

APPENDIX A – CORRECTIVE ACTION GUIDE

GOALS

The goals and objective of this corrective action guide is to provide for the following:

- Accountability
- Clarity
- Consistency
- Correct Behavior
- Improve Trust with Community
- Improve Trust for Employees and Employer

LEVELS OF ACCOUNTABILITY

Generally, corrective measures include the following actions:

- Command Counseling (not considered disciplinary)
- Letter of Reprimand
- Suspension
- Demotion
- Termination

Levels of corrective action are placed into five general categories: A – E

- A – Letters of Reprimand and Command Counseling, for minor administrative policy and conduct violations (for example: tardiness).
- B, C, D – Misconduct not necessarily resulting in termination and other non-terminable correction action with likely suspension without pay.
 - In most cases, employees continue as officers.
 - Continued employment meets the goals of accountability, clarity, consistency, correcting behavior, improving community trust and improving employee trust.
 - Aggravating or mitigating factors may be considered.
- E – Termination without Mitigation for cases involving:
 - Felonious conduct or Felony Crime Conviction
 - Domestic Violence
 - Untruthfulness
 - Public Corruption for Monetary Gain
 - Out-of-policy use of deadly force or significant violation of the confrontation management performance policy during use of deadly force.
 - Intentional Misuse of Police Authority based on Protected Class Status

Note: These corrective actions do not necessarily address day-to-day directives or instruction, though continued performance deficiencies may lead to progressive corrective action.

STEPS TO DETERMINE ACTION

Step 1: Review the type of conduct to determine category A-E. Apply the higher category for conduct that violates one or more policies and that falls into more than one category. The highest category is E.

Step 2: Identify presumptive "level" of corrective action associated with the category identified at Step 1.

Step 3: Apply mitigating and aggravating factors as relevant to determine if a greater or lesser corrective action than the presumptive level applies. Aggravation and mitigation do not change the category, but change the level of discipline within the same category.

Education Based Alternatives will be offered upon imposition of discipline for Categories B, C and D as identified on the guide.

PRINCIPLES

- Negligent: an officer fails to use reasonable care, which is the degree of care and judgment used by reasonably careful police officers in the management of their own affairs to avoid harming themselves, others, or property. See Uniform Civil Jury Instruction 20.02.
- Reckless: an officer is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable police officer would observe in the situation. See ORS 161.085(9).
- Intentional: an officer acts with a conscious objective to cause the result or to engage in the conduct so described. See ORS 161.085(7).
- Application of any mental state is done using the standard of a reasonable person within their job classification at the time the act or omission occurs.

CATEGORY NARRATIVE

Categories A - E, as presented in the Corrective Action Guide, are further described in this narrative. In the process of determining the correct Category, a review should first rely on the definitions provided in the Corrective Action Guide. This Category Narrative is intended to assist decision makers by giving a general overview of various types of conduct that could fall into a particular Category. Examples are a general overview and are not absolute. Dependent on the

totality of circumstances, alleged conduct could fall under more than one Category.

Category A

A. Conduct in violation of one or more City or Bureau policies that involves:

1. A minor violation of policy;

For example: Minor deviation from: vehicle pursuit policy, confrontation management performance policy; failure to warn (prior to use of force); duty to intervene/report policy, or administrative BWC policy.

2. A quality-of-service issue;

For example: Failure to write a report (excludes FDCR or ORS mandated report); failure to appear in court.

3. Discourtesy;

For example: Rude or dismissive behavior/language; use of profanity not directed at a person.

4. Negligence;

For example: Minor mishandling of property such as inadvertently dropping and damaging a cell phone.

5. Inefficient or negligent use of department resources; or

For example: Negligent Discharge of Less Lethal/Taser

6. Minor property damage.

For example: Vehicle crash (excludes first-time minor Bureau vehicle damage)

Vehicle accidents: First time Bureau vehicle accidents resulting in minor property damage (e.g., backing into a pole) may appropriately be handled through non-disciplinary remediation and EIS.

Category B

B. Conduct in violation of one or more City or Bureau policies that involves:

1. Violation of a policy that is neither minor nor significant;

For example: Vehicle pursuit policy, confrontation management performance policy, duty to intervene/report policy, or administrative BWC policy; policy violation resulting in negligent discharge of a firearm; disclosure of confidential information; use of profanity directed at another but not based on a protected class.

2. Involves foreseeable risk, or actual impact, to safety of public or others.

3. Out of policy use of force intended to establish control of a resistant subject, but not intended or likely to cause persistent pain or physical injury (Category IV use of force policy);

4. Unintentional/minor procedural law violation;

For example: Search and seizure.

5. Third-party property damage;

For example: Vehicle crash involving damage to third-party property that is not significant.

6. Failure to take some required important action; or

For example: Failure to complete FDCR or ORS mandated report; failure to adhere to ORS mandated arrest.

7. Failure to correct behavior after multiple (two or more) Category A violations involving the same or similar conduct.

Category C

C. Conduct in violation of one or more City or Bureau policies that involves:

1. A significant violation of a policy that is not intentional or reckless.

For example: Vehicle pursuit policy; duty to intervene/report policy; or BWC policy.

2. Involves a foreseeable significant risk or significant actual impact to safety of public or employees;

3. Out of policy use of force that is reasonably likely to cause non-enduring: pain, disorientation, physical injury, or the complaint of pain (Category III use of force policy);

4. Major third-party property damage;

5. Intentional or reckless violation of civil rights that is not a significant departure from established police practice;

6. Non-injury or non-property damage off-duty DUII;

7. Discriminatory or harassing conduct based on protected class status; or

For example: BHR 2.02 violations or disparate treatment. A 2.02 violation could be a category C or D as defined.

8. Failure to correct behavior after multiple (two or more) Category B violations involving the same or similar conduct.

Category D

D. Conduct in violation of one or more City or Bureau policies that involves:

1. A significant policy violation that is intentional or reckless:

For example: Intentional or reckless violation of duty to intervene/report policy or BWC policy; intentional or reckless evidence mishandling; intentional or reckless violation of search and seizure policy

2. Out of policy use of force that is reasonably likely to cause enduring: pain, physical injury, disability or impairment of any body part, but does not result in death (Category II use of force policy);

3. Significant violation of confrontation management performance policy;

4. A serious lack of integrity, ethics or character related to an officer's fitness to hold the position of police officer;
5. Unethical behavior for personal gain;
For example: Display of a firearm or badge for personal gain
6. A pattern of sustained rule violations that does not respond to corrective action or training. A pattern is considered at least more than five sustained violations;
7. Untruthfulness that is not relevant to the duties of the job classification;
8. Insubordination;
9. Retaliation;
10. Controlled substance abuse (excludes "first-offense" under PPA/PPCOA Substance Abuse Policy);
11. An intentional or reckless civil rights violation that is a significant departure from established police practice;
12. Discriminatory or harassing conduct based on protected class status that shocks the conscience of a reasonable person;
For example: BHR 2.02 or disparate treatment that shocks the conscience.
13. Off-duty DUII resulting in personal injury or property damage;
14. Reckless misconduct with foreseeable risk of serious injury; or
15. Failure to correct behavior after multiple (two or more) Category C violations involving the same or similar conduct.

Category E

- E. Conduct in violation of one or more City or Bureau policies that involves:**
1. A felony crime conviction or felonious misconduct;
 2. Domestic violence;
 3. Criminal conviction of a crime that is a DPSST certification disqualifying crime;
 4. Untruthfulness
(for example: Truthfulness Directive 310.50)
 5. Public corruption for monetary gain;
 6. Intentional misuse of police authority based on protected class status; or
 7. Out-of-policy use of deadly force-or significant violation of the confrontation management performance policy during use of deadly force. (For example: Category I use of force).

EDUCATION-BASED ALTERNATIVES

The City and its Police Bureau members place a high value on education and continuous performance improvement. Upon imposition of discipline and consistent with the Corrective Action Guide, the City will offer education-based alternatives (EBA) to assist in remediation

related to the policy violations. EBA alternatives will be determined by the final decision maker, who may also receive input from others within the decision-making process. An employee may elect to engage in education-based alternatives as part of corrective action.

Education Based Alternatives are coupled with corrective action (other than termination), and may include:

- Individualized remedial plan related to the policy violation and created with employee that emphasizes education, training, and other creative interventions to promote a positive outcome and avoid employee embitterment;
- Mutual Mediation; and/or
- Re-training.

The City is not precluded from directing employees to engage in education-based courses or other remedial actions, whether or not it is part of an EBA.

Upon successful completion of EBA, an addendum to the corrective action will be attached to the final corrective action letter to identify the specific EBA completed.

In the event a member does not complete EBA in a timely manner, the original corrective action, without the EBA option, will be imposed.

AGGRAVATING AND MITIGATING FACTORS

Aggravating factors are circumstances that increase the severity of the impact of the directive violation.

Mitigating factors are circumstances that do not excuse or justify the conduct but decrease the severity of the impact of the directive violation.

*Aggravating or mitigating factors are applied only ***after*** the sustained finding(s) for the totality of the conduct found and after any due process meeting. These factors are only used to alter a corrective action level. Aggravating and mitigating factors do not alter the category of conduct.


ACKNOWLEDGEMENTS

The parties agree as follows:


- A. Should a disciplinary action be grieved to an arbitration, the arbitrator is bound the terms of the Corrective Action Guide and by ORS 243.706(3) and ORS 243.808 et seq.

- B. The Parties agree that the question of the appropriate “Category” under the Corrective Action Guide for the alleged misconduct is a question of proof, by a preponderance of the evidence, by the City consistent with ORS 243.808(1)(a) inclusive of a showing by the City of just cause under ORS 236.350.
- C. If the Arbitrator determines that City has not proven any policy violation, then the Arbitrator has the authority to rescind the discipline.
- D. If the Arbitrator determines that the City has proven some but not all of its alleged policy violations, and/or that the policy violation(s) is incorrectly Categorized under the Corrective Action Guide, the Arbitrator has the authority to downgrade the Category in the Corrective Action Guide. In such event, the hearing process will be suspended, and the determination of the appropriate sanction will divert back to the City. The City has twenty-one (21) calendar days from the Arbitrator’s ruling to provide a formal notice of proposed sanction to the Arbitrator, Union and member. The parties may mutually agree to the proposed disciplinary action and resolve the grievance. If the new proposed disciplinary action is contested by the Union, the Arbitrator will retain jurisdiction, and the parties will return to the Arbitrator whose ruling will be limited to the issue of the amount of the new proposed disciplinary action, which shall be judged based on the standard as set forth in paragraph E below.
- E. If the Arbitrator determines that the City has proven the alleged policy violations, the Arbitrator shall uphold the disciplinary action, unless the Arbitrator finds that the disciplinary action was arbitrary and capricious as required by ORS 234.808(1)(b). For termination cases, the Arbitrator is further subject to ORS 243.808(1)(c).
- F. The Corrective Action Guide applies to administrative investigations opened on or after the date of ratification of the 2021-2025 collective bargaining agreement. The prior advisory disciplinary guide and associated Discipline Guide LOA will remain in effect for all administrative investigations open before the date of ratification of the 2021-2025 collective bargaining agreement.


Category A

CATEGORY		LEVEL	AGGRAVATION/MITIGATION
STEP 1		STEP 2	STEP 3
Step 1 Process: Review conduct to determine category		Step 2 Process: Based on category, move to presumptive level	Step 3 Process: Apply aggravation and mitigation factors as relevant to determine corrective action
Note: if conduct falls into 2 categories or more, the higher of the categories applies. The highest category is E.		Presumptive Corrective Action Level (presumptive for B, C, or D is yellow, orange, or red). For multiple sustained violations, the presumptive action level initiates with the higher presumptive corrective action level.	 Mitigating/Aggravating Circumstances Move Corrective Action One Level Up or Down *
A	Conduct in violation of one or more City or Bureau Policies that involves: (1) a minor violation of policy; (2) a quality-of-service issue; (3) discourtesy; (4) negligence; (5) inefficient or negligent use of department resources; or (6) minor property damage.	Non-Disciplinary - Command Counseling, remedial training, or voluntary and mutual mediation.	
		Written Reprimand	
<p>* Aggravating and Mitigating factors are only applied after Step 1 (determination of category) and after Step 2 (determination of presumptive level) are concluded. The mitigation and aggravation factors are used only to alter a corrective action level within a specified category. These factors do not alter the category of conduct.</p> <p>Education-Based Corrective Action can include remedial training and/or independent study.</p> <p>** In exceptional circumstances, and at the City's sole discretion, corrective action less than termination may be recommended by the decision maker, either the Police Chief or Oversight Board, to the Commissioner in Charge for approval.</p> <p>SWOP = Suspension without Pay; the number refers to the number of hours. Suspensions must be in the increments listed.</p>			


Category B

CATEGORY		LEVEL		AGGRAVATION/MITIGATION
STEP 1		STEP 2		STEP 3
Step 1 Process: Review conduct to determine category		Step 2 Process: Based on category, move to presumptive level		Step 3 Process: Apply aggravation and mitigation factors as relevant to determine corrective action
<p>Note: if conduct falls into 2 categories or more, the higher of the categories applies. The highest category is E.</p>		<p>Presumptive Corrective Action Level (presumptive for B, C, or D is yellow, orange, or red). For multiple sustained violations, the presumptive action level initiates with the higher presumptive corrective action level.</p>		<p align="center">Mitigating/Aggravating Circumstances Move Corrective Action One Level Up or Down*</p> 
B	<p>Conduct in violation of one or more City or Bureau Policies that involves: (1) violation of a policy that is neither minor nor significant; (2) involves foreseeable risk, or actual impact, to safety of public or others; (3) out-of-policy use of force intended to establish control of a resistant subject, but not intended or likely to cause persistent pain or physical injury (Category IV use of force policy); (4) unintentional/minor procedural law violation; (5) third-party property damage; (6) failure to take some required important action; or (7) failure to correct behavior after multiple (2 or more) category A violations involving the same or similar conduct.</p>	Written Reprimand		
		<p>10 SWOP Presumptive</p>	<p>Education-based alternatives (EBA) may be used in lieu of suspension hours for one-half of the suspension. A 10 hour-suspension may be reduced to a written reprimand via EBA.</p>	
		20 SWOP		
<p>* Aggravating and Mitigating factors are only applied after Step 1 (determination of category) and after Step 2 (determination of presumptive level) are concluded. The mitigation and aggravation factors are used only to alter a corrective action level within a specified category. These factors do not alter the category of conduct.</p> <p>Education-Based Corrective Action can include remedial training and/or independent study.</p> <p>** In exceptional circumstances, and at the City's sole discretion, corrective action less than termination may be recommended by the decision maker, either the Police Chief or Oversight Board, to the Commissioner in Charge for approval.</p> <p>SWOP = Suspension without Pay; the number refers to the number of hours. Suspensions must be in the increments listed.</p>				

Category C

CATEGORY		LEVEL		AGGRAVATION/MITIGATION
STEP 1		STEP 2		STEP 3
Step 1 Process: Review conduct to determine category		Step 2 Process: Based on category, move to presumptive level		Step 3 Process: Apply aggravation and mitigation factors as relevant to determine corrective action
Note: if conduct falls into 2 categories or more, the higher of the categories applies. The highest category is E.		Presumptive Corrective Action Level (presumptive for B, C, or D is yellow, orange, or red). For multiple sustained violations, the presumptive action level initiates with the higher presumptive corrective action level.		
C	Conduct in violation of one or more City or Bureau Policies which involves: (1) a significant violation of a policy that is not intentional or reckless; (2) involves a foreseeable significant risk or significant actual impact to safety of public or employees; (3) out-of-policy use of force that is reasonably likely to cause non-ending; pain, disorientation, physical injury or the complaint of pain (Category III use of force policy); (4) major third-party property damage; (5) intentional or reckless violation of civil rights that is not a significant departure from established police practice; (6) non-injury or non-property damage off duty DUI; (7) discriminatory or harassing conduct based on protected class status; or (8) failure to correct behavior after multiple (2 or more) Category B violations involving the same or similar conduct.	20 SWOP	Education-based alternatives may be used in lieu of suspension hours for one-half of the suspension.	
		40 SWOP Presumptive		
		80 SWOP		
Mitigating/Aggravating Circumstances Move Corrective Action One Level Up or Down *				
* Aggravating and Mitigating factors are only applied after Step 1 (determination of category) and after Step 2 (determination of presumptive level) are concluded. The mitigation and aggravation factors are used only to alter a corrective action level within a specified category. These factors do not alter the category of conduct.				
Education-Based Corrective Action can include remedial training and/or independent study.				
** In exceptional circumstances, and at the City's sole discretion, corrective action less than termination may be recommended by the decision maker, either the Police Chief or Oversight Board, to the Commissioner in Charge for approval.				
SWOP = Suspension without Pay; the number refers to the number of hours. Suspensions must be in the increments listed.				

Category D

CATEGORY	LEVEL	AGGRAVATION/MITIGATION
STEP 1	STEP 2	STEP 3
Step 1 Process: Review conduct to determine category	Step 2 Process: Based on category, move to presumptive level	Step 3 Process: Apply aggravation and mitigation factors as relevant to determine corrective action
Note: if conduct falls into 2 categories or more, the higher of the categories applies. The highest category is E.	Presumptive Corrective Action Level (presumptive for B, C, or D is yellow, orange, or red). For multiple sustained violations, the presumptive action level initiates with the higher presumptive corrective action level.	 Mitigating/Aggravating Circumstances Move Corrective Action One Level Up or Down *
D Conduct in violation of one or more City or Bureau Policies which involves: (1) a significant policy violation that is intentional or reckless; (2) out-of-policy use of force that is reasonably likely to cause enduring: pain, physical injury, disability or impairment of any body part, but does not result in death (Category II use of force policy); (3) significant violation of confrontation management performance policy; (4) a serious lack of integrity, ethics or character related to an officer's fitness to hold the position of police officer; (5) unethical behavior for personal gain; (6) a pattern of sustained rule violations that does not respond to corrective action or training (a pattern is considered to be at least more than five sustained violations; (7) failure to correct behavior after multiple (2 or more) Category C violations involving the same or similar conduct; (8) insubordination; (9) retaliation; (10) controlled substance abuse (excludes "first-offense" under PPA/PPCOA Substance Abuse Policy); (11) An intentional or reckless civil rights violation that is a significant departure from established police practice; (12) discriminatory or harassing conduct based on protected class status that shocks the conscience of a reasonable person; (13) off-duty DUII resulting in personal injury or property damage; (14) reckless misconduct with foreseeable risk of serious injury; (15) untruthfulness that is not relevant to the duties of the job classification.	80 SWOP 120 SWOP Presumptive Termination	
* Aggravating and Mitigating factors are only applied after Step 1 (determination of category) and after Step 2 (determination of presumptive level are concluded. The mitigation and aggravation factors are used only to alter a corrective action level within a specified category. These factors do not alter the category of conduct.		
Education-Based Corrective Action can include remedial training and/or independent study.		
** In exceptional circumstances, and at the City's sole discretion, corrective action less than termination may be recommended by the decision maker, either the Police Chief or Oversight Board, to the Commissioner in Charge for approval.		
SWOP = Suspension without Pay; the number refers to the number of hours. Suspensions must be in the increments listed.		

Category E

CATEGORY		LEVEL	AGGRAVATION/MITIGATION
STEP 1		STEP 2	STEP 3
Step 1 Process: Review conduct to determine category		Step 2 Process: Based on category, move to presumptive level	Step 3 Process: Apply aggravation and mitigation factors as relevant to determine corrective action
Note: if conduct falls into 2 categories or more, the higher of the categories applies. The highest category is E.		Presumptive Corrective Action Level (presumptive for B, C, or D is yellow, orange, or red) For multiple sustained violations, the presumptive action level initiates with the higher presumptive corrective action level.	
E	Conduct in violation of one or more City or Bureau Policies which involves: (1) a felony crime conviction or felonious misconduct; (2) domestic violence; (3) criminal conviction of a crime that is a DPSST certification disqualifying crime; (4) untruthfulness; (5) public corruption for monetary gain; (6) intentional misuse of police authority based on protected class or status; or (7) out-of-policy use of deadly force or significant policy violation of the confrontation management performance policy during use of deadly force.	Termination**	
<p>* Aggravating and Mitigating factors are only applied after Step 1 (determination of category) and after Step 2 (determination of presumptive level) are concluded. The mitigation and aggravation factors are used only to alter a corrective action level within a specified category. These factors do not alter the category of conduct.</p> <p>Education-Based Corrective Action can include remedial training and/or independent study.</p> <p>** In exceptional circumstances, and at the City's sole discretion, corrective action less than termination may be recommended by the decision maker, either the Police Chief or Oversight Board, to the Commissioner in Charge for approval.</p> <p>SWOP = Suspension without Pay; the number refers to the number of hours. Suspensions must be in the increments listed.</p> <p>Note: Multiple violations of policy in the same incident may lead to multiple sanctions.</p>			

Aggravating and Mitigating Factors

<i>Note: The mitigating and aggravating factors are used only to alter a corrective action level within a specified category, and these factors do not alter the category of conduct. An aggravating or mitigating factor will not be considered if already considered in determining the category.</i>	CALCULATION
Aggravating Factors - Add point/s	Points
Intentional conduct	2
Significant impact on community member or City operations/mission	2
Significant property damage or serious physical injury	2
Does not accept responsibility if policy violation is undisputed	1
Delay in reporting	1
Attempt to cover up conduct or behavior	2
Motivated by personal interest	1
Failure to meet documented expectations	1
Supervisory Position	1
Other (specified on a case-by-case basis) (Only to be used by final decision maker)	1
Total:	14
Mitigating Factors - Subtract point/s	Points
Unintentional conduct	1
No impact on community member or City operations/mission	1
No property damage or physical injury	1
Self-reported the violation	1
Attempt to ameliorate or correct the error (but not done to hide the error)	2
Positive attitude; accepts responsibility	2
Motivated by public interest or wellbeing of others	2
Positive work history	1
No repeated or other sustained violations	2
Other (specified on a case-by-case basis) (Only to be used by final decision maker)	1
Total:	14
CALCULATION	14
Each factor that applies receives a corresponding point value. Factors that do not apply receive no point value. Subtract mitigation total (green) from aggravation total (red). If the number is negative, corrective action is mitigated. If the number is positive, the violation is aggravated. If the number is 0, the violation is neither mitigated nor aggravated. Aggravating and mitigating factors apply to the totality of the conduct sustained. Note: An aggravating or mitigating factor will not be considered if already considered in determining the category.	0