Discipline Handbook

A Guide for City of American Canyon Managers and Supervisors

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CITY DISCIPLINE HANDBOOK

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INTRODUCTION

This handbook is written and designed primarily for supervisors and managers of employees who have regular City status (non-probationary). Probationary employees and department heads are at-will employees and as such are not subject to the "for cause" disciplinary procedures outlined in this handbook, though there is a section on releasing a probationary employee. Formal disciplinary action for regular employees is either under the provisions of the City's Human Resources Practices and Procedures Manual or is covered under the applicable collective bargaining agreement. Familiarize yourself with the disciplinary articles of the appropriate collective bargaining agreement.

Also, keep in mind that if you are dealing with a probationary or an at-will management employee, you need to talk to the Human Resource Department and/or City Manager on discipline issues. This discussion may involve consultation with the City Attorney or a contract labor attorney prior to taking action against an at-will employee.

This handbook has been written to provide you with useful advice, tools, examples, and assistance in carrying out your responsibility for discipline. For the majority of situations, it will serve as your primary source of information in fulfilling your key role in the disciplinary process; however, all formal disciplinary actions above an oral reprimand require the review and approval of the department head and the Human Resources Director.

Chapter 1

PHILOSOPHY OF THE CITY OF AMERICAN CANYON ON DISCIPLINE AND THE SUPERVISOR AS KEY PERSON IN IMPROVING PERFORMANCE

Excellent employees who are motivated and strive to provide the highest level of service to the citizens of the City of American Canyon in the performance of their duties and the accomplishment of the mission of their unit are the rule, not the exception. Such a unit is the desire of every supervisor and a testimony to high quality, dedicated employees and good supervisory leadership. They attest to the effectiveness of the City management, supervisory, and employee systems and processes: selection, training, teamwork, and desire to deliver the highest level of service to the public through a high quality workforce. Most employees come to the City sincerely wanting to do a good job and deliver service to the public. It is often the first-line supervisor's skill, talent, and knowledge of the "tools of supervision" which lead, direct, train, counsel, appraise, and assist the employee in achieving that goal.

Remember, the poorest performing employee in your unit – unless that performance is documented as being below standard – has set the standard for your unit in the eyes of many people. Poor performance must be documented and corrected. As a supervisor, this is your responsibility.

This responsibility for improving employee performance starts with you and extends up the management ladder of every department up to the City Manager. When it comes to taking "formal disciplinary action," it is taken by the appointing authority (department head) but usually involves action initiated by the first-line supervisor and reviewed by the Human Resources Department and/or the City Manager.

Given the above, the role of the first-line supervisor, from informal coaching and counseling through the formal disciplinary actions mentioned above, is of key importance.

A Word about Temporary and Provisional Appointments

You will learn as you read this manual that formal discipline only applies to employees who have regular status in a class that is a regular position.

- Regular Employee: Any person employed by the City for an indefinite period of time and eligible for all benefits and privileges and has successfully completed the probationary period.

- At-Will Management Employee: An employee who is appointed by and serves at the pleasure of the City Manager and who does not serve a probationary period and, therefore, does not gain "Regular" employment status.

- Probationary Period: The period of continuous City service following appointment from an eligibility list to a class in City service and prior to obtaining regular status in the class. In the City, this is typically nine months but in some cases may be twelve months.

- Position – A specific office of employment provided by the budget, whether occupied or vacant, full- or part-time, temporary or permanent, calling for the performance of certain duties as outlined in a class specification (job description).

- Status: the employee's current appointment, such as regular, temporary, provisional, at-will, or probationary.

Disciplinary action does not apply to employees who do not have regular status and who hold temporary, provisional, at-will, part-time that is less than 1,000 hours per year, or probationary status. The definitions below will help make this distinction.

Temporary Employee

Temporary employees can be hired on a full-time or part-time basis for less than 1,000 hours per year. Temporary employees are not eligible for City benefits or any leave accruals. An employee appointed to a temporary position is not a regular employee unless the employee had previously attained regular status in another position. If there is no eligibility list, a temporary employee may be appointed provisionally.

Provisional Employee/Appointment

A temporary appointment of a person who possesses the minimum qualifications established for a particular class and who has been appointed to a position in that particular class, in the absence of an available eligibility list. In no instance shall an original provisional appointment be longer than six (6) months without an official extension. A provisional appointment may be extended once only, up to a maximum of three (3) additional months by the City Manager.

Probationary Employee

A probationary employee is really in the process of completing the last part of the testing process prior to obtaining regular status. This is your opportunity as a supervisor to review the employee's work and make a very important decision— should that employee get regular status?

The supervisor must be aware when a probationary period ends. Probationary periods are typically nine months, but it is possible that the probationary period of a specific job classification may be different. Review the job description. If there is no mention of a probationary period in the job description, the probationary period is nine months. Any probationary period other than nine months will be specifically spelled out in the job classification description. If an employee is not released during the probationary period,

the employee will obtain regular status. DO NOT WAIT UNTIL THE LAST MINUTE TO RELEASE! You may not be able to process the paperwork in time!

You will learn as you proceed through this manual that when disciplining a regular employee, the burden of proof is on the City or **you,** as the supervisor. However, when releasing an employee on probation, the employee's appeal rights are limited to claims of discrimination, and the burden of proof is on the employee.

One of the best ways to avoid disciplinary problems with regular employees is to act affirmatively during an employee's probationary period. All probationary employees are to be provided an employee evaluation by their immediate supervisor. The City's Performance Management Process is designed to provide evaluations and development at three intervals for probationary employees.

All too often, a regular employee who is being disciplined should have been released on probation; typically, there were even documented reasons for rejecting him/her, but it was not done. It is very important to give an employee who is on probation regular feedback. If it is necessary to release an employee, it should not be a surprise to that employee, since she/he should have already received this feedback.

Keep the following in mind when dealing with probationary employees:

- The probationary period is an "extension of the exam process."

- Communicate expectations and standards to employees. Provide them with written duty statements and job standards by which the job should be performed within the first week of the start of employment.

- Ask yourself: Does the employee have the basic skills to do the job?

- Is there a problem with attendance or attitude? If there is, quickly release him/her on probation. Do not wait until the end of the probationary period.

- Do not settle for mediocrity— if an employee does not meet job standards, release him/her from probation. Remember, when an employee is new to a position, this is the time they should be putting their best efforts forward. If you are only getting mediocre performance when they should be showing you their best, what will their performance be when they gain regular status?

If problems such as performance, behavior and attitude, ability to work cooperatively with others, or attendance arise, **RELEASE THE EMPLOYEE FROM PROBATION.**

A probationary period should not be extended if you simply want more time to evaluate an employee. If you have doubts, release the employee from probation. A probationary period should generally be extended for only two reasons:

(1) Leave of Absence. A probationary employee may be authorized under some circumstances to take a leave of absence (paid or unpaid) that exceeds thirty (30) consecutive calendar days. In these cases, the probationary period is extended by the equivalent number of calendar days that the employee was absent.

(2) Light Duty Assignment. A probationary employee may be assigned to light duty for a period of more than thirty (30) consecutive days. The number of days the employee works in the light duty assignment is added to the probationary period as an extension, if: (a) the appointing authority authorizes the light duty assignment; (b) the light-duty assignment does not contain the essential duties necessary for adequately evaluating the performance of a probationary employee but which the employee is capable of performing based upon a medical evaluation; and, (c) the City Manager approves the extension. In such circumstances, the probationary period is extended as if the employee were on paid or unpaid leave as described above, even though the employee is performing the light-duty assignment.

The appointing authority must notify the employee and the Human Resources Director in writing of the effective date of assignment to light duty, and the expected termination date of the light-duty assignment, as soon as it is known.

There are no appeal rights of probationary employees except if the release was based upon unlawful discrimination. **The employee cannot appeal release merely because he or she disagrees with your decision.**

Chapter 2

ROLES OF KEY PARTICIPANTS IN THE DISCIPLINARY PROCESS

The Role of the Supervisor

- Communicate work rules to employees such as: City, department, and other pertinent policies and procedures and handbooks; e.g., Discrimination, Harassment, Workplace Violence, Information Technology Security, Vehicle Use, Employee Handbook, department handbooks, etc.

- Clearly explain duty statements and job and other performance expectations to enable an employee to succeed.

- Review prior employee performance evaluations.

- Meet with employees to correct and improve performance.

- Address a problem in performance and/or attendance once you are made aware of a problem or infraction.

- Recognize, handle, and make recommendations regarding disciplinary cases.

- Deal objectively with each problem and apply discipline consistently.

- Be aware of the terms and conditions of employment as they relate to disciplinary practices.

- Have knowledge of labor agreement provisions, including the representation rights of employees.

- Participate/testify in disciplinary hearings.

- Know the chain of command.

- Investigate allegations of employee misconduct or refer to the Human Resources Department.

The Role of the Union

- **Representing employees.** Some employees desire representation. A union representative can make sure that you understand the employee's case, as well as assist in communicating the supervisor's concerns to the employee.

- **Improving management practices.** Unions can frequently identify practices that need improving— sometimes matters of consistency and fairness; sometimes matters involving reasonableness of basic work rules, whether written or unwritten.

The Role of the Management/Appointing Authority (Department Head)

- Set a good example.
- Understand and implement City policies and procedures.
- Exhibit a willingness to support the policies consistently and fairly.
- Teach supervisors and other managers how to make department/City policies and procedures work.
- View “discipline” as corrective and instructive rather than punitive.
- Understand the need to change and control unacceptable behavior that is not positive and supportive of organizational goals.
- Implement discipline as required.
- Ensure that disciplinary action is consistent with department and City practice and is fair and legal.
- Understand legal limitations on discipline and those imposed by City policy.
- Understand, coordinate, and utilize “Skelly” procedures.
- Hold all departmental managers accountable for proper application of disciplinary policies.

The Role of the Human Resources Department

- Coordinate and consult with the City Manager and counsel, as needed, regarding discipline.
- Support and consult with department heads and supervisors regarding disciplinary cases and approve actions.
- Serve as the Skelly hearing officer.
- Coordinate disciplinary documentation.

Chapter 3

PREVENTION

The supervisor's primary concern is the employee's behavior that impacts work and the workplace, regardless of the cause. Preventive actions are the proactive steps taken by a supervisor to minimize problems that require corrective or disciplinary action. **Corrective or disciplinary actions are usually taken to prevent misconduct or when preventive actions fail to improve the employee's performance to an acceptable level.**

The responsibility for improvement of performance is shared between you and your employee. It is one of the most important responsibilities assigned to a supervisor. The purpose of discipline is not to punish, but to teach an individual to behave or perform in an acceptable manner. Your role as a supervisor or a manager is that of an instructor, teaching the employee how to perform in a satisfactory and acceptable manner on the job. Your employee's responsibility is to fully participate in the process and to accept responsibility for his/her performance and/or behavior. **Despite your supervisory efforts, the employee ultimately makes the decision whether or not to perform according to standards.**

Throughout the counseling process, the employee should be brought to an understanding that you honestly desire his/her improvement and are providing the needed training and/or assistance. At the same time, the employee must be aware that s/he has been given a fixed period in which to improve, and in the event s/he cannot or will not improve, the employee will be subject to disciplinary action. The value of this approach lies in the recognition that proper performance counseling (that is, communication and documentation related to performance standards) can challenge an employee to realize his/her true potential in a way no other method can.

The following suggestions can help you prevent poor employee performance or behavior problems. These suggestions are based on the belief that it is most important for you to create and maintain conditions that minimize the number of corrective or disciplinary actions that are taken. In other words, your efforts should be directed first toward preventive measures. These actions are proactive steps which you can initiate as opposed to steps taken in reaction to an employee's wrong-doing.

Set Clear Expectations

When employees report to you as their supervisor, there is a need to clearly communicate job duties and accepted standards of performance and conduct.

As changes occur, modifications should be communicated to your staff. In cooperation with your employees, you can develop the general standards of conduct and performance that are expected in your section or unit, and you can see that all employees, and particularly, all new employees, are aware of these standards. When

these standards have been formulated, accepted, and understood, you will find that the need to take corrective actions will occur less frequently.

Create a Good Working Environment

- Be friendly and approachable.
- Communicate.
- Foster a productive and safe working environment that helps employees do their best.
- Set a good example.
- Be aware and resolve conflicts before they escalate.
- Investigate and resolve complaints quickly. As an example, the sooner an interpersonal conflict between employees is resolved, the less likely it will erupt into a major problem in the future.
- If the complaint involves sexual harassment or discrimination, immediately refer to Section 9.8 of the HR Manual and Appendix I-B of on page 47 on how to handle such complaints and inform the department head and the Human Resources Director. A sexual harassment or workplace harassment complaint, if left unresolved, can leave both you and the City in a legally vulnerable position.
- If a problem or situation involves workplace violence, immediately contact your department head and the Human Resources Director (see Appendix I-A on page 46)
- If personal problems are causing an employee to have problems at work, suggest that the employee contact the Employee Assistance Program (EAP).
- If the employee indicates an alcohol or drug problem, follow the procedure in Section 3.5(b) of the HR Manual. Appendix I-D on page 62 provided additional guidance.
- Seek feedback from your employees regarding what can be done to make their working environment more productive.
- Provide employees with words of appreciation and encouragement. A memo of commendation or a Star Award for a job well done can be conducive to maintaining a positive work environment. However, be honest! Recognition for improved performance which is still not acceptable, or up to standard, is not the same as praise for acceptable or superlative work. The memorandum should state clearly what is being recognized.

Provide On-Going Feedback Regarding Performance

- You should be available to your employees and interact with them on a regular basis. If you are separated from your employees by location or shift, you should communicate with them face-to-face on a regular basis.

- Employees should feel free to offer suggestions for improving working methods and to bring problems to you when they arise. The existence of problems among your employees is not necessarily a reflection on your skill as a supervisor. What is important, however, is the willingness of your employees to bring their complaints, comments, or concerns to you. They will come to you when they know you will be open-minded in evaluating their recommendations and fair in handling their problems.

The following are suggestions to assist you in establishing open communications with your employees:

- Do not criticize employees in front of others, except when the health or safety of the employee or others is of imminent concern.

- Be respectful of both management and employee perspectives.

- Listen to the employees' concerns when they arise.

- Listen when an employee tells you of obstacles to his/her effective performance and address the situation if it calls for an adjustment and you are in a position to be able to take action.

- Be familiar with the formal negotiated grievance procedure in the labor agreement(s) covering employees who are under your supervision.

- Refer those cases you cannot satisfactorily resolve to higher authority; but be prepared to share your suggested solutions.

- Provide employees with regular feedback regarding their job performance.

- Be as impartial and objective as you possibly can on an employee's performance appraisal. Do not hesitate to praise; but do not rate an employee higher than s/he deserves just to avoid a disagreement. Evaluations can have some subjective elements, but the basis of the evaluation should be objective. <u>Your job is to make that judgment call.</u> Use examples for both good and poor performance— it shows you are considering both the positives and areas of development in performance. An inaccurate evaluation can be worse than none at all, from the point of view of the employee and management.

Provide Adequate Training and Development

- It is the supervisor's responsibility to provide training and assistance, where appropriate, so that employees can successfully perform their jobs. Supervisors have a responsibility to assess the employee's training needs and to ensure that these needs are met in a reasonable timeframe. Training can be accomplished through a variety of methods, including on the job, as well as formal classroom instruction. Become familiar with the resources available to you. They may include such things as:

    - Making use of instructional tapes and videos
    - Inviting speakers with a particular expertise to one of your staff meetings
    - Pairing an employee with a "buddy"
    - Contacting the Human Resources Department for additional resources

- The development of your staff also entails providing training opportunities to develop employees for increased responsibilities in future job opportunities. The performance appraisal is a good opportunity to discuss with employees their goals and jointly put together a career development plan to achieve those goals in the next year.

When a Problem Arises, Provide Prompt Intervention

- A problem should be immediately brought to the attention of the employee. The usual way to do this would be in your routine business communication.

- **Unresolved conflicts often lead to a need for formal action by the supervisor.** Therefore, you should attempt to resolve conflicts (such as personality disputes, minor arguments, etc.) quickly by taking the following steps:

STEP	ACTION
1	Bring the involved employees together to discuss the problem. *Note*: This is **not** appropriate when investigating allegations of employee misconduct, sexual harassment, discrimination, or workplace violence
2	Listen with an open mind to all sides of the issue.
3	Decide on a solution. If the solution involves only the parties to the dispute, you should attempt, where possible, to mediate a solution between them rather than resolving the problem for them. If the solution involves a policy decision or other unit employees, the decision should be postponed until you have an opportunity to discuss it with your department head or with your other employees.

- Informal counseling is the first step when you talk about a problem. The entire emphasis of this counseling is on helping the employee. The focus should be on the facts, not the person. Be consistent and objective. Focus on work performance, but be aware of potential personal problems affecting performance.

- To assist in making the counseling session a constructive one, consider following the steps listed below:

STEP	TOPIC
1	Review employee's personnel file to see if there are any previous deficiencies, problem areas, or record of performance limitations.
2	Prepare for the meeting by outlining topics to be discussed and gathering necessary materials for the meeting.
3	Cite specific problem areas with examples. Allow the employee the opportunity to discuss issues that s/he believes may be affecting performance. Consider suggestions offered by the employee.
4	Discuss and give employee copies of any procedures, rules, and policies relating to the performance problems. Be sure you have reviewed them yourself and be prepared to discuss them.
5	Discuss the impact of the deficiency on the job (staffing, morale, etc.).
6	Discuss the expected standard and how you will follow up (dates, consequence of error).
7	Discuss how you will measure improvement.
8	Offer assistance (i.e., training).
9	Bring the meeting to a close by confirming that the employee clearly understands 1 - 8 above.
10	Summarize the meeting by writing down what was covered and what was agreed to. If a corrective action plan has been developed, make sure the employee understands your expectations and his/her responsibilities. Provide a summary to the employee as a "record of discussion" as appropriate.

- Counseling is confidential. Meet with the employee in private. Do not discuss the need to counsel in front of or with other employees.
- Note to yourself any contributing agency factors such as poor facilities, lack of or faulty equipment, lack of training, or the need for reasonable accommodation for a qualified employee with a disability.

- If the employee mentions the need for or requests a reasonable accommodation, do not disregard the request. Identify the type of accommodation being requested. Contact your department head and Human Resources for direction on how to respond to such a request.
- If appropriate, provide the employee with ADA (American with Disabilities Act), FEHA (Fair Employment and Housing Act), FMLA/CFRA (Family Medical Leave Act/California Medical Rights Act) paperwork, so s/he may make a formal request.
- If the employee cites personal problems, do not attempt to become the employee's personal counselor. Refer the employee to the EAP or other qualified professionals.
- Be sure the employee understands what areas need to be improved, how improvement is to be achieved, and the timeframe. This is the time to clear up any misunderstandings. Be supportive of the employee.
- Follow-up on your part is critical to this entire process, and it is essential that you remember to evaluate the situation with the employee within the agreed upon timeframe.
- Your failure to follow up can send a message that it is not really important that the employee improve, and you will lessen the effectiveness of your counseling. If satisfactory improvement is not achieved and/or sustained, you will need to take further corrective action or commence the discipline process.
- It is critical that every supervisor document significant events and maintain working files that include precise, factual documentation regarding the employees s/he supervises. This documentation should include an on-going record of the employee's performance and other work-related information. The information in the supervisor's working files may provide the basis for completing performance appraisals or supporting formal disciplinary action, should it become necessary.

When engaged in corrective action, the supervisor must ensure the corrective action plan is closely monitored to provide employees the opportunity to get additional assistance. Appropriate monitoring should be put in place to provide optimal opportunity for improvement. If additional adjustments are needed to the corrective action plan, you will be able to take action quickly. Make sure to document corrective action meetings and steps to the file.

Employee Assistance Program

The Employee Assistance Program (EAP) is an employee benefit that offers counseling sessions to employees and dependents. Licensed and qualified counselors perform counseling in a confidential manner. Eligible employees and their dependents are entitled to five (5) sessions each per year, per incident.

Services provided by EAP are as broad as the kinds of problems that people have:

- Marital and family counseling
- Alcoholism and drug dependency counseling
- Financial and credit problems
- Emotional problems
- Stress
- Interpersonal conflicts
- Situational problems
- Legal matters
- Elder care

Supervisor Referral to EAP – Informal

- If you become aware that an employee may be having personal problems, you may wish to suggest that s/he contact the EAP for counseling. Advise the employee that this is a confidential process.

- The supervisor may make an informal referral to EAP, even though job performance or behavioral problems have not yet occurred.

- Utilization of the EAP is strictly voluntary on the part of the employee. Supervisors may advise employees that EAP is available and may be helpful.

- Employees should not be ordered to use EAP.

Management Referral to EAP – Formal

- If an employee continues to have performance or behavioral problems despite informal coaching and counseling, the supervisor may recommend to the department head that a management referral to EAP is necessary. A management referral to EAP is not a precondition to imposing discipline.

- A management referral consists of having Human Resources contact the EAP provider to set up a management referral record. The supervisor and/or the department head will meet with the employee to explain that he or she needs to contact EAP for a counseling appointment and that s/he is strongly advised to attend the appointment. Although it can be strongly encouraged, participation cannot be mandatory.

- The referral is made because of work performance or behavioral problems.

- Such referrals can only be made only through the Human Resources Department and after consulting your department head.

Chapter 4

DISCIPLINE DEFINED

Formal discipline applies only to employees with regular status. Any employee who has regular status may, for cause, be removed, suspended, or reduced in rank or compensation by the appointing authority, or any person authorized by him/her, by notifying the employee of the action, pending the service upon him of an order in writing, stating specifically the reasons for the disciplinary action. At-will, probationary, and part-time employees are not covered by these processes.

Discipline is very specifically defined in the City's collective bargaining agreements and/or by similar language in the Human Resources Policies and Practices Manual. After an oral warning and letter of reprimand, it may take the form of any one or a combination of the following:

- Temporary Suspension of Leave Accruals
- Suspension
- Reduction in Salary
- Disciplinary Demotion
- Discharge

Temporary Suspension of Leave Accruals

A department head may suspend sick leave or vacation leave accruals for disciplinary reasons, for a period not to exceed three (3) work-days worth of leave accrual. A temporary suspension of leave accruals will not affect the employee's anniversary date.

Suspension

A department head may suspend the employment of an employee without pay. Persons under suspension shall not accrue sick leave and vacation during such suspensions. A new benefit date shall be established, unless otherwise recommended by the department head and approved by the City Manager.

Reduction of Pay Step

A department head may reduce the salary of an employee for disciplinary reasons, provided that such reduction shall be to a step within the salary range of the position held by the employee.

Disciplinary Demotion

A department head may demote an employee for disciplinary reasons to any position with a lower salary allocation, provided the employee meets the minimum qualifications for the lower-level position.

Dismissal

Dismissal is the removal of a regular employee from City service. This action should be taken only when management is satisfied that the employee has been given fair and reasonable opportunity to meet performance or behavior standards, and has clearly failed to do so or the action is egregious enough to warrant dismissal.

Disciplinary Considerations

When disciplining an employee, management bears the burden of proving that**:**

1. There is "good cause" (i.e., a good reason) to discipline the employee;

   - and -

2. The level of discipline is appropriate, given the offense and any other relevant considerations.

Good Cause

According to the Human Resources Policies and Practices Manual and the labor agreements, no disciplinary action shall be taken without good cause. "Good cause" is defined as any facts which, based on relevant circumstances, may be reasonably relied on by the appointing authority in the exercise of reasonable discretion as a basis for disciplinary action. "Good Cause" includes, but is not limited to:

1. Fraud in securing appointment.
2. Inability, inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned tasks or failure to discharge duties in a prompt, competent and reasonable manner.
3. Insubordination, defined as failure to obey a direct order or policy of a supervisor or superior, when that order is clearly understood, and the order is both lawful and does not cause an unreasonable safety risk. Insubordination may occur when an employee's actions involve a resistance to, or a defiance of, the supervisor, such as the use of insulting, abusive, or obscene language when used to challenge a supervisor's authority.
4. Dishonesty.
5. Insobriety, unauthorized use or possession of alcohol, controlled substances or habit-forming drugs during duty hours.

6. Addiction to or current use of narcotics, habit-forming drugs, abuse of prescribed drugs or alcohol which prevents an employee from performing the essential functions of the job, with or without reasonable accommodations, or would endanger the health and safety of the employee or other individuals.
7. Absence without approved leave.
8. Conviction of a crime which relates to the qualifications, functions or duties of the employee's position or which involves moral turpitude.
9. Discourteous treatment of the public or other employees while on duty or when recognized or acting as a City representative.
10. Disorderly conduct including, but not limited to, physical altercations.
11. Disclosing any confidential City information to unauthorized persons.
12. Improper political activity as defined by the City Municipal Code and the State of California Government Code.
13. Willful disobedience.
14. Unauthorized removal or use of any City property or any of the City's agent.
15. Damage or negligence to public property or waste of public supplies or equipment.
16. Falsifying any City records or reports.
17. Interfering with another employee's job performance.
18. Any act or conduct that is discriminatory in nature toward another person's race, color, national origin, age, sex (including sexual harassment), sexual preference, gender identity, marital status, physical handicap, medical condition, veteran status, religious affiliation, political affiliation or a perceived mental or physical disability.
19. Failure to abide by reasonable safety precautions.
20. Misuse or abuse of sick leave.
21. Refusal or inability to meet job performance standards in accord with written or verbal direction after a prescribed period of time.

Factors to Consider: When to Discipline

Whether to discipline or take action will depend on many factors such as:

- Was there a rule, procedure, policy, or regulation that the employee violated? Was the rule written? Was the rule unwritten, but well known to employees?

- Was the employee informed of poor performance or inappropriate behavior? When and by whom? Was this documented?

- Are there contributing problems that are the responsibility of the City to correct?

Know what the impacts of the employee's actions are on the workplace and be prepared to explain and document.

Factors to Consider: Appropriate Level of Discipline

For the discipline to be considered appropriate, we must demonstrate that the level of discipline "fits the offense." In other words, the City must be able to show that the proposed discipline is not excessive and is appropriate given the type and extent of the misconduct and/or work performance problem.

The City must be able to show that the seriousness of the offense, the individual's disciplinary history, or similar disciplinary actions within the department were taken into account.

- Consider the employee's length of employment, class, job duties, and responsibilities.
- Have there been prior discipline or other corrective actions?
- Has discipline or corrective action been progressive, and at what stage of progressive discipline is the situation now?
- Is the conduct so unacceptable that by itself it warrants termination?
- Is the inappropriate behavior or inadequate work performance new or has it been long-term or on-going?
- Are there multiple, related performance problems that should be considered?
- Are there aggravating or mitigating circumstances that should be considered (e.g., previous discipline, impact on employee's productivity, honesty in responding to investigative inquiries)?
- Review similar situations and how they were handled by your department.
- Consider all evidence— pro and con— before making a final decision about the level of discipline.

Burden of Proof

Bearing the burden of proof means that management must have evidence— testimony, business records, etc.,— to support the facts outlined in the order of discipline. YOU MUST PROVE THE FACTS.

Chapter 5
EXAMPLES OF DISCIPLINARY SITUATIONS

This chapter provides sample problems pertaining to some of the most common reasons for discipline as listed below:

- Performance problems, including inappropriate workplace behavior
- Excessive absenteeism/sick leave abuse
- Tardiness
- Theft, embezzlement and unauthorized use of City equipment
- Substance abuse/alcohol related problems
- Loss of driver's license
- Breach of confidentiality

Performance Problems

Common performance problem situations include:

- Problems with the quality of work;
- Problems with the quantity of work;
- Problems with unacceptable behavior.

In order to address the above problems, the following steps are suggested:

STEP	ACTION
1.	Identify the critical tasks of the job. What are the most important and essential elements of the job?
2.	Identify the standards of performance and if appropriate, whether the employee has been made aware of the standards.
3.	Identify how to measure if the standards are being met.
4.	Identify how the employee failed to meet the standard(s).
5.	Place the employee on a Performance Improvement Plan (pg. 70)

As a supervisor, you can identify critical or important tasks based upon: (1) your own experience; (2) standards on the job; (3) manuals or rules and regulations; (4) discussions with employees actually doing the job; (5) the equitable application of these standards to all employees performing similar tasks; and (6) the City job description/ class specification.

For instance, you may identify the critical tasks or responsibilities of an Administrative Clerk III (an advanced journey level, lead clerical employee) to be:

- Provide lead direction to others and evaluate their work output
- Exercise independent judgment in prioritizing work
- Deal tactfully with employees, department staff, and the public
- Perform advanced journey-level work
- Pay attention to details
- Provide excellent customer service
- Set a good example
- Maintain good attendance

After determining the critical tasks or responsibilities of the position, you must figure out how to quantify or measure the work that you expect to be performed. In the example given above, you might measure quantity or quality based on:

- Accuracy of the completed work product (are there typos or misspelled words; does the work frequently have to be returned and re-done?)
- The volume of the work product. How much is being produced? Do reports get typed in a timely manner? Are deadlines met?
- Is the work of those reporting to the lead worker getting done? Is work evenly distributed?
- Is the lead worker maintaining positive working relationships and interacting with others in a positive manner? Are there examples of rude, discourteous, or inappropriate behavior?
- How is the attendance of the lead worker?

If you have an employee with whom you are having performance problems, you need to be sure you have clearly communicated your expectations, and that you have provided the necessary counseling and coaching to the employee. The concept of progressive discipline suggests that certain steps be taken.

Excessive Absenteeism/Sick Leave Abuse

A common concern and problem for supervisors is an employee who is absent a great deal, usually calling in sick. What can you do about this? You must first distinguish between protected sick leave and abuse or misuse of sick leave. If sick leave is protected, you cannot discipline an employee for that usage.

It is important to show that excessive absenteeism impacts your operation. Specifically, work does not get done, is delayed, or has to be performed by another employee.

Sick leave can be used for personal purposes when sick, to attend a medical appointment, or to donate blood. Employees may also use sick leave when eligible family members are sick or injured., It is not to be used like vacation or for personal business of a non-medical nature.

Don't use any arbitrary standard to determine sick leave abuse.

Look at sick leave use/abuse on a case-by-case basis.

Apply controlled leave consistently for like circumstances.

How do you deal with someone who is excessively absent or abusing sick leave (for example, using sick leave when they are not sick) or using more sick leave than a situation warrants (e.g., taking a whole day off for a morning medical appointment)? Determine what constitutes excessive absenteeism or sick leave abuse and how you distinguish between "legitimate" sick leave usage and "abuse." Protected leave (Workers' Compensation, ADA {Americans with Disabilities Act}, FMLA/CFRA {Family Medical Leave Act/California Family Rights Act}, and/or PDL {Pregnancy Disability Leave}) time should not be included in any calculation of excessive or abusive sick leave.

When analyzing an employee's absenteeism and sick leave usage, gather the following information:

- Current sick leave balance
- Time worked for the City
- Compare actual hours worked with hours scheduled to be worked during a specific time period, such as six months. Do not include authorized vacation time in calculating absenteeism
- Determine if a long-term illness or injury was covered by workers' compensation, FMLA/CFRA, PDL, ADA, etc.
- Was the sick leave authorized?

- What reasons did the employee provide for needing sick leave?

- Do any patterns emerge, such as Monday - Friday usage, or the day before or day after a holiday as an attempt to extend the weekend or holiday?

- What is the frequency of the employee's absences? Are there a lot of individual days being used for separate instances versus using blocks of time? For example, one employee may miss 15 continuous days from work due to a serious illness, and another employee may miss 15 separate days of work.

- Is the employee following appropriate sick leave procedures?

In other words, get your facts together before deciding what to do. Now that you have your facts, analyze the data.

Example:
You have two employees. Both have worked for the City ten years. Therefore, had they never used sick leave they would have approximately 1,200 hours of sick leave accrued.

Employee A has 300 hours of sick leave accrued. Employee B has 120 hours of sick leave accrued. On the surface, employee A has less sick leave usage or better attendance than employee B, but you need to further analyze the figures.

Upon analyzing time sheets and absence requests, you determine that employee A, in the last six months, has used 33 days of unprotected sick leave. All 33 days were single days of usage, and 23 of the 33 days were in conjunction with the weekend or holiday.

This would certainly give the appearance of sick leave abuse (i.e., Why are they usually sick in conjunction with a weekend?).

When looking at employee B, you see that after three years of employment with perfect attendance (360 hours of sick leave accrued), she had a serious non-industrial injury and was gone for three months, thus exhausting all sick leave.

She returned to work and for four more years did not use any sick leave. After four years, the employee took maternity leave for her newborn child and was gone four months, exhausting all sick leave. In the last six months she used 120 hours or 15 days of sick leave. Most of the sick leave was used for doctors' appointments for her child, none of which was in conjunction with a weekend. From these facts, it is not likely that sick leave abuse is occurring.

The illustrations above demonstrate that it is <u>not</u> recommended to establish a set number of hours to determine whether controlled leave is warranted. Employee A has more sick leave accrued, but is probably abusing sick leave, while Employee B has less sick leave but is not abusing sick leave. If you had a rule that said anyone who falls

below 200 hours sick leave is placed on controlled leave, you might possibly be dealing with the wrong employee.

Once you've analyzed your data, what do you do next? As is the case with most employee problems, the first thing to do is talk to employee A. The following points should be made:

- 33 days sick leave were used in the last six months.
- 23 of the days were in conjunction with weekends.
- The employee's use of sick leave is excessive.
- Good attendance is important to get the job done.
- You'll be monitoring the employee's sick leave usage over the next three months (or another period of time), and you expect the employee to correct his or her excessive absenteeism.
- If there is not a sustained correction and the same pattern and/or usage of sick leave continues, the employee will be placed on "controlled leave."
- Controlled leave means the employee must provide medical verification each time s/he uses sick leave unless his/her absence is protected by law.
- Document this discussion with the employee and place in your working file.

Use of Controlled Leave

Before you place an employee on controlled leave, give him/her an opportunity to improve. At this point, based upon your department's guidelines, you may want to give the employee a counseling memo to document what was said in your meeting. If you do not need to give him/her a counseling memo, make a note to your working file documenting your discussion. Contact your Human Resources Department to determine the City's practice in implementing controlled leave.

Following your discussion, continue to examine the employee's sick leave usage. For example, in the three-month period (or other specified period) after the warning, the employee used six sick days, four of which were in conjunction with the weekend; at this point you would meet with the employee and tell him/her:

- Excessive absenteeism is continuing (six days in three months is the equivalent to 24 days in a year).
- A pattern of weekend usage is continuing.
- Despite the counseling session there has been no or insufficient correction.

- Effective immediately s/he is on “controlled leave.” Provide employee a copy of the controlled leave letter on page 74, along with a Performance Improvement Plan.

- The City has a right to ask for reasonable substantiation of sick leave. If an employee refuses to comply, s/he can be disciplined.

When Does Discipline Take Place?

What should you do if the employee has complied with the controlled leave requirement, bringing in medical verification, but s/he is still excessively absent?

It may be appropriate to take formal disciplinary action, which would simply be for excessive absenteeism. Discipline is usually taken in cases where there is a pattern of sick leave usage and many single days off. If you are at the point of recommending discipline, consult with your department head and the Human Resources Department.

How to Avoid Excessive Absenteeism Problems

- Before hiring someone, particularly if promoting within the City, determine if the employee has met the attendance standards with the prior supervisor. If s/he has been excessively absent, don’t hire or promote him/her.

- If there is a promotion or transfer, review the personnel file for all perspective employees.

- Stress the importance of good attendance with all employees.

- If an employee is on probation, be sure s/he understands the importance of good attendance. Reject the employee on probation if s/he does not have good attendance.

- Stress the cost of absenteeism; don’t let sick leave be taken for granted.

- Review injury reports to see if this contributes to sick leave usage.

- Review absenteeism and sick-leave usage of all employees on a regular basis.

- Let employees know you appreciate good attendance.

Summary

STEP	ACTION
1	Stress good attendance
2	Watch sick-leave usage during probation
3	Analyze sick-leave usage on a case-by-case basis
4	Discuss the problem with the employee before placing him/her on controlled leave
5	Use controlled leave with a Performance Improvement Plan to decrease sick-leave usage
6	Recognize good attendance

It is important to track the absences of all of your employees on an attendance calendar. Contract Human Resources for the current year's calendar.

It is not mandatory for you to use an attendance calendar. Before you take any action, be sure you consult with appropriate management to ensure compliance with policies that may be unique to your department.

Tardiness

How do you deal with an employee who is constantly tardy and/or takes long lunches and/or breaks?

The first thing you need to do is discuss the problem with the employee. If an employee is always five or ten minutes late, it is not acceptable. However, there may be a problem with day care, car pools, bus schedules, etc., that can be corrected by simply adjusting the start and ending times by 10 to 15 minutes. However, it is the employee's responsibility to be at work when s/he is assigned.

Tardiness up to 15 minutes, inclusive, will result in an infraction. Tardiness in excess of 15 minutes will result in loss of pay for time absent, in addition to constituting an infraction. The steps you should take are:

STEP	ACTION
1	Be sure each employee clearly understands start and ending times. This includes how long s/he may take for a break.
2	If an employee is tardy or late, verbally counsel him/her.
3	If verbal warning does not work, follow the actions below: • First infraction – Verbal reprimand • Second infraction – Written reprimand • Third infraction – One-day suspension • Fourth infraction – Five-day suspension • Fifth infraction - Discharge

The Appendix contains sample memos that give you an idea of how to proceed if you are having this problem.

Breaks

Breaks are on paid time. All collective bargaining agreements and/or the Human Resources Policies and Practices Manual require that employees take breaks.

If an employee without a specific break time is unavailable when needed because s/he is "on a break," you can bring this situation under control by specifying his/her break time within the workday.

Theft or Embezzlement

Theft and embezzlement have one thing in common: a basic lack of honesty and integrity. It is the expectation that all employees are honest. However, by the very nature of some job classes, such as a accounting assistant or accountant, honesty is the ruling factor in determining discipline, no matter how minor the offense.

Theft of City money or equipment and embezzlement of funds are considered major infractions which require immediate action and will generally result in a recommendation for termination. The following actions should be taken in all cases involving embezzlement, theft of cash, fixed assets, or office supplies.

- In determining how to proceed, a supervisor must seek assistance from the department head or Human Resources representative.
- Investigate thoroughly. A criminal investigation is not a substitute for the departmental investigation.

- Contact the Finance Department. They will conduct an audit of internal controls, determine exactly what can be documented as missing, and make recommendations to assist in preventing future thefts or embezzlement.
- Make a report to City Police, if appropriate.
- Contact the District Attorney's Office. They will determine if the City will pursue criminal prosecution and seek restitution to the City.

In cases involving theft of office supplies or other "minor" items, you might want to consider counseling, reprimand, or suspension in lieu of termination. In these cases you would not generally make a referral for criminal investigation. The determination to make a referral for criminal investigation is the responsibility of the City Manager. Before taking action, the following steps should be taken:

STEP	ACTION
1	Investigate thoroughly.
2	Determine if the theft is cumulative or ongoing.
3	Determine if discipline is to be recommended.

Unauthorized Use of City Equipment/Materials

The unauthorized use of City equipment can be a minor or major infraction. In deciding whether the infraction is a major or minor one, you should consider some of these factors:

- Was it a violation of a written rule, regulation, law or policy?
- Was it an unauthorized use of equipment or theft?
- Was this the first offense?
- Was there cost and/or possibility of liability to City?
- Was there damage to property or injury to the employee, co-worker, or citizen?
- Did it involve behavior that is of such a nature that it causes discredit to the City?

Examples of infractions would include:

EXAMPLE	INFRACTION
1	"Borrowing" a City vehicle or major piece of equipment for personal use.
2	Use of City facilities and/or equipment to repair personal equipment or personal vehicles.
3	Use of any City equipment or facilities to operate a business.
4	Unauthorized use of City cellular phones, PDAs, computers, and printers for personal purposes.

Substance Abuse/Alcohol Related Problems

Employees who suspect that they may have a substance-abuse problem are encouraged to voluntarily seek counseling and information through the City Employee Assistance Program. The City's primary concern with substance abuse is its effect on the employees' job performance, safety issues, and the impact on the department's operations.

If you suspect that one of your employees has a substance-abuse problem, the following may be helpful.

- Read Section 3.5 (b) of the City Human Resources Policies and Practices Manual.
- Contact your department head and the Human Resources Department.
- Document the employee's behavior.

Symptoms/Behaviors Indicative of Substance Abuse.

- Late to work regularly.
- Monday/Friday absences; frequent absences.
- Disappears from the work site for long periods.
- Mood or behavior changes; disruptive behavior.
- Inability to get work done.

The following actions should be taken:

- Counsel the employee, stating what the performance problem and inappropriate behavior changes you have observed. The focus should be on the employee's work performance, not on the substance abuse issue. Explain that the employee's behavior is unacceptable.

- Refer the employee to the City's EAP. Follow up the counseling session with a counseling memo outlining your expectations and consequences of continued behavior. If the inappropriate behavior and performance problem continues, counsel the employee again and follow up with a letter of reprimand.

- In the reprimand, you may want to identify a plan of action for the employee to seek help if the employee admits to having a substance abuse problem. The plan may include a leave of absence for treatment and then time off for follow-up counseling visits.

If an Employee Comes to Work Under the Influence

- If an employee comes to work with alcohol on his/her breath or s/he appears to be under the influence of drugs or alcohol, you are within your right to refuse to allow the employee to work. The employee should be sent home from work because he or she is unfit for duty. If you send the employee home, have someone drive him/her.

- If you have previously documented the problem (issued counseling memos and letters of reprimand), you may decide to proceed with discipline; i.e., suspension.

- If this is the first time you noticed the problem, you should verbally counsel the employee, with a follow-up summary of the counseling the next day.

- You do not need to prove someone is legally under the influence before you make the employee leave the work site; however, get a second opinion from another supervisor before you take this action.

- If the employee's influence under alcohol or drugs appears to be significant, contact the Human Resources Director to arrange for alcohol and drug testing before sending the employee home.

- All employees who are required to possess a State of California commercial driver's license as a condition of employment shall be subject to alcohol and drug testing, including pre-employment, reasonable suspicion, random, post-accident and return-to-duty testing, as prescribed by federal law. Consult with your Human Resources Office or upper level management for more information about this specific program.

Loss of License, Certificates or Similar Requirements

Failure to possess or keep any license, certificate or other requirements/performance standards specified in the employee's class specification is grounds for discipline, up to termination, under Section 8.1(c)(21) of the Human Resources Policies and Practices Manual. Although this could pertain to any type of required license, such as that applicable to a utility operator or engineer, it usually pertains to loss of driver's license where a driver's license is needed to perform the job.

Each license suspension should be dealt with on a case-by-case basis. Before making your decision on the level of discipline, consider the following:

- Contact your department Human Resources Department or upper level management to find out what your department's practice is in dealing with the loss of a license or certification.
- What type of driver's license is needed for the job (A, B, or C)?
- For how long has the license or certificate been suspended?
- Is this the first time a license has been suspended?
- What is the work record and past disciplinary record of the employee?
- Did the employee notify the employer about the loss of certificate or suspension?
- Has the employee been working without a license and if so, for how long?

Termination is the standard recommendation, particularly if the license is suspended for a long period of time. However, if an employee has an excellent work record and the license suspension is, for example, only for one month, you may consider suspending the employee without pay for the period the driver's license is suspended.

If an employee has a medical condition that causes the loss of driver's license (i.e., deteriorating eyesight, diabetes), a reasonable accommodation should be considered. You may consider a leave of absence or placing the employee in a non-driving job if possible. Consult with your Human Resources Department or upper level management before making this decision. You should refer the employee to Human Resources to discuss the need for reasonable accommodation.

Breach of Confidentiality

Breach of confidentiality is the unauthorized use or disclosure of confidential and private information to individuals or agencies. Breach of confidentiality is also the unauthorized solicitation and distribution of information regarding a department client or customer without proper authorization from the client.

Certain laws require that specific information be kept confidential:

- Employee medical information (Americans with Disabilities Act)
- Client medical information (Health Insurance Portability and Accountability Act, HIPAA)

Unauthorized use or disclosure of any of this information can result in civil or criminal liability. Be sure all new employees are fully advised of any confidentiality requirements in your unit/office/department.

Other information, such as personnel files and documents, is confidential as a result of departmental or City policies and procedures.

If you suspect a breach of confidential information has occurred, the following steps provide a guideline for your investigation:

STEP	ACTION
1	Take statements from all involved individuals and witnesses (employee, complainant).
2	Inspect and collect all relevant materials and records
3	Review the employee's prior work record. Find out how often the infraction occurred and how costly it was to the department/agency (i.e., is the City liable?)
4	Consult with your Human Resources Department to find out how similar situations have been handled.
5	Proceed with coaching, counseling, or discipline as appropriate.

Chapter 6

STEPS LEADING TO DISCIPLINE

Performance problems are often time-consuming to deal with. Be prepared to spend a significant amount of time going through these steps.

Generally the City follows "progressive steps" in correcting performance problems or other misconduct. For on-going or continuing work performance problems, progressive actions may be taken that have increasingly serious consequences to the employee. In the case of a performance problem, a supervisor usually goes through the following steps:

STEP	ACTION
1	Verbally communicate the performance deficiency and/or failure to meet performance standards. It is important to document this conversation, as this constitutes an "oral warning" as provided for the City's MOUs.
2	Issue a counseling memo to the employee.
3	Issue a formal Letter of Reprimand or "Notice of Deficient Performance"
4	Follow up with progressively "formal" discipline such as suspension, reductions in pay step, demotion, and termination, as dictated by the nature of the offense.

Thus, remedial action "progresses" from the more informal methods to formal disciplinary action under the concept of progressive discipline. It should be obvious that, depending on the problem, all, some, or possibly none of the early steps need be taken in order.

Minor deficiencies might be corrected in an informal discussion with your employee, but you need to document the conversation. Some deficiencies, such as an emerging pattern of leave abuse, might require most of the earlier and some or all of the latter steps of progressive discipline. Finally, in severe cases, such as intoxication on duty, insubordination, workplace violence, theft, and race/sexual discrimination/harassment, it often is appropriate to recommend formal disciplinary action without going through the less formal steps**.**

The actions listed below are generally the steps taken prior to the recommendation of formal discipline. However, as noted above, keep in mind that there are situations where the severity of the conduct warrants some or all of these steps to be skipped. (i.e., fighting, theft, or insubordination).

Oral Warning/Counseling

Oral warning or counseling should be given when the supervisor first notices performance or behavior that needs improvement. When taking formal discipline, documentation at this stage is an important source of proof and information that demonstrates you took progressive action.

This step, when done correctly and promptly, is one of the most effective ways for supervisors to quickly resolve performance issues. This is because an employee's performance issues are easier to resolve at the early stage when the employee knows the problem early on and before patterns are set. Supervisors who do not take the necessary time to speak with employees about their performance issues are giving their employees a false sense of what is acceptable. When that occurs, not only will the job of communicating performance deficiencies to employees become much harder for supervisors, but it will also be much harder for employees to accept and see that they are not adequately performing.

At times, a written account of discussions between a supervisor and an employee (such as a record of discussion or memo to file) can be used to document discussions between the supervisor and the employee regarding any meetings that take place. Oral warnings/counselings are not subject to appeal.

Counseling Memo

The counseling memo should be given when:

- Oral warning/counseling has failed to elicit the desired performance/behavior, or
- The employee had been informed of the appropriate behavior through other means (e.g., at unit meetings).

The formation of a Counseling Memo is generally a joint effort between the Human Resources Department or upper level management and a supervisor. When issuing a Counseling Memo, supervisors should make certain employees understand the information it contains.

A Counseling Memo should include the following:

- Specific examples of problem areas;
- An explanation of the impact the deficiency has to the unit/department/agency;
- The expected standard;
- Timetables for improvement;
- If appropriate, a corrective action plan; and
- The consequences for not meeting the expected standard.

Counseling Memos are not typically placed in the employee's formal personnel file. Contact your Human Resources Department or upper level management as to where they are to be retained. Counseling Memos are not subject to appeal.

Written Reprimand or Notice of Deficient Performance

For purposes of this manual, the terms of a Written Reprimand, Written Warning, or "Notice of Deficient Performance" are used interchangeably. A Written Reprimand is a written censure of an employee that may be given with no prior warning or counseling if warranted by the facts.

The Written Reprimand should be given when:

- Oral warning(s)/counseling(s) and/or Counseling Memo(s) have failed to elicit the desired performance/behavior; or

- The conduct is severe enough to warrant a break in the normal progressive process.

Written Reprimands or Notices of Deficient Performance are placed in an employee's personnel file for a period of six months. Supervisors need to make it clear to employees who are at this stage that this may be their last opportunity to improve before formal discipline is recommended. Written Reprimands are not subject to appeal.

When you first start drafting a reprimand, just ask yourself **who, what, where, when and why,** to get started.

A written reprimand should include the following:

- Statement that it is a written reprimand
- Statement of problem or infraction
- Date of infraction
- History of any prior counseling or infraction
- Statement of impact on work
- Instructions needed, if any
- Time frame for improvement
- Warning of consequences if no further improvement
- Signature bar for the employee and any level of management based on department practice

When giving an employee a reprimand, have the employee read and sign it; then have it placed it in the employee's personnel file in Human Resources. If the employee refuses to read and/or sign it, read the entire reprimand to him/her, make a note on the document that you did so and the employee refused to sign, and then have it placed in his/her personnel file in Human Resources. Do not argue with the employee to obtain the signature.

Administrative Leave

Under certain serious circumstances and with department approval, it may be necessary or appropriate to remove an employee from the workplace and place an employee on paid administrative leave pending investigation of allegations of misconduct or imposition of the disciplinary action. Administrative leave shall not be imposed without pay because that is considered a suspension without due process.

When an employee is placed on administrative leave, the employee is given a letter outlining the terms and conditions of the leave. Typically the employee is to remain available for work at home during normal working hours and may be required to contact his/her supervisor on a daily basis. Other additional terms are contained in the sample administrative leave letter (See Appendix, page 84). As a supervisor, it is your responsibility to make sure the employee follows the terms and conditions of the administrative leave letter.

Chapter 7

IMPLEMENTING DISCIPLINE

Discipline has the following steps under the City's process. For those employees who are exempt from this process (temporary, probationary, at-will, etc.), contact the Human Resources Department.

1. Notice of Proposed Disciplinary Action
2. Skelly" Hearing
3. Order of Disciplinary Action
4. Appeal hearing, if applicable, with the City Manager

Notice of Proposed Discipline

The first step in discipline is to serve the employee with a "Notice of Proposed Disciplinary Action." This notice outlines the reasons for the discipline and the proposed penalty. For instance, the discipline might be for excessive absenteeism. The notice should specify the facts and materials leading to the discipline (including the dates of absences, whether they were unauthorized, and if relevant, their relationship to weekends, etc), the proposed level of discipline, and procedural rights for a Skelly meeting (See Appendix, page 79 for example).

The "Notice of Proposed Discipline" and the "Final Order of Discipline" can only be authorized by the appointing authority or his/her designee. As a supervisor, you cannot impose discipline without the approval of the department head or his/her designee. The notice of proposed discipline must comply with the procedures outlined in the Personnel Ordinance, the City's Human Resources Policies and Practices Manual, or the appropriate labor agreement.

The "Notice of Proposed Disciplinary Action" comes from the department head. Usually this document is based upon information submitted in writing by the appropriate supervisor or manager. All memos and other documentation related to this incident should be given to the department head and/or Human Resources. These documents include, but are not limited to, the following (not all may be applicable in all instances):

- Memos to file regarding incidents that may have occurred
- Record(s) of discussion (some departments may issue these prior to counseling memo)
- Any applicable announcements or notes from bulletins or unit meetings
- Counseling memo(s)
- Letter(s) of Reprimand
- Prior disciplinary actions

- Accident reports, police reports, accident investigation reports (if an accident was involved)
- Investigation report
- Past performance evaluations
- Statements from witnesses
- Any other related documents or information

At this point the discipline is **proposed**, not final. The employee has the right to have copies of the materials upon which the disciplinary action is based including the executive summaries of any investigative reports. The transmittal of all materials upon which disciplinary action is based should be documented, e.g. written acknowledgement of receipt by the employee.

Skelly Meeting

Before final action can be taken, the employee has the option to request a meeting to tell his/her side of the story. This meeting is commonly referred to as a "Skelly" meeting. It is an informal meeting with the department head's designated representative, usually the Human Resources Director or upper level management who was not involved in the recommendation to impose discipline. In order for an employee to take advantage of this opportunity, s/he must respond to the Notice of Proposed Disciplinary Action in the manner and timeframe specified in the Notice.

The employee may represent himself/herself, or be represented by his/her union, or an attorney. This is not a formal hearing. It is the employee's chance to present information demonstrating or asserting that the facts are wrong or incomplete, or the discipline is too severe because there are mitigating factors, or it is being imposed in an unfair fashion.

Skelly Officer Duties

During a Skelly meeting, the Skelly Officer should review the charges for fairness and completeness. The employee should be provided with a full opportunity to present any defenses or mitigating circumstances. The employee should be encouraged to provide a full and complete response. The Skelly Officer is not expected to perform an independent investigation of the alleged wrongdoing and tendered defenses.

A formal hearing is not required. A Skelly meeting is not an evidentiary hearing, but an opportunity for the employee to articulate his/her defense to the proposed charges, as well as to identify any mitigating circumstances.

At the conclusion of the meeting, the Skelly Officer should issue a written of verbal report of his/her findings so that the appointing authority is in the best possible position to evaluate the entire case before issuing discipline. After considering all of the information (including that presented by the employee and the City's information and/or

evidence on which the proposed discipline is based), if the Skelly officer believes that there is insufficient evidence to sustain the charges, s/he should so advise the appointing authority.

However, the final determination of the merits of the charges (or whether any further investigation is required) and the appropriateness of the proposed disciplinary action in light of any tendered defenses or mitigations rests exclusively with the appointing authority. The Skelly Officer may, but need not, offer a view or recommendation regarding the appropriateness of the proposed penalty. If the Skelly Officer recommends modification of the proposed penalty, the basis for the recommended modification should be articulated in the report to the appointing authority. Based on the Skelly Officer's recommendation, the Department may need to do a follow-up investigation.

Order of Disciplinary Action

After the Skelly meeting and before discipline is imposed, the employee must receive a final "Order of Disciplinary Action." The final order will contain:

- A statement of the reasons for the disciplinary action
- The effective date of the discipline
- The facts upon which the discipline is based
- A statement of appeal rights

The discipline is effective for the dates outlined in the document. For instance, it might be a five-day suspension because of an act of insubordination. It would state, for instance, you are suspended from November 1st to 5th.

The employee would be docked five (5) days pay for that period of time. The penalty would <u>not</u> be delayed pending an appeal (See Appendix page 81, for example of an Order of Disciplinary Action).

The employee will have ten (10) working days to file an appeal with the City Manager.

Amending Notices of Discipline

If new disciplinary action, new facts, or a different level of discipline is needed as a result of a Skelly or additional investigation, it may be necessary to amend the notice of proposed disciplinary action or an order of disciplinary action, in which case a new Skelly hearing may be required. With assistance from the Human Resources Department, the department head is responsible for amending the notice of proposed disciplinary action or order of disciplinary action.

Appeal to the City Manager/Adjustment Board Hearing

If the discipline is greater than a three-day suspension and if an appeal is filed with the City Manager within 10 working days from the date of the Order of Disciplinary Action, such appeal shall be submitted to an Adjustment Board comprised and convened in a manner outlined in Section 8.1(i)(5) of the Human Resources Policies and Practices Manual. If the discipline is a suspension of three days or less, the appeal is still to the City Manager (Section 8.1[h] of the Manual) who will also hear the appeal and make the final decision.

Impartial Arbitrator Hearing

In the case of discipline that is greater than a three-day suspension, if the Adjustment Board is unable to arrive at a majority decision, either the union or the City may require that the appeal of discipline be referred to an impartial arbitrator. Section 8.1(i)(6) of the HR Manual outlines this process and result.

Reasons Disciplinary Actions Are Sustained

Discipline is upheld when the following takes place:

- The facts prove that the conduct for which the employee is being disciplined occurred.
- A thorough investigation was conducted and charges in the discipline are proven.
- The testimony of witnesses is consistent with the charges in the discipline.
- All procedures in the disciplinary process were properly followed.
- Management can show, especially with performance problems, that it informed the employee of any deficiencies and made clear what was expected.
- Where applicable, the employee was offered assistance in improving performance and given time to improve.
- The level of discipline is appropriate for the offense committed by the employee.
- Management can show, if challenged, that policies are reasonable and applied consistently and equally to all employees who work for you, the supervisor.

As a supervisor, your role is critical in sustaining a disciplinary action.

Reasons Disciplinary Actions Are Modified or Reversed

Discipline may be modified or reversed if errors can be shown. The supervisor plays a key role in ensuring that discipline is upheld.

Listed below are **possible** reasons discipline might be modified or reversed:

- **The charges cannot be proven**, usually due to faulty memories unsupported by adequate documentation or because a thorough investigation was not conducted.

- **Testimony in a hearing is inconsistent with the charges and the discipline;** frequently because the procedures were not followed properly.

- **There was a lack of appropriate and progressive discipline:** the employee with a performance problem has no previous record of corrective actions or admonishments.

- **Procedures were not followed properly.**

- **The employee,** with a performance problem, was not given help or an **opportunity to improve.**

- The **level of discipline was too severe** for the offense.

- **Standards were not applied consistently** and/or discrimination can be proven.

Remember, the quality of the discipline documentation depends in large part on you, the supervisor.

Chapter 8

CONDUCTING INVESTIGATIVE INTERVIEWS AND INTERVIEWING WITNESSES

A reviewer, adjustment board, or arbitrator may not sustain corrective action and discipline if it was not based on a thorough and fair investigation. Before deciding to take corrective action, in most cases you will need to investigate any wrongdoing or poor work performance. A key part of your investigation is to hear the employee's side of the story.

THE RIGHT TO REPRESENTATION

As a supervisor, you should be aware of an employee's right to representation in an investigatory interview ("*Weingarten*" rights).

1. When the Right to Representation Applies

An employee is entitled to representation only at an investigatory interview with management that the employee reasonably believes could result in discipline.

The right to representation arises only if:

- the interview is investigatory in nature; and
- the investigation is centered on the employee being interviewed.

The key issue is the nature and content of the interview. An interview may initially be intended only to gather facts about an incident, but if the focus changes during the interview to investigating misconduct of the employee being interviewed, *Weingarten* rights may be triggered. The standard to determine the reasonableness of the employee's fear of discipline is objective, not subjective.

There is no right to representation when the purpose of the meeting is to inform the employee of disciplinary action to be taken.

2. What Triggers The Right to Representation

The employee's right to representation arises only on request. You are not required to advise employees of their rights. If the employee requests representation, you have the following options:

1. Grant the request
    - provide a reasonable amount of time for the employee to arrange for a representative; and
    - reconvene to conduct the interview in the presence of a representative; or

2. If the employee wants to continue after requesting representation, advise the employee that the meeting may continue only if the employee waives the right to union representation.

3. Employees Who Are Entitled to Representation

Both union employees and unrepresented employees have a right to representation in an investigatory interview.

- For union employees, the employee may request a union representative or another representative. The supervisor or manager need not postpone the interview because a particular union representative is unavailable for reasons out of the employer's control, when the employee could have requested the presence of another union representative who is available.

- For unrepresented employees, the representative chosen by the employee may be a coworker.

4. Scope of the Right to Representation

The employee's representative has no right to interfere with the interview or prevent the City from eliciting direct responses from the employee under investigation.

- The representative is present to assist the employee and to attempt to clarify facts or suggest other employees who may possess knowledge or facts.

- The supervisor or manager has the right to require the employee to respond to relevant questions and can insist on hearing the employee's version of the facts.

- The employee may be charged with insubordination if the employee refuses to respond and remains silent.

How to Conduct an Investigation

- **Cool off** before conducting any interviews. Wait until you and the employee(s) are calm, cool, and collected. Words spoken in the heat of the moment could be seen as a personal attack instead of an objective comment on the problem.

- **Stay objective** and be mentally prepared for the interview. It is a chance to find out the reasons why an employee took certain actions and whether a violation of City policy or procedure occurred. Try to get an objective perspective on what occurred. Don't let prior experience with any particular employee bias you.

- **Contact** the Human Resources Department for allegations that involve violence or threats of violence as provided by the City's Violence in the Workplace Policy (outlined in the Human Resources Policies and Practices Manual).

- **Contact** the department's Human Resources Department for complaints involving sexual harassment, discrimination, or retaliation.

- **Decide** whom to interview first, second, and so on. If you received a complaint about your employee (the alleged "wrong-doer"), it is usually customary to interview the complainant first, followed by the witnesses to that event, and conclude with the accused. This can help avoid the need for subsequent meetings.

- **Schedule** the interview for a specific time and place. The employee has the right to know what the meeting is about, an opportunity to request representation (if applicable), and a short time to meet with his/her representative before the meeting.

- **Prepare** for the meeting by collecting or reviewing necessary documents that will assist you in the investigation (i.e. samples of documents, policies, employee personnel file, complaint documents, reports, records).

- **Review** any written statements or reports received regarding the incident. Although many written statements can be useful in an investigation, if you analyze them closely, there may be missing information you need to collect by interviewing the witness personally. Use the reports and statements as the basis for developing your interview questions. Do not rely exclusively on those reports and statements in determining what occurred.

- **Prepare** your questions in advance. This will help you stay focused during your meeting and help ensure you ask all the questions you intended to ask. Your questions are only a guide and you may need to deviate from your list as the employee or witness provides additional information.

- **Conduct** the interview in private, not in the presence of others. It should be held in a private location where interruptions are minimal. It can be beneficial in some situations to have a witness to the interviews.

- **Begin** the meeting by explaining that you are investigating an incident.

- **Advise** the employee to answer the questions honestly and completely to the best of their ability.

- **Explain** the failure to cooperate with the investigation constitutes insubordination and may lead to disciplinary action. Check with the employee to make sure they understand the directions given.

- **Obtain** the employee's statement of what occurred, including the date, time, and place of the alleged act(s) and the names of all persons alleged to be involved or have relevant knowledge.

- **Ask** basic questions for each event of who, what, why, where, when, and how without leading him/her in a particular direction. Do not be accusatory.

- **Ask** open-ended questions (e.g. "Tell me what occurred?" "Describe the incident on…" "Explain your role in…"). Ask follow up questions as necessary.

- **Take** good notes during the interview. The notes should reflect the statements made by an employee, not your interpretation of what is being stated. Any direct quotes should be identified.

- **Listen** to the employee/witness and give them the chance to explain what they saw or heard in their own words. If the employee is the accused, give the employee a chance to think and provide additional information.

- **Remain** quiet and give the employee sufficient time to respond. Avoid the urge to fill in the moments of silence. Give the employee a chance to think and provide additional information.

- **Rephrase** any question that the employee doesn't understand or any question that the employee seems to be avoiding or is not answering directly. Remember the question you asked and evaluate if the response given addresses that question. If the witness provides a response that does not address the question, ask the question again.

- **Secure** any relevant physical evidence, such as objects, pictures, emails, police reports, documents, etc, that the employee identifies or provides during the interview.

- **Before you finish your interview, do the following:**

  1. Make sure you have covered all the questions.

  2. Ask the employee if there is any additional information s/he wants to provide.

  3. Remind the employee that the investigation has not been concluded and he or she is not to discuss the matter with anyone (with the exception of their representative, if applicable), and that the subject of the investigation is to remain confidential.

  4. Explain to the accused that you will be concluding your investigation over the next several days and analyzing the information gathered to determine if

a violation has occurred and what action, if any, to take. Also, explain to the accused that if disciplinary action is to occur, s/he will be provided with the materials used to support the discipline.

5. Advise the employee that retaliation is prohibited and should they experience any retaliation, to contact the Human Resources Department.

6. Advise the employee to contact you if they think of any additional pertinent information after they leave the interview.

7. Ask the employee if s/he has any questions. Refer those you cannot answer to the Human Resources Department or upper level management.

- **Prepare** a written summary of what occurred during the interview while the interview is still fresh in your mind. If you are interviewing employees and/or witnesses to an incident, consider obtaining the employee's signature on their witness statement.

- **Consult** with the Human Resources Department or upper level management to determine what action has been taken for similar infractions in the past.

- **Recommend** disciplinary action when appropriate through your department's chain of command or the Human Resources Department. Your recommendation for disciplinary action should include your investigation summary, and a copy of all supporting documentation, and evidence used to support the discipline.

As you proceed with the steps of the investigation as outlined above, remember to get outside help when necessary.

There may be occasions when the investigation becomes too complex for you to handle. Consult the Human Resources Department when necessary. Also, you may need to refer an employee to the EAP for potential personal, family, physical or emotional problems.

APPENDIX I

CITY POLICIES AND PROCEDURES

APPENDIX I-A

WORKPLACE VIOLENCE PREVENTION

While on duty, City of American Canyon employees, contractors, and consultants are prohibited from possessing weapons or related objects or making the verbal threat of the use of weapons, intimidation or violence in the workplace. This prohibition applies even though an individual may be licensed in his/her private capacity to carry a concealed weapon. It does not apply to law enforcement personnel or any security personnel engaged in official duties as may be authorized by the City Manager. This policy does not apply to non-licensed or regulated personal protection devices carried by employees for their personal safety, such as pepper spray.

City employees are prohibited from engaging in any violent behavior towards others, with the exception of law enforcement officers who are acting in an official capacity. Any direct physical or excessive verbal, written, or visual act (with or without a weapon) that threatens or has the purpose of unreasonably interfering with an individual's work performance, or creates an intimidating or hostile work environment is prohibited.

Procedures

1. Employees will report any threat or behavior as outlined above, whether a coworker or a member of the public. Any employee who is subject to, or observes violent behavior or threat of violent behavior, a firearm or other weapon, or any situation that appears to be potentially dangerous, must immediately report such action to his/her supervisor, department head, or the Human Resources Director.
2. The supervisor, department head, or Human Resources Director will immediately take corrective action to resolve any violent behavior situation. This includes, but is not limited to, summoning police officers or calling 911.
3. The Human Resources Director will assist supervisors, managers and department heads in investigating and preparing documentation for action surrounding an incident of violent behavior. In some cases, a referral to the employee assistance program may also be appropriate.
4. Incidents that constitute criminal acts will be referred to the American Canyon Police Department.
5. Disciplinary action may be taken, up to and including termination, for violations of this policy or for filing a false or fraudulent claim.
6. In no case shall any employee or private person who reports threats or acts of violence be retaliated against through disciplinary action, workload reassignments, denial of promotion, harassment, or any other manner of retribution. Any acts of retaliation will be reported immediately to the appropriate department head, the Human Resources Director, or City Manager.

Section 3.5(d) of HR Manual

APPENDIX I-B

WORPLACE HARASSMENT AND DISCRIMINATION

A. Policy

It is the policy of the City of American Canyon to provide a businesslike work environment, free from all forms of employee discrimination, including incidents of harassment or retaliation. Harassment by or of an employee, contractor, consultant, or volunteer on the basis of race, color, national origin, age, sex, sexual preference, gender identity, marital status, physical handicap, medical condition, veteran status, or religious affiliation will not be tolerated. No employee shall be subjected to any form of harassment by other employees or non-employees. No employee shall sexually harass anyone. It is the City's policy to treat all employees, contractors, consultants, and applicants on the basis of merit, qualifications and competence, and to remove discriminatory employment barriers when and where they are found to exist so all individuals may compete for employment opportunities on an equal basis. Violation of this policy will result in disciplinary action up to and including termination.

B. Intent

It is the intent of this procedure to provide an effective means for quickly resolving situations involving harassment with a minimum of formal or cumbersome procedural requirements.

C. Definition of Harassment

Harassment is a violation of Title VII of the 1964 Civil Rights Act and the California Fair Employment and Housing Act. Harassment may include acts committed by managers and supervisors or co-workers of the employee or third parties, such as consultants or contractors for the City. In general, harassment includes, but is not limited to:

1. **Verbal Harassment:** For example, epithets, derogatory comments or slurs made to or about an employee, yelling at an employee, or refusing to speak to an employee on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, gender identity, or age.
2. **Physical Harassment:** For example, unwanted touching of an employee, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, gender identity, or age.
3. **Visual Forms of Harassment:** For example, the display of posters, notices, bulletins, cartoons, calendars, or drawings which are derogatory on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, gender

identity or age, or the display of sexually explicit posters, calendars, or other materials in the workplace

D. Sexual Harassment

To help define sexual harassment, the State Department of Fair Employment and Housing, the Federal Equal Employment Opportunity Commission, and the courts use the following guidelines:

1. There are two types of sexual harassment:

   a) **Quid pro quo (Sexual favors as a condition of employment):** This type of sexual harassment involves situations in which a supervisor or manager of an employee requires sexual favors, such as having sexual relationship, going out on a date, etc., as a condition of employment, i.e., keeping a job, getting a promotion, etc.

   b) **Hostile work environment:** This type of sexual harassment involves situations in which:
      1. The employee is subjected to unwelcome verbal or physical conduct of a sexual nature, and
      2. The verbal or physical conduct is sufficiently severe or pervasive as to change the conditions of the employee's employment and working conditions and create an abusive work environment.

2. Sexually harassing conduct may take the form of visual, verbal, or physical conduct. It need not be explicit or even specifically directed at the victim.

3. Under court decisions, whether certain acts or situations in the workplace are sexual harassment is to be determined based on the perspective of a "reasonable woman", if the harassee is female, or a reasonable harassee, if the harassee is male. (Under the "reasonable person" standard, it does not matter that the harasser did not intend certain behavior or comments to be offensive. For example, although a male supervisor may not believe it is offensive for him to tell a female subordinate that she has a "great figure," the female subordinate or a "reasonable woman" may find this comment offensive.)

4. In some situations, inappropriate comments, touching, or other conduct between members of the same sex may constitute sexual harassment, if the comments or conduct are based on sex. However, the comments or conduct need not be motivated by sexual desire. For example, explicit comments made regarding the anatomy of a co-worker or subordinate of the same sex could be considered sexual harassment under some circumstances.

5. Examples of the types of conduct which constitute sexual harassment, include, but are not limited to the following:

a) Comments about an employee's body
b) Sexually suggestive objects or pictures in the workplace;
c) Sexually degrading words used to describe a person;
d) Propositions of a sexual nature;
e) Asking an employee out on a date, especially if the employee is a subordinate of the person making the invitation, or has previously expressed disinterest;
f) Refusing to work with or speak to an employee based on his/her sex;
g) Unwanted touching of an employee, especially in sexually sensitive areas;
h) Touching oneself in a sexually suggestive way in front of other employees;
i) Sexual jokes;
j) Blocking an employee's movement, or access to doors, etc., in the workplace;
k) Threats or insinuations by a supervisor or manager that the employee's lack of sexual submission will adversely affect the employee's employment, wages, advancement, assigned duties or shifts, or other conditions that affect an employee's livelihood.

E. Reporting Sexual Harassment

1. **Report by Employee:** Any employee who believes he or she has been illegally harassed or has witnessed harassment of another employee, as defined above, should immediately report such conduct either verbally or in writing to any of the following individuals:

   a) His/her immediate supervisor or, if the supervisor is alleged to be involved with the harassment, to his or her department head or the Human Resources Director. If any of these persons are alleged to be involved in the sexual harassment, the complaint shall be made as set forth in Subsection 9.8.g.

   b) If the City Manager is alleged to be involved in the sexual harassment, the report should be made to the City Attorney, as well as the employee's department head and the Human Resources Director.

2. **Response to Harassment Complaint by Supervisors and Managers:** Any supervisor or manager who receives a harassment complaint from an employee shall notify the applicable department head and the Human Resources Director immediately either verbally or in writing, along with his or her recommendations (if any), based on his or her knowledge of the facts. If the department head or the Human Resources Director is alleged to be involved in the sexual harassment, the complaint should be made as set forth in Subsection 9.8.g.

3. **Timeline for City's Response to Complaint:** The City will make every effort to fully investigate all reports and take appropriate action within a reasonable timeframe from receipt of the complaint.

F. Investigation and Response to Harassment Complaint by City

Upon notification of the harassment complaint, the Human Resources Director shall:

1. Report the complaint to the City Manager.
2. Immediately authorize the investigation of the complaint and supervise and/or investigate the complaint. The investigation shall be conducted by a neutral person who has sufficient knowledge and training to conduct an adequate investigation. The investigation will include interviews with:
   a) The complainant;
   b) The accused harasser; and
   c) Any other persons who have relevant knowledge concerning the complaint. This may include witnesses and/or complainants of similar conduct.
3. Review factual information gathered through the investigation, including written statements of persons interviewed to determine whether the alleged conduct constitutes sexual harassment, giving consideration to all factual information, and the totality of the circumstances, including the nature of the conduct which was the basis for the complaint and the context in which the alleged incidents occurred.
4. Report the results of the investigation and the determination as to whether sexual harassment occurred in writing to appropriate persons, including to the applicable department head, the City Manager, and City Attorney. If one of these individuals is the subject of the harassment complaint, the report regarding the investigation should be distributed to the other two individuals only.
5. The City Manager, or if the City Manager is alleged to be involved in the harassment, the City Attorney shall then make a decision regarding the action to be taken by the City in response to the results of the investigation.
6. If harassment occurred, the City shall take prompt and effective disciplinary action against the harasser. The specific disciplinary action to be imposed will depend on the circumstances of each case, including the severity of the offense, whether similar offenses have occurred in the past, and the personnel history of the harasser. If the harasser is a third party, such as a consultant or contractor or customer for the City, the City shall immediately take necessary steps to stop the harassment.
7. Inform the complainant of the findings of the investigation and the resolution of the matter, and advise him/her of the City's policy against

retaliation and the right to make additional complaints if the harassment recurs.

8. Take reasonable steps to protect the complainant, witnesses and other potential complainants from further harassment.

9. Take reasonable steps to protect the complainant and any witnesses from any retaliation as a result of initiating the complaint. Examples of retaliation may include, but are not limited to, confronting, yelling, or screaming at the employee who filed the complaint or at a witness, worsening the treatment of the employee or witness, not speaking to or refusing to work with the employee or witness, or taking adverse personnel action, which is not based on problems with job performance or a violation of City rules and policies, against the employee who filed the complaint, or the witness.

10. After a period of time not to exceed 45 working days, or 30 days after the alleged harasser has returned to work (if suspension has occurred), meet with the complainant to confirm that the harassment has ceased and that there has been no retaliation by the alleged harasser or any other persons.

G Alternate Complaint and Investigation Procedure if the Department Head, Human Resources Director, or City Manager is Subject of a Harassment Complaint

If a harassment complaint is made against the department head, the supervisor must promptly report the complaint to the Human Resources Director. If the Human Resources Director is the subject of a harassment complaint, the report should be made to the City Manager and the employee's department head. If the City Manager is the subject of a harassment complaint, the report should be made to the City Attorney.

In cases involving harassment complaints against the Human Resources Director, the City Manager shall authorize, supervise, or perform the investigation. If the City Manager is the subject of a harassment complaint, the City Attorney shall assume these responsibilities. If the City Attorney or the City Council Members are the subject of a harassment complaint, an arrangement for an investigation by a qualified neutral party shall be arranged and a decision made on behalf of the City regarding the action to be taken in response to the investigation.

H. Confidentiality

The City will make every effort to maintain the confidentiality of all claims of harassment and other information gathered during the investigation process, including correspondence, data, documents, tapes and testimony and will only disclose such information as necessary to: make a complete investigation,

provide an appropriate remedy, initiate and implement disciplinary action and/or comply with any law or this section.

I. Record Keeping

All materials related to a complaint of harassment, including reports, correspondence, data, documents, tapes and testimony gathered during the investigation will be retained in a confidential City file for a minimum of five (5) years. All materials used to support a disciplinary action shall be retained in the personnel file of the employee disciplined.

J. Prohibition of Retaliation Based on Claims of Sexual Harassment

Pursuant to State and Federal law, the City prohibits retaliation against an employee who has filed a sexual harassment complaint or participated in a sexual harassment investigation or testified at any hearing, deposition, or trial regarding sexual harassment in the workplace, even if the sexual harassment complaint is later found to be false or unfounded.

K. Responsibilities of City Managers and Supervisors

Management and supervisory personnel are responsible for ensuring that the work environment is free of illegal harassment as herein defined, including sexual harassment, by:

1. Setting an example of behavior appropriate to the workplace.
2. Informing all employees under their direction of the City's policy and complaint procedure, and answering any employee questions.
3. Reporting any instances of illegal harassment, including sexual harassment, to his/her Department head and the Human Resources Director, or the City Manager or City Attorney in appropriate cases.
4. Based on the findings of the investigation, promptly taking appropriate disciplinary action against the harasser.
5. Complying with Federal and State laws regarding harassment.

L. Training

The City will conduct periodic training on this policy for supervisors and managers, and City employees, to ensure that all employees are aware of and understand the policy and complaint procedure and to deter sexual harassment in the workplace, and will comply with all requirements of State and Federal law.

M. Dissemination of Policy

A copy of this policy will be provided to each employee, including all newly hired employees at the date of hire and all other individuals contracted to perform services at the City (as of the date of the contract or as soon thereafter as reasonably possible). In addition, the City will distribute all other information relating to the illegality of harassment as required by law.

APPENDIX I-C

RELEASING A PROBATIONARY EMPLOYEE

1. **PURPOSE**: To implement administrative procedures for releasing employees during the probationary period.

2. **POLICY SUMMARY**: Employees in regular positions must be notified in writing when they have not passed probation in a City classification. Work with Human Resources for the proper letter format and content.

3. **DEFINITIONS**:

   A. Status means the employee's current appointment, such as regular, temporary, provisional, probationary, or at-will.

   B. Probationary period means the period of continuous service following appointment from an eligible list to a regular position in a City job classification in the City service and prior to obtaining regular status in the class.

      1. The probationary period is regarded as part of the merit testing process. This period is used for closely observing the employee's work, for ensuring the employee's effective adjustment to the position, and for releasing a probationer whose performance does not meet the required standards of work.

      2. For most job classes the probationary period is 9 months. For some it may be more such as 12 months. Additionally, probationary periods may be extended according to Section 4.2 of the Human Resources Policies and Practices Manual.

      3. The last day of the established probationary period is not necessarily the last day of an employee's probation. (See Section 4.C.4 below).

      4. Probationary periods also may be required in other specific circumstances, such as reconsideration to City service after resignation.

4. **PROCEDURES**: **RELEASE DURING PROBATION**

   A. Decision to Release an Employee from Probation

      1. The employee's supervisor should consult with the appointing authority and/or or the Human Resources Department when deciding whether to release an employee during the probationary period.

- Employees must be notified in writing when they are released from probation. Notice must be served using documents approved by Human Resources. These documents are the Notice of Release Form Probationary Status and Affidavit of Service. (See Attachments 1 and 2)

- Determining an effective date of release is part of the decision process. For guidance in determining the date of release, contact Human Resources and refer to Section 4C: Effective Date of Release.

2. Resignation. If the employee who is about to be released resigns, either orally or in writing, promptly consult Human Resources.

3. Leave of Absence. A probationary employee may be authorized to take a leave of absence. If the leave of absence totals 30 or more days, the probationary period will automatically be extended by the equivalent amount of time absent from work.

4. Light Duty Assignment. A probationary employee may be assigned to light duty for a period exceeding thirty consecutive calendar days. The number of thirty or more days is added to the probationary period as an extension, if the conditions listed below are met. The probationary period will be extended if:

    - The light duty assignment does not include duties essential to determining the employee's performance in the probationary classification; and

    - The employee has been assigned to light duty for medical reasons; and

    - The appointing authority authorizes the light duty assignment; and

    - The appointing authority notifies the employee and the Human Resources Director in writing. Written notice must include the following: the effective date of assignment to light duty and the termination date of the light duty assignment, as soon as it is known.

B. <u>Human Resources Recommendation</u>

1. Human Resources strongly recommends that the effective date on a Notice of Release be at least seven days earlier than the date

calculated as the last day of the employee's probation. In doubtful cases, contact Human Resources as soon as possible for guidance regarding the effective date.

- The Notice of Release from Probationary Status must be served on or before its effective date.

- The effective date of release cannot be later than the last day of the employee's probation. The release cannot be effective retroactively.

C. Effective Date of Release

1. The release of a probationary employee is effective on the date and at the time specified in the Notice of Release from Probationary Status. The Notice of Release must be served before the date and time it is effective.

2. Releasing an employee may be appropriate at any time during the probationary period. In each case the effective date should be determined on the basis of all relevant circumstances.

    - When releasing an employee who has the right to return to a former department, the releasing department/work unit must give the former department/work unit reasonable notice. (See Section G)

3. An employee's probationary period may be extended according to Section 4.2 of the Human Resources Policies and Procedures Manual.

4. Last Day of the Established Probationary Period and Last Day of an Employee's Probation. The last day of the established probationary period is not necessarily the last day of an employee's probation. The last day of the established probationary period is determined by counting the number of months from the date of hire. The last day of an employee's probation is the employee's last regularly scheduled workday within the established probationary period. An employee's probation ends at the end of the employee's last regularly scheduled work shift within the established probationary period. The end of shift may be on or before the last day of the established probationary period.

    - Last day of the established probationary period

        1) The last day of the established probationary period is determined by counting the number of months from the

date of hire. For most classes the established probationary period is 9 months; for some it is 12 months.

Examples in the table below illustrate the method of calculating the last day of an uninterrupted, nine-month probationary period.

Hired On	Last Day of Established Probationary Period
Feb 2	Nov 1
Apr 30	Jan 29
May 30	Feb 28/29
Aug 29	June 28
Aug 30	June 29
Aug 31	June 30

2) Established probationary periods may be extended according to Section 4.2 of the Human Resources Policies and Practices Manual.

- Last day of an employee's probation.

  1) The last day of an employee's probation is the employee's last regularly scheduled work day within the established probationary period as calculated in the section above. The last day of an employee's probation may be on or before the last day of the established probationary period.

  2) The last day of an employee's probation is not the same as the last day of a pay period or the last day of a work week, although these may coincide.

  An employee's probation ends at the end of the employee's last regularly scheduled work shift, whether the employee is present or not present, paid or unpaid. The end of shift may be on or before the last day of the established probationary period.

- To calculate the last day of an employee's probation: 1) determine the end of the established probationary period; and 2) determine the employee's last regularly scheduled work shift within the established probationary period.

- An employee attains regular status at the end of the shift which begins on the last working day of the established probationary period.

D. Date of Service

1. The Notice of Release from Probationary Status must be served on or before its effective date.

E. Method of Service

1. The original Notice of Release from Probationary Status must be served on the employee.

2. If at all possible, notice should be served in person by the employee's immediate supervisor, department head, or Human Resources Department. It is preferable to serve notice in a private setting.

    - The server should not attempt to explain reasons for the employee's release except to state that the employee did not complete the probationary period.

    - The server should answer questions on procedure or refer the employee to a resource person.

3. If the employee is unavailable for any reason and cannot be served in person, consult Human Resources for advice on alternate methods of service. Alternate methods of service may be more time consuming, therefore it is imperative that the employing department act quickly in these instances.

F. Documentation of Service

1. Prepare the Notice of Release from Probationary Status and three copies. (See Attachment 1)

2. The original Notice of Release and all copies must be signed by the department head or the Human Resources Director.

3. The person who serves notice should complete the Affidavit of Service immediately (see Attachment 2). Attach a copy of the Affidavit to each copy of the Notice of Release.

    - The Affidavit of Service documents the probationary employee's receipt of legally-mandated information contained in the Notice of Release. This documentation will be used to prove timely delivery of the release, if the employee files a complaint.

4. Distribute documents immediately after the Affidavit has been completed.

    - The original Affidavit of Service and a copy of the Notice of Release must be filed with the Human Resources along with the Personnel Action Form.

    - The remaining documents should be distributed to: City Manager's Office and the operating department's supervisory file.

G. Right to Return

1. Right to Return to a Former Class. Employees may have transferred or promoted to the probationary class from a class in which they hold regular status. These employees have a right to return to the class from which they promoted, unless the reasons for the release from probation would be cause for dismissal from City service under Section 8.1(c) of the Human Resources Manual.

    - If it is necessary or appropriate to dismiss a probationary employee who has regular status in a former class, always contact the City Manager and Human Resources promptly.

    - Example: A probationer's unsatisfactory conduct may be so serious, that the employee should be dismissed from the former class in addition to being released from probation. In this case procedures under Section 8.1 of the Human Resources Manual apply.

2. Return to a Former Position - Usually, an employee with prior regular status who is serving probation in a new position will be returned to the former class and if applicable, in the former department.

    - The immediate supervisor in the releasing department/work unit notifies the former department/work unit that the employee is being released to the former class in the former department/work unit. Notice should be given at lease seven days before the anticipated date of return.

    - The Human Resources Director in consultation with the City Manager and department head of the former department/ work unit determines an appropriate placement for the returning employee.

    - The former department/manager sends written notice to the releasing department/work unit, including the employee's new

position title, the person to whom the employee should report, and the date of return indicated by the releasing department/ work unit.

- The immediate supervisor in the releasing department /work unit notifies the employee of the new assignment in the former department/work unit.

- If no vacancy exists in the former class in the former department/work unit, the former department/work unit should contact the Human Resources. The possibility of placing the employee in a vacant position in the class in another department will be considered. <u>If the employee cannot be placed in another department/work unit, s/he will return to the former department/work unit in the former class even if this will cause a “bumping” situation.</u>

- The releasing department/work unit sends the PAF, the Notice of Release, and Affidavit of Service to the gaining department/work unit. The gaining department/work unit obtains appropriate authorization signatures and forwards the PAF and attachments to Human Resources.

7. **APPEALS:** A probationary employee has no right of appeal of failure to pass probation.

Attachment 1 of Appendix I-C

CITY OF AMERICAN CANYON

NOTICE OF RELEASE FROM PROBATIONARY STATUS

TO: _____, _____
(Name of Employee) (Class Title)

You are hereby notified that you are released from employment during your probationary period and that your employment in the class identified above is terminated effective
_____, 2___, at _____ o'clock ___.m.

PRIOR REGULAR STATUS

If you were promoted or transferred to the above class from a position in which you held regular status, you may have a right to return to a position in that class as provided in for in the City's policies and procedures. For information concerning this right, contact the Human Resources Department.

APPEAL FROM RELEASE

Pursuant to Section 4.2(3)(c) of the City's Human Resources Policies and Practices Manual, a probationary employee shall have no right of appeal of failure to pass probation.

Attachment 2 of Appendix I-C

AFFIDAVIT OF SERVICE

I, _____, do hereby declare:

I am employed in the position of _____

with the City of American Canyon.

On _____,

20_____ at approximately _____ at
(time)

_____
(location)

I personally served a copy of the attached "Notice of Release From

Probationary Status" upon _____,
(Probationer's Name)

by handing such a copy to him/her.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20_____,

at _____, California.

_____
(signature)

APPENDIX I-D
CITY OF AMERICAN CANYON

SUBJECT: Substance Abuse

SUPERVISOR'S GUIDE ON EMPLOYEE COUNSELING TO IMPROVE UNSATISFACTORY PERFORMANCE

1. SUBSTANCE ABUSE IN RELATIONSHIP TO DISCIPLINARY ACTIONS

Some performance and behavior problems are a direct result of alcoholism or drug abuse. As a supervisor, your official concern with alcoholism or drug abuse has to be limited to its effects on an employee's performance on the job.

a. Indications of the Possible Drinking Problem. You should be alert to the possibility that poor performance or unsatisfactory behavior is due to alcoholism or drug abuse. Following is a list of some indicators of a possible drinking problem. However, bear in mind that the presence of one or more of these indicators does not prove the existence of a substance abuse problem.

- Absenteeism.
- Repeated Friday, Monday, or part-day absences.
- Frequent reporting of absences by persons other than the employee himself.
- Unusual excuses for absences.
- Morning substance use before going to work and/or signs of withdrawal on the job. (Hangovers or other symptoms vary with the substance.)
- Substance abuse during working hours.
- Lying about inconsequential matters.
- Display of an increasing lack of responsibility.
- Mood changes in a previously stable employee.
- Frequent loud talking or irritability.
- Increasing nervousness and jitteriness.

- Avoidance of the supervisor.
- Taking longer lunch periods.
- Frequent use of breath purifiers.
- Hand tremors, flushed face, dilated or constricted pupils or other commonly recognized physical signs of substance abuse.

b. Do Not Accuse an Employee of Being an Alcoholic or Drug Abuser. In most cases you will not have conclusive evidence that an employee is a substance abuser. Usually you will accomplish little by directly suggesting that an employee's performance problem is due to substance abuse. Your accusation, more likely than not, merely will make the employee more defensive. Concentrate on dealing with the job performance problem. Give the employee an opportunity personally to come to the conclusion that his or her performance difficulties are due to alcoholism or drug abuse. The employee has the obligation to acknowledge the problem. If the employee does not admit having such a problem, the most you should do is suggest, that if the employee has a personnel problem which might benefit from counseling or treatment, you may be able to take that into consideration in dealing with the job performance problem.

c. Counseling Process. Deal with cases involving possible substance abuse exactly as you would any other job performance or behavior problem. The difference comes in only when the employee acknowledges in some way that alcoholism or drug abuse may be contributing to the performance difficulties. When the employee makes such an acknowledgement, then you need to get a commitment that the employee will participate in a formal counseling or treatment program.

d. Employee Assistance Program Coordinator. When you are giving an employee an opportunity to obtain treatment for substance abuse, have the employee contact the Employee Assistance Program. During the period in which the employee has promised to participate in the treatment program, you can periodically check with Human Resources, who will contact the particular treatment program and let you know whether the employee is participating.

e. Suspension of Punitive Disciplinary Action. If an employee has made a commitment to obtain treatment for substance abuse and appears to be following through in good faith, you appropriately can suspend consideration of punitive disciplinary action that you otherwise feel would be warranted. This does not mean that you will condone unsatisfactory performance. What you are doing is giving the employee a chance to solve his or her alcoholism or drug abuse problem. If the employee's

performance continues to be unsatisfactory, you have every right to proceed toward punitive disciplinary action just as in any other case of unsatisfactory performance or behavior

f. Time Limits. If an employee agrees to undergo treatment for substance abuse, you should establish definite time limits just as you would in any other case involving poor performance. As an absolute maximum you should insist on seeing substantially improved performance on the job within 90 days.

g. Documentation. The details of an employee's commitment to treatment of a substance abuse problem should be documented in an employee counseling memorandum. (See Section 6 of this Discipline Manual.) The employee's agreement to obtain treatment should be set forth under the section of the counseling memo which states what the employee must do to improve unsatisfactory performance. The fact that you will be checking with the Human Resources Department to insure that the employee is following through on the commitment, should be set forth. The time limits for treatment should be documented in the memorandum, under the section which warns that punitive action may be taken if the employee does not improve during a specified period.

h. Records Confidential. All written materials relating to an employee's substance abuse should be maintained in a strictly confidential file. These can be kept either in a separate file or sealed in the employee's regular personnel file.

i. Intoxication or Drug Abuse on the Job. Direct punitive action, including the possibility of dismissal, can be taken against employees intoxicated or under the influence of drugs on the job. These are serious offenses.

j. Probationary Employees. The approach suggested above appropriately can be used for the probationary employee as well as regular employees. If the case is properly documented, the department will have the evidence required to sustain a discharge even if the employee obtains regular status. In cases where the probationary period ends before the employee could complete a treatment program, your department should consult with the Human Resources or the City Manager for advice.

APPENDIX II

SAMPLE LETTERS AND NOTICES

APPENDIX II-A

MEMORANDUM

Date: (date)
To: (employee name)
From: (supervisor name)

Subject: **Employee Assistance Program Referral**

CC: (Human Resources)

The purpose of the memo is to express my concern about your behavior in the workplace.

Over the past (months, weeks, days), I have met with you on _____ occasions regarding your behavior at work. (describe specific circumstances here)

As a way of providing you support to address the above issues, I am formally referring you to the Employee Assistance Program. The EAP is confidential, so any information discussed about your personal problems is strictly between you and the EAP counselor. As your supervisor, I am referring you to the program and encouraging you to attend, but your participation is voluntary. I have contacted Human Resources who can provide you with the information needed to set up an appointment. I will be notified whether or not you attend the appointment. Supervisory Referral EAP sessions will not count against your own EAP benefit sessions and you may schedule them during normal working hours.

I hope that you will utilize the EAP, but in any event, your behavior at work must improve. I am available to discuss this situation further should the need arise.

_____ _____
Supervisor's Signature Date

_____ _____
Department Head's Signature Date

APPENDIX II-B
CITY OF AMERICAN CANYON
Inter-departmental Correspondence

Date: May 11, 2XXX

To: Administrative Clerk III

From: Administrative Supervisor

Subject: **COUNSELING MEMO - PERFORMANCE**

The purpose of this memo is to counsel you regarding your performance in several areas. On October 18, 2XXX, you were promoted to Administrative Clerk III. On that date I gave you a copy of your duties and the standards and expectations of your position. You did well during your probationary period and, until July 2XXX, your performance was acceptable.

However, shortly after your last annual evaluation on July 17, 2XXX, I noticed areas of your performance that were falling below standard. The specific areas I noticed which were not meeting standards and expectations were your accuracy and completeness of work and the work of your unit, performance in new and emergency situations, and concerns regarding your leadership abilities.

Listed below are my areas of concern.

Accuracy and Promptness in Completing Work

There are two areas I am concerned with: the accuracy and promptness of your personal work and that of one of your staff.

1. Regarding your own work, there have been several incidents in which you have missed deadlines in the letters and reports that you type for me. Specifically, the letters to department heads regarding assessment practices was to go out on March 8, 2XXX, but didn't get done until March 15, 2XXX. This is just one of many examples. In addition, you have yet to set up a system for purchase orders and warrants which I had asked you to do by March 25, 2XXX.

2. Regarding the work assigned to the clerical support staff of your unit, overall, the quality has been sporadic. Specifically, on four separate occasions in the last week, letters have gone out with typos in them; in one case there were three typos. This is not acceptable.

3. In addition, there have been specific performance problems with one of your employees. Specifically, regarding the performance of the Administrative Clerk I, the following needs correcting:

   a. The attitude he displays in dealing with the supervisors; specifically, he is constantly complaining and creates a negative and unfriendly work environment.

   b. The letters and reports he types have had to be redone repeatedly. Specifically, he continually gives final drafts to the supervisors that still have typos. Attached are five examples of his work that were unacceptable.

Performance in New or Emergency Situations

As you know, we work in an office that has many deadlines and "rush" jobs. Priorities may occasionally change. I have noticed that when a priority needs to change, rather than adjust your work and that of your subordinates accordingly, you continually complain to the supervisors for whom your staff provides clerical support. This creates a disruptive and negative environment. One specific incident occurred on April 14, 2XXX when you lost your temper and shouted at one of the supervisors in the presence of three other people. This is unacceptable.

Training and Leading Staff

I am concerned with the lack of training or direction given to the Administrative Clerk I. This has resulted in a poor work product from him as described above. You need to spend more time reviewing his work and taking steps to improve it.

In addition, based on your conduct as described in the "Performance in New or Emergency Situations" above, you are not providing positive leadership to your staff when you exhibit the behavior mentioned above.

Performance Improvement Plan

For you to meet the expectations and standards of your position, the following will be in place:

Accuracy and Timeliness in Completing Assignments:

It is your responsibility as an Administrative Clerk III to insure that your work and the work of your staff is accurate and is completed in the required timelines. If you are having difficulty in meeting the required timelines, it is your responsibility to adjust your priorities in order to meet the deadlines, or, if necessary to meet with me to discuss any issues you may have in meeting our customer's needs.

Performance in New or Emergency Situations:

When you receive a new assignment or change in priorities, I expect you to look at the work of your unit and adjust it accordingly. Again as stated above, if you feel you can't meet your various deadlines, you should discuss it with me rather than complain to the supervisors or the employees in your work unit.

Training and Leading Staff:

In an attempt to improve your performance in the areas listed above, we will discuss potential training to assist you in meeting the required standards and expectations.

Overall:

During your probationary period and for some time after that you demonstrated the capabilities to perform well as an Administrative Clerk III. The purpose of this counseling memo is to provide the required mechanisms such as additional training in specific areas to assist you to return to that level of performance. I will do a thorough review of your performance in sixty days. It is very important for you to demonstrate improvement as described above in the next sixty days or I will have no alternative but to recommend further action.

APPENDIX II-C

Memo

Date: 12/12/XX

To: Employee

From: Supervisor

Re: **COUNSELING MEMO – PERFORMANCE IMPROVEMENT PLAN**

On *date,* you and I discussed the need to improve your job performance in the following area(s):

1) **Attendance**: From *date* to *date,* you were out of the office for (*indicate various reasons including family sick leave, parental leave, and/or sick leave self)*. During that time you failed to follow the call-in procedure in 3 out of 7 instances, *provide dates,* resulting in Absence Without Approved Leave (AWOL) on these days. In addition, you left early one day *date* without requesting approval and flexed your time on another day *date* without prior approval.

2) **Telephone usage**: You spend an unusually large portion of your work time on personal calls on your cell phone. The times you spend on your personal calls have been observed by myself and other staff members who have complained.

3) **Work management**: During *timeframe,* I have reviewed your workload and found the following deficiencies:

   - # water shut-offs were not processed within 30 days and should have been
   - # business licenses should have been denied due to various reasons
   - # incorrect water bill payments that were processed

It is necessary that you improve your job performance in order to meet the expectations of your job and I am willing to assist you in meeting an acceptable level of performance. However, it is your responsibility to bring your work performance up to standard. To assist you in meeting this objective, effective *date*, we are implementing the following Performance Improvement Action Plan:

1) I am temporarily taking you off of counter service effective *date.* This will allow you to correctly handle all delinquent water bills and business license requests that are currently in your in-basket. I expect you to complete this backlog of work by *date*.

2) You must route shut-off notices and business licenses through my office for review before sending them out. I will keep a log on these cases.

3) We will meet weekly on *day* between *time* to discuss your progress and areas to be concentrated on for the upcoming week.

4) I will expect you to schedule your personal telephone calls only during your scheduled lunch and breaks. The times we have agreed upon are as follows: first break is *time*, lunch is *time*, and second break is *time*.

5) If you need to deviate from your scheduled lunch or breaks, you must notify me personally and in advance. If I am not available then you are required to check in with my backup, *name*, or any other available supervisor.

6) As you know, you are required to follow the call-in procedure when you will not be at work at your scheduled time and you must have prior approval for any request of over-time, flex-time, or other time off. Please let me know immediately if you have any questions about these processes.

Failure to satisfactorily meet the above plan activities in this Performance Improvement Plan by *date (reasonable amount of time, depending on the severity of the situation)* may result in further action.

_____

Supervisor's/Department Head's Name, Title

Attachment – Performance Improvement Plan

CC: Human Resources

Attachment 1 to Appendix II-C

PERFORMANCE IMPROVEMENT PLAN

Subject:
(Mark the appropriate box)

- ☐ *Performance*
- ☐ *Policy/Procedure Violation*
- ☐ *Behavior/Conduct Violation*
- ☐ *Absenteeism and/or Tardiness*

1. Measurable/Tangible Improvement Goals:
(The purpose of this section to ensure that a concrete outcome results. The outcome can take the form of increased productivity, decrease in errors, improved interpersonal communications or a reduction in excessive absenteeism or a tardiness-free attendance record.) A key phrase that can be used is "I expect" you to .....

2. Training or Special Direction to be Provided:
(Whenever possible, it is best to address a problem with positive tools as opposed to negative methods. Training is, therefore, a better alternative than punishment. This important section further documents the supervisor's effort to help the employee succeed on the job.)

3. Employee Assistance Program (EAPs):
(*EAPs provide confidential professional help when personal problems become performance problems. They can minimize insurance claims, unauthorized absenteeism, allowing the supervisor to focus on productivity and performance rather than personal counseling.)*

A supervisor has the option of making a formal referral when an employee's performance or behavior disrupts the workplace, or an employee can voluntarily request assistance. Neither form of referral – voluntary or formal – should be mandatory.

4. Employee's Personal Improvement Plan Input and Suggestions:
(A key part of the overall performance improvement plan is the employee's personal input into the process. An appeal for the employee's input shows a commitment to making the employee successful and proves that they are still part of the team (open communication). Not all employees, however, will accept the olive branch, however, the supervisor will have shown the effort made to rehabilitate the employee.)

_____

_____

_____

(Attach additional sheets if needed).

PERFORMANCE IMPROVEMENT PLAN – Page 2

Outcomes and Consequences

Positive: Employee meets the performance goal/s set, and no further disciplinary action is to be taken regarding this performance issue.

Negative: Employee is placed on notice that continued substandard performance and/or Disruptive behavior may result in dismissal. A copy of this document will be placed in the employee's personnel file.

Scheduled Review Date:

_____

Employee Signature

APPENDIX II-D

CITY OF AMERICAN CANYON
Inter-departmental Correspondence

Date: July 10, 2XXX

To: Employee

From: Department Head

Subject: **CONTROLLED LEAVE - ABENSENTEEISM**

On January 10, 2XXX, I met with you to review your absenteeism. Your absenteeism was unacceptable during the period of October 10, 2XXX, through January 9, 2XXX.

On March 10, 2XXX, you received a counseling memo following a second meeting with me on your continuing unacceptable absences.

Since March 10, 2XXX, you have been absent on the following days:

- Monday, March 17, 2XXX, 8 Hours Sick Leave
- Friday, March 21, 2XXX, 8 Hours Sick Leave
- Friday, April 4, 2XXX, 8 Hours Sick Leave
- Thursday, April 10, 2XXX, 4 Hours Sick Leave (Dr.'s appointment)
- Friday, April 11, 2XXX, 8 hours Sick Leave
- Monday, May 5, 2XXX, 8 Hours Sick Leave
- Tuesday, May 27, 2XXX, 8 Hours Sick Leave (day after holiday)
- Wednesday, May 28, 2XXX, 8 Hours Sick Leave
- Thursday, June 5, 2XXX, 8 Hours Sick Leave
- Friday, June 27, 2XXX, 4 Hours Sick Leave (left early)
- Tuesday, July 1, 2XXX, 8 Hours Sick Leave
- Wednesday, July 2, 2XXX, 8 Hours Sick Leave
- Thursday, July 3, 2XXX, 8 Hours Sick Leave
- Wednesday, July 9, 2XXX, 8 Hours LWOP (sick)

During the past four months you have been absent 104 hours out of 688 scheduled hours or 15 % of the hours you were scheduled to work. Your attendance continues to be unacceptable, despite our two counseling sessions on January 10 and March 10 of this year.

Effective immediately you are placed on controlled leave. Controlled leave means that, any time you use sick leave, you must bring medical verification of your sick leave usage that states you were seen and unable to work, to your supervisor when you return to work. This controlled sick leave requirement does not apply to absences covered by

FMLA/CFRA, PDL, Workers Compensation, or ADA. Additionally, bringing in medical verification does not mean that your absences will necessarily be excused.

For controlled leave, the verification must contain the following information:

1. Statement from physician or other qualified medical professional that the employee was seen on the first date of the absence.

2. Statement from physician or other medical professional that the employee's illness/injury prevented employee from being at work on specific days

3. Prognosis (estimated date of return to work)

4. Statement must be signed by your attending physician or other medical professional (M.D.,N.P., R.N., Optometrist, Psychologist)

If you use family sick leave, the medical verification only needs to contain:

1. The period of the illness or injury and the verification must be signed by a medical professional.

2. Statement from physician or other qualified medical professional that the eligible family member was seen on the first date of the absence.

3. Statement from the physician or other qualified medical professional that the employee's attendance was needed for the care or support of the eligible family member.

Each time you are absent due to your and your family's illness or injury, you are required to bring the medical verification when you return to work. If you fail to bring the verification, you will be docked for the hours you missed.

Despite a previous warning, your sick leave usage is still unacceptable. You may not use vacation or CTO in lieu of sick leave. You will remain on controlled leave for __ months. At the end of __ months, your controlled leave will be reviewed and may be extended if necessary and you may be subject to disciplinary action.

I acknowledge receipt of this controlled leave letter_____
Employee

Attachment:(Use Performance Improvement Plan found in Attachment 1 of Appendix II-C)

cc: Personnel File

APPENDIX II-E

CITY OF AMERICAN CANYON
Inter-departmental Correspondence

Date: March 15, 2XXX

To:

From:

Subject: **COUNSELING MEMO - TARDINESS AND UNAUTHORIZED ABSENCE**

The purpose of this memo is to document your tardiness in the last two weeks. On Monday, March 1, you arrived to work thirty minutes late. On Wednesday, March 3, you arrived to work 25 minutes late. On Wednesday, March 3, after your second late arrival to work, I verbally advised you that you were expected to arrive at work at 8:00 a.m.

Despite the warning outlined above you returned 20 minutes late from lunch on Thursday, March 4 and Friday, March 12, you arrived to work 15 minutes late and took a 25-minute break in the morning.

As you are aware, your work hours are from 8:00 a.m. to 5:00 p.m. with a one-hour lunch. You are hereby advised that you are expected to arrive at work by 8:00 a.m. and leave no earlier than 5:00 p.m. You are advised, effective immediately, that your lunch will be taken from 12:00 p.m. to 1:00 p.m. I am further advising you that your breaks will be taken from 10:00 to 10:15 a.m. and 2:30 to 2:45 p.m.

Any deviation from this schedule will require my prior approval. Please be advised that you will be docked for any unauthorized absence and that corrective action may be taken.

APPENDIX II-F

CITY OF AMERICAN CANYON
Inter-departmental Correspondence

Date: March 29, 2XXX

To:

From:

Subject: **LETTER OF REPRIMAND - TARDINESS AND UNAUTHORIZED ABSENCE**

By means of this letter you are hereby formally reprimanded for tardiness and unauthorized absence from work.

On Tuesday, March 23, 2XXX, you arrived to work at 8:30 a.m., one-half hour late. You did not call in saying you would be late and, when requested, you offered no reason for your lateness. On Wednesday, March 24, you returned from lunch 15 minutes late and on Thursday, March 25, took a 25-minute break in the morning.

On March 15, 2XXX, you received a counseling memo regarding your unauthorized absence and tardiness. Despite receipt of this memo, the problem has continued.

A copy of this reprimand and the March 15 counseling memo are being placed in your personnel file for six months. If this problem continues, I will recommend formal disciplinary action.

Receipt acknowledged: _____

cc: Personnel File

APPENDIX II-G

CITY OF AMERICAN CANYON
Inter-departmental Correspondence

Date:
To:
From:

Subject: **COUNSELING MEMO - INCIDENT OF YESTERDAY**

Yesterday morning at 8:10 a.m. I met with you and told you I smelled alcohol on your breath from a few feet away. I told you it was unacceptable to come to work with alcohol on your breath because I was concerned whether you could do the job and also I was concerned with the image you would project to other employees and the public.

You stated you had not been drinking and went on to say that, “Even if I had, what difference does it make - I just sit at a desk and type all day.”

After further discussion, I told you that you would not be allowed to work and directed you to leave the office. After arguing with me, you left and I had a coworker drive you home.

So there is no misunderstanding, I want to make sure you understand the following:

1. It is unacceptable to come to work with the smell of alcohol on your breath. This presents a poor image of the City to other employees and the public, and I question your effectiveness during the course of the work day.

2. If you come to work again with alcohol on your breath, I will give you a formal letter of reprimand and a copy of the reprimand along with this memo will be placed in your personnel file. Assuming no further incident, this memo will be removed from your personnel file in six months.

3. If you feel you have a problem with alcohol, I want to offer you all possible assistance. You may wish to see an EAP counselor. If you wish to discuss assistance available, please don’t hesitate to see me.

Your time will be documented as vacation for yesterday. If any further incidents occur, you will be sent home and docked for the day.

APPENDIX II-H

CITY OF AMERICAN CANYON
XXX DEPARTMENT
NOTICE OF PROPOSED DISCIPLINARY ACTION
(5 DAY SUSPENSION)

TO: Employee Name
Employee Classification

FROM: Department Head Name
Title and Department

SUBJECT: PROPOSED DISCIPLINARY ACTION – 5 DAY SUSPENSION

YOU ARE HEREBY NOTIFIED that I am recommending that you be suspended for a period of five (5) days. The facts upon which the proposed disciplinary action is based are as follows:

Despite numerous counseling's and a letter of reprimand, you consistently fail to report to work at your assigned time. Excessive tardiness has continued to occur and includes the following dates:

DATE TARDY	TIME LATE
March 20, 2XXX	1.6 hours
April 2, 2XXX	2.7 hours
May 5, 2XXX	1.0 hours
May 9, 2XXX	4.0 hours
June 15, 2XXX	.8 hours

Previous actions taken against you include:

a. Letter of Reprimand dated May 12, 2XXX, from supervisor name, supervisor classification, to employee name, employee classification, continued tardiness.

b. One day suspension effective June 1, 2XXX, from supervisor name, supervisor classification, to employee name, employee classification, concerning tardiness and failure to follow call-in procedures in the event of illness.

Your continued tardiness has had a significant adverse impact upon the operations of the <office name> in that others have had to fill in during your absences and still maintain their workplace responsibility. In addition, your supervisor has had to consistently adjust staffing plans because she cannot depend upon you to arrive at work in a timely manner. You have been counseled and issued a letter of reprimand to address your tardiness in accordance with the MOU, but the efforts to correct the problem have not been successful. Your continued unabated tardiness demonstrates a total disregard for the efforts and patience of

management in working with you to correct your tardiness problems and bring you into compliance. Accordingly, a five-day suspension is deemed appropriate.

The above facts are considered good cause for disciplinary action under the Labor Agreement between the City of American Canyon and the Teamsters, Local 490. The materials upon which the order of disciplinary action is based include the following:

a. Letter dated June 12, 2XXX from supervisor name, supervisor job title to department head name and title, requesting disciplinary action.
b. Attendance and Tardiness, Section 6.4 of the Human Resources Policies and Practices Manual.
c. Copies of American Canyon City time sheets for the pay periods 1 through 6, 2XXX.
d. Letter of Reprimand dated May 12, 2XXX, from supervisor name, supervisor title, to employee name, employee title, and continued tardiness.
e. Order of Disciplinary Action – One Day Suspension dated June 1, 2XXX.

Copies of the documents are attached.

Before a final decision is made by me in this matter, you have ten (10) calendar days from the date you are served with a copy of this notice, either personally or by mail, to respond to this proposed disciplinary action. You may respond personally or in writing. You may submit any materials you desire to be considered in regard to your response.

If you desire to respond personally, contact me or the Human Resources Director at ###-####, to arrange for an appointment for the personal hearing of this matter. The Human Resources Director is my delegated representative (Skelly Officer) to hear this matter on my behalf and to recommend to me what final decision should be made in this matter. The meeting will be informal in nature and does not include any right to present evidence by way of oral examination of witnesses. Any materials you desire to submit should be delivered to the Human Resources Department (address) no later than the date of the personal (Skelly) meeting.

If you do not respond to this disciplinary action either personally or in writing on or before the expiration of the ten (10) calendar-day period referred to above, then I will make my final decision based upon the facts set forth above and any materials indicated.

DATED_____

_____
Department head

RECEIVED:

_____
Date Employee

APPENDIX II-I

CITY OF AMERICAN CANYON

PUBLIC WORKS DEPARTMENT

ORDER OF DISCIPLINARY ACTION
(5 DAY SUSPENSION)

DATE: **May 29, 2XXX**

TO: Employee Name
Employee Classification

FROM: Directors Name
Title and Department

SUBJECT: ORDER OF DISCIPLINARY ACTION – 5 DAY SUSPENSION

YOU ARE HEREBY NOTIFIED that you are hereby suspended from your position as <title> for five workdays commencing with June 13, 2XXX and ending on June 17, 2XXX. The facts upon which the order of disciplinary action is based are as follows: Despite numerous counselings and a letter of reprimand, you consistently fail to report to work at your assigned time.

I. FACTUAL BASIS FOR THE ACTION

Excessive tardiness has continued to occur and includes the following dates:

DATE TARDY	TIME LATE	DATE TARDY	TIME LATE
March 20, 2XXX	1.6 hours	April 27, 2XXX	3.0 hours
April 2, 2XXX	2.7 hours	April 30, 2XXX	3.0 hours
April 5, 2XXX	2.0 hours	May 11, 2XXX	2.0 hours
April 9, 2XXX	4.0 hours	May 14, 2XXX	2.0 hours
April 13, 2XXX	.5 hours	May 17, 2XXX	3.3 hours
April 16, 2XXX	1.8 hours	May 18, 2XXX	4.7 hours
April 18, 2XXX	.8 hours	May 21, 2XXX	1.5 hours

Previous actions taken against you include:

a. Letter of Reprimand dated May 1, 2XXX, from supervisor name, supervisor classification, to employee name, employee classification, and continued tardiness.

b. Counseling Memorandum dated April 19, 2XXX, from supervisor name, supervisor classification, to employee name, employee classification, concerning tardiness and failure to follow call-in procedures in the event of Illness.

c. Record of Discussion dated April 6, 2XXX, from supervisor name, supervisor classification, to employee name, employee classification concerning tardiness.

Your continued tardiness has had a significant adverse impact upon the operations of the <office name> in that others have had to fill in during your absences and still maintain their workplace responsibility. In addition, your supervisor, has had to consistently adjust staffing plans because she cannot depend upon you to arrive at work in a timely manner. You have been counseled and issued a letter of reprimand to address your tardiness, but the efforts to correct the problem have not been successful. Your continued unabated tardiness demonstrates a total disregard for the efforts and patience of management in working with you to correct your tardiness problems and bring you into compliance. Accordingly, a five-day suspension is deemed appropriate.

The above facts are considered good cause for disciplinary action under the Labor Agreement between the City of American Canyon and the Teamsters, Local 490. The materials upon which the order of disciplinary action is based include the following:

a. Tardiness Report from March 20, 2XXX through May 21, 2XXX.

b. Attendance and Tardiness, Section 6.4, Human Resources Policies and Practices Manual.

c. Copies of American Canyon City time sheets for the pay periods 4 through 9, 2XXX.

d. Letter of Reprimand dated May 1, 2XXX, from supervisor name, supervisor classification, to employee name, employee classification, continued tardiness.

e. Counseling Memorandum dated April 19, 2XXX, from supervisor name, Supervisor classification, to employee name, employee classification concerning Tardiness and failure to follow call-in procedures in the event of Illness.

f. Record of Discussion dated April 6, 2XXX, from supervisor name, supervisor classification, to employee name, employee classification concerning Tardiness.

II. WARNING AGAINST RETALIATION

This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has participated in complaining or providing information regarding any of the above allegations.

III. APPEAL RIGHTS

Pursuant to the MOU and the City's Human Resources Policies and Practices Manual, Section 8.1(i)(5-6), you have appeal rights that start with a hearing with an adjustment board; and, if the issue is not settled at that level, the appeal may be advanced to a hearing with an impartial arbitrator whose decision is final and binding. To exercise these appeal rights, you must appeal to the City Manager within ten (10) working days from the date of the Notice of Disciplinary Action.

_____

Department Head Date
Title

RECEIVED:

_____

Date Employee

PERSONAL SERVICE WITNESSED BY : _____ Date:_____

APPENDIX II-J

CITY OF AMERICAN CANYON

DATE:
TO: Employee Name, Job Title
FROM: XXX, Director, XXX Department
SUBJECT: **ADMINISTRATIVE LEAVE**

Attached is a Notice of Proposed Disciplinary Action recommending that you be dismissed from your position with the City based on the charges stated therein. Consequently, effective immediately, and until further notice, you are on administrative leave with pay. While you have the right to respond to this Notice, this is a confidential matter and is not to be discussed with anyone other than your representative. In addition, the following directives will be in place:

1. You are to be available at home during your assigned normal work hours.

2. If you have a doctor's appointment, you must advise *XXX or his/her* designee, of the time and date of appointment. Because you remain on controlled leave, all of the controlled leave requirements remain in place.

3. If you have any other appointments and request to use vacation, CTO, etc., such requests must have prior approval from *XXX or his/her* designee.

4. You must immediately surrender your *City ID badge, keys, pagers, tools, etc (fill in the blanks).*

5. You are directed not to visit the any City facility occupied by any Department of XXX staff during or after working hours nor are you to contact any Department of XXX employees either in person or electronically.

6. You are not to contact anyone who might be a potential witness in this personnel action either in person or electronically.

7. If you need to obtain anything from your *desk/work area* regardless of whether it is a personal item or otherwise, you may contact *XXX and s/he* will consider your request.

8. If you wish to respond to the attached Notice of Proposed Disciplinary Action in person, a meeting has been scheduled with XXX, Human Resources Director, for *XXX.* Her office is located at XXX, telephone number XXX.

If you have any questions regarding any of the above, please call XXX, Human Resources Director, at XXX.

cc: XXX