POLICY STATEMENT:

It is the policy of the City of Denton to give individual employees an opportunity for an appeal regarding disciplinary dismissal, disciplinary suspensions or demotions when they believe that a disciplinary action taken against them is capricious or arbitrary; the discipline violates an existing City of Denton policy or administrative directive; the discipline violates an existing state or federal law or regulation; or when the employee believes that the conduct for which he/she has been disciplined constitutes the exercise of a constitutional right or a statutorily protected activity. Disciplinary appeals are considered according to prescribed guidelines as set forth in the following “Administrative Procedures”. The disciplinary appeal process is designed to afford the employee a responsive forum to guard against biased or arbitrary decisions; however, nothing in this policy shall be construed as a grant to any employee of a property right in tenured public employment. All employees are employed strictly on an at-will basis.

Dismissals based upon a positive drug or alcohol test result are not subject to this Disciplinary Appeal process because the City of Denton’s Anti-Substance Abuse and Rehabilitation policy (no. 108.12) provides an appeal process for those dismissals.

City Council appointees, temporary employees, seasonal employees, contract employees, 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. However, an opportunity for a response and appeal shall be afforded such employees when they believe that a disciplinary action taken against them is capricious or arbitrary; the discipline violates an existing City of Denton policy or administrative directive; the discipline violates an existing state or federal law or regulation; or when the employee believes that the conduct charged constitutes the exercise of a constitutional right or a statutorily protected activity.

ADMINISTRATIVE PROCEDURES:

I. APPEAL PROCESS FOR SUSPENSIONS, INVOLUNTARY DEMOTIONS AND DISMISSALS

   A. Requesting the Appeal:

   An employee who has been demoted involuntarily, suspended without pay or dismissed may request a disciplinary appeal. Disciplinary appeals are conducted by an assistant city manager, a department head, an assistant director or another manager on the same level as an assistant.
director. “Dismissed” means that an employee has been involuntarily terminated and does not include resignations.

1. All requests for a disciplinary appeal must be in writing and must be filed with the Human Resources Department within ten (10) business days after receiving notification of an action taken.

2. An employee who requests a disciplinary appeal must inform the Human Resources Department in writing of his/her correct mailing address and telephone number if it is different from the address in the Human Resources’ personnel files. Failure to provide current mailing address and telephone information may result in administrative closure of the disciplinary appeal.

3. The written request must set forth the specific reasons why the employee feels the action is capricious or arbitrary; the discipline violates an existing City of Denton policy or administrative directive; the discipline violates an existing state or federal law or regulation; or the employee believes that the conduct for which he/she has been disciplined constitutes the exercise of a constitutional right or a statutorily protected activity. The employee should also identify those persons whom the employee believes have knowledge of facts relevant to the matter being appealed. If the request for a disciplinary appeal fails to contain the reason for the appeal or any facts to support the reason for the appeal, the Director of Human Resources may refuse the request for appeal.

4. Because it is important that disciplinary appeals be resolved as rapidly as possible, time limits, as set out in the following paragraphs, shall be considered a maximum and every effort shall be made to expedite the process. However, the limits may be extended or shortened at any or all steps if both parties agree in writing. In the event either party cannot agree, the Director of Human Resources shall have the discretion to shorten or extend the time limits. In the event the last day of a time limit falls on a weekend or a City holiday, in the case of a time limit based upon calendar days, the time limit shall include the next working day. In all instances, consecutive working days will be counted (excluding Saturday, Sunday, and City holidays) in arriving at the length of the time interval. Under no circumstances shall any failure to meet any time limit affect the validity or finality of event for which a hearing is sought.

B. Appointment of Appeal Official

1. The Director of Human Resources or Human Resources designee will appoint the Appeal Official. The Director of Human Resources or designee will not assign an assistant city
manager, division or department director or assistant director who played a role in the disciplinary action from which the employee’s complaint arose. An assistant city manager, department director, or assistant director shall be presumed to have played a role in the disciplinary action if he/she:

a. Discussed the details of the proposed disciplinary action with the employee or any supervisor in the chain of command;

b. Approved the disciplinary action; or

c. Personally imposed the disciplinary action.

Nothing shall prevent an assistant city manager, a director, or an assistant director of the City from acting as the Appeal Official for an employee's appeal if he/she has merely been informed of the type of disciplinary action imposed against the employee.

2. If the employee requesting the appeal or the employee’s supervisor object to the appointed Appeal Official because of a belief that the appointed Appeal Official is biased, the employee or supervisor may submit a written objection to the Director of Human Resources within three business days of the date of the letter giving notice of the appointment. Any written objection must contain specific facts upon which the objection is based. It is not sufficient objection that the appointed Appeal Official is an employee of the City of Denton. Within five business days of receiving the objection, the Director of Human Resources will determine whether the objection will be sustained based upon the written reasons in the objection--although the Director of Human Resources may seek clarification of those facts from the appointed Appeal Official. Should the Director of Human Resources sustain the objection, the Director of Human Resources will either appoint a different Appeal Official (to which either the appealing employee or the employee’s supervisor may again object in writing within three business days) or the Director of Human Resources may submit a list of three proposed individuals to which each party (the appealing employee or the employee’s supervisor) may object to one name and the Director of Human Resources will select an Appeal Official from the names without objections. It is within the Director of Human Resources’ discretion as to which method is used for the appointment of an Appeal Official. When an objection is made to an Appeal Official, the thirty calendar days by which an Appeal Official must conduct a review and investigation into the employee’s appeal, as described below, will be suspended for the length of time it takes for the Director of Human Resources to determine the objection or appoint another Appeal Official.
C. Investigation, Recommendation and Determination

1. The Appeal Official will conduct a review and investigation into the employee’s appeal to be completed within 30 calendar days of the employee's request for an appeal, unless an extension is agreed upon by both parties as described in this policy or unless an objection is made to the Appeal Official as described above. In addition to reviewing the employee’s written appeal and documentation relevant to the discipline, the Appeal Official may conduct interviews of witnesses or persons with knowledge relevant to the appeal. As part of the review process, the Appeal Official may or may not require a face-to-face meeting between the employee filing the appeal and the supervisor who recommended the discipline being appealed.

2. Upon conclusion of the investigation of the appeal, the Appeal Official will make a recommendation to the City Manager and a final action will be concluded within ten (10) business days. The City Manager may accept the recommendation; reject the recommendation; or accept the recommendation with modifications. The City Manager’s acceptance or rejection of the recommendation is the final decision on the appeal. After the City Manager has either accepted the recommendation (with or without modifications) or rejected the recommendation, the City Manager will communicate the final decision in writing to the employee, the employee's supervisor and others with the need to know in the chain of command.

3. As all employees are employed strictly on an at-will basis, and no contractual rights are implicated, no particular burden of proof need be met to sustain a termination or disciplinary sanction.

II. OTHER DISCIPLINARY ACTIONS (WARNINGS, MANAGED ACTION PLANS, REPRIMANDS AND DECISION MAKING LEAVES)

The appeal procedures described above do not apply to other forms of discipline, including Warnings, Managed Action Plans, Reprimands, and Decision Making Leaves (all described in City of Denton policy no. 109.01). If an employee questions the appropriateness of those disciplines the employee may do one or both of the following:

A. Write a rebuttal to the disciplinary action and the rebuttal will be placed in the employee’s personnel file with the disciplinary action. The employee may write the rebuttal on the space provided on the Performance Correction Notice or may write it on a separate sheet of paper. In any case, the employee should submit his/her response within ten (10) business days of receiving the disciplinary action; and/or,
B. Speak with his supervisor’s supervisor and/or anyone in his chain of command, up to and including the City Manager, regarding the disciplinary action and request that the disciplinary action be removed or modified. If a supervisor in his/her chain of command, after speaking with the employee, believes that the disciplinary action should be removed or modified, then Human Resources should be contacted to either remove the item from the employee’s personnel file or to assist in modifying the disciplinary action.