

SECTION VII: DISCIPLINARY ACTION

1. GENERAL POLICY.

- A. It is the policy of Tremonton City that each new employee will be provided a copy of the Tremonton City Personnel Policies and Procedures Manual outlining what is expected at work, what constitutes employee misconduct, what management and the employee may do to correct any misconduct, and what the employee's rights are if disciplined. Updates to the Tremonton City Personnel Policies and Procedures Manual are kept on the City's website (www.tremontontcity.com).
- B. It is the responsibility of all employees to inform themselves and to observe rules of conduct necessary for the proper operation of City government. Administrative procedures have been established for the handling of disciplinary measures when required. All such measures shall follow the presentation of charges to the employee.
- C. Disciplinary action, up to and including termination, may be imposed for misconduct.
- D. The Mayor, City Manager, or Department Head shall conduct disciplinary action in a consistent manner.
- E. Written documentation concerning employee disciplinary action imposed will become a permanent part of an employee's personnel file.

2. MISCONDUCT – CAUSES FOR DISCIPLINARY ACTION.

- A. Misconduct is cause for disciplinary action, up to and including termination. Misconduct, may include, but is not limited to, the following:
 - (1) Violation of the laws of the State of Utah or the United States, other than minor traffic offenses.
 - (2) Conduct which endangers the peace and safety of others or poses a threat to the public interest.
 - (3) Unjustified interference with work of other City employees.
 - (4) Malfeasance: generally means wrongdoing or misconduct especially by a public official.
 - (5) Misfeasance: generally means the performance of a lawful action in an illegal or improper manner.

- (6) Nonfeasance: generally means failure to act; failure to do what ought to be done.
- (7) Incompetence: generally means the lack of ability to do something well.
- (8) Negligence: generally means failure to exercise the care that a reasonably prudent person would exercise in like circumstances.
- (9) Insubordination: generally means not obeying authority; refusing to follow orders.
- (10) Failure to maintain skills.
- (11) Inadequate performance of duties.
- (12) Unauthorized absence.
- (13) Falsification or unauthorized alteration of records.
- (14) Violation of City policies.
- (15) Violation of Departmental policies.
- (16) Falsification of employment application.
- (17) Discrimination in hiring, assignment, or promotion.
- (18) Sexual harassment.
- (19) Violation of the Personnel Policies and Procedures.
- (20) Use of alcohol or drugs, other than medication prescribed by a physician, that affect job performance.
- (21) Falsifying of City records.
- (22) Knowingly marking the time slip of another employee, authorizing ones time slip to be marked by another employee, or unauthorized alteration of a time slip.
- (23) Unauthorized possession of firearms, weapons, or explosives on City owned property.
- (24) Carelessness which affects the safety of personnel.

- (25) Threatening, intimidating, coercing, or interfering with fellow employees on the job or the public at large.
- (26) Theft or removal of any City property or property of any employee from the work area premises without proper authorization.
- (27) Gambling or engaging in a lottery at any City work area.
- (28) Misusing, destroying, or damaging any City property or the property of any employees.
- (29) Deliberately restricting output.
- (30) Drinking any alcoholic beverage during the workday or scheduled on-call time, or being under the influence of illicit drugs or alcohol during the workday.
- (31) Sleeping during working hours, with the obvious exception of fireman employees.
- (32) Fighting (verbal or physical) on City premises.

B. The Department of Transportation (DOT) has expanded the definition of events that require disqualification of CDL drivers from driving commercial vehicles. A driver must be disqualified from driving a Commercial Motor Vehicle (CMV) if the driver commits a “Major Driving Offense” while driving either a CMV or a non-CMV, including personal motor vehicles. (See Appendix 34 for the specific “Major Driving Offenses” and periods of disqualification. (CC mtg. 11/15/11)

3. CLASS I – TYPES OF DISCIPLINARY ACTION. Class I types of disciplinary action are appropriate for minor misconduct as determined by the City Manager or Department Head. After conducting an Investigation (See section 5) the City Manager or Department Head may determine that a type of Class I disciplinary action is appropriate. In determining if the misconduct is minor the City Manager or Department Head may consider aggravating and mitigating circumstances such as: the repeated nature of misconduct, prior disciplinary action imposed, the severity of the misconduct, the employee's work record, the effect on City operations, and/or the potential of the misconduct to harm person(s) or property. Class I types of disciplinary action are generally aimed at correcting the minor misconduct. Disciplinary actions that include Up to Two-Day Suspension and Involuntary Transfer – To a Position with Same Remuneration require the concurring consent of the City Manager.

A. Verbal Warning.

- (1) Whenever misconduct exists and the City Manager, Department Head, or Sergeant/Battalion Chief/Lead determines that more severe action is not

immediately necessary, the employee's misconduct should be verbally communicated to the employee. (CC mtg 11/15/11)

- (a) When communicating a verbal warning, the City Manager, Department Head, or Sergeant/Battalion Chief/Lead should state clearly that they are issuing a verbal warning;
 - (b) Be specific in describing the unacceptable performance or behavior;
 - (c) Remind the employee of the acceptable standards or rules and provide a copy of the appropriate policy to the employee and the corrective action sought;
 - (d) State the consequences of failure to demonstrate immediate and sustained improvement.
- (2) Whenever possible, sufficient time for improvement should precede additional disciplinary action to monitor the correction of the misconduct demonstrated.

B. Written Reprimand.

- (1) The City Manager or Department Head may reprimand an employee for cause associated with an employee's misconduct. The City Manager or Department Head shall furnish the employee with a written Employee Written Reprimand Notification (see Appendix Number 17 for details) setting forth the reason(s) and the corrective action sought. (CC mtg 11/15/11)
- (2) A copy of the Employee Written Reprimand Notification, signed by the City Manager or Department Head and the employee, shall be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the City Manager or Department Head will so state.

C. Up to Two-Day Suspension.

- (1) The City Manager or Department Head may suspend an employee for up to, but not exceeding, two (2) days for cause associated with an employee's misconduct.
- (2) On or before the effective date of the suspension, the City Manager or Department Head shall furnish the employee with a written Employee Up to Two-Day Suspension Notification (see Appendix Number 18 for details) setting forth the reason(s) for suspension and the corrective action sought. (CC mtg 11/15/11)

- (3) A copy of the Employee Up to Two-Day Suspension Notification, signed by the City Manager or Department Head and the employee, shall be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the City Manager or Department Head will so state.
- (4) An employee on suspension for up to two days shall be responsible for making full contributions to their employee medical insurance benefits if applicable.

D. Involuntary Transfer- To a Position with Same Remuneration.

- (1) The City Manager or Department Head may transfer an employee without the employee's consent to a different position with the same remuneration due to an employee's misconduct.
- (2) Involuntary transfers to a position with same remuneration may occur for situations other than disciplinary action such as to accommodate an FMLA situation, etc. Involuntary transfers to accommodate these situations shall not be misconstrued to be a disciplinary action.
- (3) On or before the effective date of the transfer, the City Manager or Department Head shall furnish the employee with a written Employee Involuntary Transfer To a Position with Same Remuneration Notification (see Appendix Number 19 for details) setting forth the reason(s) for transfer and the corrective action sought.
- (4) A copy of the Employee Involuntary Transfer To a Position with Same Remuneration Notification, signed by the City Manager or Department Head and the employee, shall be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the City Manager or Department Head will so state.
- (5) For purposes of this section, remuneration means compensation or benefits received from employment.

4. CLASS II- TYPES OF DISCIPLINARY ACTION. Class II types of disciplinary action are appropriate for major misconduct as determined by the Mayor, City Manager, or Department Head. After conducting an Investigation (See section 5), providing written notice (See section 6), and Pre-Deprivation Hearing (See section 7) the Mayor, City Manager, or Department Head may determine that a type of Class II disciplinary action is appropriate. In determining if the misconduct is major the Mayor, City Manager, or Department Head may consider aggravating and mitigating circumstances such as: the repeated nature of misconduct, prior disciplinary action imposed, the severity of the misconduct, the employee's work record, the effect on City operations, and/or the potential of the misconduct to harm person(s) or property. Class II types of disciplinary

action are generally aimed at immediately ending or resolving the misconduct and may result in a temporary or permanent loss of a property right for an employee. All Class II types of disciplinary action require the concurring consent of the Mayor or City Manager.

A. Over Two-Day Suspension.

- (1) The Mayor, City Manager, or Department Head may suspend an employee over two (2) days for up to, but not exceeding, thirty (30) calendar days for cause associated with an employee's misconduct.
- (2) On or before the effective date of the suspension, the Mayor, City Manager, or Department Head shall furnish the employee with a written Employee Over Two-Day Suspension Notification (see Appendix Number 18 for details) setting forth the reason(s) for suspension and the corrective action sought.
- (3) A copy of the Employee Over Two-Day Suspension Notification, signed by the Mayor, City Manager, or Department Head and the employee, shall be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the Mayor, City Manager, or Department Head will so state.
- (4) An employee on suspension for over two days shall be responsible for making full contributions to their employee medical insurance benefits if applicable.

B. Involuntary Transfer- To a Position with Less Remuneration.

- (1) The Mayor, City Manager, or Department Head may transfer an employee without their consent to a different classification with less remuneration or work location due to an employee's misconduct.
- (2) On or before the effective date of the transfer, the Mayor, City Manager, or Department Head shall furnish the employee with a written Employee Involuntary Transfer To a Position with Less Remuneration Notification (see Appendix Number 19 for details) setting forth the reason(s) for transfer and the corrective action sought.
- (3) A copy of the Employee Involuntary Transfer To a Position with Less Remuneration Notification, signed by the Mayor, City Manager, or Department Head and the employee, shall be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the Mayor, City Manager, or Department Head will so state.
- (4) For purposes of this section, remuneration means compensation or benefits received from employment.

C. Termination for Cause.

- (1) The Mayor, City Manager, or Department Head may terminate an employee for cause associated with an employee's misconduct by furnishing the employee with a written Employee Termination Notification (see Appendix Number 20 for details).
- (2) A copy of the Employee Termination Notification, signed by the Mayor, City Manager, or Department Head and the employee, shall be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the Mayor, City Manager, or Department Head will so state.

5. CONDUCTING AN INVESTIGATION.

A. CLASS I- Investigations.

- (1) The City Manager or Department Head shall conduct an investigation to determine the findings of misconduct upon which form the grounds for Class I disciplinary action. The investigation may include an informal opportunity for the employee to discuss the facts or circumstances surrounding the findings.

B. CLASS II- Investigations.

- (1) The Mayor, City Manager, or Department Head shall conduct an investigation into the allegations to determine the preliminary findings of misconduct upon which form the grounds for Class II disciplinary action.
- (2) During an investigation to determine the facts upon which disciplinary action may be imposed, the Mayor, City Manager, or Department Head may place an employee on administrative leave. Absent good cause showing to the contrary, employees shall be paid while on administrative leave.
- (3) The investigation may include an informal opportunity for the employee to discuss the facts or circumstances surrounding the preliminary findings.

6. CLASS II – PRE-DEPRIVATION NOTICE (LOUDERMILL NOTICE).

- A. Background. The Pre-Deprivation Notice or Loudermill Notice is part of the “due process” requirement provided to eligible government employees. The term Loudermill stems from a court case in which the United States Supreme Court held that non-probationary civil servants had a property right to their employment and such employment could not be deprived unless employees were given written notice of the charges against them prior to being deprived.

- B. Eligibility. Employees not covered by Utah Code 10-3-1105 may be suspended for over two days without pay, involuntarily transferred to a position with less remuneration, or terminated with or without notice for any or no reason without any right to due process, notice, explanation, or appeal in connection with said suspension, involuntary transfer, or termination.
- C. Pre-Deprivation Notice. The City shall provide timely written notice of the charges against the employee. The Pre-Deprivation Notice shall include the following:
 - (1) Where the employee can obtain access to City rules, policies, and procedures.
 - (2) The preliminary findings including a description of the specific misconduct for which the disciplinary action could potentially be imposed, evidence of alleged misconduct, and citation of appropriate personnel policy that was violated.
 - (3) Any prior disciplinary action imposed.
 - (4) The disciplinary action that may be imposed.
 - (5) The effective date and duration of the potential disciplinary action.
 - (6) Time and place of the Loudermill Hearing; the employee has the right to attend the Loudermill Hearing, but even should the employee choose not to attend, the hearing will still take place.
 - (7) The invitation to provide a written response to the preliminary findings of misconduct. An employee's written response, if any, and other related documents shall be placed in the employee's personnel file.

7. CLASS II- PRE-DEPRIVATION HEARING (LOUDERMILL HEARING).

- A. Background. The Pre-Deprivation Hearing or Loudermill Hearing is part of the "due process" requirement provided to eligible government employees. The term Loudermill stems from a court case in which the United States Supreme Court held that non-probationary civil servants had a property right to their employment and such employment could not be deprived unless employees were given an opportunity to hear and respond to the charges against them prior to being deprived. Since disciplinary actions involve factual disputes, a hearing provides the employee an opportunity to explain and refute any preliminary findings the employer reached prior to imposing Class II disciplinary action against the employee.

- B. Eligibility. Employees not covered by Utah Code 10-3-1105 may be terminated, suspended for over two days without pay, or involuntarily transferred to a position with less remuneration with or without notice for any or no reason without any right to due process, notice, explanation, or appeal in connection with said termination, suspension, or involuntary transfer.
- C. Hearing. Any eligible employee facing Class II disciplinary action shall be afforded a pre-deprivation hearing. The pre-deprivation hearing shall be attended, at minimum, by one or more of the following: the Mayor, City Manager, and/or the applicable Department Head. Others may be invited to attend the pre-deprivation hearing on a case by case basis at the discretion of the Mayor, City Manager, and/or applicable Department Head. The pre-deprivation hearing shall:
 - (1) Be held at the offices of Tremonton City, or any other appropriate location as decided by the Mayor, City Manager, or applicable Department Head.
 - (2) Absent good cause for exception, be held during the course of regular Tremonton City Business Hours.
 - (3) Not be a public meeting.
 - (4) Provide an opportunity for the Mayor, City Manager, applicable Department Head, and/or an invited attendee to ask questions of the employee relevant to the employee's alleged misconduct.
 - (5) Provide an opportunity for the employee to refute any preliminary findings of the employee's misconduct referenced in the pre-deprivation notice. Such refutation may be provided in written form by the employee and may include any statements or documents that the employee determines to be absolvitory in nature.

8. IMPOSING DISCIPLINARY ACTION.

- A. For Class I (except for verbal reprimand) disciplinary action the City Manager or Department Head shall notify the employee, in writing, of the findings of the investigation and type of disciplinary action imposed. The written statement shall include:
 - (1) The findings, including a description of the specific misconduct for which the disciplinary action is being imposed.
 - (2) Any prior disciplinary action imposed.
 - (3) The disciplinary action to be imposed.
 - (4) The effective date and duration of the disciplinary action.

- (5) The corrective action necessary for the employee to avoid further disciplinary action.
- B. For Class II disciplinary action the Mayor, City Manger, or Department Head shall notify the employee, in writing, of the preliminary findings of the investigation, the finding of facts of the Pre-Deprivation Hearing, and type of disciplinary action imposed. The written statement shall include:
- (1) The preliminary findings, including a description of the specific misconduct for which the disciplinary action is being imposed.
 - (2) The findings of fact of the Pre-Deprivation Hearing.
 - (3) Any prior disciplinary action imposed.
 - (4) The disciplinary action to be imposed.
 - (5) The effective date and duration of the disciplinary action.
 - (6) The corrective action necessary for the employee to avoid further disciplinary action, if applicable.
 - (7) The employee's right to submit a written notice of appeal to the Tremonton City Recorder within ten (10) days or the employee shall be deemed to have waived all appeal rights. Should the employee choose to appeal, the City is authorized to forward the documents on to the Appeals Board.
9. CLASS II – POST- DEPRIVATION HEARING (APPEAL HEARING).
- A. For more information on Class II – Post-Deprivation Hearings see Chapter 3-1300 Appeals Board, of the Tremonton City Corporation's Revised Ordinances.