

CITY OF VIRGINIA BEACH DISCIPLINE POLICY AND PROCEDURE	Policy Number:	4.02
	Date of Adoption:	May 12, 1977
	Date of Prior Revision:	October 2, 2012
	Date of Current Revision:	April 25, 2016
		Page 1 of 16

1.0 PURPOSE

To provide a policy and procedures for imposing discipline to address an employee's misconduct or unsatisfactory work performance.

2.0 DEFINITIONS

- 2.1 WRITTEN REPRIMAND:** A form of discipline where an employee receives a letter or memorandum, which is placed in an employee's official file, documenting an employee's unsatisfactory work performance or misconduct as a result of a disciplinary or performance issue.
- 2.2 SUSPENSION:** A form of discipline where an employee is not allowed to work for specified period of time and is not paid as a result of a disciplinary or performance issue.
- 2.3 ADMINISTRATIVE DECREASE:** A form of discipline where a salary reduction of no greater than 5% within a pay range of the employee's class is imposed as a result of a disciplinary or performance issue.
- 2.4 DEMOTION:** A form of discipline where a reduction in the pay range of an employee in conjunction with a change in job duties and responsibilities is imposed as a result of a disciplinary or performance issue.
- 2.5 DISMISSAL:** A form of discipline where the employee is involuntarily separated from employment as a result of a disciplinary or performance issue.
- 2.6 EXEMPT EMPLOYEE:** An employee who, because of his or her duties and responsibilities, is exempt from the overtime provisions of the Fair Labor Standards Act.
- 2.7 FIREFIGHTER:** for purposes of eligibility for the procedural guarantees provided for in [Virginia Code §9.1-300](#) et seq., shall mean any person who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires, the protection

of life and property, and the enforcement of local and state fire prevention codes and laws pertaining to the prevention and control of fires. [Virginia Code §9.1-300](#).

2.9 EMERGENCY MEDICAL TECHNICIAN (EMT): for purposes of eligibility for the procedural guarantees shall mean any person who is employed solely within the fire department or public safety department of an employing agency as a full-time emergency medical technician whose primary responsibility is the provision of emergency care to the sick and injured, using either basic or advanced techniques. Emergency medical technicians may also provide fire protection services and assist in the enforcement of the fire prevention code. [Virginia Code §9.1-300](#).

2.10 LAW ENFORCEMENT OFFICER: for purposes of eligibility for the procedural guarantees provided for in [Virginia Code §9.1-500](#) et seq., shall mean any person, other than a Chief of Police, who, in his official capacity, (i) is authorized by law to make arrests and (ii) is a non-probationary officer. [Virginia Code §9.1-500](#).

3.0 APPLICABILITY

This policy applies to all full time merit and part time employees of the City as defined by the Code of the City of Virginia Beach. This policy also applies to employees working within Constitutional Offices, if the City's policies have been adopted by written consent of the appropriate elected official. Law enforcement officers, firefighters, and EMTs are also eligible for the procedural guarantees which are provided for them in Code of Virginia, Title 9.1.

4.0 POLICY STATEMENT

It shall be the policy of the City of Virginia Beach to establish a system of progressive discipline to address the behavior of employees who have engaged in misconduct or who fail to meet performance expectations. In cases where employee conduct is sufficiently egregious, serious discipline, up to and including dismissal, may be imposed even for a first offense.

5.0 BASIS FOR TAKING DISCIPLINARY ACTION

5.1 Disciplinary action may be taken either when an employee's work performance is unsatisfactory, violates policy, or when the employee has engaged in misconduct.

5.2 The following are examples of employee behavior or employee performance falling within these general categories which could result in discipline. This list is not all-inclusive and may be further defined by department policy.

A. Performance

- (1) Failing to perform assigned duties correctly, competently, or at an adequate level of production
- (2) Careless conduct, endangering one's safety or the safety of others
- (3) Violating safety procedures; carelessness in the handling and operation of City property or equipment
- (4) Refusing to cooperate in an official investigation

B. Policy

- (1) Violation of a City or departmental policy, procedure, regulation, administrative directive, or any local, state or federal law
- (2) Retaliation against an employee for using mechanisms such as complaint procedures or whistleblower venues in accordance with [Fraud Waste and Abuse Policy AD 1.16](#)
- (3) Code of Ethics violation
- (4) Failure to successfully comply with a directed referral to the Employee Assistance Program (EAP) or failure to successfully complete a mandated EAP treatment plan
- (5) Substance Abuse Policy violation (Note that even a first occurrence of a positive drug or alcohol screen is a violation of the [Substance Abuse Policy, No. 6.15](#))

- (6) Misuse of City-provided computers or computer systems in accordance with [Network Acceptable Use Policy AD 2.04](#).

C. Misconduct

- (1) Absence without leave (AWOL)
- (2) Recurring tardiness
- (3) Insubordination
- (4) Refusal to comply with instructions of a supervisor
- (5) Sleeping on the job (unless required by the employee's position)
- (6) Use of offensive, abusive, threatening, coercive, profane or discourteous language
- (7) Provoking or participating in a fight while on duty
- (8) Carrying a weapon during work hours (unless required by the employee's position)
- (9) Theft
- (10) Conduct that may cause the City to be put in disrepute
- (11) Conduct unbecoming a City employee
- (12) Use of one's City position, identification or badge for personal gain
- (13) Engaging in unlawful or improper conduct on or off the job
- (14) Misappropriation or misuse of City assets
- (15) Falsification of City records or reports
- (16) Dishonesty

- (17) Lack of candor (intentional failure to fully disclose related facts)

6.0 PROCEDURE

6.1 Fact-Finding Investigation

Before imposing any discipline, a supervisor shall conduct an investigation (fact-finding process). The extent and formality of the investigation will depend on the individual circumstances of the policy violation, misconduct or performance issue. The fact-finding investigation shall be conducted as soon as practicable.

- A. The fact-finding investigation shall include one or more of the following, if applicable:
- (1) Fact-Finding Meeting: Talking to the employee against whom discipline is being considered. See [Section 7.2C](#) regarding exception when misconduct involves criminal charge and/or conviction.
 - (2) Determining whether the employee had been informed about the rule or policy which had been violated.
 - (3) Determining whether the employee had been provided clear and attainable performance standards and expectations.
 - (4) Gathering and reviewing documentary evidence, e.g. logs, e-mails, photographs, written work, time sheets, attendance records, and/or voice mail recordings.
 - (5) Talking to witnesses and/or persons with relevant knowledge.
- B. In appropriate circumstances, e.g., in cases of AWOL and insubordination, the fact-finding investigation may consist solely of the fact-finding meeting with the employee against whom discipline is being considered.
- C. Employees are not entitled to have a personal representative at any meeting(s) with a department supervisor during the fact-finding process.
- D. Whenever a firefighter or EMT is subjected to an interrogation which could lead to dismissal, demotion or suspension for punitive

reasons the following procedures set forth in [Virginia Code §9.1-301](#), et seq. shall be adhered to:

- (1) The interrogation shall take place at the facility where the investigating officer is assigned.
- (2) No firefighter or EMT shall be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter or EMT of the nature of the investigation.
- (3) All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter or EMT is on duty, unless the matters being investigated are of such a nature that immediate action is required.
- (4) The firefighter or EMT under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.
- (5) Interrogation sessions shall be of reasonable duration and the firefighter or EMT shall be permitted reasonable periods for rest and personal necessities. The firefighter or EMT may have an observer of his choice present during the interrogation, as long as the interview is not unduly delayed. This observer may not participate or represent the employee, may not be involved in the investigation, and must be a current member of the Department, for purposes of confidentiality.
- (6) The firefighter or EMT being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.
- (7) If a recording of any interrogation is made, and if a transcript of the interrogation is made, the firefighter or EMT under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.
- (8) No firefighter or EMT shall be discharged, disciplined, demoted, denied promotion or seniority, or otherwise disciplined or discriminated against in regard to his employment, or be threatened with any such treatment as

retaliation for his exercise of any of the rights granted or protected by this chapter.

- E. Whenever an investigation focuses on matters which could lead to dismissal, demotion, suspension or transfer for punitive reasons of a law enforcement officer the procedures set forth in [Virginia Code §9.1-501](#), et seq. including, but not limited to the following shall be adhered to:
- (1) Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless matters being investigated are of such a nature that immediate action is required.
 - (2) Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.
 - (3) The law-enforcement officer shall be notified in writing of all charges, the basis therefore, and the action which may be taken;
 - (4) The law-enforcement officer shall be given an opportunity, within a reasonable time limit after the date of the written notice provided for above, to respond orally and in writing to the charges. The time limit shall be determined by the agency, but in no event shall it be less than five calendar days unless agreed to by the law-enforcement officer;
 - (5) In making his response, the law-enforcement officer may be assisted by counsel at his own expense; and
 - (6) The law-enforcement officer shall be given written notification of his right to initiate a grievance under the grievance procedure established by the local governing body pursuant to Virginia Code §§ [15.2-1506](#) and [15.2-1507](#). A copy of the local governing body's grievance procedure shall be provided to the law-enforcement officer upon his request.

- (7) A law-enforcement officer may proceed under either the local governing body's grievance procedure or the law-enforcement officer's procedural guarantees, but not both. .

6.2 Administrative Leave

A. Post Drug Testing

An employee shall be placed on paid administrative leave until the start of the next regularly scheduled work day, or twenty-four (24) hours following the administration of the drug or alcohol test, whichever is later, when

- (1) an employee's confirmatory evidential breath test result is **.02 BAC or greater**, AND/OR
- (2) an employee receives drug testing based on reasonable suspicion of a drug impairment following the completion of the applicable checklist as outlined in Section 5.2C of the [Substance Abuse Policy, No. 6.15](#).

B. Investigation

Pending the outcome of a departmental administrative investigation or city auditor investigation into allegations of misconduct, an employee will normally remain working in their position or may be placed in a temporary alternative assignment within the department in accordance with department policy and procedures.

- (1) However, an employee may be placed in a paid administrative leave status, for a period of up to three (3) consecutive workdays with written notice to the Director of Human Resources, or designee when
 - (a) a temporary alternative assignment within the department is not available and the employee's continued presence on the job during the investigation
 1. poses a threat or danger to the workplace or public; AND
 2. the misconduct relates to the work performed or the position held by the employee; OR

- (b) the employee's continued presence in a temporary alternative assignment and in his/her usual position
 - 1. poses a threat or danger to the workplace or public; AND
 - 2. the misconduct relates to the work performed or the position held by the employee; OR
 - (c) actions of the employee while in the workplace are interfering with the internal administrative investigation.
- (2) Every attempt shall be made to ensure the investigation is completed in an expeditious manner. When an investigation is expected to last longer than three (3) consecutive workdays, departments shall request approval in writing from the Director of Human Resources, or designee, to place an employee on paid administrative leave longer than three (3) consecutive workdays. Such request may be granted if the delay in the investigation was not through the fault of the employee in question.

6.3 Consultation with the Department of Human Resources

Supervisors are encouraged to consult with the Department of Human Resources Employee Relations Division prior to taking any disciplinary action; however, supervisors, or the person in the supervisory chain authorized pursuant to departmental policy to impose a dismissal, demotion, administrative decrease or suspension for more than 40 hours, are **required** to contact the Department of Human Resources, Employee Relations Division or Director's Office prior to initiating such discipline for review and recommendation.

6.4 Pre-Disciplinary Meeting

Prior to issuing formal discipline, a supervisor shall meet with the employee to allow the employee a final opportunity to respond to the allegations against him/her. During the pre-disciplinary meeting, employees shall not be allowed to have a personal representative present. When termination, demotion, administrative decrease or a suspension of 40 or more hours is being considered Departments shall provide a minimum of 24 hours written notice to the employee of the pre-disciplinary meeting advising the employee of the proposed action, the reason(s) why discipline is being proposed, and the date and time of the meeting. In

situations involving lesser discipline 24 hours written notice is not required and where otherwise appropriate, the fact-finding meeting may suffice for the pre-disciplinary meeting.

A. Law Enforcement

The procedures for imposing discipline outlined in Virginia Beach Police Department General Order 2.07 shall be followed to ensure compliance with the Law Enforcement Officers Procedural Guarantees, [Virginia Code §9.1-500](#) et seq. Pursuant to [Virginia Code §9.1-502](#) upon the conclusion of an investigation, non-probationary law enforcement officers against whom discipline greater than a letter of reprimand is being proposed may, in making their response to the Memorandum of Charges and Five Day Letter, be assisted by counsel at their own expense.

B. When an in-person meeting with the employee is not viable because the employee is not available, a supervisor shall notify the employee of the proposed action and the reasons why discipline is being proposed in writing. This letter shall also give the employee ten (10) days to respond to the proposal in writing or to schedule an in-person meeting. This letter shall be sent to the employee's home address which is on record with the City of Virginia Beach using United States Postal Service (USPS) certified mail or a commercial service which allows for tracking and confirmation.

6.5 Mandatory Contents of Disciplinary Letters

All letters imposing discipline shall be forwarded to the Department of Human Resources to be included in the employee's Official Personnel File. Only the Department of Human Resources shall be authorized to place disciplinary letters into official personnel files. All letters imposing discipline shall contain the following elements:

- A. The reason(s) for the action taken, described in sufficient detail so that a reasonable person would understand the basis for the discipline;
- B. The date when the pre-disciplinary and/or fact-finding meeting took place, and a summary of the employee's response or that the employee failed to provide a response;
- C. A warning that future unsatisfactory performance or misconduct may result in further disciplinary action; and

- D. An explanation of the employee's rights, if any, under the [Grievance Policy and Procedures, No. 4.04](#), or [Open Door Policy, No. 4.05](#), and in the case of non-probationary law enforcement officers, the option of appealing in accordance with the Law Enforcement Officers Procedural Guarantees Act.

6.6 Situational Contents of Disciplinary Letters

As appropriate, letters imposing discipline shall also contain the following elements:

- A. An explanation of steps (e.g., training, counseling, performance improvement plan) which management has taken to assist the employee;
- B. A listing of prior disciplinary action(s) which the employee has received. See [Section 7.1D](#) of this policy for timeframes regarding written reprimands and suspensions.
- C. A brief explanation of the factors which the supervisor considered in selecting the penalty. See [Section 7.1](#) for penalty selection factors.

6.7 Discipline Requiring Approval

- A. Suspensions
Suspensions for more than 40 hours or more require approval by the Director of Human Resources, or designee.
- B. Administrative Decrease
A letter of justification shall be submitted by the department to the Director of Human Resources, or designee, and shall be subject to the approval of the City Manager, or designee.
- C. Demotions
Demotions require approval by the Director of Human Resources, or designee.
- D. Dismissals
Dismissals shall require approval by the Director of Human Resources, or designee. The Department of Human Resources shall not take final action to dismiss an employee until it receives the disciplinary letter including all mandatory contents as required under [Section 6.5](#) of this policy.

6.8 Immediate Suspension

Notwithstanding the procedural requirements provided in [Sections 6.1 through 6.6](#), a law enforcement officer may be immediately suspended without pay when his or her continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the police department or the public and/or for refusing to obey a direct order issued in conformance with the police department's written and disseminated regulations. [Virginia Code §9.1-505](#).

6.9 Notice of Discipline

A. A written notice of the discipline being imposed shall be hand-delivered to and signed by the employee, or shall be sent by USPS certified mail or a commercial service which allows for tracking and confirmation of receipt. A copy of such written notice shall be forwarded to the Department of Human Resources for inclusion in the employee's official personnel file.

B. Employee Separation

If an employee separates from employment either by resignation or retirement prior to discipline being imposed refer to the [Official Employment Records File System Policy, No. 6.10](#), to determine when and under what circumstances information regarding the proposed discipline may be included in the employee's official personnel file after the separation date.

6.10 Purging Letters of Reprimand and Suspension

A. Letters of reprimand and suspension may be purged from an employee's official personnel file in the Department of Human Resources. Employees shall forward a written request for these records to be purged to their supervisor or department director. If approved by the Department Director, the department must forward a written request acknowledging Department Director's approval to the Director of the Department of Human Resources. The Director of the Department of Human Resources, or designee, in the absence of objective facts to the contrary may purge the requested record provided that (1) no subsequent disciplinary action has been taken, and (2) the minimum retention period has passed. The minimum retention period for a letter of reprimand is eighteen (18) months, and for a suspension is five (5) years.

- B. Departments shall implement procedures to ensure copies of these records are also purged from all internal departmental files when approval for purging has been obtained. This requirement does not apply to Police Department Professional Standards Office files.

6.11 Reemployment or Reinstatement

- A. No individual shall be reemployed who has been dismissed twice from the City of Virginia Beach within the previous five (5) consecutive calendar year period. However, a single dismissal during this time period does not guarantee reemployment or reinstatement and the circumstances will be reviewed on a case by case basis. The Department Director shall make the final decision regarding all requests for reemployment and reinstatement.
- B. An employee seeking reinstatement shall be considered in accordance with Section 2-106 of the City's Administration of Basic Pay Plan Policy, 2.01.

7.0 PENALTY FACTORS/CONSIDERATIONS:

7.1 Factors/Considerations

The following are a list of factors that, depending on the circumstances of each individual case, shall be considered in determining the penalty for an employee's misconduct or unsatisfactory work performance. This list is not all-inclusive:

- A. The nature and seriousness of the offense, and the impact on the Department's mission;
- B. Whether the employee had notice of supervisor or department expectations;
- C. Whether the employee had notice of the rule or policy which was violated;
- D. Prior Discipline

- (1) A written reprimand shall not be considered after eighteen (18) months, without further disciplinary action being imposed within the intervening eighteen (18) months;
 - (2) A suspension shall not be considered after five (5) years, without further disciplinary action being imposed within the intervening five years.
- E. The level of the employee in the organization;
 - F. Mitigating factors such as consideration of an employee's length of exemplary or satisfactory service with the City (note that mitigating factors are not considered, however, when an employee has violated the [Substance Abuse Policy, No. 6.15](#));
 - G. Whether there is prior documentation of work or performance issues with the employee;
 - H. Whether the supervisor reasonably believes that the employee's behavior or work products can become acceptable in the future; and
 - I. What discipline has been issued in similar cases of employee misconduct or poor performance.

7.2 Prescribed Penalties and Special Considerations

Some situations have specifically prescribed penalties, suggested penalties, or special considerations. These are:

- A. Inappropriate Use of City Funds
Employees found to have knowingly and with intent misused City funds, or helped others to do so shall be dismissed. Misuse of City funds may include, but are not limited to, the failure to use a City Procurement Card, petty cash or any other means to make City purchases in accordance with the City's policies/procedures, administrative directives and/or departmental guidelines.
- B. Substance Abuse
A second confirmed positive test for drugs and/or alcohol within the twelve (12) months immediately following the employee's successful return to duty test shall result in dismissal from City employment for failure to abide by the Last Chance Agreement. An employee's first confirmed positive test for drugs and/or alcohol

may also result in dismissal or, at the department's discretion, some lesser disciplinary penalty. Refer to [Substance Abuse Policy, No. 6.15](#).

C. Suspensions or Dismissals Under the Criminal and Administrative Charge and Conviction Policy Provisions

(1) The [Criminal and Administrative Charge and Conviction Policy, No. 6.02A](#), sets forth under what situations a suspension or dismissal shall be recommended by the Charge and Conviction panel. The panel's recommendation is subject to review and approval by the City Manager, or designee. When an employee has been charged with or convicted of a criminal or administrative offense, and there is no other conduct that is subject to discipline, there is no requirement to convene the fact-finding or pre-disciplinary meeting referenced in [Section 6.4](#) above. In such cases, the employee is immediately provided with a decision letter upon approval by the City Manager, or designee.

(2) An employee whose duties require him or her as an essential job function, to testify in court and who is convicted, pleads guilty to, or has a deferred finding, where sufficient evidence exists to convict the worker entered as a result of any felony, or a misdemeanor involving moral turpitude (lying, stealing or cheating) shall be dismissed.

D. Sworn Law enforcement Officers

Sworn law enforcement officers and animal control officers, who are found, after a full fact-finding investigation, to have been untruthful shall be dismissed. For the purposes of this section untruthful shall mean lied, was dishonest, and/or was deceitful. This mandatory penalty shall not, necessarily apply in circumstances where the employee recants, confesses and/or corrects the action prior to it being discovered or the employee receiving any benefit. This shall not prohibit departments from disciplining other employees for being untruthful; however, there is no mandatory penalty with regard to other employees.

E. Absence Without Approved Leave (AWOL)

An absence from work during a scheduled work period without approval by an employee's supervisor or other designee will generally result in:

- (1) A written reprimand for the first occurrence of absence without leave (two consecutive workdays or less) within a twelve (12) consecutive calendar month period;
- (2) A suspension for the second occurrence of absence without leave (two consecutive workdays or less) within a twelve (12) consecutive calendar month period; and
- (3) Dismissal for the third occurrence of absence without leave (two consecutive workdays or less) within a twelve (12) month period, OR
- (4) Dismissal for any absence without leave for three (3) consecutive workdays or more.

F. Suspensions of Exempt Employees

The provisions of the Fair Labor Standards Act must be considered when suspending employees who are exempt under that act. Consequently, managers must consult with the Department of Human Resources Employee Relations Division prior to suspending an exempt employee.

G. Law Enforcement Officers, Firefighters and EMTs

The Code of Virginia sets forth specific procedures and requirements to be followed when conducting investigations of law enforcement officers, firefighters, and EMTs. The statutory procedural guarantees shall always be followed by the employees' departments when imposing any discipline greater than a written reprimand.

H. Part-Time, Temporary and Probationary Employees

For grievance procedures of part-time, temporary, and probationary employees refer to [Section 2-132](#) of the City Code and the [Grievance Policy and Procedures, No. 4.04](#).

8.0 EXCLUSIONS

- 8.1 The City of Virginia Beach considers verbal warnings, cautions, and counselings to be performance management tools and not forms of discipline. For more information, see the [Performance Management Policy, No. 6.07](#).

- 8.2** The [Administrative Separation Policy, No. 6.01\(A\)](#), shall be used to address situations where employees are unable to perform the essential duties of their own, or another, position in the City due to non-substance abuse health-related reasons.

9.0 REVISION:

The City Manager, or designee, may revise this policy, or any portion thereof, at any time.