

CITY OF DENTON

POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE

SECTION: HUMAN RESOURCES	REFERENCE NUMBER: 109.03
SUBJECT: CORRECTIVE ACTION AND SEPARATION	INITIAL EFFECTIVE DATE: 11/08/96
TITLE: APPEALS	LAST REVISION DATE: 11/19/2020

POLICY STATEMENT:

It is the policy of the City of Denton to give individual employees an opportunity for an appeal regarding corrective action, including suspensions, involuntary demotions, or dismissals when they believe that a corrective action taken against them is capricious or arbitrary; the corrective action violates an existing City of Denton policy or administrative directive; the corrective action violates an existing state or federal law or regulation; or when the employee believes that they have received corrective action (i.e., suspension, involuntary demotion, or dismissal) for conduct that constitutes the exercise of a constitutional right or a statutorily protected activity. Appeals are considered according to prescribed guidelines as set forth in the following "Administrative Procedures." The 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 Appeal process because of 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, 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 corrective 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 an appeal."Dismissed" means that an employee has been involuntarily terminated and does not include resignations.

POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)

TITLE: APPEALS	REFERENCE NUMBER: 109.03
--------------------------	-----------------------------

1. All requests for an 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 corrective appeal must inform the Human Resources Department in writing of their current mailing address, personal email address, and telephone number. Failure to provide a current mailing address, personal email address, and telephone number may result in the administrative closure of the 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 they have 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 corrective appeal fails to contain the reason for the appeal or any facts to support the reason for the appeal, including the requested remedy the employee seeks, the Director of Human Resources or their designee may refuse the request for appeal.
4. Because it is important that 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 reasonably necessary. The Director of Human Resources or their designee 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. A failure by the City to meet the deadlines established herein shall not result in the appeal being granted

B. Appeal Committee

1. An Appeal Committee consisting of three (3) members will consider the employee's appeal. The three members will consist of the following combination of levels of City staff:
 - at least one deputy or assistant director, or director; and
 - one or more managers
2. The Appeal Committee will select a member to serve as the Chairperson of the Appeal

POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)

TITLE: APPEALS	REFERENCE NUMBER: 109.03
--------------------------	-----------------------------

Committee who will be responsible for making procedural decisions, including decisions related to investigations (e.g., who should be interviewed, how to proceed with the interviews, the drafting of the investigative report and what to include in the report, etc.)

3. Any director, assistant or deputy director, or manager who is a member of the Appeal Committee and played a role in the corrective action from which the employee's complaint arose must recuse themselves, and another Appeal Committee member will be appointed by the Director of Human Resources or their designee to serve in substitute of the recused member's place. A manager, department director, or assistant or deputy director shall be presumed to have played a role in the corrective action if they:
 - a. Discussed the details of the proposed corrective action with the employee or any supervisor in the chain of command;
 - b. Approved the corrective action;
 - c. Imposed the corrective action personally against the employee; or
 - d. Was a witness to the underlying event that was the basis for the corrective action.

Further, any director, assistant or deputy director, or manager who is a member of the Appeal Committee and also a member of the employee's department must recuse themselves, and another Appeal Committee member will be appointed by the Director of Human Resources or their designee to serve in substitute of the recused member's place.

Nothing shall prevent a director, assistant or deputy director, or manager from serving on the Appeal Committee for an employee's appeal if they have merely been informed of the type of corrective action imposed against the employee.

4. If the employee requesting the appeal or the employee's supervisor object to the service of an Appeal Committee member because of a belief that the appointed Appeal Committee member is biased, the employee or supervisor may submit a written objection to the Director of Human Resources or their designee within three (3) 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 a sufficient objection that the Appeal Committee member is an employee of the City of Denton. Within five (5) business days of receiving the objection, the Director of Human Resources or their designee will determine whether the objection will be sustained based upon the written reasons in the objection. The Director of Human Resources or their designee may seek clarification of those facts from the Appeal Committee member. Should the Director of Human Resources or their designee sustain the objection, the Director of Human Resources will request the participation of another Appeal Committee member to serve on the Appeal Committee for consideration of the employee's

POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)

TITLE: APPEALS	REFERENCE NUMBER: 109.03
----------------	-----------------------------

appeal.

C. The Investigation, Recommendation, and Determination

1. The Appeal Committee will conduct a review and investigation into the employee's appeal to be completed within thirty (30) calendar days of the date in which the Appeal Committee receives the employee's request for an appeal unless the timeline is extended as described in this policy. In addition to reviewing the employee's written appeal and documentation relevant to the discipline, the Appeal Committee may conduct interviews of witnesses or persons with knowledge relevant to the appeal. As part of the review process, the Appeal Committee 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 Committee will make a recommendation to the City Manager. The recommendation must be approved by a majority vote of the Appeal Committee members and shall include its factual findings. If there is a dissenting opinion regarding the recommendation, the dissenting opinion (including factual support for the dissenting opinion) will be included in the Appeal Committee's recommendation to the City Manager. 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. The final action will be concluded within ten (10) business days.
3. As all employees are employed strictly on an at-will basis, and no contractual rights are implicated, no particular burden of proof needs to be met to sustain a termination or corrective action.

II. WRITTEN REPRIMANDS

The appeal procedures described above do not apply to written reprimands (described in City of Denton Corrective Action policy no. 109.01). If an employee questions the appropriateness of a reprimand, the employee may do one or both of the following:

- A. Write a rebuttal to the reprimand, and the rebuttal will be placed in the employee's personnel file with the corrective action. The employee may write the rebuttal on the space provided on the

POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)

TITLE: APPEALS	REFERENCE NUMBER: 109.03
--------------------------	-----------------------------

reprimand, email it, or write it on a separate sheet of paper. The employee should submit their response within ten (10) business days of receiving the reprimand; and/or

- B. Speak with their supervisor's supervisor and/or anyone in their chain of command, up to and including the City Manager, regarding the reprimand and request that the reprimand is removed or modified. After speaking with the employee, if a supervisor in the employee's chain of command believes that the reprimand should be removed or modified, then Human Resources should be contacted to either include documentation in the employee's personnel file to rescind or modify the reprimand.