PREFERRED EMPLOYEE RESPONSES

It is the policy of the City of Denton to maintain an effective, productive, and disciplined work force in order to deliver outstanding quality services to the citizens of Denton. Employees are responsible for performing their jobs in a safe, productive and effective manner and within the instructions and standards established by the employees’ supervisors. In addition, employees are expected to maintain acceptable standards of conduct in their employment. Supervisors are responsible for communicating job duties, responsibilities and performance standards and expectations. Supervisors accomplish this through job orientation, job instruction, coaching and informal discussions with the employee.

Temporary employees, seasonal employees, contract employees, city council appointees, Assistant Judges and those employees governed by the provisions of Chapter 143 of the Texas Local Government Code are exempt from this policy, unless specifically stated otherwise herein. The purpose of this policy is to provide direction to supervisors. It does not provide contractual or property rights to any employee. All employees are employed strictly on an at-will basis.

ADMINISTRATIVE PROCEDURES:

I. INTRODUCTION

The City of Denton is an “at-will” employer and may terminate employees at any time and for any reason, with or without cause, unless expressly prohibited by law. These administrative procedures are established to provide appropriate guidelines in carrying out the policies of the City of Denton regarding the progressive disciplinary program. They are intended to address general application of the principles of disciplinary actions in typical situations. Disciplinary actions should include the importance of the City's responsibility to provide outstanding quality services to the citizens. These procedures address a broad range of performance deficits and conduct concerns. They are not intended to address every problem or situation that may arise. It is the responsibility of the supervisor to determine the nature, extent, facts and circumstances in each disciplinary action and to use judgment in the application of these policies and procedures.

**Disciplinary actions are designed to help the employee correct the problem and build a renewed commitment to the City and job in an equitable and consistent manner.**
A. Progressive Discipline Model:

Notwithstanding the fact that the City of Denton is an “at-will” employer, the City of Denton uses a progressive disciplinary process to address employee performance deficiencies. The City of Denton’s progressive disciplinary model, consisting of a system of increasingly significant measures, is utilized to provide feedback to employees so that the employees can correct conduct or performance problems. The City of Denton recognizes four levels of disciplinary intercessions:

Level I: Warning

Level II: Managed Action Plan (MAP), or Reprimand

Level III: Decision Making Leave, Suspension Without Pay, or Involuntary Demotion

Level IV: Dismissal

The City of Denton’s use and publication of the progressive discipline model does not preclude the supervisor from taking appropriately severe disciplinary action when the severity of the violation(s) warrants such action.

B. Definitions:

"Director of Human Resources or designee" or "authorized representative of the Department of Human Resources” means the Director of Human Resources, the person designated to act in the Director’s absence or a representative of the Human Resources Department.

“Performance Correction Notice” is the official form that a supervisor uses to document disciplinary actions.

"Supervisor" means the person who is responsible for hiring the employee, administering performance evaluations and implementing disciplinary actions.

"Supervisor's Manager" means the person to whom the employee's supervisor reports.
II. GENERAL CRITERIA TO BE CONSIDERED IN DISCIPLINARY ACTIONS

The following disciplinary measures may be taken, depending upon the particular circumstances surrounding the employee’s conduct. The supervisor may consider the following criteria when determining which disciplinary action to take:

1. Severity and type of offense(s);
2. Impact of the offense(s) on other employees, the City and/or citizens;
3. Employee's length of service and work record;
4. Period of time since discussion with the employee about a similar problem or recent disciplinary action for the same or similar problem;
5. Employee’s prior performance appraisals, if any; and/or,
6. Past disciplinary actions taken by the City for the same or similar problem.

If a supervisor determines that the nature, severity and impact of the employee's action(s) require a disciplinary action classified as Level III or Level IV, the supervisor should thoroughly investigate the situation, discuss it with the next level supervisor and a representative of Human Resources, and obtain approval from the supervisor’s director and the Director of Human Resources prior to taking any action. Based upon the facts of the situation, Human Resources will provide guidance to the supervisor relating to the suggested course of disciplinary action.

III. RESPONSIBILITY AND AUTHORITY FOR ADMINISTERING DISCIPLINARY ACTIONS

Supervisors are responsible for enforcing all City policies and procedures, accomplishing the goals and objectives of a division or department and maintaining work performance, attendance and conduct standards among their employees. They are vested with the authority to take appropriate disciplinary action under the directions and guidelines set forth in these procedures.

Prior to any disciplinary action being administered, the supervisor shall conduct a thorough examination of the situation before deciding to take any disciplinary action.

The Director of Human Resources or designee will review all proposed involuntary demotions, suspensions, decision making leaves, and dismissals prior to any formal action being taken by the supervisor or division.
All disciplinary actions shall be properly documented on a Performance Correction Notice to substantiate the action being taken. Both the employee and the supervisor shall sign the Performance Correction Notice. The employee should understand that the employee’s signature indicates receipt of the document only, not necessarily agreement with its contents. If the employee refuses to sign, the supervisor should have a witness (who must be of a supervisory level or a member of Human Resources and may not be a work peer of the employee) sign that the Performance Correction Notice was read to the employee, the employee was given an opportunity to ask questions about the disciplinary meeting and that the original of the document was given to the employee. A copy of the Performance Correction Notice shall be forwarded to Human Resources to be placed in the employee’s personnel file and a copy should be kept by the supervisor.

If a serious problem arises that endangers the safety, health or life of the employee, another employee or citizen or, if in the judgment of the supervisor, the employee problem is unmanageable, a supervisor has authority to proceed immediately to place the employee on administrative leave with pay or without pay. The supervisor shall immediately notify the department director and the Director of Human Resources or designee. This will allow time to investigate, determine appropriate action and discuss alternate actions prior to formal action being taken. If an employee is placed on administrative leave without pay and it is later determined that the employee is not subject to suspension, demotion, or dismissal, the employee will receive back pay for the period of time that the employee was on unpaid administrative leave. If it is determined that the employee is subject to a suspension, the time spent on administrative leave without pay may be counted against the suspension period that the employee receives as discipline for misconduct.

IV. DISCIPLINARY PROCESS

The following disciplinary process may be applied to an employee whose performance of duties or personal conduct is unsatisfactory. The policy of progressive discipline shall in no way prevent the supervisor from taking appropriate disciplinary action when the severity of the violation(s) warrants such action. The supervisor should use the performance documentation provided by Human Resources and identified below to document each disciplinary action taken. The original Performance Correction Notice should be signed by the employee as an acknowledgement of receipt of the Performance Correction Notice. The original Performance Correction Notice should be given to the employee and a copy should be forwarded to Human Resources to be placed in the employee’s personnel file. A copy should also be kept by the supervisor. The following process is intended to be descriptive and serve only as a guide to the types of disciplinary responses that may be appropriate. This listing is not intended to be exhaustive or exclusive:
A. Warning:

1. A Warning is a Level I form of discipline and is generally the first form of written discipline, depending upon the severity and nature of the misconduct, an employee may receive when the employee is not meeting the supervisor’s performance expectations. A Warning is most appropriate when an employee has received prior verbal and, in some cases, written coaching from the supervisor with respect to specific performance deficiencies and the employee’s performance has not changed to conform to the supervisor’s expectations.

2. The supervisor shall discuss the situation with the employee in private and make every effort to discover the reason(s) for the employee's performance and advise the employee of the necessary changes in behavior or performance to correct the problem.

B. Managed Action Plan (MAP):

1. A Managed Action Plan (MAP) is a Level II form of discipline and is used as an intensive disciplinary coaching tool when an employee has either exhibited repeated performance deficiencies and has not responded to appropriate coaching and/or when the employee has received a prior Warning(s).

2. When the performance of an employee falls below the acceptable level, supervisors should point out deficiencies to the employee at the time they are observed. An employee who continues to perform below the acceptable level may be placed on a formal program designed to improve performance. The supervisor should communicate this to the employee orally and by presenting him/her with a Performance Correction Notice, including the following information:

   a. The specific deficiencies observed in the employee’s performance of duties;
   b. The actions necessary to bring about improvement;
   c. The period of time in which improvement must occur;
   d. The specific dates and times during the MAP on which the supervisor shall meet with the employee to discuss progress or lack of progress in improving performance; and,
   e. Any further action that will result if the employee fails to show satisfactory improvement.

3. During the period of time for the MAP, the supervisor shall meet periodically with the employee to discuss the employee’s progress or lack of progress in addressing the performance and/or conduct issues identified in the MAP. The supervisor shall document what was discussed in the progress meetings with the employee and both supervisor and employee shall sign the documentation.
4. If an employee fails to demonstrate the necessary improvement as required during or upon completion of the MAP, the supervisor, upon discussion and review with Human Resources, may place the employee on a decision making leave, suspend the employee, demote the employee, or dismiss the employee.

5. If an employee demonstrates sufficient improvement as required in the MAP, the supervisor will discuss the improvements with the employee and monitor the employee’s continuing performance. Once an employee has satisfactorily completed a MAP, the immediate supervisor shall give the employee a document from the Performance Correction Notice stating that the employee has completed the MAP and reminding the employee that any future violations of the performance and/or conduct addressed in the MAP could jeopardize the employee’s continued employment with the City of Denton.

6. Nothing shall preclude a supervisor from proposing other disciplinary action when an employee commits an additional act of misconduct while the employee is completing a MAP.

C. Reprimand:

1. A Reprimand is a Level II form of disciplinary action. Any supervisor in the employee's chain of command may issue a subordinate employee a Reprimand. In the event that the Reprimand is issued by someone other than the employee's direct supervisor, a report of such action shall be made to the direct supervisor. The Reprimand may be issued when the employee has demonstrated an inability to perform required job duties; has excessive absences that constitute an abuse of the attendance policy; or has minor personal conduct problems.

2. An employee who demonstrates significant inability to perform required duties or a serious personal conduct problem may be issued a Reprimand without having first been issued Warning or having discussed the problem with the supervisor.

D. Decision-Making Leave:

1. A Decision-Making Leave is a Level III form of discipline. The immediate supervisor may provide the Director of Human Resources or designee with documentation and records, using the Performance Correction Notice form, supporting a request that an employee be placed on a Decision-Making Leave with or without pay. The employee’s overall work record, work performance, attendance and conduct problems should be reviewed. The Human Resources Director or designee will meet with the employee to discuss the performance or conduct issues. After the employee meets with the Human Resources Director or designee, the employee will be placed on a one day Decision-Making Leave with or without pay, typically
the following work day (shift). The Decision-Making Leave is intended to allow the employee to reflect on performance, work responsibilities, wants, needs, etc. and to make a decision as to whether the employee wants to make the necessary performance improvements to continue employment with the City of Denton. The supervisor should prepare a Performance Correction Notice outlining the reasons for the Decision-Making Leave and the specific day the leave is to be taken (typically the next work day).

2. Upon return from a Decision-Making Leave, the employee must report a decision to continue employment or resign. If the employee decides to continue working for the City of Denton, the employee must present the supervisor with a plan to make the needed performance improvements and the employee and the supervisor will discuss the plan. The employee should be informed that termination will result if the employee does not show immediate and continuous improvement. Following this discussion, the employee will be given a letter summarizing the Decision-Making Leave discussion and the employee’s decision. The letter should be signed by the employee to acknowledge receipt of the letter. The original, signed letter should be given to the employee and a copy should be sent to Human Resources to be placed in the employee’s personnel file. A copy should also be kept by the supervisor.

E. Suspension Without Pay:

1. A Suspension Without Pay is a Level III form of disciplinary action. A supervisor may recommend a Suspension Without Pay for up to 30 days. In determining the length of the Suspension Without Pay, the supervisor should consider the nature and severity of the conduct, impact on the organization and previous disciplinary actions. No disciplinary Suspension Without Pay or combination of Suspensions Without Pay will exceed 30 working days in a 12-month period. All proposed Suspensions Without Pay will require the approval of the Director of Human Resources or designee and any Suspension Without Pay for more than 15 days without pay must be approved by the Assistant City Manager. Supervisors requesting a Suspension Without Pay should complete a Performance Correction Notice form identifying the reasons for the requested Suspension Without Pay.

2. Employees classified as exempt under the Fair Labor Standards Act may not be suspended for any period of time less than a full work period (Friday midnight to Friday midnight) except in the following situations:

   a. An exempt employee may be suspended for one or more full days for serious workplace misconduct. “Serious workplace misconduct” is defined to consist of the violation of a major written policy that is applicable to all employees for the City of Denton. Violations of the following City of Denton policies and administrative directives may constitute “serious workplace misconduct”: the Workplace Violence Prevention administrative
b. An exempt employee may also be suspended without pay for one or more full days for major safety infractions. A major safety infraction is one that puts another human being in direct threat of loss of life or serious bodily injury.

c. Exempt employees may not be suspended for less than a full work week for any general performance related deficiencies or for any misconduct that fails to meet the standards set by the Department of Labor’s regulations relating to the Fair Labor Standards Act.

d. Human Resources must review and approve any Suspensions for exempt employees.

3. The following instances are intended to be descriptive and serve only as a guide to the types of infractions for which Suspension may be appropriate. This listing is not intended to be exhaustive or exclusive of the types of conduct for which disciplinary action may be taken:

a. Safety violation(s), and

b. Any action that could negatively impact the City’s image but is not serious enough to warrant immediate termination

4. Prior to an employee being suspended without pay, the employee will meet with the Director of Human Resources or designee to discuss the actions leading up to the Suspension.

F. Involuntary Demotion:

1. Involuntary Demotion is a Level III disciplinary action. Involuntary Demotion may be considered when an employee fails to satisfy the requirements and performance standards established for a position but is able to function productively in another capacity and when an open lower-level position is available in the employee’s department.

2. Typically, employees who are demoted will have their pay reduced by a minimum of 5%, but that amount could be greater if the 5% does not place them within the pay range for the position to which they are demoted. Further, employees who are demoted will have their annual review date changed to the same date as the effective date of the demotion.
3. Prior to an employee being demoted, the employee will meet with the Director of Human Resources or designee to discuss the actions leading up to the demotion.

G. Dismissal:

1. Dismissal is a Level IV disciplinary action. A supervisor may propose to the Director of Human Resources that an employee be dismissed from employment with the City of Denton. A supervisor proposing a dismissal must provide clear, specific and detailed justification for an action of dismissal using the Performance Correction Notice form and attaching any other documentation or summary which supports the supervisor’s proposal. For all employee dismissals, supervisors must consult with the Director of Human Resources or designee and the division head. Human Resources will request review and legal advice of the Legal Department recommendations for dismissal in cases where the employee has had no previous disciplinary actions in accordance with this policy or in cases where the Director of Human Resources deems that review by the Legal Department is warranted. The supervisor will provide documentation of the conduct leading to the recommendation for dismissal.

2. The employee shall be given an opportunity to speak with the Director of Human Resources or designee to discuss the proposed dismissal prior to any final action. At such time, the employee may respond to the supervisor’s reasons for the requested dismissal if the employee chooses to do so.

3. Employees who have a positive drug or alcohol screen, as set forth in the City’s Anti-Substance Abuse and Rehabilitation policy (no. 108.12) will be dismissed. Those employees who would appeal their dismissal must appeal the findings of the drug or alcohol screening as set forth in policy 108.12.

4. Upon review by the City Attorney, consultation with the Director of Human Resources or designee, and approval of the City Manager or designee, the supervisor may deviate from any or all of these procedures and summarily dismiss any employee at any time for any reason or for no reason, pursuant to the City of Denton’s “at-will” employer status.

V. EXAMPLES OF PERFORMANCE DEFICIENCIES AND PERSONAL CONDUCT SUBJECT TO DISCIPLINARY ACTION

Coaching and informal discussions are everyday responsibilities performed by supervisors to ensure that employees are performing their jobs and conducting themselves in an acceptable manner. If a performance, attendance or conduct problem arises, the supervisor may coach and informally discuss
the problem with the employee. The objective is to assist the employee in recognizing that a problem exists and to develop effective solutions to correct the problem. Normally, the employee corrects most problems in this manner. When informal discussions fail to bring about the appropriate changes in the employee's behavior, however, formal disciplinary action may be taken. The following actions are intended to be descriptive and serve only as a guide to the types of problems for which disciplinary action may be appropriate. This listing is not intended to be exhaustive or exclusive of the types of conduct for which disciplinary action may be taken:

A. **Performance of duties:**

The following are examples relating to unsatisfactory performance of duties for which disciplinary action may be taken. This list is not intended to be all-inclusive. It does describe examples of unsatisfactory performance that management believes are unacceptable and could jeopardize an employee's continued employment. Examples are:

1. Incompetence in the performance of duties: The fact that any employee is deemed competent at the time of employment will not preclude a judgment of incompetence as the result of apparent unwillingness to perform assigned tasks, being absent without approved leave or demonstrating unnecessary absence from the assigned work area during assigned hours of work. Other proof of incompetence may include repeated oral and written disciplinary actions for minor infractions of policies, rules, regulations, manuals or directives and/or repeated oral and written disciplinary actions demonstrating the employee's inability to meet performance standards.

2. Failure to satisfactorily meet performance standards for the position.

3. Patterned absenteeism without sufficient medical justification.

4. Absence without approved leave.

5. Tardiness as a habitual pattern or failure to report for duty at the assigned time and place.

6. Violation of written departmental regulations regarding the performance of duties.

7. Careless, negligent or improper use of City property or equipment.

8. Improper use of leave privileges.

9. Discourteous treatment of the public or other employees.
10. Neglect or carelessness in the performance of duties.

11. Failure to meet or maintain specified conditions of employment, such as failure to obtain or maintain a license or certificate required as a condition for performing a job.

12. Negligently causing damage to City property.

13. Causing or contributing to an accident by operating City equipment in an unsafe or unauthorized manner.

B. Personal Conduct:

The following are examples relating to personal conduct for which disciplinary action may be taken. The list is not intended to be all-inclusive. It does describe examples of conduct which management believes are unacceptable and could jeopardize an employee's continued employment. Examples are:

1. Violating a City policy (i.e., Drug and Alcohol Free Workplace (108.11), Harassment (108.10), Workplace Violence Prevention (108.05), Fraud (509.01), etc.).

2. Theft of, aiding in or encouraging the theft of cash, City property or equipment.

3. Destroying City records without authorization.

4. Falsifying City records, including application for employment or medical information or other information concerning employment status.

5. Willful damage to public property or willful waste of public supplies, service or equipment.

6. Insubordination: the refusal to perform a reasonable, lawful, safe and proper work assignment, duty or task from an authorized supervisor.

7. Physical assault committed on the job upon a City employee, member of the public or City official.

8. Using an official position or office for economic gain or soliciting favors or gratuities for performing services required by the employee's position.

9. Disclosing information as defined by statute to be confidential.
10. Unauthorized use or possession of City funds or property.

11. Possession or use of weapons on City property or while performing City responsibilities except as authorized as part of the job (i.e., law enforcement).

12. Making threats against another employee or a member of the public.

13. Engaging in any employment activity or enterprise that constitutes a conflict of interest.

14. Using City property or equipment without authorization.

15. Dereliction of duty that is detrimental to the proper performance of the functions of the City. The following subsections constitute dereliction of duty:
   a. Failure of a supervisor to immediately take action when a violation of policies, rules or regulations comes to the supervisor’s attention, regardless of the supervisor’s or violator's assignment or position in the City.
   b. Failure to observe and adhere to the policies of the employee's division or the City.
   c. Failure to deliver to the official City custodian any property found by, confiscated by or relinquished to employees of the City without undue delay and, in any event, before the workday is ended.

16. Misusing or failing to use delegated authority in the performance of duties.

17. Using abusive language toward employees or the public.

18. Unnecessarily disrupting the work of other employees.

19. Operating or conducting gambling on the job or on City property.

20. Drinking alcoholic beverages during working hours.

21. Violations of safety rules or practices that endanger the employee or others or that damage City property or equipment.

22. Playing tricks or jokes or engaging in horseplay that adversely affects job performance or safety issues.
23. Making derogatory racial, age, ethnic or sexist remarks while on duty.

24. Engaging in personal business while on duty without the supervisor’s authorization.

25. Failure to report damage to City equipment or property of others.

26. Appropriating City property, i.e., equipment, furniture or construction materials that have been abandoned or discarded.

27. Utilizing City data or information systems for any reason other than City business.

28. Sleeping on the job.

29. Falsely reporting illness or injury or otherwise attempting to deceive the employee’s supervisor or any other City official as to a health or medical condition.

30. Engaging in unbecoming conduct, either on or off duty. “Unbecoming conduct” shall include that which brings the City, the City Council, City Administration or the City’s reputation into disrepute or reflects discredit upon the employee as an employee of the City, or that which impairs the operation or efficiency of the City or the employee. The exercise of constitutional rights or other legally protected activities are not unbecoming conduct.

31. Employees may be disciplined up to and including discharge for conduct which occurs outside regularly scheduled working hours if such conduct affects the employee's ability to work for the City or if it places the City Council, City Administration or the City's reputation in a negative light. An example that might be considered negative light is a conviction for an offense that jeopardizes citizen trust or confidence in an employee's ability to perform required job duties and responsibilities. Pursuant to such policy, an employee may also be disciplined for failing to report an arrest or conviction for an offense that could jeopardize citizen trust or confidence in the employee’s ability to perform required job duties and responsibilities. An employee who is arrested or convicted for such an offense should report the arrest/conviction to his her division within three business days of the offense/conviction.

**IF THE EMPLOYEE HAS ANY QUESTIONS ABOUT THE NECESSITY OF REPORTING AN ARREST, THE EMPLOYEE SHOULD CONTACT HUMAN RESOURCES AND NOTIFY THE DIRECTOR OF HUMAN RESOURCES OR DESIGNEE OF THE ARREST.**
VI. REVIEW OF DISCIPLINARY ACTIONS

If an employee believes that a disciplinary action taken against him/her is capricious or arbitrary; the discipline violates an existing City of Denton policy; the discipline violates an existing state or federal law or regulation; or when the employee believes that the conduct for which the employee has been disciplined constitutes the exercise of a constitutional right or a statutorily protected activity, the employee may seek a discipline review hearing in accordance with the Disciplinary Appeal policy number 109.03.

VII. TEMPORARY AND SEASONAL EMPLOYEES

Employees classified as temporary, seasonal or special agreement are not covered by this policy. Although it is recommended that supervisors use the guidelines described in this policy, a temporary or seasonal employees may be dismissed for any reason or for no reason.