace immediately and/or the employee or superior is otherwise unavailable to participate in a hearing before the suspension is administered, a hearing shall be scheduled as soon as reasonably possible following the suspension. Such a hearing shall be informal and its purpose shall be for the employee to respond to charges which have been brought against him/her. Whenever practical, the employee shall receive the written charges in advance of the hearing, but if not received by the employee prior to the hearing, they may be presented to the employee at the time of the hearing.

- 2) Before a regular full-time employee receives a disciplinary suspension without pay of more than five days, he/she should be provided the opportunity to receive a hearing before the City Manager (or Acting City Manager). The City Manager, or Acting City Manager, may delegate the authority to conduct such a hearing to the Director of Human Resources. The hearing shall be informal and its purpose shall be for the employee to respond to charges which have been brought against him/her. The employee should receive a written copy of the charges in advance of the hearing.
- 3) A regular full-time employee should be advised of his/her right to have an attorney present at such a hearing before a Department Director, an Assistant City Manager or the City Manager.
- 4) If an immediate suspension is necessary before an investigation, a written explanation that the employee is suspended, with or without pay, pending the results of the investigation should be provided to the employee as soon as practical after the verbal order of suspension.
- 5) The written notice of suspension should state the anticipated duration of the suspension. When the final determination of possible disciplinary action is to occur following the investigation of the incident, the employee may also be advised of the ultimate disciplinary action that may take place.
- 6) Under most circumstances, the Department Director should thoroughly review the situation prior to the suspension, which would include a meeting/hearing with the employee being disciplined.

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- 7) Under normal circumstances, the employee should be provided with a written Notice of Suspension at the time of suspension, which should include:
 - a) The name of the disciplined employee;
 - b) A description of the violation(s) including specific reference to violated rules (Specifications and Charges), if applicable;
 - c) The consequences of further undesirable behavior (optional);
 - d) The specific dates for which the employee is to be suspended;
 - e) A statement as to whether the suspension is to be with or without pay;
 - f) Reference to the employee's right to appeal;
 - g) Signature of the Department Director, and signature and date of the disciplined employee acknowledging receipt.
- 8) A Request for Personnel Action Form should be completed and appropriately executed either at the time of suspension or as soon thereafter as possible.
- 9) In the case of a suspension for more than five (5) working days, the Department Director should make a written recommendation for suspension to the City Manager including all the information normally contained in the Notice of Suspension. A copy of the recommendation for suspension should also be furnished to the employee.
- 10) The City Manager or his/her designee should schedule a meeting/hearing with the employee. An employee may be accompanied by a representative of his/her choice at this meeting/hearing. If the employee so chooses, and with the concurrence of the City Manager (Acting City Manager or Director of Human Resources), he/she may waive attending the meeting/hearing or submit a written statement in lieu of attending the meeting/hearing.
- 11) Following the meeting/hearing, the City Manager (Acting City Manager or Director of Human Resources) should issue a decision regarding the recommendation for suspension, at the earliest possible date.
- 12) A copy of all notices and documents of suspension should be forwarded to the Human Resource Department immediately for placement in the employee's Human Resource Department file. Civil Service Rules provide notification of the Commission for suspensions

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of employees in the Classified Civil Service; notice to the Director of Human Resources shall meet this requirement.

- 13) Given the “at will” basis of employment for part-time/temporary employees, suspension as a disciplinary/corrective measure is rarely used. However, when a suspension is used, the procedure and content for the suspension is less formal than for a regular full-time or regular part-time employee. The Department Director or his/her designee should advise the employee of the reason(s) for the contemplated suspension, and if the employee is available, give the employee an opportunity to respond to any allegations, charges or specifications. A record should be made of such reason(s) for suspension, the employee's response, and the action taken.

d. **Appeal — Suspension of Five (5) Working Days or Less**

- 1) Suspensions of five (5) working days or less may be appealed through Policy No. 702: Administrative Grievance Procedure or if the employee is represented by a recognized bargaining unit, through the grievance procedure established by that agreement.
- 2) Suspensions of five (5) working days or less are not appealable to the Kettering Civil Service Commission.
- 3) Suspensions are not appealable to the Kettering Board of Personnel Appeals.

e. **Appeal — Suspension of More Than Five (5) Working Days**

- 1) Suspensions of more than five (5) working days may be appealed through Policy No. 702: Administrative Grievance Procedure or if the employee is represented by a recognized bargaining unit, through the grievance procedure established by that agreement.
- 2) Classified Civil Service employees who have successfully completed their probationary period and have been suspended without pay for five (5) working days or longer may appeal their suspension to the Kettering Civil Service Commission.
- 3) The suspended Classified Civil Service employee who has successfully completed his/her probationary period has ten (10) days from the receipt of the City Manager’s (or Acting City Manager’s) final determination in which to file a written appeal with the Kettering Civil Service Commission through the Director of Human Resources.
- 4) Suspensions are not appealable to the Kettering Board of Personnel Appeals.

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4. Dismissal

- a. **Definition** — Dismissal is the ultimate disciplinary action. It removes the undesirable impact on the organization not by correcting the employee's behavior, but by removing the employee. Dismissal is used when reasonable corrective measures, including disciplinary action, have not been effective, or in response to a serious violation.
- b. **Authority**
- 1) The City Manager (or Acting City Manager) is the only individual with the authority to terminate regular full-time or regular part-time City employees.
 - 2) Through this Policy, the City Manager extends to each Department Director the authority to act in his/her behalf to dismiss and/or hear the appeals of Unclassified part-time/temporary employees. Unclassified part-time/temporary employees are employed on an "at will" basis and their employment is at the discretion of the City Manager or his/her designee.
- c. **Procedure and Content**
- 1) Recommendation for dismissal of a regular full-time or regular part-time employee is to be made in writing to the City Manager by the appropriate Department Director or Assistant City Manager.
 - 2) If the Department Director or Assistant City Manager believes that dismissal is probably warranted and that it is in the organization's best interest to remove the employee from his/her job immediately, yet the Department Director or Assistant City Manager needs time to carefully review matters before making a thorough recommendation to the City Manager, the provisions for suspension, either with or without pay, should be followed initially.
 - 3) A copy of the recommendation for dismissal should be provided to the employee at the time it is sent to the City Manager.
 - 4) Such recommendation should be made only after the Department Director or Assistant City Manager has thoroughly reviewed the situation, including having had a meeting/hearing with the employee and his/her representative (employee's option), and is ready to take full responsibility for such action.
 - 5) The written recommendation should include:
 - a) The name of the employee for whom dismissal is recommended;

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- b) A description of the violation(s) including specific reference to violated rules (Specifications and Charges), if applicable;
 - c) The date of the violations;
 - d) The name and signature of the Department Director or Assistant City Manager.
- 6) Before a regular full-time employee is dismissed from his/her employment with the City, he/she must be provided the opportunity to receive a hearing before the City Manager (or Acting City Manager or his/her designee). Such a hearing shall be informal and its purpose shall be for the employee to respond to allegations, charges and/or specifications which have been brought against him/her. The employee should receive a written copy of the allegations, charges and/or specifications in advance of the hearing. The employee should be advised of his/her right to have an attorney present at such a hearing before the City Manager (or designee).
 - 7) Refusal by an employee to appear before the City Manager for review of a recommendation is, in itself, grounds for dismissal.
 - 8) If mutually agreed to by the employee and the City Manager, a written statement submitted by the employee or the employee's representative may be substituted for a hearing.
 - 9) The City Manager's (or designee's) decision shall be made in writing.
 - 10) The procedure and content for regular part-time or part-time/temporary employees is less formal. The Department Director and/or designee should advise the employee of the reason(s) for the contemplated dismissal, and if the employee is available, give the employee the opportunity to respond to any allegations, charges or specifications. A record should be made of such reason(s) for dismissal, the employee's response, and the action taken.
- d. **Appeal**
- 1) A Classified Civil Service employee has the right to appeal a termination to the Kettering Civil Service Commission. Such appeal must be filed with the Director of Human Resources for conveyance to the Commission within ten (10) days of receipt of the notice of dismissal.
 - 2) An Unclassified employee has the right to appeal a termination to the Kettering Board of Personnel Appeals. Such appeal should be filed within ten (10) days of receipt of the notice of dismissal.
 - 3) Where applicable, the notice of dismissal to an employee should advise him/her of the preceding rights of appeal.

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5. **Other Discipline**

In some cases, other forms of discipline may be used, but only with the approval of the City Manager or the City Manager's designee.

F. **Reasons for Discipline**

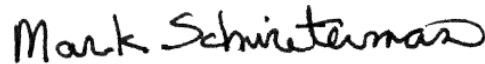
1. Discipline is not administered only for the violation of written City of Kettering rules but rather, there are actions, behaviors and levels of performance which warrant discipline, whether written or not.

The City Manager hereby delegates the appropriate responsibility and authority to administer this Policy to the City's Assistant City Managers and Department Directors.

Approved:

9/18/06

Date

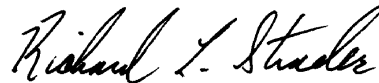


Mark Schwieterman
City Manager

Issued:

10/27/06

Date



Richard L. Strader
Director of Human Resources