

TEXARKANA, TEXAS POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> February 1, 2008		<i>Amended Date</i> May 1, 2015		<i>Directive</i> 2.08.1	
<i>Subject</i> Appeal Procedures for Disciplinary Actions					
<i>Reference</i>					
<i>Distribution</i> All Personnel City Manager City Attorney		<i>TPCA Best Practices Recognition Program Reference</i> 2.08.1 Appeal Procedures for Disciplinary Actions		<i>Review Date</i> January 1, 2017	
<i>Pages</i> 10					

This Operations Directive is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.

SECTION 1 PURPOSE

The purpose of this directive is to establish a disciplinary process that ensures all discipline imposed is consistent, fair to all employees and to the agency, stimulates employee morale and motivation, instills confidence in management, and promotes continuity of direction within the agency.

SECTION 2 POLICY

It is the policy of this Department that the disciplinary system includes training, rewarding, counseling and punitive actions in the interest of discipline.

It is the policy of this Department to administer discipline in an expeditious, impartial and just manner in accordance with this directive.

SECTION 3 PROCEDURES

- A. The agency's disciplinary system provides a guideline of available options to address employee work or behavior problems. Discipline may begin with any level in the disciplinary system and discipline is not required to be progressive or in a particular order. By maintaining this discretion, the agency can consider aggravating circumstances, as well as the severity and frequency of the behavior.
 - 1. Informal Counseling – An informal counseling or admonishment to an employee alerting him/her of a required change in his/her behavior. This is the lowest form of corrective action. Supervisors shall document an informal counseling on the Employee Counseling Record, check "Informal Counseling" on the form, and forward the Employee Counseling Record to OPR for filing in the OPR database.
 - 2. Formal Counseling - A formal means of documenting an employee's deficiency and required behavior change. A Formal Counseling shall generally be done by a Commander or the Chief of Police. Formal Counseling should be done on the Employee Counseling Record form, and "Formal Counseling" should be noted on the form.
 - a. The Employee Counseling Record form shall include the following:

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1. The supervisor's assessment of the employee's deficiency
 2. The employee's explanation for the deficiency
 3. The supervisor's suggestions and recommendations for remedying the deficiency, and
 4. The employee's plan of action to remedy the deficiency
- b. A supervisor shall use the Employee Counseling Record form to document all counseling and any training that a supervisor requires an employee to complete because of a deficiency.
 - c. Both the supervisor and the employee shall sign the Employee Counseling Record form. The form will then be reviewed and signed by the Chief of Police.
 - d. A supervisor should counsel with an employee within three (3) working days of the determination that a Counseling is the appropriate course of action.
 - e. If the affected employee is a non-civil service employee, a copy of the Employee Counseling Record shall be forwarded to the City's Human Resources Director, the employee's Division Commander, and the Office of Professional Responsibility for filing in the personnel file in the Office of the Chief of Police.
 - f. If the affected employee is a civil service employee, a copy of the Counseling of Record shall be forwarded the employee's Division Commander and to the Office of Professional Responsibility for filing in the Office of the Chief of Police.
 - g. Any supervisor may counsel an employee.
3. Written Reprimand - A formal reprimand issued by the Chief of Police and directed to the employee for violation of at least one policy, procedure, rule, regulation, or directive of the agency, the City of Texarkana, Texas Personnel Policies or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations.
- a. The written reprimand shall include the following:
 1. A descriptive narrative that summarizes the event and the employee's actions or misconduct
 2. A statement of the policies, procedures, rules, regulations, or directives that the employee violated
 3. A statement of specific expectations of the employee
 4. The following statement: *"A copy of this letter of reprimand will be placed in your personnel file in the office of the Chief of Police. Any further violations of City Personnel Policies or Department rules and regulations may result in more severe disciplinary action."*
 - b. The original of the written reprimand shall be signed and dated by the employee upon receipt and he/she will retain the original document;

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- c. A supervisor should carry out the Written Reprimand within five (5) working days of the determination that a Written Reprimand is the appropriate course of action.
 - d. If the affected employee is a civil service employee, copies of the written reprimand shall be disseminated to the employee's personnel file in the Office of the Chief of Police, the Civil Service Director's office to be filed in the employee's Civil Service File, the Office of Professional Responsibility and the employee's Division Commander. In accordance with Texas Local Civil Service, Section 143.123 (j) a civil service employee may write a response to the written reprimand, and the response shall be filed in the employee's personnel file in the Office of the Chief of Police along with the reprimand.
 - e. If the affected employee is a non-civil service employee, copies of the written reprimand shall be disseminated to the employee's personnel file in the Office of the Chief of Police, the Office of Professional Responsibility, the employee's Division Commander and the City's Human Resources Office.
4. Suspension without Pay - One or more work days in which an employee is relieved of duty and his/her pay is reduced for a violation of at least one policy, procedure, rule, regulation, or directive of the agency, the City of Texarkana, Texas Personnel Manual or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations. The Chief of Police is the only person authorized to suspend an employee of the agency.
- a. A temporary suspension of a civil service employee shall only be for a violation of a civil service rule.
 - b. Temporary suspension of a civil service employee shall be in accordance with the Texas Local Government Code, Chapter 143, Municipal Civil Service and Rule 13, Disciplinary Action, of the City of Texarkana, Texas Municipal Civil Service Rules and Regulations.
 - c. Temporary suspension of non-civil service personnel shall be in accordance with the City of Texarkana, Texas Personnel Policies, Chapter 6, Employee Conduct, Complaints, and Grievances, Directive 6.07 Disciplinary Action and Appeals and Directive 6.08 Employee Complaints and Grievance Process.
 - d. At least twenty-four (24) hours prior to a suspension, the Chief of Police will conduct a Predetermination Meeting with the affected employee. The purpose of this meeting is to give the employee an opportunity to present evidence or facts to the Chief of Police that may assist the Chief in his/her final determination of appropriate discipline.
 - 1. The Chief of Police shall ensure that the affected employee receives written notification of the Predetermination Meeting no less than thirty-six (36) hours prior to the meeting time.
 - 2. The Predetermination Meeting notification letter shall also include a statement of the acts or behavior of misconduct; the specific violations of policies, procedures, rules, regulations, or directives of the agency, the City of Texarkana Personnel Manual or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations and the proposed discipline.
 - 3. The employee may have a personal representative present during the Predetermination Meeting.

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- e. Upon determination that a temporary suspension without pay is the appropriate discipline, the Chief of Police shall ensure that the affected employee is provided a written notification of the suspension in the form of a Notice and Order of Temporary Suspension. If the suspended employee is a civil service employee, the Chief of Police, in person, shall immediately deliver the Notice and Order of Temporary Suspension.
- f. The Notice and Order of Temporary Suspension shall include the following:
 - 1. The number of workdays the employee is suspended;
 - 2. The date and time the suspension is to commence and end;
 - 3. A written statement that points out each violation of the policy, procedure, rule, regulation, or directive of the agency, the City of Texarkana, Texas Personnel Manual and/or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations;
 - 4. A written statement that describes the acts or behavior that are in violation of a policy, procedure, rule, regulation, or directive of the agency, the City of Texarkana, Texas Personnel Manual and/or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations;
 - 5. A statement of the appeals process.
 - a. If the temporarily suspended employee is a civil service employee, the following shall be included: *“If you wish to appeal the suspension, you must file a written notice of appeal with the Civil Service Commission of the City of Texarkana, Texas, by filing such appeal with (Insert Name), Civil Service Director, City of Texarkana, Texas, Municipal Building, 220 Texas Boulevard, Texarkana, Texas 75501, within two hundred-forty (240) hours following receipt of the Notice and Order of Temporary Suspension without pay. If you choose, you may elect to appeal to an independent third party hearing examiner instead of the Civil Service Commission. If you elect to have your appeal heard by a hearing examiner, you must submit, as part of your original notice of appeal, required under Section 143.052 Texas Local Government Code, a written request to the Civil Service Director within two hundred-forty (240) hours following receipt of this Notice and Order of Temporary Suspension Without Pay, stating your decision to appeal to an independent third party hearing examiner. If you elect to appeal this temporary suspension without pay to an independent hearing examiner, you will waive all rights of appeal to a district court, except for certain limited circumstances as detailed in Section 143.057(j), Texas Local Government Code. You will find attached copies of sections 143.010, 143.052, 143.053 and 143.057 of the Local Government Code, which will fully apprise you of your rights of appeal.”*
 - b. If the temporarily suspended employee is a non-civil service employee, the following statement shall be included: *“If you wish to appeal the suspension, you must file a written request for a meeting with the City Manager with the Human Resources Director for the City of Texarkana, Texas located at the Municipal Building, 220 Texas Boulevard, Texarkana, Texas 75501, within five (5) days of receiving the temporary suspension. Your written request for a meeting with the City Manager shall include your allegations and actions taken up to this point.”*

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6. If the temporarily suspended employee is a civil service employee, within 120 hours after the hour of the suspension, the Chief of Police shall file the Notice and Order of Temporary suspension with the Civil Service Commission.
 7. If the temporarily suspended employee is a non-civil service employee, a copy of the Notice and Order of Temporary Suspension and the employee's response to the allegations shall be filed with the Human Resources Director prior to disciplinary action being taken.
 8. The final Notice and Order of Temporary Suspension shall be disseminated to the employee's personnel file in the Office of the Chief of Police, the Office of Professional Responsibility, the employee's Division Commander, and the City Human Resources Director.
5. Demotion: A reduction in rank accompanied by a reduction in pay to the corresponding salary scale of the reduced rank. Demotion of civil service employees shall be handled in accordance with the Texas Local Government Code Chapter 143 Municipal Civil Service Section 143.014 "Appointment and Removal of Person Classified Immediately Below Department Head" or Section 143.054 "Demotions" as applicable.
- a. If the Chief of Police wants a civil service employee, not appointed in accordance with the Texas Local Government Code Chapter 143 Municipal Civil Service Section 143.014 "Appointment and Removal of Person Classified Immediately Below Department Head", involuntarily demoted, the Chief is required to provide a written recommendation to the Civil Service Commission that the employee be demoted.
 1. The recommendation for demotion must state the reasons for demotion and request that the Commission order the demotion.
 2. The Chief of Police must immediately and in person furnish a copy of the recommendation for demotion to the affected employee.
 3. No employee shall be demoted until so ordered by the Commission.
 - b. A civil service employee appointed to the position in classification immediately below the Chief of Police and who is appointed in accordance with the Texas Local Government Code Chapter 143 Municipal Civil Service Section 143.014 "Appointment and Removal of Person Classified Immediately Below Department Head" serves at the pleasure of the Chief of Police.
 1. An employee who is removed from this position by the Chief of Police shall be reinstated in the agency and placed in the same classification, or its equivalent, that the employee had before the appointment.
 2. The employee retains all rights of seniority in the agency.
6. Indefinite Suspension or Termination: The dismissal of an employee from the agency for a violation of at least one policy, procedure, rule, regulation, or directive of the agency, the City of Texarkana, Texas Personnel Manual or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations. The Chief of Police is the only person authorized to indefinitely suspend an employee from the agency.

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- a. The indefinite suspension of a civil service employee shall only be for a violation of a civil service rule.
- a. The indefinite suspension of a civil service employee shall be in accordance with the Texas Local Government Code, Chapter 143, Municipal Civil Service and Rule 13, Disciplinary Action, of the City of Texarkana, Texas Municipal Civil Service Rules and Regulations.
- b. The termination of non-civil service personnel shall be in accordance with the City of Texarkana, Texas Personnel Policies, Chapter 6, Employee Conduct, Complaints, and Grievances, Directive 6.07 Disciplinary Action and Appeals.
- c. At least twenty-four (24) hours prior to a suspension, the Chief of Police will conduct a Predetermination Meeting with the affected employee. The purpose of this meeting is to give the employee an opportunity to present evidence or facts to the Chief of Police that may assist the Chief in his/her final determination of appropriate discipline.
 - 1. The Chief of Police shall ensure that the affected employee receives written notification of the Predetermination Meeting no less than thirty-six (36) hours prior to the meeting time.
 - 2. The Predetermination Meeting notification letter shall also include a statement of the acts or behavior of misconduct; the specific violations of policies, procedures, rules, regulations, or directives of the agency, the City of Texarkana Personnel Manual or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations and the proposed discipline.
 - 3. The employee may have a personal representative present during the Predetermination Meeting.
- e. Upon determination that an indefinite suspension without pay is the appropriate discipline, the Chief of Police shall ensure that the affected employee is provided a written notification of the suspension in the form of a Notice and Order of Indefinite Suspension or Notice and Order of Termination. If the suspended employee is a civil service employee, the Chief of Police, in person, shall immediately deliver the Notice and Order of Indefinite Suspension.
- f. The Notice and Order of Indefinite Suspension and Notice and Order of Termination shall include the following:
 - 1. The date and time that the indefinite suspension or termination is effective
 - 2. A written statement that points out each violation of the policy, procedure, rule, regulation, or directive of the agency, the City of Texarkana, Texas Personnel Manual and/or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations
 - 3. A written statement that describes the acts or behavior that are in violation of a policy, procedure, rule, regulation, or directive of the agency, the City of Texarkana, Texas Personnel Manual and/or the City of Texarkana, Texas Municipal Civil Service Rules and Regulations
 - 4. A statement of the appeals process

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- a. If the employee who is to be indefinitely suspended is a civil service employee, the following statement shall be included; *“If you wish to appeal the indefinite suspension, you must file a written notice of appeal with the Civil Service Commission of the City of Texarkana, Texas, by filing such appeal with (Insert Name), Civil Service Director, City of Texarkana, Texas, Municipal Building, 220 Texas Boulevard, Texarkana, Texas 75501, within two hundred-forty (240) hours following receipt of the Notice and Order of Indefinite Suspension without pay. If you choose, you may elect to appeal to an independent third party hearing examiner instead of the Civil Service Commission. If you elect to have your appeal heard by a hearing examiner, you must submit, as part of your original notice of appeal, required under Section 143.052 Texas Local Government Code, a written request to the Civil Service Director within two hundred-forty (240) hours following receipt of this Notice and Order of Indefinite Suspension, stating your decision to appeal to an independent third party hearing examiner. If you elect to appeal this indefinite suspension to an independent hearing examiner, you will waive all rights of appeal to a district court, except for certain limited circumstances as detailed in Section 143.057(j), Texas Local Government Code. You will find attached copies of sections 143.010, 143.052, 143.053 and 143.057 of the Local Government Code, which will fully apprise you of your rights of appeal.”*

- b. If the employee who is to be terminated is a non-civil service employee, the following statement shall be included; *“If you wish to appeal the termination, you must file a written request for a meeting with the City Manager by notifying the Human Resources Director for the City of Texarkana, Texas located at the Municipal Building, 220 Texas Boulevard, Texarkana, Texas 75501, within five (5) days of being terminated. Your written request for a meeting with the City Manager shall include your allegations and actions taken up to this point.”*
 - 1. If the employee who is indefinitely suspended is a civil service employee, within 120 hours after the hour of the indefinite suspension, the Chief of Police Shall file the Notice and Order of Indefinite Suspension with the Civil Service Commission.
 - 2. If the employee who is to be terminated is a non-civil service employee, a copy of the Notice and Order of Termination and the employee’s response to the allegations shall be filed with the Human Resources Director prior to disciplinary action being taken.
 - 3. The final Notice and Order of Indefinite Suspension or Notice and Order of Termination shall be disseminated to the employee’s personnel file in the Office of the Chief of Police, the Office of Professional Responsibility, the employee’s Division Commander, and the City Human Resources Director.

- 7. Training - If a supervisor believes an employee needs additional training, the supervisor will identify the training needed by the employee and he/she will indicate to the employee the type and source of training required, the objectives to be satisfied, and specify the period in which the training is to be satisfactorily completed. Training may be included with or in lieu of any disciplinary action except indefinite suspension.

- 8. Transfer - Corrective action may include reassignment of the employee at the discretion of the Chief of Police when such action will serve to provide a more efficient and effective operation of

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the department. Reassignment can also be used other than as a disciplinary measure. Transfer may be an added component to Written Reprimands, Suspensions without Pay, and Demotions.

9. Outside Counseling - The City of Texarkana, Texas has an Employee Assistance Program (EAP) to assist employees in addressing problems associated with drug misuse, alcohol misuse, and any other problems that adversely affect their work attendance and/or job performance. If, through the disciplinary process, a supervisor has reason to believe professional counseling outside the agency is required, the supervisor will forward a recommendation of such through the chain of command to the Chief of Police. Such recommendation may be incorporated into any disciplinary recommendations made. The Chief of Police will make the final decision on whether to require the employee to attend counseling. The agency will adhere to the City of Texarkana, Texas Personnel Policies, Chapter 6, Employee Conduct, Complaints, and Grievances, Directive 6.03.

B. RECOMMENDATION FOR DISCIPLINE OR CORRECTIVE ACTION

1. The Chief of Police at his/her discretion may convene a Peer Review Panel as provided in General Orders 2.08.2. The Peer Review Panel may provide a non-binding recommendation to the Chief of Police on the appropriate discipline.

C. GRIEVANCES AND APPEALS PROCESS

1. Civil Service Employee
 - a. Written Reprimand - A civil service employee may appeal a written reprimand by requesting a hearing before the Chief of Police within ten (10) days from receipt of the reprimand. The determination of the Chief of Police shall be final in all cases.
 - b. Temporary and Indefinite Suspension - A civil service employee, including a person appointed to his/her position pursuant to Texas Local Government Code, Section 143.014 Appointment and Removal of Person Classified Immediately Below Department Head, may appeal a Temporary or Indefinite Suspension, but must do so in accordance with the Texas Local Government Code, Chapter 143 Municipal Civil Service, Section 143.010 Commission Appeal Procedure and Section 143.057 Hearing Examiners.
 - c. Any appeal of a Temporary or Indefinite Suspension by a civil service employee will be adjudicated in accordance with the Texas Local Government Code, Chapter 143 Municipal Civil Service, Section 143.010 Commission Appeal Procedure, Section 143.052 Disciplinary Suspensions, Section 143.053 Appeal of Disciplinary Suspension and Section 143.057 Hearing Examiners.
2. An employee who is an academy trainee or a police officer on probation as described in the Texas Local Government Code, Chapter 143 Municipal Civil Service, Section 143.027 Probationary Period and the City of Texarkana, Texas Local Civil Service Rules and Regulations, Rule 11 Probation, has no right of appeal to the Civil Service Commission for a temporary or indefinite suspension. However, the employee may appeal such action pursuant to procedures of the City of Texarkana, Texas Personnel Policies, Chapter 6, Employee Conduct, Complaints, and Grievances, Directive 6.07 Disciplinary Action and Appeals and Directive 6.08 Employee Complaints and Grievance Process.

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3. Non–Civil Service Employee

- a. Non–civil service employees may appeal a grievance or discipline in accordance with the City of Texarkana, Texas Personnel Policies, Chapter 6, Employee Conduct, Complaints, and Grievances, Directive 6.07 Disciplinary Action and Appeals and Directive 6.08 Employee Complaints and Grievance Process.
- b. All grievances and appeals will be adjudicated in accordance with the City of Texarkana, Texas Personnel Policies, Chapter 6, Employee Conduct, Complaints, and Grievances, Directive 6.07 Disciplinary Action and Appeals and Directive 6.08 Employee Complaints and Grievance Process.

4. Grievances in General

- a. Any employee having a grievance relating to his/her employment, operating or administrative matters (except in cases of discipline involving civil service employees), shall file the grievance in accordance with the City of Texarkana, Texas Personnel Policies, Chapter 6, Employee Conduct, Complaints, and Grievances, Directive 6.07 Disciplinary Action and Appeals and Directive 6.08 Employee Complaints and Grievance Process.
- b. All grievances and appeals will be adjudicated in accordance with the City of Texarkana, Texas Personnel Policies, Chapter 6, Employee Conduct, Complaints, and Grievances, Directive 6.07 Disciplinary Action and Appeals and Directive 6.08 Employee Complaints and Grievance Process.

D. FRINGE AND RETIREMENT BENEFITS AFTER TERMINATION OR INDEFINITE SUSPENSION

1. Sick Leave Accumulation

- a. When a civil service employee is indefinitely suspended from the agency, payment of any accumulated sick leave shall be handled in accordance with the Texas Local Government Code, Chapter 143 Municipal Civil Service, Section 143.045 Accumulation and Payment of Sick Leave.
- b. When a non-civil service employee is terminated from the agency, payment of any sick leave shall be handled in accordance with the City of Texarkana, Texas Personnel Policies Chapter 3 Work Schedules and Leave Time, Directive 3.05.

2. Vacation Leave Accumulation

When a civil service employee or a non-civil service employee is indefinitely suspended or terminated from the agency, as applicable, payment of any accumulated vacation leave shall be handled in accordance with the City of Texarkana, Texas Personnel Policies Chapter 3 Work Schedules and Leave Time, Directive 3.03 Vacation Time.

3. Holiday Leave Accumulation

When a civil service employee or a non-civil service employee is indefinitely suspended or terminated from the agency, as applicable, payment of any accumulated holiday leave shall be handled in accordance with the City of Texarkana, Texas Personnel Policies, Chapter 3 Work Schedules and Leave Time, Directive 3.02 Holiday Time

4. Retirement

All city employees are vested in the Texas Municipal Retirement System after five (5) years of employment and are entitled to receive retirement benefits as detailed in the Texas Municipal Retirement System Handbook.

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5. Health Insurance

An employee who is indefinitely suspended or terminated from the agency is entitled to temporary continuation of health benefits coverage via the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. The health benefit coverage is for up to eighteen (18) months after the indefinite suspension or termination, and the employee is responsible for the payment of all premiums.

E. RESPONSIBILITY

1. All members of the Department shall know and comply with all aspects of this directive.
2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.