

ORDINANCE NO. 3385

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, REVISING THE GENERAL GOVERNMENT POLICIES AND PROCEDURES MANUAL BY DELETING CHAPTER 4, SECTION 4.1, IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 4, SECTION 4.1, DEFINING THE CITY'S EQUAL EMPLOYMENT OPPORTUNITY POLICY; BY DELETING CHAPTER 8 IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 8 ENTITLED CODE OF CONDUCT, RULES OF BEHAVIOR, DISCIPLINARY ACTIONS AND SEPARATIONS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of Mesquite has adopted a General Government Policies and Procedures Manual; and

WHEREAS, Chapter 1 of the Policies and Procedures Manual provides for the revision of the policies and procedures set forth in such manual by adoption of ordinance; and

WHEREAS, it has been determined that the policies and procedures for City employees are in need of revision.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the General Government Policies and Procedures Manual is hereby revised by amending Chapter 4 and Chapter 8 as follows; said Policies and Procedures Manual in all other respects to remain unchanged.

- (1) Amend Chapter 4 by deleting the current Section 4.1 in its entirety and adopting a new Section 4.1 to read as follows:

CHAPTER 4

POLICIES AND PROCEDURES

4.1 Equal Employment Opportunity

The City of Mesquite is committed to equal employment opportunity for all employees and applicants for employment. Discrimination against any person in recruitment, examination, appointment, training, promotion, discipline, pay or any other aspect of personnel administration is prohibited. This includes discrimination because of race, color, creed, national origin, religion, sex, age or disability.

- (2) Amend Chapter 8 by deleting the current Chapter 8 in its entirety and adopting a new Chapter 8 to read as follows:

CHAPTER 8

CODE OF CONDUCT, RULES OF BEHAVIOR, DISCIPLINARY ACTIONS AND SEPARATIONS

8.1 **Standards of Conduct** (Taken from Chapter 2, Art. IV, Sec. 2-123 of the City Code. The Code of Conduct contains references to Council, Officer, and Boards and Commissions which have been omitted herein. Places where such have been omitted are indicated as follows [omitted].)

A. No [omitted] employee of the City shall:

1. Accept any gift or favor from any person that might reasonably tend to influence him in the discharge of his official duties, or grant in the discharge of his official duties any improper favor, service or thing of value.
2. Grant any special consideration, treatment, or advantage to any citizen, individual or group beyond that which is available to every other citizen, individual or group.
3. Disclose information that could adversely affect the property, government or affairs of the City, nor directly or indirectly, use any information gained by reason of his official position or employment for his own personal gain or benefit or for the private interest of others.
4. Engage in any outside activities which will conflict with, or will be incompatible with, the duties assigned to him in the employment of the City, or reflect discredit upon the City, or in which his employment in the City will give him an advantage over others engaged in a similar business, vocation, or activity.
5. Transact any business on behalf of the City in his official capacity with any business entity with which he is an officer, agent or member, or in which he owns a substantial interest. In the event that such a circumstance should arise, then he shall make known his interest, [omitted] and turn the matter over to his superior for reassignment, state the reasons for doing so and having nothing further do with the matter involved.

6. Accept other employment or engage in outside activities incompatible with the full and proper discharge of his duties and responsibilities with the City, or which might impair his independent judgment in the performance of his public duty.
 7. Receive any fee or compensation for his services as an [omitted] employee of the City from any source other than the City except as may be otherwise provided by law. This shall not prohibit his performing the same or other services for a private organization that he performs for the City if there is no conflict with his responsibilities.
 8. Represent, directly or indirectly, or appear in behalf of private interests of others before any agency of the City or any of its agencies.
 9. Use his official position to secure special privileges or exemptions for himself or others.
- B. The provisions of subsection (A) of this section shall not be deemed to deny to such party any right or privilege guaranteed by law or the federal and state constitutions. Where the advocacy of a right or privilege, however, is incompatible with the position held by the advocate, such party shall make an election so that his position with the City and his advocacy will not be incompatible. Where the advocacy of a right or privilege is occasional and infrequent or involves little or no discretion, the advocate shall abstain from any action as an [omitted] employee that would reasonably appear to influence the outcome of the matter, such as voting on the matter, sitting on a board or tribunal charged with deciding the issue when the issue is to be decided, or in the case of an employee, personally processing the matter. Where the advocacy of the right or privilege is usual and frequent or can reasonably be expected to arise in due course of one's occupation or profession, then such [omitted] employee shall remove himself from his position as may be incompatible, until such position of incompatibility ceases to exist.
- C. The failure of any [omitted] employee to comply with or who violates one (1) or more of the standards of conduct pursuant to this division, which apply to him, shall constitute grounds for expulsion, reprimand, [omitted], or discharge, whichever is applicable. In the case of an employee of the City, not a member of the Fire Department or Police Department subject to V.T.C.A. Local Government Code, Chapter 143, disciplinary action and appeals therefrom shall be in conformance with procedures established by City Charter and personnel rules and regulations, and in actions involving members of the Fire Department or Police

Department covered under V.T.C.A. Local Government Code, Chapter 143, appeals shall be in conformance with the procedures established in that statute. [omitted]

8.2 Grounds for Disciplinary Action/Termination

Grounds for disciplinary action/termination include but are not limited to the following. The City reserves the right to determine the degree of violation and take appropriate action to maintain the functions and order of the organization.

A. Attendance:

1. Abuse of approved leave.
2. Tardiness.
3. Failure to report to work without timely notification.
4. Failure to follow procedures for requesting or using leave.
5. Unauthorized absence from work site.
6. Job abandonment (absence for two consecutive working days without providing notice).
7. Other actions that constitute unsatisfactory attendance.

B. Job Performance:

1. Neglect of duty.
2. Loafing.
3. Carelessness.
4. Lack of initiative.
5. Lack of cooperation.
6. Failure to remain at work station.
7. Sleeping or otherwise being inactive during working hours.
8. Inefficiency.

9. Performing or conducting personal business during working hours.
10. Abuse of eating and/or rest periods.
11. Interfering with work of others.
12. Discourteous treatment of the public or other employees.
13. Other acts reflecting unsatisfactory job performance.

C. Incompetence or Unsatisfactory Work Performance:

1. Inability to perform the duties of the job.
2. Inefficient or unproductive behavior.
3. Violation of departmental work rules.
4. Deliberate or careless damage to property or equipment.
5. Unsatisfactory quality or quantity of work.
6. Inability to work effectively with other employees.
7. Inability to adjust or adapt to changing work requirements.
8. Failure to make requested changes in job performance.
9. Repeated disciplinary action for minor infractions of policy or procedure.
10. Incurring an expense or liability for the City without proper authorization.
11. Other acts reflecting incompetency or unsatisfactory work performance.

D. Failing to Follow Instructions/Insubordination:

1. Failure or refusal to perform assigned work or fully comply with instructions or orders as requested by appropriate authorities.
2. Failure or refusal to fully cooperate with official internal investigations.
3. Acts of defiance towards a superior including but not limited to arguing about assignments, talking back, walking away from or ignoring superior while being addressed, deliberate attempts to undermine or put the supervisor in a false light.

4. Other acts that reflect the failure to follow instructions/insubordination.

E. Violation of Safety Rules:

1. Smoking in prohibited areas.
2. Unauthorized removal of safety guards, fire extinguishers or other equipment designed to protect employees or equipment.
3. Failure to use safety equipment or to follow safety practices or rules.
4. Careless, neglectful or improper use of tools or equipment.
5. Causing injury or damage to person or property through negligence or deliberate action.
6. Causing a chargeable accident or injury.
7. Failure to report maintenance deficiencies or properly maintain equipment.
8. Operating equipment in an unsafe manner.
9. Violation of traffic laws pursuant to Chapter 13, Section 11.
10. Failure to report an injury or equipment accident.
11. Violation of any of the policies and/or procedures of Chapter 13 relating to on the job injuries or illness, regardless of the employee's eligibility for salary supplement including but not limited to:
 - a. If an employee fails or refuses to comply with the instructions or advice of a treating physician to improve his/her condition.
 - b. If an employee fails to keep the immediate supervisor informed on a weekly basis as to the status of the injury when off work.
12. Other acts reflecting the violation of safety rules.

F. Dishonesty:

1. Stealing or taking City property or property of other employees without prior authorization.

2. Misuse of funds.
 3. Misrepresentation or knowingly providing false information related to job duties.
 4. Cheating.
 5. Providing false or misleading information or omitting material information during the course of an official investigation.
 6. Forging or otherwise falsifying official reports, records or documents.
 7. Misusing paid leave.
 8. Unauthorized use of official documents or information.
 9. Releasing or making known in any manner confidential information without authorization.
 10. Failure to properly account for City documents or property.
 11. Misuse or usurpation of authority, employee identification or business card.
 12. Duplication, removal or destruction of documents or property without authorization.
 13. Other acts reflecting dishonesty.
- G. Conduct Prejudicial to Good Order:
1. Fighting, using profane, abusive or threatening language.
 2. Using unnecessary loud or boisterous language.
 3. Offensive or lewd conduct.
 4. Spreading false reports or otherwise disrupting the harmonious relations of the workplace.
 5. Possession of unauthorized firearms or lethal weapons on the job.
 6. Engaging in disruptive personal behavior.

7. Threatening another in a manner reasonably likely to cause the person to believe bodily injury will be inflicted on the person or a member of his family or friends or damage will be done to the person or person's family or friend's property.
8. Intentionally destroying or threatening destruction of City or another's property.
9. Making harassing or threatening phone calls to another.
10. Stalking or conducting unauthorized surveillance on another.
11. Other acts reflecting conduct prejudicial to good order.

H. Alcohol or Drugs:

Violation of the City's Controlled Substance and Alcohol Abuse and Testing Policy (Chapter 16).

I. Unlawful Conduct:

1. Conviction or disposition other than acquittal including probation or deferred adjudication of any criminal offense except that Class C misdemeanor traffic offenses will be determined pursuant to Chapter 13-11.
2. Engaging in any unlawful activity or actions showing lack of good moral character.
3. Indecent, provocative or offensive behavior or any unlawful activities.
4. Other acts of unlawful conduct.

J. Conduct Inconsistent With Interests of the City of Mesquite:

1. Any violation of the City Charter, Civil Service Rules and Regulations, City and departmental policies and directives, Standards of Conduct, or other policies addressed in this manual.
2. Actions which demonstrate disloyalty to the goals and objectives of the City.

3. Other acts inconsistent with the interests of the City of Mesquite.

K. Solicitation:

1. Solicitation of funds or anything of value for personal profit from either employees or the public during work hours.
2. Solicitation of funds or anything of value from either employees or the public during work hours without prior authorization.
3. Solicitation of other employees for membership in employee organizations during work hours.
4. Using the City's name or position to promote personal business.
5. Other acts of solicitation not consistent with the performance of work-related duties.

L. Financial Obligations:

1. Disruption in the workplace resulting from failure to pay just debts and obligations.
2. Other types of neglect related to failure to pay financial obligations which disrupt the workplace.

M. Personal Appearance:

1. Failure to dress appropriately and in good taste in relation to assigned job duties.
2. Failure or refusal to wear assigned uniforms in the manner prescribed.

N. Acceptance of Gifts: (See also Standards of Conduct, Section A.1.)

Accepting significant gifts or gratuities from individuals or firms with which the City does business or an individual or firm seeking City business.

O. Sexual Harassment:

1. Violating the City's Sexual Harassment policy in any manner.

2. Failure to cooperate in the conduct of an investigation of sexual harassment.

P. Political Activity:

1. Using one's position or personal influence for or against any candidate for public office.
2. Directly or indirectly coerce, attempt to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization or person for political purpose.
3. Seek or hold an office of public trust, or partisan office in any jurisdiction with or without remuneration, where such service would constitute a conflict of interest with City employment.
4. Engage in any other type of political activity which may be in conflict with the interests of the City of Mesquite.

Q. Secondary Employment:

1. Engaging in activities related to secondary employment during normal duty hours or perform secondary employment or activities related to secondary employment which would reflect unfavorably upon the City or impair performance of job duties.
2. Using City facilities, equipment, supplies or time for engaging in secondary employment.
3. Using information gained during employment for personal profit or gain.

R. Dereliction of Duty:

1. Failure to observe and give effect to the policies of the organization.
2. Failure to report or document violations of policy or procedure.
3. Other acts reflecting dereliction of duty.

- S. Electronic Surveillance, Eavesdropping and Unauthorized Tape Recording:
 - 1. Engaging in unauthorized electronic surveillance, eavesdropping or unauthorized secret tape recording by use of an electronic recording device of any communications between or among employees or elected representatives of the City of Mesquite.
 - 2. Other acts of unauthorized electronic surveillance, eavesdropping and tape recording.

8.3 Grounds for Non-Disciplinary Termination

Discharge of a regular full-time employee resulting from a non-disciplinary termination may not be appealed to the City's Trial Board. The following are grounds for a non-disciplinary termination:

- A. Failure to Maintain Minimum Job Requirements: Failure to maintain or secure licenses or certifications required as a condition for performing the job.
- B. Failure to Successfully Complete Initial Probationary Period: Any actions during the initial probationary period, including those described in Chapter 8.1 A or B, indicative of inability, incapability or unwillingness to perform the duties and responsibilities of the job in the manner prescribed by the City.
- C. Layoff: A reduction in authorized positions as described in Chapter 8.5 of this manual.

8.4 Disciplinary Action

To the greatest extent practical, the City will use a progressive discipline system. The City, however, is not obligated to use all of the progressive disciplinary steps. Additionally, the City may begin the disciplinary process at any level, up to and including termination, based upon the severity of the infraction. All suspensions, demotions, terminations or resignations in lieu of terminations of employees, regardless of probationary status or employment category (part-time, seasonal, etc.) shall be approved by the Human Resources Director prior to action being taken.

- A. Types of Disciplinary Action:
 - 1. Oral Warning: The oral warning is a conference, discussion, talk or any other form of oral communication between a supervisor and employee in which the intent is to correct unsatisfactory job performance or conduct. Supervisors will document in their files, oral warnings given to

employees citing at a minimum the date of warning, content of the warning and expected action to be taken by the employee to avoid further disciplinary action.

2. **Written Reprimand:** The written reprimand is used to document the unsatisfactory job performance or conduct that has been demonstrated by the employee. The employee will be requested to sign the reprimand. If the employee refuses, the supervisor present shall document on the reprimand that the employee was given the opportunity to sign but refused. The employee shall be given a copy of the supervisor's signed written reprimand.
3. **Suspension Without Pay:** Suspension without pay is used when an employee's unsatisfactory job performance or conduct requires more severe disciplinary action than a written reprimand. A suspension may not exceed twenty working days for any single disciplinary incident. Employees on disciplinary suspension without pay may not use compensatory, vacation or sick leave to recuperate the lost time.
4. **Disciplinary Demotion:** A disciplinary demotion is the reduction of an employee's pay grade as a result of action initiated by the City. Disciplinary demotion should only be considered as an appropriate form of action when the employee's job performance or conduct is unsatisfactory in the current position and it is determined that the employee should be retained in a lower graded position.
5. **Voluntary Demotion:** An employee may submit a written request for a voluntary demotion for non-disciplinary reasons. The determination to grant a voluntary demotion rests with the City Manager.
6. **Termination:** Termination is an involuntary discharge from the City. Terminations may be for disciplinary or nondisciplinary reasons.

B. **Filing of Disciplinary Actions:**

A signed copy of all reprimands, suspensions, demotions (disciplinary and voluntary) and terminations shall be promptly submitted to the Human Resources Director for inclusion in the employee's Human Resources file and may only be removed by court order, or in accordance with V.T.C.A. Local Government Code, Chapter 143, where applicable.

C. Affect of Disciplinary Termination on Benefits:

Employees terminated as a result of disciplinary action are leaving "not in good standing" and are not eligible for payment of separation benefits (vacation and sick leave).

D. Notice of Disciplinary Action:

1. Procedural Due Process: Prior to suspension, disciplinary demotion or disciplinary termination, employees shall be notified of the department's intentions and the basis for the proposed action and shall be allowed an opportunity to respond to the official making the disciplinary decision.
2. To Employee: All employees who are reprimanded, suspended, disciplinarily demoted or terminated will be given written notification of the grounds for termination (Chapter 8.1), the acts or actions alleged to be in violation of the grounds for termination, the consequences of any future violations of policy (except in cases of termination) and any right of appeal.

8.5 Layoff Policy

A layoff is a non-disciplinary reduction in the number of authorized positions.

- A. Basis: The City reserves the right to determine the number and type of personnel required to maintain the functions of the organization. The following are illustrative but not all inclusive of the basis for a layoff:
 1. A discontinuation of or reduction in demand for service.
 2. A change in level or source of funding.
 3. Technological developments which reduce staffing requirements.
 4. To accomplish economic or staffing efficiency.
 5. Privatization of services/contracting out.
 6. Requirements of state and/or federal laws.
- B. Retention Criteria: The initial consideration shall be to maintain the level of service necessary to operate the City. Thereafter the following factors shall apply in determination of which employees shall be subject to layoff:

1. Degree of organizational impact as evidenced by employee's knowledge, skills and abilities, productivity and job performance.
 2. Employee's length of service in the position, in the department and with the City.
- C. Notice of Layoff: Employees subject to layoff will be given two weeks notice.
- D. Recall and Severance Pay: The City makes no provision for recall or severance pay for the classified service.
- E. Benefits: A layoff is considered a nondisciplinary termination. Employees will receive all termination benefits for which they are eligible, as provided by policy.
- F. Re-employment: Employees subject to layoff may make application with the Human Resources Department through the normal employment process for consideration for current vacancies. Employees who have been subject to layoff will be required to meet all of the qualifications for the position for which they are applying.
- G. Fire and Police State Civil Service: Employees covered under Fire and Police State Civil Service are governed by the provisions of Chapter 143 of the Local Government Code.

8.6 Administrative Inquiry

An employee may be placed on administrative leave with or without pay to permit the City to conduct an administrative inquiry regarding allegations of unacceptable or unlawful conduct as set forth in Chapter 8.2. Administrative leave is not considered a disciplinary action and is not grievable or appealable to the Trial Board. Paid administrative leave may not exceed forty-five (45) days per inquiry.

- A. Authorization of Administrative Leave: In cases where use of administrative leave appears appropriate, the department head shall submit a request to the Human Resources Director who will review the request and determine the appropriate course of action.

8.7 Appeal From Disciplinary Action

Only full-time or terminated regular classified employees not on initial probation who have been suspended, involuntarily demoted or terminated for disciplinary reasons may use the Trial Board appeal for disciplinary action process.

A. Employee Appeals:

1. Time Limitations: The time limitations regarding an employee's actions are mandatory and jurisdictional. Failure to comply with the time limits by the employee shall result in loss of appeal rights. All time limits begin the day after notification of the appealable action. An employee's appeal must be received in the Human Resources Department within ten calendar days after the date of notification to the employee of the appealable action.
2. Appeal Process:
 - a. It is the responsibility of the Human Resources Director to administer and coordinate the provisions of these policies and ensure compliance with established procedures.
 - b. The employee's appeal must be in writing on the form and in the manner prescribed by the Human Resources Director.
 - c. All appeals must be signed and dated by the employee. The Human Resources Director may not process an unsigned appeal.
 - d. At a minimum, the appeal must state:
 - i) The action being appealed;
 - ii) Why the employee feels the action should be modified; and
 - iii) The remedy sought by employee.
 - e. Once filed, the scope of the appeal may not be expanded or amended.
3. Appeal Exclusions: The Human Resources Director may not process an appeal:
 - a. Which questions the wisdom or advisability of any policy, procedure or directive; or
 - b. Which has been rendered moot by existing law.

4. Appeal Retraction: An appeal may be withdrawn at any time by written request of the appellant.
5. Reimbursement of Legal Fees and Damages Prohibited: Employees are not entitled to seek reimbursement of any legal fees or seek damages other than back pay and benefits in connection with a Trial Board appeal.
6. Hearings Private: Unless otherwise requested in writing by the appellant at the time of filing of the appeal, the appeal shall be closed to the public.

8.8 Trial Board

A. Membership:

The Trial Board shall be comprised of three members appointed for three years by the City Council. Trial Board members may also serve in a dual capacity as Civil Service Commissioners.

B. Jurisdiction Restricted:

The Trial Board may only consider appeals from disciplinary action for suspension, involuntary demotion or disciplinary termination and which do not question the wisdom or advisability of any policy, procedure or directive.

C. Board Administrator:

The Human Resources Director shall serve as administrator and coordinator for the Trial Board. The Human Resources Director will provide all necessary assistance to the Trial Board not in conflict with these policies.

D. Rules of Procedure:

The Trial Board shall adopt rules of procedure which, at a minimum, shall contain the following:

1. The Trial Board rules of procedure may not supplant or conflict with established City policy.
2. The Trial Board may not consider appeals which question the wisdom or advisability of established City policy, procedure or directive.

3. The Trial Board may not render a decision which would serve to amend or modify any classification or compensation structure, benefit program or countermand any established City policy, procedure or directive.
4. The Trial Board may not interpret or consider issues or questions of law, but will adhere solely to the review of facts presented during the hearing relating to the disciplinary action taken.
5. The Trial Board may not consider claims for reimbursement of any legal costs, fees or damages other than back pay and benefits.
6. The Trial Board will not allow the admission of nor consider evidence that is not relevant to the disciplinary action being appealed.
7. The Trial Board will not allow the appellant to present testimony which has the effect of expanding their written appeal.
8. The Trial Board will not review exhibits or hear testimony not presented during the hearing under oath and in the presence of both appellant and the City's representative.
9. The Trial Board may not retain in its personal possession notes, exhibits or items furnished in evidence during the hearing.
10. The Trial Board may require witnesses to be removed from the hearing room except while testifying. The Trial Board may limit the number of witnesses and decline to hear repetitive and irrelevant testimony.
11. The Trial Board may recess or go "off-the record" by a majority vote of the Trial Board members present.
12. The Trial Board will establish an agenda of presentation to provide for the efficient conduct of its meetings.
13. All Trial Board Members will sign the official record of their deliberations and decisions within the time limits established by this policy.

E. Quorum:

Two members constitute a quorum for hearing of an appeal. A majority of those present is necessary to render a decision.

F. Notice of Appeal Hearing:

Notice of an appeal hearing will be posted not less than seventy-two (72) hours prior to the hearing.

G. Time Limits:

Unless otherwise agreed to by the parties, the Trial Board shall hear all valid appeals and render a written decision within thirty (30) calendar days from the first full day after the appeal is received in Human Resources. The Trial Board, by a majority vote, may extend the thirty (30) day limit by an additional fifteen (15) calendar days. The decision of the Trial Board shall be final.

SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That, as with all policy and procedures contained in the General Government Policies and Procedures Manual, the provisions of this ordinance are not intended to create contractual rights between the City of Mesquite and its employees.

SECTION 5. That upon passage of this ordinance all employees of the City of Mesquite shall be notified of the revisions made herein to the General Government Policies and Procedures Manual.

SECTION 6. That this ordinance shall be effective from and after October 1, 2000.

Policies and Procedures: Chapters 4 and 8 Revisions/September 19, 2000
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DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas,
on the 19th day of September, 2000.



Mike Anderson
Mayor

ATTEST:



Ellen Williams
City Secretary

APPROVED:



B. J. Smith
City Attorney