

ADMINISTRATIVE ORDER NUMBER 2-14

SUBJECT: Guide to Corrective Action

Responsible Department: Personnel Services Department

Date Issued: 11-23-1998

Date Revised: 08-10-2017

Approved: (*Signature on File*)

Policy

It is the policy of the City to administer discipline in a consistent, equitable manner throughout all departments. Work situations differ, therefore the use of discipline must be tempered by good judgment. No fixed discipline can be prescribed for any single infraction of the rules. The more serious the infraction, or the more frequent, the more severe the discipline should be. Unusual circumstances may lessen or increase the severity.

Procedures

1. **Fresno Municipal Code (FMC) Requirements:** The FMC does not cover letters of understanding or written reprimands. It applies only to fines, demotions, suspensions or removal of permanent employees. Always refer to the proper code sections for requirements, authority to take action, etc., but the following summarizes the FMC provisions.
 - a. **Causes for Action (Section 3-286):** Malfeasance, misconduct, inefficiency, failure to perform duties of the position, to observe established rules and regulations, or cooperate reasonably with superiors or fellow employees; malfeasance and misconduct include a variety of specific acts or omissions.
 - b. **Authority to Take Action:**
 - i. Fine: \$100 maximum, Section 3-280
 - ii. Suspension: 30 calendar day maximum, Section 3-280
 - iii. Demotion: Section 3-285
 - iv. Removal: Section 3-282
 - c. **Notice of Intended Action:** FMC Section 3-280 requires that a permanent employee be given advance written notice of an intent by a department director to fine, suspend, demote or remove that employee. The employee has seven calendar days in which to respond to the department director, verbally or in writing. The seven-day period can be extended only by the Director of Personnel at the request of the employee.

After receipt of the response, if any, and consideration thereof, the department director may proceed with appropriate action. There is an exception to this provision for certain serious infractions.

- d. **Appeal Procedure:** FMC Section 3-282 provides an appeal of a fine, demotion, suspension or removal by a permanent employee to the Civil Service Board (CSB) or, an option of a hearing before a hearing officer. The recommendation of the hearing officer goes to the CSB for final action. The decision of the CSB is final in appeals from disciplinary actions.
- e. **Required Signatures:**
 - i. **Notice of Intended Action:** Three signatures are required on the Notice of Intended Action—Department Director, City Attorney, and Director of Personnel. The signatures should be obtained in the order listed.
 - ii. **Disciplinary Action:** Four signatures are required on the Notice of Action: Department Director, City Attorney, Director of Personnel, and City Manager. The signatures should be obtained in the order listed.
 - iii. The signature of the City Attorney indicates that legal requirements are met, code references are correct, charges are adequate, etc. The signature of the Director of Personnel indicates that the action is procedurally correct and consistent with other disciplinary actions of the same nature and seriousness. The City Manager's signature indicates his/her awareness of the situation, its seriousness, and his/her agreement that the infraction warrants the discipline for the good of the City.
- f. A copy of the Notice of Action, together with proof of service of the Notice, must be filed with the CSB within ten (10) days of service upon the employee (FMC 3-282). Forward the copy to the Personnel Department to be placed in the employee's permanent file.

2. General Guidelines

- a. **Dissemination of Rules:** Each department has the obligation to make employees fully aware of the rules and requirements of the job and to

ensure that employees perform and behave acceptably. Employees who do not are subject to disciplinary action.

“I didn’t know” should not be an accurate response by an employee to disciplinary action. Each department has the obligation to inform an employee of the rules and regulations applicable to that employee. The employee should be aware of the consequences of failure to follow the rules and regulations.

- b. **Progressive Discipline:** Serious offenses, even a first offense, can warrant a long suspension or termination. Usually, however, corrective action results from a series of offenses, and discipline should be progressive, generally leading from lesser action to more severe action.

Termination is appropriate when a particular incident is by itself intolerable, or when a series of offenses indicates that the employee cannot, or will not, abide by the rules and regulations.

The corrective actions listed below, in order of severity, are the standard forms of action, but are not necessarily all-inclusive. If, in a supervisor’s judgment, an alternative method will correct the problem, use it, but put it in writing, stating that it is being used in lieu of more formal action. This establishes a record of action and, if the problem continues, more strict discipline may be taken in the future.

- i. **Retraining:** This should occur when evidence indicates the problem is a lack of knowledge or skill by an employee, correctable by attention to skill improvement.
- ii. **Letter of Understanding:** This is most appropriate when the problem is a lack of understanding of the rules, regulations, and requirements of the job, rather than an intentional disregard of them. No fault attaches to this action; it is an assurance that an employee knows what is expected.
- iii. **Oral Reprimand:** This is the first form of discipline for minor offenses and should be documented as having been given by a supervisor. Although nothing would be placed in an employee’s permanent file in the Personnel Department, it may be documented in a departmental file, and a copy should be provided to the employee.
- iv. **Written Reprimand:** This should be used when an offense is sufficiently serious, on its own or in a series of offenses, to warrant a written document reprimanding an employee for certain behavior. The document should contain a statement of the specific action of the employee, the rule violated, and a statement that further violations will result in more severe discipline.

- v. **Suspension:** Suspension is a serious form of discipline and should be used only for serious offenses or for the most recent in a series of offenses not corrected by less severe disciplinary action. A Notice of Intended Action, in accordance with FMC Section 3-280, is required before suspending a permanent employee. Permanent employees may appeal suspensions.
 - vi. **Fine in Lieu of Suspension:** The same criteria apply to fines as to suspensions, including a Notice of Intended Action. Fines should be administered sparingly, generally where suspension is inappropriate or ineffective, or where an offense involves damage to property.
 - vii. **Demotion of Promoted Employee:** Demotion can occur for the same reasons as for fine or suspension, but should be limited to cases where job performance in the higher class is inadequate and demotion of a promoted permanent employee to the previously held lower class is the only way of achieving adequate performance. A Notice of Intended Action is required.
 - viii. **Removal:** Termination should be used when the offense or situation is so serious that retention is not acceptable, or when the action of the employee is the latest of a series of offenses showing that the employee is unwilling or unable to correct his/her behavior, even despite previous progressive discipline.
Termination may be ordered for physical or mental incompetence, which may or may not occur through fault of the employee. Competent medical evidence is required, and action should be taken only after close consultation with the Personnel Department. A Notice of Intended Action is required for permanent employees. Removal for failure to meet the requirements of the job, or for physical or mental incompetence, requires special attention, and the general rules for “discipline” may not apply.
- c. **Consistency of Discipline:** Discipline must be consistent in its application. Employees should be treated equally in those cases under the same circumstances. Consistency also applies to individual employees. A supervisor cannot overlook an infraction three times and take action effectively the fourth time. Little things cannot be overlooked. The “last straw” syndrome has no place in effective discipline. An employee who gets away with several offenses cannot be fired as a form of retroactive discipline. Discipline, and correction of unacceptable behavior, proceeds from one step to the next—not in large increments. Since the acceptable level of behavior is set by the worst employee, differential treatment (under the same set of circumstances) is inappropriate and will be resented. “Good” employees cannot be expected to perform and behave better than “poor” employees if the poor employee’s behavior is tolerated.

- 3. Probationary Employees:** Probationary employees require special care and attention. While probationary employees should be on their best behavior and we should expect a special effort, probationary employees may be unfamiliar with the City, its operation, and the requirements of the job. Additional direction and counseling may be necessary. Supervisors must take extra care to ensure that probationary employees are aware of the rules and regulations applicable to them.

Corrective action may be taken for probationary employees. Rejection of probation is accomplished pursuant to FMC Section 3-273. No Notice of Intended Action is required and no appeal is provided.

- 4. Exempt Employees Under Fair Labor Standards Act:** Exempt employees may not be suspended for a period of less than one week, except for major safety violations. Fines are not a permissible form of discipline for exempt employees. These provisions shall be applicable to any and all disciplinary orders or actions involving exempt employees since September 1, 1991. Refer to the Salary Resolution for determination of exempt status.

Good judgment is the most critical element in the administration of corrective action. The intent is to change an employee's behavior to an acceptable standard – not to punish. Even termination is not punishment. Termination recognizes that correction is not possible and eliminates the problem in the only remaining way.

Any questions should be referred to the Personnel Department or the City Attorney's Office, as appropriate. Any department needing assistance in determining the level of corrective action, writing the action document, or any other help, should contact the Personnel Department.