

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer A. Maguire

**SUBJECT:** SEE BELOW

**DATE:** March 25, 2024

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**SUBJECT: AMENDMENTS TO CONSOLIDATED OPEN GOVERNMENT AND ETHICS RESOLUTION NO. 77135 (SECTION 4.3.2.5 C), CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF THE CITY OF SAN JOSE POLICY, CODE OF ETHICS POLICY, INVESTIGATION PRINCIPLES POLICY, AND DISCIPLINE POLICY**

## **RECOMMENDATION**

- (a) Adopt a resolution to amend the City of San José's Consolidated Open Government and Ethics Resolution No. 77135 (Section 4.3.2.5 C) to document circumstances under which disciplinary actions taken against regular Classified Civil Service Employees may be subject to disclosure due to serious misconduct and supersede Resolution No. 77135.
- (b) Adopt a resolution to amend:
  - (1) Council Policy 0-15, Code of Ethics for Officials and Employees of the City of San José in the Council Policy Manual; and
  - (2) City's Code of Ethics Policy in the City Administrative Policy Manual.
- (c) Accept the update regarding revisions made to the City's Investigation Principles Policy and Discipline Policy in the City Administrative Policy Manual.

## **SUMMARY AND OUTCOME**

By approving the changes to Consolidated Open Government and Ethics Resolution No. 77135 (Section 4.3.2.5 C), the City Council will clarify the circumstances under which disciplinary actions taken against regular Classified Civil Service Employees may be subject to disclosure due to serious misconduct. Further, approval will result in revisions to the Code of Ethics for Officials and Employees of the City of San José Policy in the Council Policy Manual (**Attachment A**) to describe all employees' obligation to report violations of City policy that they know of, or should have known of, and will make corresponding changes to the Code of Ethics Policy in the City Administrative Policy Manual (**Attachment B**). Moreover, through this memorandum, the Mayor and City Council will be aware of corresponding revisions to be made

HONORABLE MAYOR AND CITY COUNCIL

March 25, 2024

**Subject: Amendments to Consolidated Open Government and Ethics Resolution No. 77135 (Section 4.3.2.5 C), Code of Ethics for Officials and Employees of the City of San Jose Policy, Code of Ethics Policy, Investigation Principles Policy, and Discipline Policy**

Page 2

to the City's Investigation Principles Policy (**Attachment C**) and Discipline Policy (**Attachment D**) in the City Administrative Policy Manual contemporaneously with the other revisions described in the memorandum.

## **BACKGROUND**

In April 2006, the City Council approved the establishment of a Sunshine Reform Task Force to review and make recommendations to the City Council regarding open government. One such recommendation was to publicly disclose disciplinary action taken to address employee misconduct and performance issues.

Disclosure of records pertaining to misconduct of City Officials was outlined in the resulting Consolidated Open Government and Ethics Provisions, Resolution No. 77135, and described circumstances under which misconduct of City Officials<sup>1</sup> was subject to disclosure.

Disclosure of records pertaining to misconduct of employees in the regular Classified Civil Service was to be made in the form of a log<sup>2</sup> containing anonymized information that was to be available for inspection. Unlike records pertaining to City Officials, the disciplinary information for employees in the regular Classified Civil Service was viewed as confidential and the underlying records were not disclosable unless as permitted by the Public Records Act.

Given recent attention to misconduct involving City of San José employees in the regular Classified Civil Service, the proposed revisions to Resolution No. 77135 (Section 4.3.2.5 C) will clarify the circumstances under which disciplinary actions taken against regular Classified Civil Service Employees may be subject to disclosure.

Revisions to the Code of Ethics for Officials and Employees of the City of San José Policy in the Council Policy Manual and related Code of Ethics Policy in the City Administrative Policy Manual will affirm all employees' obligation to report violations of City policy that they know of or should have known of. Moreover, the Mayor and City Council will be aware of corresponding revisions to be made to the City's Investigation Principles Policy and Discipline Policy in the City Administrative Policy Manual contemporaneously with the other revisions described in the memorandum.

## **ANALYSIS**

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<sup>1</sup> "City Official" for purposes of this Section shall mean the Mayor and Members of the City Council; any appointees of the City Council, unclassified staff members in the office of the Mayor or a Councilmember, the City Manager and his or her Assistant City Manager, Deputy City Managers, and heads of offices reporting to the City Manager and City Department heads.

<sup>2</sup> Beginning in 2008, the City began publicly posting formal discipline reports describing actions taken to address employee misconduct and performance issue. It is accessible at: <https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/employee-relations/discipline-process/formal-discipline-reports>

The City's workforce is comprised of thousands of dedicated, hardworking, and well-meaning employees that endeavor to provide the best possible services to the community that we are fortunate to serve. Unfortunately, on occasion, employees fall short and disciplinary action is warranted with the goal of correcting inappropriate conduct and/or substandard performance and to define a standard of conduct of City employees. The appropriate use of discipline is essential to high employee morale and productivity and furthers the City's goal of providing excellent customer service to the community.

The City generally regards disciplinary action as confidential personnel information, but balances the public's right to know when and how disciplinary action is taken by providing information in specific circumstances. The City's Consolidated Open Government and Ethics Provisions addressing Misconduct of City Officials and Disciplinary Actions taken against regular Classified Civil Service Employees are contained in Resolution No. 77135 (Section 4.3.2.5 B and C) and allow for the disclosure of employee misconduct records as follows:

**B. Misconduct of City Officials**

1. City Official. The term "City Official" for purposes of this Section shall mean the Mayor and Members of the City Council; any appointees of the City Council, unclassified staff members in the office of the Mayor or a Councilmember, the City Manager and his or her Assistant City Manager, Deputy City Managers, and heads of offices reporting to the City Manager and City Department heads.
2. Misconduct. The term "misconduct" for purposes of this Section includes dishonesty, misuse of City property or City funds, any violation of conflict of interest laws or policies, the City's Gift Policy or Discrimination and Harassment Policy, inexcusable neglect of duty, fraud in securing employment and unlawful political activity.
3. City Records Subject to Disclosure. Where there is reasonable cause to believe the complaint is well-founded, records of misconduct by a City Official, including any investigation and discipline, if any form of discipline is imposed, shall be subject to disclosure. Information that falls within the protection of any privileges or rights provided under the law may be redacted.
4. Not Limiting Access. Nothing in this Section shall be construed as limiting access to other disciplinary records as permitted by the Public Records Act.

**C. Disciplinary Actions -- Regular Classified Civil Service Employees**

1. Log. The Office of Employee Relations shall maintain a log of disciplinary actions taken by the City for regular classified civil service employees, updated as frequently as possible and available for inspection. An item may be included in the log only upon issuance of a notice of discipline. The log shall include the department, employee classification (except for single position classifications or unique classifications, for which releasing the classification would identify the employee),

- type of discipline (i.e. suspension, demotion, step reduction or dismissal/termination), basis of the complaint (such as violation of the San José Municipal Code, Council Policy or Administrative Policy) and any final disposition. Identifying information shall not be included in the log.
2. Not Limiting Access. Nothing in this Section shall be construed as limiting access to other disciplinary records as permitted by the Public Records Act.

Beginning in 2008, the City began publicly posting formal discipline reports describing disciplinary action taken to address misconduct and performance issues of employees in the regular Classified Civil Service. Consistent with Resolution No. 77135, the report contains the classification of the disciplined employee, department in which they work, a general description of the conduct that gave rise to the disciplinary action, the disciplinary action taken, whether or not the discipline was appealed, and the final disposition if an appeal was conducted. No identifying information is included in the log as employees' disciplinary action is generally regarded as confidential as indicated in Resolution No. 77135 Section 4.3.2.8, which includes "personnel records" as one category of documents that is generally not subject to disclosure; however, additional disclosure may be warranted pursuant to the Public Records Act, for example, when the safety of the public outweighs concern for the individual employee's privacy.

The proposed revisions to Resolution No. 77135 (Section 4.3.2.5 C) are as follows and are shown in italics:

C. Disciplinary Actions -- Regular Classified Civil Service Employees

1. Log. The Office of Employee Relations shall maintain a log of disciplinary actions taken by the City for regular classified civil service employees, updated as frequently as possible and available for inspection. An item may be included in the log only upon issuance of a notice of discipline. The log shall include the department, employee classification (except for single position classifications or unique classifications, for which releasing the classification would identify the employee), type of discipline (i.e. suspension, demotion, step reduction or dismissal/termination), basis of the complaint (such as violation of the San José Municipal Code, Council Policy or Administrative Policy) and any final disposition. Identifying information shall not be included in the log.
2. City Records Subject to Disclosure. *Where an investigation in response to allegations of serious misconduct has been conducted, and it has been determined that sufficient information or evidence exists to conclude based on a preponderance of the evidence that the alleged misconduct occurred, records related to that investigation and/or disciplinary action taken may be released on a case-by-case basis upon request following conclusion of any disciplinary appeal to either the Civil Service Commission or arbitrator, subject to any applicable laws. Information that falls within the protection of any privileges or rights provided under the law may be redacted.*

3. *Serious Misconduct*. *Serious misconduct is defined as conduct that has the potential to impact the safety or financial health of the community (e.g., alleged sexual misconduct, assault, theft, and/or bribery) and where an investigation has been completed and formal disciplinary action (i.e., suspension, demotion, step reduction, or dismissal/termination) has been taken and noted on the log referenced in C1 of this Section.*
4. Not Limiting Access. Nothing in this Section shall be construed as limiting access to other disciplinary records as permitted by the Public Records Act.

These revisions will provide clarity on the potential disclosure of records relating to serious misconduct following the conclusion of any disciplinary appeal, subject to applicable laws.

Corresponding revisions to the City's Investigation Principles Policy (Attachment C) and Discipline Policy (Attachment D) in the City Administrative Policy Manual will be made contemporaneously with the other revisions described in the memorandum to add references to the provisions in the amended City's Consolidated Open Government and Ethics Resolution No. 77135.

In addition, the Administration proposes to modify the Code of Ethics for Officials and Employees of the City of San José Policy in the Council Policy Manual (Attachment A) and Code of Ethics Policy in the City Administrative Policy Manual (Attachment B) to make clear an employee's obligation to report any violations of City policy that they know of or should have known of. Specifically, the Administration proposes to add the following to the current language in both policies as shown in italics:

1. Responsibilities of Public Service

City officials and employees are obligated to uphold the Constitution of the United States and the Constitution of the State of California and to comply with Federal, State, and local laws and City policies. Recognizing the special responsibilities of serving the City and its citizens and customers, City officials and employees are required to maintain the highest standards of integrity and honesty, and they are expected to treat all members of the public and fellow City employees with respect, courtesy, concern and responsiveness. The conduct of City officials and employees in both their official and private affairs should be above reproach to assure that their City position is not used for personal gain.

*Any employee who knows of, or possesses sufficient information to recognize the potential of, a violation of any City policy by a City employee wherein the conduct has the potential to impact the community and/or other City employees (examples include, but are not limited to, alleged sexual misconduct, assault, theft or bribery, or other misconduct that a reasonable person should recognize would constitute a significant policy violation if true), and fails to report such conduct, may be subject to disciplinary action. Misconduct may be reported to a supervisor/manager, Department Director, [Whistleblower Hotline](#), and/or the Office of Employee Relations. The City's [Non-](#)*

HONORABLE MAYOR AND CITY COUNCIL

March 25, 2024

**Subject: Amendments to Consolidated Open Government and Ethics Resolution No. 77135 (Section 4.3.2.5 C), Code of Ethics for Officials and Employees of the City of San Jose Policy, Code of Ethics Policy, Investigation Principles Policy, and Discipline Policy**

Page 6

*Retaliation Policy describes each employee's right to raise concerns in good faith without retaliation or reprisal.*

The revised policies confirm an employee's obligation to report a significant policy violation or the potential of a significant policy violation by another City employee and that failure to report may be subject to disciplinary action.

The recommended revisions to Resolution 77135 (Section 4.3.2.5 C), Code of Ethics for Officials and Employees of the City of San José Policy, Code of Ethics Policy, Investigative Principles Policy, and Discipline Policy were provided to all bargaining units on November 2, 2023. Input was received, and minor modifications were made based on the feedback provided. Revised drafts were provided to all bargaining units on February 2, 2024, and input received was considered.

#### **EVALUATION AND FOLLOW-UP**

No further follow-up with the City Council related to this action is anticipated at this time.

#### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

#### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the April 9, 2024 City Council meeting.

#### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

#### **CEQA**

Not a Project, File No. PP17 008, General Procedure & Policy Making resulting in no changes to the physical environment.

#### **PUBLIC SUBSIDY REPORTING**

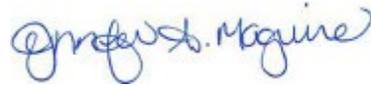
HONORABLE MAYOR AND CITY COUNCIL

March 25, 2024

**Subject: Amendments to Consolidated Open Government and Ethics Resolution No. 77135 (Section 4.3.2.5 C), Code of Ethics for Officials and Employees of the City of San Jose Policy, Code of Ethics Policy, Investigation Principles Policy, and Discipline Policy**

Page 7

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.



JENNIFER A. MAGUIRE  
City Manager

For questions, please contact Allison Suggs, Assistant Director of the Office of Employee Relations, at (408) 535-8157.

## **ATTACHMENTS**

- A. Redlined Code of Ethics for Officials and Employees of the City of San José
- B. Redlined Code of Ethics Policy
- C. Redlined Investigation Principles Policy
- D. Redlined Discipline Policy

## City of San José, California

### COUNCIL POLICY

<b>TITLE</b>	TITLE CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF THE CITY OF SAN JOSE	<b>PAGE</b>	1 of 3	<b>POLICY NUMBER</b>	0-15
<b>EFFECTIVE DATE</b>	August 19, 1980	<b>REVISED DATE</b>	April 24, 2018		
<b>APPROVED BY COUNCIL ACTION</b> 8/19/1980, Res. No. 53699; 10/14/1980, Res. No. 53971; 3/23/1982, Res. No. 55371; 6/25/1991, Item 9(j), Res. No. 63171; 6/28/2005, Item 10.1(a1), Res. No. 72837; 4/24/2018, Item 3.3, Res. No. 78560					

#### PURPOSE AND SCOPE

In order to best serve the citizens and customers of the City of San José, the elected and appointed officials, and employees of the City must act individually and collectively to create a City government that is responsible, fair, honest and open. City employees and officials are expected to demonstrate the highest standards of personal integrity, honesty and conduct in all activities in order to inspire public confidence and trust in City employees.

As stated in the City Charter, "The citizens of San José expect and must receive the highest standard of ethics from all those in the public service. City officers and employees must be independent, impartial and responsible in the performance of their duties and accountable to the members of the public."

The purpose of this Code of Ethics is to establish policy and guidelines, reflecting expected values and behaviors for use by and applicable to elected and appointed City officials, City officers, including Board and Commission members, and employees. Individuals employed by the City under contractual agreement must also observe the provisions of this policy for the term of their contract or as the contract may stipulate.

For additional regulations regarding ethics please refer to Title 12 of the San José Municipal Code.

#### POLICY

Elected and appointed officials and employees of the City of San José at all levels are guardians of the public trust. City officials and employees are required to be impartial and responsible in the fulfillment of their duties. The citizens and customers of San José expect and must receive the highest standard of ethics from all those in public service, regardless of personal consideration.

##### 1. Responsibilities of Public Service

City officials and employees are obligated to uphold the Constitution of the United States and the Constitution of the State of California and to comply with Federal, State, and local laws and City policies. Recognizing the special responsibilities of serving the City and its citizens and customers, City officials and employees are required to maintain the highest standards of integrity and honesty, and they are expected to treat all members of the public and fellow City employees with respect, courtesy, concern and responsiveness. The conduct of City officials and employees in both their official and private affairs should be above reproach to assure that their City position is not used for personal gain.

Any employee who knows, or possesses sufficient information to recognize the potential of, a violation of any City policy by a City employee wherein the conduct has the potential to impact the safety or financial health of the community and/or other City employees (examples include, but are not limited to, alleged sexual misconduct, assault, theft or bribery, or other misconduct that a reasonable person should recognize would constitute a significant policy violation if true), and fails to report such conduct, may be subject to disciplinary action. Misconduct may be reported to a supervisor/manager, Department Director, Whistleblower Hotline, and/or the Office of Employee Relations. The City's Non-Retaliation Policy describes each employee's right to raise concerns in good faith without retaliation or reprisal.

##### 2. Access to City Government, Services & Resources

The City of San José is committed to open and transparent government and strives to consistently meet the community's expectations by providing excellent service in a positive, timely, and transparent

TITLE	TITLE CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF THE CITY OF SAN JOSE	PAGE	POLICY NUMBER
		2 of 3	0-15

manner. City employees and officials are obligated to serve the public by reaching decisions and conducting activities in full view of the public in accordance with the Brown Act and the Consolidated Open Government and Ethics Resolution (Resolution #77135).

### 3. **General Rule with Respect to Conflicts of Interest**

City employees and officials are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an independent and impartial manner.

All City officials, officers and employees are prohibited from making, participation in making, or attempting in any way to use his or her official position to influence a City decision in which the employee knows or has reason to know he or she has a financial interest as defined by law. For example, City employees and officials shall not make personal investments nor maintain any direct or indirect interest in enterprises, activities, or entities which they have or have reason to believe may be involved in decisions or recommendations to be made by them or persons under their supervision, or which may create a conflict between their private interests or may impair their independence of judgment in the accomplishment of their official duties. If, however, persons in the public service have financial interests in matters coming before them, or before the department in which they are employed, they shall remove themselves from making, participating in the making, or seeking to influence any decision regarding such matter. Employees who are designated in the City's Conflict of Interest Code, shall file the appropriate disclosure statements required under State Law.

A conflict of interest may arise when dealing with a current or prospective vendor, supplier, or other business. Please refer to Section 3 below and seek guidance from a supervisor or from the Employee Helpline at 535-8150.

### 4. **Acceptance of Favors, Gratuities and Gifts**

City employees and officials shall not accept money or other consideration or favors from anyone other than the City for the performance of an act which they would be required or expected to perform in the regular course of their duties; nor shall such persons accept any gifts as defined in the City's Gift Ordinance, gratuities or favors of any kind which be perceived or interpreted as an attempt to influence their actions with respect to City business.

This is just a summary of your obligations, for additional information regarding specific regulations on the acceptance of gifts; please refer to policy 2.02, titled Gift Policy in the City Policy Manual. Additionally, if there are any discrepancies between this Gift Policy and Title 12 of the San José Municipal Code, Title 12 of the San José Municipal Code supersedes.

### 5. **Use of Confidential Information**

City employees and officials shall not use confidential information acquired by or available to them in the course of their employment with the City for personal gain or for personal, non-City business related reasons. City employees and officials shall uphold the public's right to know, and in accordance with the Brown Act, uphold the public's right to know not only the decisions taken, but also the deliberations which shape public policies. Any employee or official, who is aware of a breach of confidentiality, is expected to bring forth that information to the appropriate officials in a timely manner.

### 6. **Use of City Employment and Facilities for Personal Gain**

City employees and officials shall not use City time, City funds or City facilities, equipment or supplies for personal use or personal gain or for campaign related political activities, nor shall they use or attempt to use their position to secure unwarranted privileges or exemptions for themselves or others.

This is just a summary of your obligations, for additional information please refer to policy 1.6.2, titled Personal Use of City Equipment, and 1.7.1, titled Use of E-Mail, Internet Services and Other Electronic Media, in the City Policy Manual.

### 7. **Outside Employment**

No employee shall engage in any work, employment or occupation outside City employment, which is detrimental to City service, which prevents or impedes the efficient performance of their duties in City employment, or which is in any way in conflict with their employment with the City. No employee shall engage in any work, employment or occupation outside City employment unless they have notified their

TITLE	TITLE CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF THE CITY OF SAN JOSE	PAGE	POLICY NUMBER
		3 of 3	0-15

department via an Outside Work Permit, and the permit has been approved by the Department Director.

This is just a summary of your obligations, for additional information please refer to policy 1.2.3, titled Outside Employment Policy, in the City Policy Manual.

#### 8. **Discussion of Future Employment**

All offers or discussions of offers to City employees of future employment outside City service must be reported immediately to the employee's supervisor whenever such discussions occur with, or when such offer is made by, any person, firm or organization presently dealing with the City concerning matters directly within the employee's current areas of decision-making responsibilities. It shall be within the supervisor's discretionary powers to relieve said employee from further decision-making responsibilities in relationship to said person, firm or organization if he or she determines that the offer of employment or discussions of an offer of employment would impair the employee's independence or judgment or could be construed by others as a bid for favorable treatment.

#### 9. **Reporting of Improper Activities**

The City of San José has a responsibility to conduct its affairs ethically and in compliance with the law. City employees and persons in City service are expected and encouraged to promptly raise questions and concerns regarding possible violations of City policy or local, State or Federal law with his/her immediate supervisor or another management employee within the employee's department. Employees may also call the Employee Helpline at 535-8150 or the Fraud and Audit Hotline at 535-8200.

It is the policy of the City to prohibit the taking of any adverse employment action against those who in good faith report or participate in investigations into complaints of alleged violations of City policy or local, State or Federal law in retaliation for that reporting or participation. No officer or employee of the City shall directly or indirectly use or attempt to use the authority or influence of such officer or employee for the purpose of intimidating, threatening, coercing, directing or influencing any person with the intent of interfering with that person's duty to disclose alleged violations of City policy or local, State or Federal law.

This is just a summary of your obligations, for additional information please refer to Policy 1.1.4, titled Non-Retaliation, in the City Policy Manual.

#### 10. **Discrimination and Harassment**

City employees and officials shall not, in the performance of their duties, discriminate against any person on the basis of race, color, religion, national origin, ancestry, age, sex, gender, pregnancy, childbirth or related medical condition, sexual orientation, marital status, disability, medical condition and actual or perceived gender identity and they will reinforce the City of San José's commitment to equal employment opportunity and a work environment free of discrimination and harassment, including sexual harassment.

This is just a summary of your obligations, for additional information please refer to policy 1.1.1, titled Discrimination and Harassment Policy, in the City Policy Manual.

### **VIOLATIONS OF THE CODE OF ETHICS**

In addition to any other penalty as provided by law, employees who violate the Code of Ethics will be subject to disciplinary action, up to and including termination. The violation of this Code of Ethics by a City official, elected or appointed, constitutes official misconduct. For additional information, please refer to Title 12 of the San José Municipal Code and the City Council Censure Policy.

**Code of Ethics****1.2.1****PURPOSE AND SCOPE**

In order to best serve the citizens and customers of the City of San Jose, the elected and appointed officials, and employees of the City must act individually and collectively to create a City government that is responsible, fair, honest and open. City employees and officials are expected to demonstrate the highest standards of personal integrity, honesty and conduct in all activities in order to inspire public confidence and trust in City employees.

As stated in the City Charter, "The citizens of San Jose expect and must receive the highest standard of ethics from all those in the public service. City officers and employees must be independent, impartial and responsible in the performance of their duties and accountable to the members of the public."

The purpose of this Code of Ethics is to establish policy and guidelines, reflecting expected values and behaviors for use by and applicable to elected and appointed City officials, City officers, including Board and Commission members, and employees. Individuals employed by the City under contractual agreement must also observe the provisions of this policy for the term of their contract or as the contract may stipulate.

For additional regulations regarding ethics please refer to Title 12 of the San Jose Municipal Code.

**POLICY**

Elected and appointed officials and employees of the City of San Jose at all levels are guardians of the public trust. City officials and employees are required to be impartial and responsible in the fulfillment of their duties. The citizens and customers of San Jose expect and must receive the highest standard of ethics from all those in public service, regardless of personal consideration.

**1. Responsibilities of Public Service**

City officials and employees are obligated to uphold the Constitution of the United States and the Constitution of the State of California and to comply with Federal, State, and local laws and City policies. Recognizing the special responsibilities of serving the City and its citizens and customers, City officials and employees are required to maintain the highest standards of integrity and honesty, and they are expected to treat all members of the public and fellow City employees with respect, courtesy, concern and responsiveness. The conduct of City officials and employees in both their official and private affairs should be above reproach to assure that their City position is not used for personal gain.

Any employee who knows of, or possesses sufficient information to recognize the potential of, a violation of any City policy by a City employee wherein the conduct has the potential to impact the community and/or other City employees (examples include, but are not limited to, alleged sexual misconduct, assault, theft or bribery, or other misconduct that a reasonable person should recognize would constitute a significant policy violation if true), and fails to report such conduct, may be subject to disciplinary action. Misconduct may be reported to a supervisor/manager, Department Director, Whistleblower Hotline, and/or the Office of

**Code of Ethics****1.2.1**

Employee Relations. The City's Non-Retaliation Policy describes each employee's right to raise concerns in good faith without retaliation or reprisal.

**2. Access to City Government, Services & Resources**

The City of San José is committed to open and transparent government and strives to consistently meet the community's expectations by providing excellent service in a positive, timely, and transparent manner. City employees and officials are obligated to serve the public by reaching decisions and conducting activities in full view of the public in accordance with the Brown Act and the Consolidated Open Government and Ethics Resolution (Resolution #77135).

**3. General Rule with Respect to Conflicts of Interest**

City employees and officials are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an independent and impartial manner.

All City officials, officers and employees are prohibited from making, participation in making, or attempting in any way to use his or her official position to influence a City decision in which the employee knows or has reason to know he or she has a financial interest as defined by law. For example, City employees and officials shall not make personal investments nor maintain any direct or indirect interest in enterprises, activities, or entities which they have or have reason to believe may be involved in decisions or recommendations to be made by them or persons under their supervision, or which may create a conflict between their private interests or may impair their independence of judgment in the accomplishment of their official duties. If, however, persons in the public service have financial interests in matters coming before them, or before the department in which they are employed, they shall remove themselves from making, participating in the making, or seeking to influence any decision regarding such matter. Employees who are designated in the City's Conflict of Interest Code, shall file the appropriate disclosure statements required under State Law.

A conflict of interest may arise when dealing with a current or prospective vendor, supplier, or other business. Please refer to Section 3 below and seek guidance from a supervisor or from the Employee Helpline at 535-8150.

**4. Acceptance of Favors, Gratuities and Gifts**

City employees and officials shall not accept money or other consideration or favors from anyone other than the City for the performance of an act which they would be required or expected to perform in the regular course of their duties; nor shall such persons accept any gifts as defined in the City's Gift Ordinance, gratuities or favors of any kind which be perceived or interpreted as an attempt to influence their actions with respect to City business.

This is just a summary of your obligations, for additional information regarding specific regulations on the acceptance of gifts; please refer to policy 1.2.2, titled Gift Policy in the City Policy Manual. Additionally, if there are any discrepancies between this Gift Policy and

**Code of Ethics****1.2.1**

Title 12 of the San Jose Municipal Code, Title 12 of the San Jose Municipal Code supersedes.

**5. Use of Confidential Information**

City employees and officials shall not use confidential information acquired by or available to them in the course of their employment with the City for personal gain or for personal, non-City business related reasons. City employees and officials shall uphold the public's right to know, and in accordance with the Brown Act, uphold the public's right to know not only the decisions taken, but also the deliberations which shape public policies. Any employee or official, who is aware of a breach of confidentiality, is expected to bring forth that information to the appropriate officials in a timely manner.

**6. Use of City Employment and Facilities for Personal Gain**

City employees and officials shall not use City time, City funds or City facilities, equipment or supplies for personal use or personal gain or for campaign related political activities, nor shall they use or attempt to use their position to secure unwarranted privileges or exemptions for themselves or others.

This is just a summary of your obligations, for additional information please refer to policy 1.6.2, titled Personal Use of City Equipment, and 1.7.1, titled Use of E-Mail, Internet Services and Other Electronic Media, in the City Policy Manual.

**7. Outside Employment**

No employee shall engage in any work, employment or occupation outside City employment, which is detrimental to City service, which prevents or impedes the efficient performance of their duties in City employment, or which is in any way in conflict with their employment with the City. No employee shall engage in any work, employment or occupation outside City employment unless they have notified their department via an Outside Work Permit, and the permit has been approved by the Department Director.

This is just a summary of your obligations, for additional information please refer to policy 1.2.3, titled Outside Employment Policy, in the City Policy Manual.

**8. Discussion of Future Employment**

All offers or discussions of offers to City employees of future employment outside City service must be reported immediately to the employee's supervisor whenever such discussions occur with, or when such offer is made by, any person, firm or organization presently dealing with the City concerning matters directly within the employee's current areas of decision-making responsibilities. It shall be within the supervisor's discretionary powers to relieve said employee from further decision-making responsibilities in relationship to said person, firm or organization if he or she determines that the offer of employment or discussions of an offer of employment would impair the employee's independence or judgment or could be construed by others as a bid for favorable treatment.

**9. Reporting of Improper Activities**

**Code of Ethics****1.2.1**

The City of San Jose has a responsibility to conduct its affairs ethically and in compliance with the law. City employees and persons in City service are expected and encouraged to promptly raise questions and concerns regarding possible violations of City policy or local, State or Federal law with his/her immediate supervisor or another management employee within the employee's department. Employees may also call the Employee Helpline at 535-8150 or the Whistleblower Hotline at 535-8200.

It is the policy of the City to prohibit the taking of any adverse employment action against those who in good faith report or participate in investigations into complaints of alleged violations of City policy or local, State or Federal law in retaliation for that reporting or participation. No officer or employee of the City shall directly or indirectly use or attempt to use the authority or influence of such officer or employee for the purpose of intimidating, threatening, coercing, directing or influencing any person with the intent of interfering with that person's duty to disclose alleged violations of City policy or local, State or Federal law.

This is just a summary of your obligations, for additional information please refer to policy 1.1.4, titled Non-Retaliation, in the City Policy Manual.

**10. Discrimination and Harassment**

City employees and officials shall not, in the performance of their duties, discriminate against any person on the basis of race, color, religion, national origin, ancestry, age, sex, gender, pregnancy, childbirth or related medical condition, sexual orientation, marital status, disability, medical condition and actual or perceived gender identity and they will reinforce the City of San Jose's commitment to equal employment opportunity and a work environment free of discrimination and harassment, including sexual harassment.

This is just a summary of your obligations, for additional information please refer to policy 1.1.1, titled Discrimination and Harassment Policy, in the City Policy Manual.

**VIOLATIONS OF THE CODE OF ETHICS**

In addition to any other penalty as provided by law, employees who violate the Code of Ethics will be subject to disciplinary action, up to and including termination. The violation of this Code of Ethics by a City official, elected or appointed, constitutes official misconduct. For additional information, please refer to Title 12 of the San Jose Municipal Code and the City Council Censure Policy.

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*Approved by the City Council*  
*April 24, 2018*

Approved for posting:

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**Code of Ethics**

**1.2.1**

\_\_\_\_\_  
/s/ Jennifer A. Maguire  
~~Assistant~~ City Manager

\_\_\_\_\_  
~~April 30, 2018~~  
Date

# Investigation Principles

## 2.1.4

### PURPOSE

The City of San Jose takes very seriously allegations of misconduct and/or substandard performance. The purpose of this policy is to provide guidance for conducting investigations of allegations of misconduct, substandard performance, and City policy violations. The City is committed to ensuring that all investigations are conducted in a fair, impartial, thorough and thoughtful manner.

### SCOPE OF APPLICATION

The City Manager's Office of Employee Relations is responsible for overseeing personnel investigations related to employees under the appointing authority of the City Manager. Employees under appointing authorities other than the City Manager are investigated by those appointing authorities, who may consult, coordinate, or request assistance from the Office of Employee Relations, if they desire.

For concerns involving "City Officials" as defined in the City's open government and ethics provisions, high-ranking individuals and other unclassified employees not otherwise covered by the Discipline Policy, Section 2.1.3 of the City Policy Manual, the appropriate appointing authority will be informed of the complaint and shall authorize any investigation (for classified and unclassified employees). For certain investigations, such as those of high-ranking officials City Officials, the City may deem it appropriate to hire an external investigator. Investigations, whether conducted by an internal or external investigator, may be subject to disclosure pursuant to the City's open government and ethics provisions (Resolution No. 77135 Section 4.3.2.5, Personnel Information).

Allegations that are criminal in nature are referred to the San Jose Police Department (SJPD) prior to the commencement of a personnel investigation. As covered in the Administrative Leave Policy, Section 4.2.3 of the City Policy Manual, in the event that the Police Department receives a criminal allegation against a City employee that is credible and has the potential to impact the safety or financial health of the community and/or other City employees (examples include, but are not limited to, alleged sexual misconduct, assault or battery, and theft or bribery), the City Manager and the City Manager's Office of Employee Relations will be immediately notified. The Office of Employee Relations will notify departments of criminal allegations, unless it is determined that the referral could interfere with a police investigation, and will apprise departments of the findings of any investigation.

### PROCEDURES

Employees, City departments, and members of the public may raise concerns in a variety of ways, including:

Phone	(408) 535-8150 (City Manager's Office of Employee Relations)
	(408) 535-8200 (Whistleblower Hotline, administered by the City Manager's Office of Employee Relations)
Fax	(408) 292-6436
Email	<a href="mailto:employee.relations@sanjoseca.gov">employee.relations@sanjoseca.gov</a> (City Manager's Office of Employee Relations)



**Investigation Principles** **2.1.4**

| \_\_\_\_\_  
/s/ Jennifer A. Maguire  
City Manager

\_\_\_\_\_ May 27, 2022  
Date

## Discipline Policy

## 2.1.3

### PURPOSE

The purpose of this policy is to explain various aspects of the City of San Jose's disciplinary procedures for permanent City employees in the classified service. This policy includes an explanation of disciplinary procedures, the authorities under which disciplinary action is taken, definitions of informal and formal disciplines, and a summary of the rights of employees who are subject to disciplinary action. This policy provides general information for employees. Department managers and supervisors should consult with the City Manager's Office of Employee Relations for more information and assistance with disciplinary actions and procedures.

### SCOPE OF APPLICATION

This Discipline Policy applies to all permanent City employees in classified service, with the exception of the "Disclosure of Disciplinary information" section below, which applies to all City employees. (Please note that this policy and the rights and procedures contained herein do **not** apply to temporary, probationary employees, unclassified employees, or other employees who are considered "at-will.") Various aspects of this policy may vary by Memorandum of Agreement (MOA), which will be noted throughout the policy. To the extent this policy conflicts with any provision in an applicable MOA, the provisions of the MOA shall prevail.

### POLICY

It is the City's policy to administer discipline with the goal of correcting inappropriate conduct and/or substandard performance and to define a standard of conduct of City employees. The appropriate use of discipline is essential to high employee morale and productivity and furthers the City's goal of providing excellent services to the community.

The City's discipline process is based on the concept of progressive discipline. Under progressive discipline, the City takes progressively more severe action if the employee has not responded to previous instructions, warnings, or other lower-level actions. However, progressive discipline does not mean that the City must progress through all discipline steps in all cases. Certain conduct may be serious enough that the first incident may warrant a higher level of discipline, up to and including termination without progressive discipline.

### AUTHORITIES

1. **AUTHORITY TO TAKE DISCIPLINARY ACTION.** The San Jose City Charter Sections 701(a), 803.1, 805.1, 809.1 and 901 authorize the **Appointing Authority** to discipline City employees. The City Manager is the Appointing Authority for all City employees, excluding professional employees in the City Attorney's Office, employees of the City Auditor's Office, employees of the Independent Police Auditor's Office, employees of the Office of Retirement Services, and employees appointed by the Mayor and City Council.

The City Manager delegates to the Director of Employee Relations the responsibility to review and approve formal disciplinary actions for City employees under the City Manager's appointing authority. The City Attorney, the City Auditor, and the Independent Police Auditor, and the Chief

## Discipline Policy

## 2.1.3

Executive Officer (Director) of the Office of Retirement Services are the Appointing Authorities for all employees in their Offices for which they have the authority to appoint under the City Charter. The applicable Appointing Authority must approve any formal disciplinary action before the action is taken.

2. **CAUSE FOR DISCIPLINE.** Pursuant to San Jose Municipal Code 3.04.1370, an employee may be disciplined for any of the following causes:

- a. Malfeasance
- b. Misconduct
- c. Incompetence
- d. Failure to satisfactorily perform the duties of his/her position
- e. Failure to observe applicable rules and regulations
- f. Failure to cooperate reasonably with his/her superior officer or fellow officers or employees
- g. Fraud in securing appointment
- h. Inefficiency
- i. Inexcusable neglect of duty
- j. Insubordination
- k. Dishonesty
- l. Drunkenness on duty or drinking of alcoholic beverages
- m. Chronic alcoholism
- n. Use of narcotic or habit forming drugs without prescription
- o. Inexcusable absence without leave
- p. Conviction of a felony or conviction of a misdemeanor involving moral turpitude
- q. Discourteous treatment of the public or other employees
- r. Unlawful political activity
- s. Willful disobedience
- t. Misuse of city property
- u. Any violation of departmental conflict of interest codes approved by the City Council and adopted pursuant to Chapter 7 of the Political Reform Act of 1974 (Government Code 87100)
- v. Any other act, either during or outside of duty hours which is detrimental to the public service.

3. **AUTHORITY FOR FORMAL DISCIPLINARY ACTION**

- a. **Suspension, Demotion or Dismissal.** San Jose Municipal Code 3.04.1350 through 3.04.1500 provides the legal basis for suspension, demotion or dismissal of City employees in the classified service.
- b. **Step Reduction.** Memoranda of Agreement (MOA) provide the authority for this alternate form of discipline for employees represented by the following organizations:
  - i. Association of Building, Mechanical and Electrical Inspectors (ABMEI)
  - ii. ~~Association of Engineers and Architects, IFPTE Local 21 (AEA)~~
  - iii. ~~ii.~~ International Association of Firefighters, Local 230 (IAFF)
  - iv. ~~iii.~~ International Brotherhood of Electrical Workers, Local No. 332 (IBEW)

## Discipline Policy

## 2.1.3

- iv. Municipal Employees' Federation, AFSCME, Local 101 (MEF)
- v. San Jose Police Officers' Association (POA)
- vi. Peace Officers Park Ranger Association (POPRA)
- vii. International Union of Operating Engineers, Local 3 (OE#3)
- viii. San Jose Police Dispatchers Association (SJPDA)

### 4. DISCIPLINARY PROCEDURES AND APPEAL PROCESS

Disciplinary procedures and the appeal process are set out in the San Jose Municipal Code, Sections 3.04.1350- 3.04.1500. Certain appeals are also contained in applicable Memoranda of Agreements (MOA's).

#### TYPES OF DISCIPLINE

The City's disciplinary system is based on progressive discipline. In progressive discipline, the City takes progressively more severe action if the employee has not responded to previous actions. However, certain conduct and circumstances may be serious enough to warrant severe disciplinary action, up to termination, without prior ~~lower~~ lower-level discipline.

The City's disciplinary actions are divided into "informal" and "formal" actions:

#### 1. INFORMAL DISCIPLINARY ACTIONS

Informal disciplinary actions vary from formal disciplinary actions in that they do not involve any monetary punitive actions and employees are not entitled to all of the appeal procedures which are applicable to formal discipline.

- a. **Counseling** is an informal one-on-one communication with an employee and is used for several purposes. Counseling may be designed to develop the employee's skills, abilities, and understanding of the job and/or may clarify standards and rules, evaluate the employee's strengths and challenges, seek information, or solve problems. It may also be the immediate corrective reaction when minor misconduct or poor performance is observed. The supervisor should document the date and subject of discussion for future reference.
- b. **Documented Oral Counseling (DOC)** is a written confirmation of verbal notification that performance or behavior needs improvement and a warning of potential future discipline if there is no improvement. Generally, counseling is administered by the first line supervisor and subsequently documented in a memo to the employee. The memo should document the discussion and the improvement expected in the employee's conduct or performance. The memo should be given to the employee and a copy should be kept in the supervisor's employee file and should not go into the employee's permanent personnel file. After one year, if the problem does not reoccur, the memo should be removed from the employee's supervisory file. However, the supervisor should note the date and subject of discussion for future reference and the underlying conduct should be noted in the employee's performance appraisal for that rating period.

## Discipline Policy

## 2.1.3

- c. **Written Reprimand/Letter of Reprimand (LOR)** is warning that certain conduct or performance is unacceptable, and formal disciplinary action will occur unless the performance or conduct improves. It differs from a DOC in that a written reprimand is placed in the employee's permanent personnel file. It should be used to correct specific inadequate performance or unacceptable conduct where oral counseling has not corrected the problem, or in cases where a more formal written record is appropriate.

Employees may submit a rebuttal to a Letter of Reprimand within thirty (30) days. The rebuttal will be kept in the employee's permanent personnel file. Additionally, employees represented by the San Jose Police Officers' Association (POA) and the San Jose Firefighters, IAFF, Local, 230 are entitled to certain appeal rights for Letter of Reprimands. Please refer to those MOA's for more information.

### 2. FORMAL DISCIPLINARY ACTIONS

In response to serious misconduct, a pattern of poor performance or when informal disciplinary action has not corrected the behavior, formal disciplinary action may be necessary. When any of the following disciplinary actions are to be taken, there are specific due process requirements and appeal rights. Formal discipline includes the following levels of disciplinary action:

1. **Salary Step Reduction** is a decrease in salary of one or more steps (2.5%, 5%, 7.5%, 10%, etc.) for a specified period of time or until a certain event occurs (e.g., reinstatement of driver's license). This action is applicable only to employees represented by the bargaining units specified under the above Authorities Section 3b.
2. **Suspension** is unpaid time off from work for a specified number of work hours or workdays. Time spent on suspension is excluded from service time for layoff seniority purposes.
3. **Demotion** is removal from one classification and appointment to a classification with a lower salary range.
4. **Dismissal** is termination from City employment.

### SUMMARY OF PROCEDURES FOR FORMAL DISCIPLINARY ACTION

Formal disciplinary actions are coordinated between the Department Director and the City Manager (unless the issues involve an employee under the appointing authority of the City Attorney, the City Auditor, or the Independent Police Auditor). The City Manager (or other applicable Appointing Authority) makes the ultimate decision to impose discipline and on the level of discipline imposed.

The City Manager delegates to the Director of the Office of Employee Relations the responsibility to review and approve formal disciplinary actions for City employees under the City Manager's appointing authority. It is the employee's department's responsibility to prepare the required documents before submitting a recommendation to the City Manager (through the Office of Employee Relations). The Office of Employee Relations may, in certain situations, conduct an investigation as a confidential personnel matter.

## Discipline Policy

## 2.1.3

The following are procedures involved in formal discipline. Please note that not all of these procedures apply to informal discipline.

1. **Investigation/Documentation.** An inquiry, investigation, and/or other documentation is completed by the Department or the Office of Employee Relations, or by an external investigator as appropriate, in accordance with the Investigation Principles Policy, Section 2.1.4 of the City Policy Manual. Department managers and supervisors should consult with the Office of Employee Relations for more information and assistance with investigations and/or necessary documentation.

Under certain limited circumstances, departments may request to the Appointing Authority that an employee be placed on Administrative Leave, pending investigation for possible disciplinary action. Guidelines and procedures for [Administrative Leave](#) are specified in Section 4.2.3 of the City Policy Manual.

This relates to all investigations, not just those related to classified employees.

2. **Recommended Discipline.** The Department's recommendation for formal discipline is forwarded to the City Manager (through the Office of Employee Relations as designated by the City Manager.) The Office of Employee Relations reviews the Department's documentation and coordinates any changes/modifications with the Department Director or designee.
3. **Notice of Intended Discipline (NOID).** If the recommendation for formal disciplinary action is approved, the employee is given a Notice of *Intended* Discipline (NOID). This is a required notice advising the employee that formal disciplinary action is being recommended. It is **not** a final decision to impose discipline. The NOID specifies the causes for discipline, potential effective date of discipline and the recommended disciplinary action and is provided along with a copy of the materials upon which the action is based.
4. **Skelly Conference.** The NOID also advises the employee that he/she can respond either personally or in writing at an informal conference/meeting ("*Skelly* Conference") with the department director or other designated official. The employee must request a *Skelly* conference within the timeline specified in the NOID, which in most cases is five (5) days from receipt of the NOID. However, the employee may request time extensions in writing to the Department Director or designee. If an employee requests a *Skelly* Conference within the specified timeframe, the proposed discipline will **not** be imposed on the date contained in the NOID. Any decision on the proposed discipline will not occur until after the *Skelly* Conference.

The purpose of the *Skelly* conference is to allow the employee an opportunity to present any information they want the City to consider before the City makes a final decision on the proposed discipline. This is not a full evidentiary hearing and the employee does not present witnesses. The responsibility of the City during the *Skelly* Conference is to listen to the employee and to ask questions if necessary to ensure understanding of the employee's statements. The employee has the right to have a representative at the *Skelly* conference. Also present at the *Skelly* conference is a representative from the Office of Employee Relations, and in certain cases, a representative from the City Attorney's Office.

## Discipline Policy

## 2.1.3

After the *Skelly* conference, the City (the City Manager through the Office of Employee Relations, in consultation with the Department) may do one of the following: impose the proposed disciplinary action, impose a lesser disciplinary action, enter into a settlement agreement, or not impose any discipline at all.

5. **Notice of Discipline (NOD)**. If the City decides to proceed with formal discipline after the *Skelly* Conference or if the employee does not request a *Skelly* conference, the employee is served with a Notice of Discipline (NOD) outlining the causes for discipline, the final effective date of the discipline and the type of disciplinary action being taken. In most cases, if the employee does not request a *Skelly* conference, the disciplinary action being taken does not change from the discipline specified in the NOID.

**Civil Service Commission Appeal**. Once an NOD is served, an employee who has been suspended, demoted, reduced in salary step or dismissed has the right to appeal to the Civil Service Commission (CSC), within twenty (20) days of the date the NOD is served to the employee. **Please note that even when an employee appeals to the CSC, the discipline becomes effective on the date specified in the NOD.**

The Commission is composed of five members who are appointed by the City Council pursuant to the City Charter. The Commission must schedule a disciplinary appeal hearing within 45 days, or authorize extension of the time limit. Employees represented by the POA or IAFF may, alternatively, appeal to arbitration. Time limits for appeals to arbitration are set forth in the appropriate MOA.

- a. **Conduct of hearings**. Disciplinary appeal hearings are evidentiary hearings. The City is usually represented by the City Attorney's Office and the employee has a right to representation. Both sides may submit evidence, examine and cross-examine witnesses and present their case similar to a case in court.
- b. **Results of Appeal**. For appeals to the Civil Service Commission, the Commission hears the case as an appellate body and decides the appeal by majority vote of the members present. In appeals to arbitration, a single arbitrator selected mutually by the City and the employee organization hears and decides the appeal. The Commission (or arbitrator) can affirm, reject or reduce the level of discipline imposed. Based on the findings of the appeal, the Commission/arbitrator may:
  - i. Sustain/uphold the discipline (deny the appeal)
  - ii. Modify the discipline by reducing it to a lower level or lesser suspension. For example, a dismissal may be reduced to a suspension. The level of discipline cannot be increased as a result of an appeal.
  - iii. Overturn the discipline (revoke the action entirely).

## RIGHT TO REPRESENTATION/WEINGARTEN RIGHTS

**Discipline Policy****2.1.3**

When an employee represented by a bargaining unit (a union) is being interviewed and the employee reasonably believes that the investigation is likely to result in disciplinary action, the employee has the right to request to have a union representative present during the investigative interview.

**DISCLOSURE OF DISCIPLINARY INFORMATION**

Generally speaking, the City regards disciplinary action taken against an employee to be the confidential personnel information of the employee disciplined and such information is not subject to disclosure unless disclosure is warranted consistent with the City's open government and ethics provisions (Resolution No. 77135 Section 4.3.2.5, Personnel Information). This includes disclosure under the following circumstances:

C. Disciplinary Actions -- Regular Classified Civil Service Employees

1. Log. The Office of Employee Relations shall maintain a log of disciplinary actions taken by the City for regular classified civil service employees, updated as frequently as possible and available for inspection. An item may be included in the log only upon issuance of a notice of discipline. The log shall include the department, employee classification (except for single position classifications or unique classifications, for which releasing the classification would identify the employee), type of discipline (i.e. suspension, demotion, step reduction or dismissal/termination), basis of the complaint (such as violation of the San Jose Municipal Code, Council Policy or Administrative Policy) and any final disposition. Identifying information shall not be included in the log.
2. City Records Subject to Disclosure. Where an investigation in response to allegations of serious misconduct has been conducted, and it has been determined that sufficient information or evidence exists to conclude based on a preponderance of the evidence that the alleged misconduct occurred, records related to that investigation and/or disciplinary action taken may be released on a case-by-case basis upon request following conclusion of any disciplinary appeal to either the Civil Service Commission or arbitrator, subject to any applicable laws. Information that falls within the protection of any privileges or rights provided under the law may be redacted.
- 1.3. Serious Misconduct. Serious misconduct is defined as conduct that has the potential to impact the safety or financial health of the community (e.g., alleged sexual misconduct, assault, theft, and/or bribery) and where an investigation has been completed and formal disciplinary action (i.e., suspension, demotion, step reduction, or dismissal/termination) has been taken and noted on the log referenced in C1 of this Section.
4. Not Limiting Access. Nothing in this Section shall be construed as limiting access to other disciplinary records as permitted by the Public Records Act.

Approved:

\_\_\_\_\_  
/s/ Jennifer Schembri  
Director of Employee Relations

\_\_\_\_\_  
Date

Original Effective Date: November 3, 1988

Revised Date: ~~July 13, 2016~~

Page 7 of 8

<b>Discipline Policy</b>	<b>2.1.3</b>
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Approved for posting:

\_\_\_\_\_  
/s/ Jennifer A. Maguire  
~~Senior Deputy~~ City Manager

\_\_\_\_\_  
Date