

ASHEVILLE POLICE DEPARTMENT POLICY MANUAL

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CONTENTS

INTRODUCTION

POLICY STATEMENT

DEFINITIONS

RULES AND PROCEDURES

2300.1 AUTHORITY TO DISCIPLINE

2300.2 DISCIPLINARY MATRIX

2300.3 ALTERNATIVES TO DISCIPLINE

2300.4 DOCUMENTED VERBAL WARNINGS & WRITTEN WARNINGS

2300.5 DISCIPLINARY SUSPENSION

2300.6 TERMINATION OF EMPLOYMENT

2300.7 PRE-DISCIPLINARY CONFERENCE

2300.8 APPEAL PROCEDURES [26.1.6]

2300.9 RECORDS

ASSOCIATED DIRECTIVES

[City of Asheville Corrective Action & Discipline Policy](#)

[City of Asheville Personnel Policy](#)

[Policy 702 - Department Motor Vehicle Collisions](#)

[Policy 2301 – Administrative Investigations](#)

INTRODUCTION

The purpose of this directive is to identify those having authority to impose corrective and disciplinary actions, define considerations in determining the appropriate action to impose, define the administrative and appeal process, and describe how related records are to be maintained.

POLICY STATEMENT

It is the policy of the Asheville Police Department (APD) to ensure consistency in how corrective and disciplinary actions are administered. All department members are subject to corrective action and discipline under this directive and the City of Asheville policy.

DEFINITIONS

Aggravating Circumstances: conditions or events that increase the misconduct's seriousness may increase the degree of penalty. Aggravating circumstances may be considered to deviate from the recommended or presumptive punishment.

Coaching Session: a non-punitive, non-disciplinary remedial action used to correct minor work performance deficiencies

Disciplinary Action: punitive action used to deter employee misconduct and stop repeated work performance deficiencies. Examples of disciplinary actions include documented verbal warnings, written warnings, disciplinary suspensions, or dismissal from employment.

Egregious Conduct: conduct for which a penalty that exceeds the maximum recommendation is justified because of its gravity or an excess of aggravating circumstances, such as an intentional offense that causes injury to a member of the public or results in a violation of another person's civil rights.

Grievance: a complaint or dispute of an employee relating to their employment, including unfair interpretation or application of policies governing personnel practices and unfair or inappropriate disciplinary actions.

Inappropriate Personal Conduct: behavior of such a detrimental nature that the functioning of the City may be impaired, the safety of persons or property may be threatened, or the laws of the government may be violated.

Mitigating Circumstances: conditions or events that do not excuse or justify misconduct are considered in deciding the degree of penalty. Mitigating circumstances may be considered to deviate from the recommended or presumptive punishment.

Penalty Range: the range of discipline for a given offense. Every offense level has a mitigating penalty, a presumptive penalty, and an aggravating penalty.

Presumptive Penalty: the penalty imposed if there are no mitigating or aggravating circumstances or mitigating and aggravating circumstances are equal.

RULES AND PROCEDURES

2300.1 AUTHORITY TO DISCIPLINE [26.1.5]

A. Disciplinary actions may be taken against an employee for the following: [26.1.4 c]

1. Unsatisfactory job performance as stipulated in the [City of Asheville Corrective Action & Discipline Policy](#) and Civil Service Rules and Regulations; for example, inefficiency, negligence, or incompetence in the performance of duties, absence without approved leave, or habitual pattern of failure to report for duty at assigned times and place.

2. Inappropriate personal conduct as defined by [City of Asheville Corrective Action & Discipline Policy](#); for example, brutality in the performance of duties, use of impairing substances while on duty, harassment, or explicit sexual activity while on duty.
3. Violation of Asheville Police Department rules of conduct or department directives.
4. Violation of law or ordinance that results in the suspension or revocation of law enforcement certification made by the NC Department of Justice Criminal Justice Standards Division.

B. Final approval of all discipline rests with the Chief of Police. Supervisors may recommend or issue disciplinary action in alignment with this policy and [Policy 2301 - Administrative Investigations](#).

- C. Suspensions of ten (10) or more consecutive work shifts, demotion, or dismissal may only be imposed after consultation with the City's Human Resources Director.
- D. Supervisors are authorized to issue verbal counseling and coaching sessions to address performance concerns with the concurrence of the Division Commander and after reviewing the employee's concise history.
- E. Supervisors should consider consulting with the Professional Standards Section when preparing corrective action documentation.

2300.2 DISCIPLINARY MATRIX

- A. To ensure consistency, disciplinary actions will be determined utilizing the disciplinary matrix guidelines outlined in this policy.
- B. The same or similar violation must be given the same or a similar penalty; however, it is recognized that an offense's circumstances may make it more or less egregious and deserving of a lesser or more significant penalty. **Aggravating and mitigating circumstances** will be identified as appropriate.
- C. The following is not an exhaustive list, and other factors may exist. These non-inclusive factors, as applicable, may be considered when determining **mitigating circumstances**:
 1. The knowledge, training, and experience of the involved employee respondent involved.
 2. The nature of the event was such that it was unpredictable, volatile, or unfolded rapidly, not allowing time for deliberate reflection.
 3. Attempts to use de-escalation tactics.
 4. The severity of the crime responded to.

5. Level of resistance by the subject in a use of force.
6. Duration of the action.
7. The area of law or policy implicated in the matter is novel or complex, or vague.
8. The mental state of the involved employee respondent, including the absence of intent to cause harm.
9. The primary motivation for the action is premised upon emergency response or service.
10. The veracity of the involved employee respondent and the involved employee respondent's level of cooperation with the investigation.
11. The acceptance of responsibility and any mitigating or remedial actions taken by the involved employee respondent.
12. Any positive employment history, including any notable accomplishments.
13. The nature and extent of the consequences or harm caused by the violation.
14. The impact of the violation upon the department and its mission.
15. The lack of prior disciplinary history.
16. Any extraordinary circumstances or hardships that may be relevant.
17. The potential for remediation.

D. The following is not an exhaustive list, and other factors may exist. These non-inclusive factors, as applicable, may be considered when determining **aggravating circumstances**:

1. The employee's level and scope of responsibility with the department and the nature of their position.
2. The knowledge, training, and experience of the involved employee.
3. The nature and seriousness of the violation and its relationship to the employee's duties, position, and responsibilities.
4. The employee's past disciplinary and work record.
5. The employee has a previous sustained violation of a higher level within the preceding twenty-four (24) months.
6. Whether the violation was intentional or committed maliciously or for personal gain.
7. Whether the violation was repeated and how often.
8. Whether the violation affects the rights or liberties of another person.
9. Whether the violation caused injury or impacted a citizen or the community.

10. Whether the violation caused property damage and the extent.
 11. Whether the violation is technical and an administrative or criminal offense.
 12. Whether the violation resulted in a criminal conviction or arrest.
 13. The impact upon the department with regard to its mission, reputation, credibility, and relationship with the community and the impact on public trust
 14. Any failure to turn on a body-worn camera or failure to prepare a required report or otherwise document an incident in an effort to hide misconduct.
- E. A disciplinary category will be determined. The category description should be used as a guide to determine the proper level of violation.
1. **There can be multiple violations of one policy in a single incident. Each violation will be considered separately or may be used as an aggravating circumstance.** For example, a single incident involving a Category D and Category B violation, depending on the circumstances, could result in:
 - a. The presumptive sanction issued for both the Category D and B violations.
 - b. The aggravated Category D sanction is issued with the Category B violation considered an aggravating factor.
 2. **Repeated violations within specified time frames may increase the disciplinary category for subsequent violations.** For example:

1st Violation	2nd Violation	Outcome of 2nd Violation
Category D	Category A	Category B, with a possible aggravating circumstance from the prior Category D violation.
Category A	Category A	Category B
Category A	Category D	1st offense Category D
Category E	Category D	Category E, with a possible aggravating circumstance from prior Category E violation

- F. Utilizing the identified disciplinary category and any identified aggravating or mitigating circumstances, the Disciplinary Matrix will be used to determine the appropriate sanction.
1. **The matrix is not an all-inclusive list but is intended to capture most policies or rules.** If a specific policy violation is not listed, the Chief will make the final determination as to what category the violation meets. The Chief should rely on existing guidelines within this policy to make a determination.
 2. **Without aggravating or mitigating factors, the presumptive level of discipline should be used.** The disciplinary matrix guidelines should be considered a scale where the needle can be moved by mitigating and aggravating factors. Extreme

aggravating or mitigating factors may justify reclassifying a violation into another category.

3. The matrix categories may not be sequentially followed in cases with multiple violations or particularly egregious circumstances.

G. The matrix is only a guideline, and it is within the Chief of Police's discretion to deviate from the matrix based on individual cases and facts. A deviation from the matrix, in and of itself, will be cause for the affected employee to proceed with a grievable action after all other forms of internal due process are exhausted.

H. Either temporary or permanent removal from any specialty assignment (i.e., Field Training Officer, Community Resource Officer, Emergency Response Team, Crisis Negotiation Team, K9) will be at the discretion of the Chief of Police for Category **C**, **D**, or **E** violations. This may be imposed as an independent discipline or in conjunction with other discipline.

I. Discipline related to department motor vehicle collisions is determined by [Policy 702 - Department Motor Vehicle Collisions](#).

Category A			
A conduct violation or a single incident that has a minimal negative impact on the operations or reputation of the department. Sanctions listed in this category are not considered discipline.			
Repeated acts of Category A violations <u>within one (1) year</u> will increase the related violation to Category B.			
Policy/Directives	Mitigating	Presumptive	Aggravating
Policy: 302 - Uniform Standards 303 - Grooming and Appearance 503 - Incident Reporting 2006 - Attendance & Timekeeping 2200 - Training Administration	N/A	N/A	<i>Repeated offenses within one year - move to Category B.</i>
Rules of Conduct: R-5 - Offices/Work Areas P-15 - Testifying for Defendant P-18 - Residency and Telephone P-19 - Information and Communication	N/A	N/A	<i>Repeated offenses within one year - move to Category B.</i>

Category B			
<p>Violations that have more than a minimal impact on the operations or reputation of the department or that negatively impact relationships with other officers, agencies, or the public or repeated acts from Category A within the time frame listed above.</p> <p>Repeated acts of Category B violations <u>within two (2) years</u> will increase the violation to Category C.</p>			
Policy/Directives	Mitigating	Presumptive	Aggravating
Repeated Category A Violations	N/A	Documented Verbal Warning	Written Warning
Policy: 305 - Social Media 400 - Authority, Jurisdiction, & Mutual Aid 507 - Serious Incident Notification 509 - Body-Worn Cameras 511 - Naloxone 701 - Emergency Response 703 - Department Vehicles 704 - Mobile Video Equipment 705 - Take-Home Vehicles 706 - Special Purpose Vehicles 900 - Investigations Administration 901 - Crime Scenes and Evidence 906 - Polygraph Examinations 1100 - Critical Incident Response 1300 - Traffic Enforcement 1301 - Traffic Crash Investigations 1307 - Vehicle Towing 1308 - Speed Measuring Instruments 1503 - Forensic Services 1800 - Victim-Witness Assistance 2001 - Residency Requirements 2005 - Military Leave 2202 - In-Service and Advanced Training	Coaching Session	Documented Verbal Warning	Written Warning
Rules of Conduct: I-1 - Compliance to Rules and Policies** I-6 - Soliciting, Accepting Gifts, Gratuities I-7 - Commercial Testimonials R-1 - Courtesy R-3 - Authority of Temporary Officers/Supervisors R-4 - Rumors R-6 - Civil Suits P-2 - Unsatisfactory Performance P-8 - Responsibilities of Duty P-11 - Assistance to Others P-12 - Supervisory Cooperation P-16 - Civil Actions Involving Employees P-17 - Driver's License P-20 - Off-Duty Police Actions	Coaching Session	Documented Verbal Warning	Written Warning

***Rules of Conduct I-1 Compliance to Rules and Policies should not be used as an additional policy violation where another policy has been violated for the purposes of determining aggravating circumstances.*

Category C			
<p>Violations that have a pronounced negative impact on the operations or reputation of the department or on relationships with employees, other agencies, or the public or repeated acts from Category B within the time frame listed above.</p> <p>Repeated acts of Category C violations <u>within three (3) years</u> will increase the violation to Category D.</p>			
Policy/Directives	Mitigating	Presumptive	Aggravating
Repeated Category B Violations	N/A	Written Warning	1-5 days suspension
Policy: 501 - Crisis Intervention 502 - Involuntary Commitment 605 - Warrantless Searches 606 - Strip and Body Cavity Searches 700 - Vehicle Pursuits 801 - Missing Persons 903 - Interviews & Interrogations 904 - Eyewitness Identification 1004 - Seizure and Forfeiture 1501 - Records Management 1701 - Criminal Intelligence 1702 - Gang Intelligence 2002 - Secondary Employment	Documented Verbal Warning	Written Warning	1-5 days suspension
Policy: 402 - Response to Resistance 403 - Less Lethal Weapons	Documented Verbal Warning	Written Warning	<i>Chief's discretion dependent on egregious conduct</i>
Rules of Conduct: I-5 - Games of Chance I-9 - Removal of Official Documents I-13 - Evidence and Property F-2 - Directing R-2 - Conduct Towards Supervisors/Subordinates R-7 - Release of Employee Information P-5 - Interference P-7 - Selling Alcoholic Beverages P-13 - Identification as Police Officer P-14 - Court Appearances P-4 - Use of Force	Documented Verbal Warning	Written Warning	1-5 days suspension
Rules of Conduct: P-4 - Use of Force	Documented Verbal Warning	Written Warning	<i>Chief's discretion dependent on egregious conduct</i>

Category D			
<p>Violations that are contrary to the core values of the APD or that involved a substantial risk to an officer or public safety or repeated acts from Category C within the time frame listed above. <i>(A combination of Category D and Category E violations will be considered a Category E violation due to both violations being a category D or above.)</i></p> <p>Repeated acts of Category D within <u>five (5) years</u> will increase the violation to a Category E.</p>			
Policy/Directives	Mitigating	Presumptive	Aggravating
Repeated Category C Violations	N/A	1-5 days suspension	6-14 days suspension / reduction in rank 1 step
Policy: 304 - Unbiased Policing 401 - Firearms 504 - Domestic Violence 1002 - Confidential Informants	Written Warning	1-5 days suspension	6-14 days suspension / reduction in rank 1 step
Rules of Conduct: I-3 - Associations and Establishments I-4 - Reporting Violations of Laws, Rules, Orders I-8 - Abuse of Position I-10 - Dissemination of Information I-12 - Reporting Criminal Violations F-1 - Prejudicial Attitude P-1 - Unbecoming Conduct P-3 - Insubordination P-6 - Consumption of Intoxicants	Written Warning	1-5 days suspension	6-14 days suspension / reduction in rank 1 step
Category E			
<p>Violations that are contrary to the core values of the department. This includes acts of serious misconduct or acts of criminal conduct. This also involves any behavior that could effectively disqualify an employee from continued employment as a law enforcement officer.</p>			
Policy/Directives	Mitigating	Presumptive	Aggravating
Repeated Category D Violations	N/A	15-30 days suspension / reduction in rank 2 steps	Termination
Rules of Conduct: I-2 - Conformance to Laws I-11 - Truthfulness I-14 - Duty to Intervene F-3 - Personal Bias F-4 - Retaliation P-9 - Refusal to Work	6-14 days suspension / reduction in rank 1 step	15-30 days suspension / reduction in rank 2 steps	Termination

2300.3 ALTERNATIVES TO DISCIPLINE

- A. Remedial training may be implemented on its own, combined with, or take the place of, other components of discipline to improve performance deficiencies. [33.1.5] [26.1.4 a]
- B. [Voluntary referrals may be made to the City of Asheville](#) Employee Assistance Program (EAP), [other referred providers, or the department's embedded clinicians as necessary and appropriate.](#) [22.1.7 e]
- C. [Supervisors may consider or evaluate the need for a fitness for duty examination within the City of Asheville guidelines. This may be in addition to or as an alternative to disciplinary measures.](#) [22.1.7 e]
- D. Coaching sessions may be conducted to address minor misunderstandings or performance errors where discipline is not warranted. [26.1.4 b]
 - 1. Coaching sessions to address performance issues should not be used for violations of clearly stated and understood policies or processes, inappropriate personal conduct, or performance problems where expectations are clearly understood.
 - 2. The supervisor should identify and define the area needing improvement, offer guidance on how improvement can be achieved, and ensure the employee understands the department's expectations.
 - 3. Coaching sessions will be documented on the [Coaching Session Form](#) and maintained in the employee's department personnel file.

2300.4 DOCUMENTED VERBAL WARNINGS & WRITTEN WARNINGS

- A. Documented verbal warnings and written warnings will be recorded on the City of Asheville Corrective Action Form.
- B. Documented verbal warnings and written warnings will include a description of the incident(s) of misconduct or job performance issues that include but are not limited to specific dates and times, locations, policies and/or procedures violated, and personnel involved.
- C. When issuing documented verbal warnings, methods to correct the problems should be discussed, agreed upon, and documented. Documented verbal warnings must clearly define areas for improvement and any violations of policy, procedure, values, or performance standards. [26.1.4 c]
- D. Issuance of a written warning will include a summary of the action to be taken (Written Warning 1, 2, or Final) and any previous corrective actions. Where appropriate, the employee should be provided a statement of the applicable department or City policy and informed of potential consequences for failure to improve performance. [26.1.4 c]

- E. All documented verbal warnings and written warnings will be forwarded to the City of Asheville Human Resources department to be stored in the employee's personnel file. A copy will also be maintained in the employee's departmental personnel file. [26.1.8]

2300.5 DISCIPLINARY SUSPENSION

- A. Suspensions resulting from disciplinary action may be applied as a loss of vacation days or compensatory time if the employee desires. Such a request will be forwarded to the Chief of Police for consideration.
 - 1. Employees may request to split suspension and vacation days. For example, an employee who receives five (5) days of suspension as a result of disciplinary action may request to have three (3) vacation days removed and serve their final two (2) days of suspension without pay.
- B. The Chief of Police will make the final determination regarding suspensions as they impact the department's needs.
- C. All suspension days will be calculated based on 8-hour workdays.

2300.6 TERMINATION OF EMPLOYMENT

- A. Termination of employment is a complete and final separation from the department. If an employee is dismissed from the department, the employee must be provided with a written statement of the following information:
 - 1. The reason for dismissal; [26.1.7 a]
 - 2. The effective date of the dismissal; and [26.1.7 b]
 - 3. Contact information for the City of Asheville Human Resources Department or documentation on the status of any fringe and retirement benefits after dismissal [26.1.7 c]

2300.7 PRE-DISCIPLINARY CONFERENCE

- A. As outlined in [Asheville Code of Ordinances, Chapter 2, Article IV, Division 3, Sec. 2-230](#), a departmental pre-disciplinary conference will be afforded to any full-time permanent employee whose conduct or performance may result in involuntary demotion, suspension without pay for more than ten (10) consecutive work shifts or dismissal from city service.
- B. All provisions of the grievance procedure regarding an appeal to the city manager and the civil service board will be applicable.

2300.8 APPEAL PROCEDURES [26.1.6]

- A. Any full-time permanent employee who is disciplined may appeal the disciplinary action in accordance with the City of Asheville Grievance Procedure and Asheville Civil Service Law.
- B. Any department employee may request a meeting with the Chief of Police to discuss the imposed disciplinary action before filing a grievance.

2300.9 RECORDS

- A. Copies of all supporting documentation for all actions deemed disciplinary in nature may be placed in the employee's department personnel file, the City of Asheville Human Resources file, and, if applicable, in the corresponding administrative investigation case file. [26.1.8]
- B. The Professional Standards Section will ensure that all records described in this section, including grievance records, are maintained and controlled in a secure manner. [25.1.2] [26.1.8]
- C. Annually, the Professional Standards Commander will analyze the department's grievances, as well as supporting policies and practices for submission to the Chief of Police. [25.1.3]
- D. Access to records described in this section and authorized contents of same will be duplicated, disclosed and released, retained, and purged in accordance with the laws set forth by the State of North Carolina.

BY ORDER OF:

A handwritten signature in black ink, appearing to read 'ML LH', is written over a horizontal line.

Michael Lamb
Interim Chief of Police