3.8.1 PURPOSE

The Department shall deal consistently and fairly with issues of possible and proven misconduct by employees.

3.8.2 POLICY

This policy provides procedures for the investigation and reporting of suspected and/or alleged employee misconduct, guidelines for the administration of discipline in regard to proven misconduct and a description of the appeals process, in order to assure appropriate attention to behavioral problems, fair treatment of employees and necessary organizational integrity.

3.8.3 CORRECTIVE ACTION PRINCIPLES AND PHILOSOPHY

A. In General

The Department shall accept and report all complaints, appropriately investigate all suspicions and allegations of employee misconduct, appropriately address employee behavior that discredits the Department or impairs its effective operation and will document the final disposition of all allegations and complaints of employee misconduct. Rights of employees and the public will be preserved. The Department shall use progressive corrective action as outlined by the City Human Resources, City Code and appropriate labor agreement. Any required corrective action will be administered according to the following philosophy.

B. Department Corrective Action Philosophy

1. Discipline in a police organization must be maintained to preserve organizational integrity and effectiveness and to retain and enhance public trust. The goal of any Departmental corrective action is to be consistent and fair in the review of behaviors which may be determined to be unacceptable to the organization.

2. The purpose is such action is to correct the behavior when possible, recognizing that some unacceptable behaviors may rise to a level requiring discipline and even employee termination. Consistency is defined as holding everyone similarly accountable for similarly unacceptable behavior.
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Fairness is defined as understanding the circumstances that contributed to the behavior and applying consequences in a way that reflects this understanding.

3. The following factors must be considered to determine a consistent and fair corrective action related to unacceptable behavior:

a. Employee Experience;

   1) A relatively new employee, (or a more experienced employee in an unfamiliar assignment), may be shown more understanding when judgment errors are made.

   2) Conversely, employees who make judgmental errors that would not be expected of one of their experience may receive more serious sanctions for such errors.

b. Employee Motivation;

   An employee who violates a policy in an effort to accomplish a legitimate police purpose that demonstrates an understanding of the broader public interest inherent in the situation will be given more positive consideration in the determination of consequences than one who was motivated by personal interest.

c. Intentional/Unintentional Errors;

   Generally, intentional errors will be treated more seriously and carry greater consequences than unintentional errors. The conscious decision to disregard polices and orders will be dealt with sternly.

d. Degree of Harm; and

   Harm will be measured in a variety of ways, including: the monetary cost to the Department and community; the personal injury or property damage the error causes, and the likely impact of the error on public confidence and trust in the organization or the individual officer.

e. Employee’s Past Record.

   To the extent allowed by law and other Department policies, an employee’s past record (both positive and negative) will be taken into consideration in determining the consequences of a failure to meet the Department’s expectations and requirements.

4. Once this philosophy is considered, a supervisor will recommend the method of corrective action, which may include counseling and/or training recommendations.
C. Corrective Action System

1. Failure to comply with any municipal, state, or federal law; Department policy, general order or written directive; or any unjustifiable deviation from standard operating procedures may result in corrective action as set forth in this general order, appropriate rules and regulations when applicable and applicable labor agreements.

2. It shall be the responsibility of all supervisory personnel to:
   a. Administer the corrective action reasonably, impartially, and consistently;
   b. Administer appropriate corrective actions when needed;
   c. Thoroughly document corrective actions taken, including supporting documentation; and
   d. Initiate appropriate corrective actions for Department personnel when necessary.

3. Supervisors shall allow bargaining unit employees the opportunity to have a bargaining unit representative present:
   a. Any time the employee requests a bargaining unit representative to be present in accordance with the terms of the applicable labor agreement;
   b. At discussions with the employee on violations of policy, procedure, rules, or regulations; and
   c. At the time the supervisor serves the employee with the Corrective Action Form.

3.8.4 INFORMAL CORRECTIVE ACTION EXAMPLES

A. Positive Contacts

The primary responsibility of supervisors and commanders is to recognize and reinforce the daily good performance of employees. Recognizing good performance is more important than recognizing poor performance. Positive contacts and recognitions are more influential when they follow the event or action being reinforced. Acknowledge the minor achievements that produce the results towards meeting the mission. There are many situations in which positive contacts take place, such as roll call, zone meetings, supervisory meetings, one on one discussion, or at weekly crime strategy meetings. The needs of the employee should be considered, especially when the employee does not like group recognition.

B. Teaching
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This is not formal corrective action, as the purpose of teaching should not be a negative experience, rather to communicate helpful information. A meeting between a supervisor and an employee to explain workplace rules, regulations, expectations, or requirements is a regular responsibility of supervisors whenever an employee is unclear or exhibits a need for guidance. When managing employees, supervisors have a responsibility to set clear rules and expectations. However, not every workplace rule must be specified. When an employee is aware, or should reasonably be aware of management’s expectations, and chooses to violate those expectations, formal corrective action may be necessary to modify the employee’s behavior.

C. Coaching

This is a process to resolve problems and enhance relationships. Coaching is a serious and planned discussion between employee and supervisor to correct problems or improve performance. The purpose of this meeting is to get the employee to agree to change and to offer input about how he/she will make the change happen. Coaching is different than daily casual conversation or teaching between supervisor and employee. Coaching requires:

1. Planning before the meeting to determine:
   a. The actual and desired performance;
   b. Why the problem must be resolved; and
   c. A logical consequence if the problem continues.

2. During the session:
   a. Confirm the planned action is appropriate;
   b. Gain the employee’s agreement to change and make him or her aware of the consequences; and
   c. Determine the action the employee is willing to take.

3. After the meeting:
   a. Document the discussion;
   b. Follow up to make sure that the problem has been resolved; and
   c. Determine if there has been positive change.

   1) If so, recognize the employee’s efforts.
   2) If not, begin progressive discipline.

4. Training or re-training may be employed singularly or in conjunction with one or more of the other components of the formal corrective action system. Training is particularly appropriate when an employee lacks the skills and ability to perform properly. Any supervisor may recommend training for a
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subordinate, as appropriate, to impact an identified deficiency in job performance.

5. The evaluation system’s quarterly feedback reports may serve as a tool to implement and document informal corrective actions.

6. Special evaluation/520 plan - Employees may be placed on a special evaluation and be given 520 continuous work hours of time to improve “less than satisfactory” performance in any or all tasks, duties, or responsibilities set forth in the position description, per City Personnel Code and any applicable labor agreements. There may be other opportunities for informal corrective action implementation as the circumstances dictate.

3.8.5 APPROACHES FOR ALTERNATIVES TO FORMALIZED CORRECTIVE ACTION

A. Supervisors are empowered to determine when alternative corrective action is likely to be more effective for particular situations.

B. Admission of Wrongdoing

1. The employee must admit to committing the offense, and acknowledge the action violated department policy, in order to qualify for alternatives to discipline. Under the right circumstances, an admission can be advantageous. Through the admission, the employee takes responsibility for the unacceptable actions.

2. Alternatives to formal corrective action should not be automatically ruled out if an employee does not wish to admit to the misconduct. In these cases, he/she must express a strong and genuine interest in using alternatives to formal corrective action to put the issue into the past and to move forward to a future free of misconduct. One of the best things about alternatives to formal corrective discipline (and one of the most challenging) is that each situation must be judged on its own merits.

C. Alternatives to formal corrective action are used when supervisors have reason to believe the alternative has a greater potential than traditional corrective action to prevent a repetition of the misconduct. In requiring a promise the conduct will not be repeated, the agency is reinforcing this principle. Furthermore, if the employee does not feel he/she is able to promise refraining in the future, this may be considered a strong indicator the alternatives to formal corrective action are unlikely to be effective.

D. While alternatives to formal corrective action are not always required to be the result of an agreement between management and the individual, it has a greater potential to be successful if the employee has buy-in. Therefore, when the involved supervisor and employee mutually agree, it is recommended that alternatives to formal corrective action be used. These are the directly involved parties to the situation and most likely have the best grasp of the concerns and
issues. If one or both of these individuals do not think alternatives to formal corrective actions are appropriate or likely to be successful, then it is fair to say alternatives are not appropriate for the particular situation or not likely to modify the employee’s conduct in the future.

E. The following are examples of alternatives to formal corrective action. The appropriateness of the particular approach will vary based upon the nature of the offense and personality of the individual whose conduct requires correction. What works well for one person may have no impact on another. These ideas are not recommendations, merely examples of alternative approaches that may be considered and are not all inclusive.

These examples are provided in no particular order:

1. Policy Advisory- an issued memorandum explaining and clarifying department policy as a result of an employee’s action or inaction, that could be interpreted as a violation of said policy. The policy advisory is kept in the bureau commander file and purged after six months with no reoccurring of like policy violations. If reoccurrence of like policy violations transpires then formalized corrective action can be sought.

2. Employee attends an appropriate program approved by the Employee Assistance Program (EAP) (e.g. for misuse of a travel card, the employee attends debt management classes; for shouting at a supervisor or co-worker, the employee attends anger management classes; or for substance abuse, the employee enters a substance abuse program).

3. Employee serves a suspension in smaller pieces over the course of multiple pay periods to soften the financial impact.

4. Employee serves a suspension that exists only in the record—no loss of duties or pay but the record indicates an agreement that the Corrective Action Form will be considered equivalent to a suspension of a particular length for as required by the appropriate labor agreement. This action serves as a foundation for progressive discipline should future violations occur.

5. Employee receives a reduction in the number of days to be served on suspension. Alternatives to corrective action should not be used to require an employee to waive any rights in order to obtain a lesser penalty when that lesser penalty was already the appropriate degree of discipline. However, it may be used to reduce the penalty below the level management believed was otherwise appropriate if the employee offers something in exchange, such as an acceptance of responsibility and an acknowledgement that the behavior was inappropriate and will not re-occur.

6. Employee’s penalty is held in abeyance; if there is another incident, the penalty takes effect; if there are no future incidences for the life of the agreement, the penalty will not take effect, but the record still exists in the file as a foundation for progressive discipline.

7. Special Evaluations (520 Plan) - in accordance with City of Topeka Personnel Code, a Department head may cause a special evaluation to be
conducted for any employee when the Department head determines that such employee's performance is "less than satisfactory" with respect to any or all of the duties, tasks, and/or responsibilities set forth in the employee’s position description.

3.8.6 FORMAL CORRECTIVE ACTION

A. All levels of supervisory personnel have the authority to counsel, reprimand or suspend as authorized below and in any attachments to this policy.

B. When misconduct is of a nature that could result in formal corrective action, the supervisor shall ensure the basis for the action is documented and supported by Department general orders.

1. The Corrective Action form shall be forwarded through the chain of command for approval of level of corrective action, with supplementary documentation, and supervisory recommendations attached, where appropriate.
2. A Commander in the Bureau shall verify with the employee’s personnel file that the progressive step being taken is correct.

C. Copies of any corrective document will be:
   1. Sent to Human Resources; and
   2. Given to the employee.

D. A grievance process for corrective actions is described in the appropriate labor contracts and/or City Code.

E. The Chief of Police has final authority and responsibility for Department corrective action system except where outlined in applicable labor contracts.

F. Any supervisor may recommend any amount of corrective action. Supervisors and commanding officers have the authority to issue suspension without pay as follows:
   1. Sergeants may issue up to 3 days suspension without pay upon approval of a Lieutenant or above;
   2. Lieutenants may issue up to 5 days suspension without pay;
   3. Captains may issue up to 10 days suspension without pay;
   4. Majors may issue up to 15 days suspension without pay;
   5. The Deputy Chief may issue any amount of suspension up to but not including termination;
   6. The Chief may issue any amount of suspension up to and including termination; and
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7. Terminations are subject to a review by the Human Resources Director per COT policy.

3.8.7 CORRECTIVE ACTION STEPS

All steps must provide the following:

<table>
<thead>
<tr>
<th><strong>Failure of employee to sign will be documented and a person other than the issuing supervisor will sign as a witness that employee received corrective action and was unable/did not sign.</strong></th>
<th>Verbal Warning</th>
<th>Counseling Caution</th>
<th>Written Warning</th>
<th>Reprimand</th>
<th>Suspension</th>
<th>Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any supervisor may issue these corrective actions in writing.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SGTs, LTs, CPTs, MAJs, LTC and the Chief may issue any corrective action up to and including three days suspension without pay. The suspension must be reviewed or approved as required.</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>LTs, CPTs, MAJs, LTC and Chief may issue up to 5 day suspensions without pay.</td>
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<tr>
<td>CPTs, MAJs, LTC and the Chief may issue up to 10 day suspensions without pay.</td>
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<tr>
<td>MAJs, LTC and the Chief may issue up to 15 day suspensions without pay.</td>
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<tr>
<td>LTC and the Chief may issue any amount of suspension without pay up to but not including termination.</td>
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<tr>
<td>The Chief of Police may issue any amount of suspension without pay including termination.</td>
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<td></td>
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<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Supervisors will provide employees with copies of all corrective actions.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Each Corrective Action must state: 1) date action initiated 2) nature of action, non-action, infraction 3) date, time and place of infraction along with any relevant facts 4) be signed by initiating supervisor 5) accompanied with supporting documentation for the chain of command.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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</tr>
<tr>
<td>Suspension and termination must state 1) date action initiated 2) specific dates of suspension without pay, 3) nature of action, non-action or infraction, 4) date, time and place of infraction along with any relevant facts, 5) shall be signed by supervisor issuing suspension, 6) Accompanied with written statement of facts relative to the infraction and other supporting documentation for the chain of command.</td>
<td></td>
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<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Forward documentation to Chief’s office to be sent to Human Resources.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.8.8 DOCUMENTATION OF CORRECTIVE ACTION

A. Formal corrective action - If the decision is made to issue corrective action, ONLY the Corrective Action form must be completed.

B. Alternative Corrective Action
3.8 Performance Management and Grievance Procedure

1. If the decision is made to allow an alternative to formal corrective action, the Corrective Action form and/or a Special Evaluation/520 form must be completed.

2. Regardless of which form of corrective action is used, the supervisor is required to support the action with supplemental documentation establishing the need for action.

C. Corrective Action Form – refers to the City’s disciplinary action form. This form cover all levels of disciplinary actions.

3.8.9 TERMINATION PROCESS

A. A decision by the Chief of Police to terminate an employee is reviewed by the Human Resources Director in accordance with City of Topeka policy.

B. Employee’s right to challenge or appeal a suspension or termination.

1. Sworn and civilian employees - Refer to applicable labor contract and City of Topeka Personnel Code.

2. Probationary employees are not afforded bargaining unit or civil service protection in challenging a termination.

3.8.10 UPON TERMINATION OR SUSPENSION OF EMPLOYMENT

A. Any employee who is suspended will deliver all Department issued equipment and uniforms to their Bureau Commander, or designee, immediately upon request.

B. Non-probationary, permanent employees may only be terminated for just cause. If employee conduct results in termination, the following information shall be provided to the employee:

1. A statement citing the reason for dismissal;

2. The effective date of the dismissal;

3. A statement that the employee has the right to be heard regarding the dismissal decision; and

4. Who to contact regarding the status of fringe and retirement benefits after dismissal.

C. Employees will not allow a suspended or terminated employee to:

1. Ride in a police vehicle, unless directed by a commanding officer.

2. Enter any secured areas of the LEC without an escort.

3. Exercise any law enforcement authority in their presence.

3.8.11 MAINTENANCE AND RETENTION OF PAPERWORK
A. Corrective Action Paperwork

1. All original finalized Corrective Action forms shall be scanned to Human Resources where the official personnel file is kept.
2. Corrective Action forms shall be purged in accordance with applicable labor contracts, and/or City policy. Purge date should be calculated from the date of the original infraction.
3. Corrective action may be amended through negotiations with the employee and bargaining unit representative, by decision of the Grievance Review Board (GRB), or by decision of an arbitrator. When approved amendment of the corrective action occurs, the original Corrective Action Form should be rewritten defining the amended action. Only the finalized Corrective Action Form should be sent to the Human Resources Department. Copies should be provided to the employee and the appropriate bargaining unit. The original Corrective Action Form should be sent to HR until such time as the amended form replaces it.

B. Corrective Action Paperwork

1. Documentation regarding alternatives to formal corrective action (memos, special evaluation/520 Form, etc.) shall be maintained in a file in the Bureau Commanders office for the duration of the current evaluation period.
2. Alternatives to formal corrective action documentation resulting from a PSU investigation shall permanently become part of the PSU file. Upon expiration of the appropriate sunset date, these files cannot be reviewed for matters pertaining to promotions, management council selections, or progressive discipline per the terms of the appropriate labor agreement.

3.8.12 GRIEVANCE PROCEDURES

Employees can make a formal complaint regarding alleged infractions or inconsistencies in administration of federal, state, local, city, or TPD policy. Employees are ensured the right of review at succeeding levels of Department authority until the grievance is resolved. The right to file a grievance and its administrative review promotes efficiency and results in improved morale. Those positive benefits are defeated if employees are reluctant to file a grievance.

No retaliatory action of a formal or informal nature shall be taken by the Department against an employee, employee witness, or employee representative, merely for having filed a grievance; nor is such filing to be otherwise looked upon with disfavor by the Department.

A. In General
3.8 Performance Management and Grievance Procedure

1. Department employees are governed by current bargaining unit contracts (FOP/AFT) or the City of Topeka Personnel Grievance Procedure. They address the following criteria:

   a. Matters that can be grieved and levels in the Department to which a grievance may be filed;
   b. Time limitations for filing grievances, including to the next level;
   c. Type of information required when submitting a grievance;
   d. Procedural steps and time limitations at each level in responding to grievances; and
   e. Employee representation.

B. Grievance Procedure Coordination

1. Responsibility for coordination of grievance procedure steps shall rest with the Deputy Chief and Human Resources.
2. At the initiation of a grievance and at all successive steps, a copy of the written grievance shall be forwarded to the Deputy Chief.

   a. Grievance procedure records will be maintained by Human Resources.

3. Bureau Commanders and other supervisory personnel (as directed by the Chief of Police) shall have access to grievance records, which may be obtained through Human Resources.

C. Grievance Review Board Procedure

1. TPD shall abide by “The Grievance Review Board” (hereinafter “GRB”). The GRB derives its authority from the collective bargaining agreement between the City of Topeka and the current Fraternal Order of Police Lodge No. 3 (hereinafter “Lodge”), contract (hereinafter “Agreement”), Article 15, Grievance Procedure, Step 3. The GRB is designed to be an informal process to settle grievances and avoid arbitration.