

RESOLUTION NO. 2013-02-___ (R)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY,
TEXAS, AUTHORIZING THE ADOPTING CERTAIN MCKINNEY POLICE
DEPARTMENT GENERAL ORDERS; PROVIDING FOR THE AMENDMENT
OF SAID GENERAL ORDERS; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the City Council of the City of McKinney, Texas, believes it is in the best interests of the public to have a Police Department that provides a high level of professional services to the citizens of the City of McKinney and the public; and

WHEREAS, the City of McKinney finds that establishing policies and procedures, as reflected in the attached General Orders, for the McKinney Police Department relative to hiring procedures, personnel complaint investigations, corrective/disciplinary measures and promotional procedures, assists in insuring professionalism in police service and provides clearly understood criteria to be utilized by the McKinney Police Department relative to said issues; and

WHEREAS, by adopting the attached General Orders, the McKinney Police Department is providing detailed policies and procedures in addition to other applicable personnel policies and procedures established by the City for its employees; and

WHEREAS, the purpose of the attached General Orders is, among others, to create confidence in these General Orders and the McKinney Police Department's implementation of these General Orders; and

WHEREAS, the City Council by this Resolution hereby adopts the attached McKinney Police Department General Orders.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MCKINNEY,
TEXAS:**

Section 1. That the foregoing recitals are hereby found to be true and correct legislative and factual findings of the City of McKinney, Texas, and are fully incorporated into the body of this Resolution.

Section 2. The McKinney Police Department General Orders relative to Hiring Procedures, Personnel Complaint Investigations, Corrective Measures and Promotional Procedures, attached hereto as Exhibits A through D, respectively, and incorporated by reference, are hereby approved and adopted and shall be incorporated into the McKinney Police Department's General Orders effective immediately and further, the relevant provisions of the General Orders in existence prior to the adoption of this Resolution are no longer of any force or effect.

Section 3. The McKinney Police Department General Orders relative to Hiring Procedures, Personnel Complaint Investigations, Corrective Measures and Promotional Procedures shall only be amended or otherwise modified hereafter by Resolution of the City Council of the City of McKinney. Nothing in this Resolution impairs or otherwise limits the authority of the Police Chief to adopt, repeal, amend or otherwise modify any other departmental General Order.

Section 4. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
McKINNEY, TEXAS ON THE 5th DAY OF FEBRUARY, 2013.**

CITY OF McKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

Exhibit A

McKinney Police Department General Orders		402.00	
Subject Hiring			
Reference Personnel			
Effective Date May 22, 2008	Reviewed Date November 14, 2012	Revised Date November 14, 2012	
Related General Orders 403.00	Related SOPs	Number of Pages 7	
TPCA Recognition Program Standards 3.17.1, 4.01.1, 4.02.1, 4.03.1, 4.04.1		CALEA Standards	
Related Public Safety Software Information		Comments	
Signature and date that this General Order was approved by the Chief of Police			
Date signed:			

I. PURPOSE

The purpose of this General Order is to provide employees with a basic understanding of the hiring process for sworn personnel and non-sworn personnel by the McKinney Police Department. This is not a rigid structure and is flexible in some areas according to the needs of the department. Any deviation or exception from this order must be approved by the Chief of Police.

II. PHILOSOPHY

These guidelines were created for the department to establish fair, impartial, and consistent hiring process (TPCA: 4.01.1) and to insure that the best-qualified applicants are hired. It is the policy of this department to provide for open, competitive and free examinations and/or interviews.

III. HIRING PROCESS

The Hiring Process is one of the most important aspects in a professional, contemporary law enforcement agency. The Hiring Process consists of multiple phases, each of which has its own standards. Therefore, each phase must be successfully completed before proceeding on to the next phase. The following phases pertain to sworn Police Officer positions only. The hiring process for all non-sworn positions will include an interview and or skills testing, background investigation, and other phases as deemed necessary depending on the position.

- A. Phase One - Applicants must submit either a written or electronic application. Applications will be accepted as determined by position openings and availability of testing locations. The process will be coordinated by the Police Department. Generally, a posting will be made on the City website and through media outlets.
- B. Phase Two - Applications will be reviewed for completeness and eligibility by the City of McKinney Human Resources Department and/or Police Department personnel. The department relies upon the accuracy of information contained in the application as well as the other data presented throughout the hiring process and employment. Any misrepresentations, falsifications or material omissions in any of this information or data may result in the department's exclusion of the individual from further consideration for employment or, if the individual has been hired, termination of employment.

Eligibility Requirements:

1. Must meet all minimum requirements as described in the Texas Commission on Law Enforcement Officer Standards and Education, Rules § 217.1 Minimum Standards for Initial Licensure, as may be amended from time to time.;(TPCA: 4.01.1)
2. Must meet all Minimum Qualifications and Conditions of Employment as described in the official job description for a Police Officer of the City of McKinney; and
3. Must meet all minimum requirements for employment by the City of McKinney as outlined in the City of McKinney, Employee Handbook.
4. At the discretion of the Chief of Police any out of state applicant who is a Certified Law Enforcement Officer and receives a conditional job offer with the McKinney Police Department may be required to attend a Basic Peace Officer Academy and must successfully pass the academy to maintain employment status.

C. Phase Three - A validated written examination will be administered to all eligible applicants simultaneously, as facilities dictate. The examinations are open to each person who makes proper application and meets the minimum requirements. Each applicant, during the same testing process, will take the same examination and will be examined in the presence of other applicants and a proctor. Applicants must present a current government issued identification card to receive admission into the testing facility.

1. A minimum passing score of at least a seventy (70) (in each section of the test) must be obtained to successfully pass the examination.
2. Tests will be graded on site.
3. Applicants will be advised of their test score before leaving the testing facility.
4. Applicants not successfully passing this portion of the hiring process may retake the written examination no earlier than six (6) months after the date of the last failed exam. The applicant must be re-screened to determine if they meet the requirements of Phase I and II prior to the exam.

D. Phase Four - A physical examination will be given to applicants that successfully pass the written examination. The physical examination will be based off of Cooper Fitness Standards and administered by Cooper trained and certified employees. Applicants must receive a total score of 15 points to proceed in the hiring process.

1. 300 Meter Run	1 Point	1:16 and over
	2 Points	1:11 to 1:15.59
	3 Points	1:06 to 1:10.59
	4 Points	1:01 to 1:05.59
	5 Points	1:00.59 or less
2. Maximum Push-ups	1 Point	14 and under
	2 Points	15 to 20
	3 Points	21 to 26
	4 Points	27 to 32
	5 Points	33 and up
3. Vertical Jump	1 Point	13” and under
	2 Points	Up to 14.5”
	3 Points	Up to 16”
	4 Points	Up to 17.5”
	5 Points	19” and over
4. One Minute Sit-ups	1 Point	21 or below
	2 Points	22 to 26
	3 Points	27 to 30

	4 Points	31 to 34
	5 Points	35 or more
5. One and a Half Mile Run	1 Point	16:31 or over
	2 Points	14:31 to 16:30.59
	3 Points	12:31 to 14:30.59
	4 Points	10:01 to 12:30.59
	5 Points	10:00.59 or less

All applicants will be ranked by their written test score only (highest to lowest) regardless if they are Certified Law Enforcement Officers or Non-Certified Applicants.

Phase Five - A Comprehensive Background Investigation will be completed by the Background Investigator. The Background Investigator must have attended a formal class or follow a standard full outline that is required to be followed on every background investigation (TPCA: 3.17.1) to include the requirement of the Texas Occupations Code 1701.451, for any prior agency termination reports

1. An investigator will meet with the applicant to conduct an interview prior to starting the background investigation to ensure that all of the information is verified and correct on the submitted Personal History Statement.
2. The background investigation will entail personal and professional reference checks and verification of required documents. (TPCA: 4.03.1)
3. Significant information discovered during the background investigation that was not included in the Personal History Statement either by omission or falsely reported will be grounds for rejection.
4. Each applicant rejected from the process due to the results of the background investigation will be notified in writing. The background investigator will notify the applicant when, and/or if they will be eligible to re-apply.

E. Phase Six - An Oral Interview Board will be conducted with applicants depending on the availability of positions.

1. Following the Background Investigation applicants will be called in order of their written examination scores.
2. The Oral Board will consist of officers selected by the Professional Standards Division. The Oral Board will be chaired by the Professional Standards Deputy Chief or his/her designee.
3. A minimum passing score of three (3.0), on a scale of 1.0 to 5.0, must be obtained in order to proceed in the hiring process.
4. Each applicant who does not achieve the minimum score of three (3.0) will be notified in writing.
5. Once a passing score is determined on the Oral Board interview, the Background Investigator will conduct an interview and begin the process of the investigation. (TPCA: 4.03.1)

G. Phase Seven – Applicants successfully completing the Oral Board will be scheduled for a Conditional Job Offer Interview with either the Chief of Police or the Assistant Police Chief. A Conditional Job Offer will be presented to the applicant upon successful completion of the interview. An offer of employment will be extended on the condition that the applicant is successful with completing the remaining phases of the hiring process.

- H. Phase Eight - Applicants will be scheduled to complete a polygraph examination with the City's contracted certified polygraph examiner. (TPCA: 4.02.1) To successfully complete this phase applicants must be found to be honest and forthcoming with the examiner and no disqualifying information must be revealed that has not already been disclosed and determined to not affect the applicant's eligibility. In the event additional facts are revealed during this Phase regarding a previously disclosed possibly disqualifying event, the applicant will be removed from consideration. Applicants that do not successfully complete this phase will be notified in writing and can re-apply in one (1) year.
- I. Phase Nine - Applicants successfully completing Polygraph Examination will be scheduled for a Psychological Examination from the City's contracted licensed Police Psychologist.
1. Successful completion of the examination is mandatory to obtain a TCLEOSE Peace Officer License.
 2. The testing psychologist must authorize licensing by signing a TCLEOSE L-3 form.
 3. Applicants unsuccessful on this portion of the Hiring Process may re-apply in one (1) year.
- K. Phase Ten - A Physical Examination and Drug Screen will be conducted by a City contracted licensed physician. The physical examination will consist of measurement instruments as prescribed by current City of McKinney policy.

III. NOTIFICATION

If an applicant is unsuccessful on any portion of the Hiring Process, they will be notified in writing. Unsuccessful applicants will be advised in the notification when they will be eligible to re-apply. Most applicants may typically re-apply within six-months, with the exception of an unsuccessful completion of the polygraph or psychological examination, in which case the applicant may re-apply no earlier than one year from the date of notice from the City that they are no longer eligible at this time for consideration. The Police Department reserves the right to make the determination on a case-by-case basis when and/or if an applicant may re-apply. This determination will depend on the reason(s) why the applicant was disqualified.

IV. DISPOSITION OF SELECTION RECORDS OF APPLICANTS

After the hiring selection process is completed the records of sworn and non-sworn applicants are filed regardless if they were selected for hire or not selected. Those that are selected will be filed in the "Current Employee" filing cabinets and remain until employment has ended. Those files will then be moved to the "Past Employees" file cabinet and maintained for five years. Those that were not selected for employment will be filed in the "Applicants" file cabinet and maintained for two years. (TPCA: 4.04.1)

V. PROBATIONARY POLICE OFFICERS

- I. Recruit Police Officers-non TCLEOSE certified employees.
1. Recruit Police Officers are required to attend the Basic Peace Officer Academy and must successfully pass the academy to maintain employment status.
 2. Recruit Police Officers must also successfully complete the Texas Basic Peace Officer examination as required by the Texas Commission on Law Enforcement Officer Standards and Education Rules to maintain employment status. A recruit Police Officer shall be allowed the maximum number of attempts as allowed by TCLEOSE to pass the TCLEOSE exam prior to termination.

3. Upon successful completion of both the Basic Peace Officer Academy and the Peace Officer Examination, a Recruit Police Officer will be upgraded to a Probationary Police Officer.

J. Probationary Police Officers-TCLEOSE certified officers.

1. All newly hired certified officers must successfully complete the Police Department's in-house academy prior to entering Field Training.
2. All Probationary Police Officers must complete the Field Training Program and their remaining probationary time period prior to being removed from the probationary status.

VI. POLICY RESTRICTION

This directive is for departmental use only and does not apply in any criminal proceeding. The department policy shall not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions.

VII. GENERAL PROVISION

- I. Any previous directive, rule, order, policy or regulation that pertains to this subject matter and its amendments shall remain in full force and effect prior to the effective date of this General Order.
- J. If any section, sentence, clause or phrase of this General Order is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this General Order.
- K. The effective date of this General Order is stated in the header block.
- L. Any reference made in this General Order to any other law, statute, code, ordinance, rule or regulation is intended to incorporate such material as it presently exists and also any future amendments, changes, revisions, repeals or recodifications of such material, unless otherwise expressly provided.

[END]

Exhibit B

McKinney Police Department General Orders		411.00	
Subject Promotional Procedures			
Reference Personnel			
Effective Date January 17, 2006	Reviewed Date November 14, 2012	Revised Date November 14, 2012	
Related General Orders		Related SOPs	Number of Pages 8
TPCA Recognition Program Standards 4.06.1, 4.07.1		CALEA Standards	
Related Public Safety Software Information		Comments	
Signature and date that this General Order was approved by the Chief of Police <p style="text-align: right;">Date signed:</p>			

I. PURPOSE

The purpose of this General Order is to standardize and outline procedures and practices for conducting promotional assessments within the McKinney Police Department.

II. PHILOSOPHY

It is essential that the Department establish standards that will ensure the validity of the promotional process and will identify those employees who appear to have the potential for being leaders within the police organization. This General Order describes the procedures used for each element of the promotional process and requirements for eligibility for promotion for sworn personnel.

III. DEFINITIONS

Promotion: denotes the upward movement of an employee within the organizational hierarchy from one rank classification or position to another or the movement of an individual from one job title to a job title of a higher category.

Assessment Center: a standardized evaluation of behavior based on multiple inputs. Multiple trained observers and techniques are used to judge the behavior of promotional candidates as they progress through specially designed assessment simulations.

IV. PROMOTIONAL PROCESS (TPCA: 4.06.1)

It shall be the responsibility of the Chief of Police, or their designee, to maintain standardized procedures pertaining to promotions, to administer the promotional process and effectively manage its operation and direction in accordance with this order and all other applicable City of McKinney policies.

It shall be the responsibility of each employee to fulfill the prerequisites for a particular position and provide the Police Department with acceptable documentation that the prerequisite was met.

A. The Chief of Police, or their designee, will insure that procedures used for promotion are job-related, non-discriminatory and in accordance with applicable City policies.

- B. The Chief of Police, or their designee, will conduct a periodic review of the promotional process and make revisions as necessary.
- C. The Department may rely on a private external organization to administer or provide one or more elements of the promotional process.

V. **MINIMUMS FOR CONSIDERATION OF PROMOTION** (TPCA: 4.06.1)

Minimums consist of a combination of TCLEOSE certification levels, formal education from an accredited university or college, as defined by state law, and years of experience. Candidates for promotion must be full-time McKinney Police Department employees at the time of assessment. However, if there is not a pool of suitable applicants within the department, applicants may be sought from outside the department. The decision to seek applicants for a position from outside the department will be made by the Chief of Police.

Police Corporal:

- A. Intermediate Peace Officer Certification and;
- B. Two (2) years of full-time experience with the McKinney Police Department.

Police Sergeant:

- A. Advanced Peace Officer Certification;
- B. Thirty-three (33) college hours/credits;
- C. Two (2) years of full-time experience with the McKinney Police Department as Police Corporal and;
- D. Currently hold the rank of Police Corporal at the time of assessment.

Police Lieutenant:

- A. Advanced Peace Officer Certification;
- B. Ninety (90) college hours/credits;
- C. Two (2) years of full-time experience at McKinney Police Department at the rank of Police Sergeant and;
- D. Currently hold the rank of Police Sergeant at the time of assessment.

Deputy Chief:

- A. Master Peace Officer Certification;
- B. Bachelor's Degree;
- C. Two (2) years of full-time experience with the McKinney Police Department at the rank of Police Lieutenant and;
- D. Currently hold the rank of Police Lieutenant.

Employees must meet the minimum qualifications for promotion prior to participating in any

assessment. Anyone not meeting minimum qualifications will not be eligible to assess. All promotional lists will expire one (1) year from the date of final promotional posting. The expiration date will be clearly stated on the promotional posting.

VI. DISQUALIFIERS (TPCA: 4.06.1)

- A. Candidates for promotion who have had disciplinary suspensions in excess of one (1) work day, non-voluntary demotions or have been placed on a performance improvement plan during the one year period prior to the date of the promotional process will not be interviewed or considered eligible for a promotional assessment.
- B. The one-year period of disqualification commences on the actual date of the violation which resulted in the suspension or non-voluntary demotion.
- C. A candidate may be assessed and interviewed during an ongoing internal investigation involving that candidate. Should the allegations be sustained, the candidate is subject to failing promotional probation and/or demotion.

VII. ASSESSMENT PROCEDURES (TPCA: 4.06.1)

- A. The promotional assessment process will be developed in accordance with legal, professional, and administrative requirements as directed by the Department.
- B. The promotional assessment process may consist of numerous assessment tools or measurement instruments to evaluate the skills, knowledge, and abilities of candidates.

These assessment tools or measurement instruments may consist of, but are not limited to:

- 1. A validated written examination;
 - 2. An in-basket exercise;
 - 3. A problem-solving exercise;
 - 4. A leaderless group discussion;
 - 5. A presentation;
 - 6. A media relations exercise;
 - 7. An oral interview board; and/or
 - 8. And an interview with the Chief of Police and/or his designee(s).
- C. The number of measurement instruments and the degree of difficulty will be in accordance with the rank of the position.
 - D. The Chief of Police has final authority over which measurement instruments are utilized on each promotional assessment.

VIII. PROMOTIONAL ASSESSMENT PROCESS (TPCA: 4.06.1)

A. Police Corporal

- 1. Phases of the promotional assessment process for Police Corporal are:
 - a. A validated written examination (weighted value: 50%)

- b. An oral interview board (weighted value: 30%)
 - c. Top three (3) candidates will be interviewed by the Chief of Police or their designee(s). (weighted value: 20%)
- 2. Candidates must successfully complete each step of the promotional assessment process before proceeding to the next step.
- 3. A promotional assessment process for Police Corporal will be conducted annually. Should there be no current position(s) available at the time the promotional process is initiated; a promotional eligibility list will be established. The list will be in effect for one year from the time of the final posting of the effective promotional list.

B. Police Sergeant

- 1. Phases of the promotional process for Police Sergeant are:
 - a. A validated written examination (weighted value: 50%)
 - b. A variety of Assessment Tools or Measurement Instruments. To be defended during an Oral Interview Board. (weighted 30%)
 - c. The top three candidates will be interviewed by the Chief of Police or his designee(s). (weighted value 20%)
- 2. Candidates must successfully complete each step of the promotional process before proceeding to the next step.
- 3. A promotional process for Police Sergeant will be conducted annually. Should there be no current position(s) available at the time the promotional process is initiated; a promotional eligibility list will be established. The promotional eligibility list will be in effect for one year from the time of the final posting of the effective promotional list.

C. Police Lieutenant and Deputy Chief

The promotional process for Police Lieutenant and Deputy Chief will include portions of the Assessment Tools and Measurement Instruments as deemed necessary by the Chief of Police. Assessments for these positions will be conducted on an as needed basis.

IX. COMPOSITION OF ASSESSMENT BOARD (TPCA: 4.06.1)

- A. Each assessment will include an oral interview by an assessment board. Assessment boards may consist of members of:
 - 1. The McKinney Police Department;
 - 2. Other law enforcement agencies;
 - 3. Other City of McKinney departments;
- B. The assessment board will consist of not less than four members.
- C. Each assessor from within the McKinney Police Department or outside law enforcement agency will be of greater rank than the position being assessed for.

X. ASSESSMENT MATERIAL AND SCORING (TPCA: 4.06.1)

- A. Candidates will be provided, prior to the promotional assessment, material relating to:

1. The dates, times and locations of the promotional process,
 2. The number of and type of assessment tools or measurement instruments that will be used,
 3. Criteria in which the candidates will be graded,
 4. The weight or value that each assessment tools carries, and
 5. Guidelines for how the final assessment scores will be determined.
- B. Each candidate will be responsible for obtaining his/her resource materials, study aids, or equipment needed to prepare for or the assessment process.
- C. It is allowable for promotional candidates to seek guidance or advice from other members of the Department on the potential assessment material.
- D. The assessment board will grade candidates on a 100-point scale using the designated assessment scoring materials. The assessment board and other assessment measuring instrument scores will be computed as outlined in the assessment guidelines provided prior to the promotional assessment process. An overall minimum score of 70 must be obtained in order to be placed on the eligibility list.
- E. Candidates will then be ranked in descending order by their final scores in the promotional assessment process and presented to the Chief of Police and/or their designee(s) for the final interview.

XI. FINAL SELECTION FOR PROMOTION

- A. Documentation containing the eligibility list from the assessment board will be presented to the Chief of Police.
- B. As part of the selection process, the Chief of Police and/or their designee(s) will interview the eligible candidates in order to determine the most qualified candidate(s). This interview will have a weighted factor and may change the ranking of the eligibility list.
- C. Candidates on the eligibility list will usually be selected for appointment in order. However, the Chief of Police may bypass a candidate on the eligibility list if the Chief has a valid reason for not appointing the highest scoring candidate.
- D. This General Order does not limit the Chief of Police, who has final authority on all promotions, from considering other factors such as cumulative discipline, safety violations, supervisory recommendations, or any other factors in determining whether to delay or deny a promotion.
- E. The final decision to promote or not to promote a candidate will be made by the Chief of Police.

XII. LIST OF ELIGIBILITY (TPCA: 4.07.1)

- A. After each assessment the promotional eligibility list will be posted. The list will contain a roster of eligible promotional candidates in order and the date of expiration of the list.
- B. All promotional eligibility lists shall remain in existence for one year, unless exhausted. At the end of one year, the list will expire.

- C. If an eligibility list does not exist at the time of a vacancy occurs or a classification is created, a promotional assessment must be held to create a list.

XIII. APPEAL PROCESS

A candidate may submit an appeal concerning a question or questions on any portion of the assessment process. The appeal must:

- A. Be submitted in writing at the conclusion of the specific assessment tool.
- B. Contain the specific question that is being appealed and contain the complete basis for the appeal.

Only appeals that meet the above requirements will be considered. No other appeals are permitted or will be considered.

XIV. APPEAL RESOLUTIONS

The Chief of Police or the Director of Human Resources or his or her designee will consider each appeal and render a decision within two business days. Potential outcomes of the appeal could be:

- A. The question(s) will be removed from the assessment instrument and the grading adjusted to remove the value of that question.
- B. Two or more responses can be considered as correct responses.
- C. The question(s) will be determined as valid and the appeal will be denied.

XV. GENERAL PROVISION

- A. Any previous directive, rule, order, policy, or regulation that pertains to this subject matter and its amendments shall remain in full force and effect prior to the effective date of this General Order.
- B. If any section, sentence, clause or phrase of this General Order is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this General Order.
- C. The effective date of this General Order is stated in the header block.
- D. Any reference made in this General Order to any other law, statute, code, ordinance, rule or regulation is intended to incorporate such material as it presently exists and also any future amendments, changes, revisions, repeals, or recodifications of such material, unless otherwise expressly provided.

[END]

Exhibit C

McKinney Police Department General Orders		501.00	
Subject Personnel Complaints Investigations			
Reference Professional Standards			
Effective Date January 17, 2006	Reviewed Date November 14, 2012	Revised Date November 14, 2012	
Related General Orders 502.00	Related SOPs	Number of Pages 24	
TPCA Recognition Program Standards 2.04.01, 2.05.1, 2.06.1, 2.07.1, 2.08.1, 2.09.1, 2.10.1,		CALEA Standards	
Related Public Safety Software Information		Comments	
Signature and date that this General Order was approved by the Chief of Police			
Date signed:			

I. PURPOSE

This order establishes the criteria, expectations, guidelines, responsibilities, and fundamental procedures for accepting, processing, and investigating complaints lodged against employees of the McKinney Police Department (MPD). This order defines provisions applicable only to investigations and dispositions regarding Administrative Inquiries and Administrative Investigations.

II. POLICY STATEMENT

- A. It is the policy of the MPD to accept and investigate all allegations of employee misconduct, violations of City policies, and/or violations of the department's written directives received from any source outside or inside the department. The department will initiate this review to promote a fair, prompt, and impartial resolution of all complaints made against employees. A fair and prompt review of complaints serves both the professional interest of the MPD – establishing and maintaining public trust, and the general interest of the community in deterring police misconduct. Further, it is the policy of the MPD to pursue criminal charges against individuals who file false complaints against employees of the MPD.

- B. Nothing written or implied in this order is intended to restrict the normal duties and obligations of supervisors. Supervisory inquiries may be completed by the immediate supervisor, or designee, for employees involved in incidents requiring Response to Resistance Reports, Pursuit Reports, Fleet Crash Reports, Damaged/Lost City Property Reports, and other inquiries as ordered by the Chief of Police or his/her designee. Supervisors must ask fact finding questions to properly evaluate, monitor, train, and professionally develop employees under their supervision. Such fact finding questions do not constitute an investigation. In the event that an supervisory inquiry or other supervisory observation concludes potential policy violations, the employee will be given notice of the complaint and an internal affairs investigation will be initiated (unless the supervisory inquiry determined "No additional action(s) recommended" or other corrective measures are determined to be the appropriate course of action).

III. DEFINITIONS

- A. Administrative Inquiry: An informal review of an incident or occurrence prepared for the Chief of Police or his/her designee. The review should indicate whether policy,

training, equipment, or disciplinary issues should be addressed. The review could also involve more than one incident.

- B. Complaint: An allegation of misconduct, malfeasance, nonfeasance, or a violation of law or Department directives made against any member of the Department, or against the Department.

This does not include a complainant's disagreement with the application of law which is properly decided in a court of law.

- C. Investigate: For the purpose of this order, investigate means to conduct either an Administrative Inquiry or Internal Affairs (IA) Investigation.
- D. Internal Affairs Investigation: A formal, detailed investigation of alleged misconduct, violation of law or Agency directives.
- E. Office of Internal Affairs (OIA): The designated unit responsible for coordinating IA Investigations.
- F. First Line Employee: Employees (sworn and non-sworn) of the MPD who are not classified as supervisors.
- G. Supervisor: For the purpose of this general order, a supervisor is an officer with the rank of Corporal or higher, or a civilian (non-sworn) employee designated as a supervisor.
- H. Malfeasance: Any wrongful conduct that affects, interrupts, or interferes with the performance of official duties; performance of an act that a person ought not do.
- I. Misfeasance: The improper performance of some act which a person may lawfully do.
- J. Nonfeasance: Nonperformance of some act which a person is obligated or has responsibility to perform; the omission of an act which a person ought to do.
- K. Compelled Interview: An involuntary interview, whereby the employee is compelled to respond to job related questions, or face disciplinary sanctions, including dismissal.
- L. Garrity: A decision by the U.S. Supreme Court regarding a police officer's constitutional right to self-incrimination under the 14th Amendment, which concluded "that police officers are not relegated to a watered down version of constitutional rights", also known as the Garrity Warning. (Garrity v. New Jersey, 385 U.S. 483 and Gardner v. Broderick, 392 U.S. 273)
- M. Legal Counsel: A lawyer hired to advise and represent an individual regarding legal matters.
- N. Special Examination: For the purpose of this order, Special Examination means an administrative investigative tool to include, but not limited to:
1. Intoxilyzer or other instrument used to determine the presence of an intoxicant by the means of a breath specimen;
 2. Providing DNA;
 3. Submitting a specimen of blood or urine;
 4. Polygraph Examination;
 5. Alcohol and drug testing;
 6. Photograph lineup for identification; and

7. Fitness for duty examinations to include (behavioral) examinations

- O. Substantial Evidence: Substantial evidence is defined as such evidence that a reasonable person might accept as adequate to support a conclusion of fact. It is that quality of evidence necessary for a court to affirm an administrative decision.

IV. COMPLAINTS – CATEGORIES & CLASSIFICATIONS

A. The Department has two categories of complaints – formal and informal.

1. Formal complaints are those that require an investigation, either an Administrative Inquiry and/or an IA Investigation.

(a) Formal complaints are classified as follows:

(1) **Class I Complaints**: Allegations regarding violations of federal, state, or local laws, use of force, or incidents of potential public concern / outcry. Class I incidents include, but are not limited to:

- (i) Serious misconduct or criminal misconduct.
- (ii) Discharge of a firearm, other than pre-approved discharges related to firearms training.
- (iii) Complaints in the form of a notice of claim to the City, if no specific allegation is asserted, the notice of claim may be classified as a Class III.
- (iv) Complaints regarding excessive force to include, but not limited to, the use of:
 - 1. Control techniques;
 - 2. Impact weapons;
 - 3. Chemical agents;
 - 4. ECDs; and
 - 5. Firearms.
- (v) An allegation of sexual harassment, racial profiling (biased policing), or other civil rights violations.
- (vi) In-custody deaths
- (vii) Death or serious bodily injury of any person as a result of any police action.

(2) **Class II Complaints**: Allegations regarding violations of departmental orders (written/verbal), often referred to as “conduct and behavior” complaints. Class II complaints include, but are not limited to:

- (i) Allegations of rudeness / discourtesy.
- (ii) Allegations of inadequate / incomplete case investigation.
- (iii) Allegations of improper tactics / procedures.

(3) Class III: Allegations of employee misconduct that are made by individuals who wish to remain anonymous and /or do not wish to complete and submit a signed Complaint Affidavit.

- (i) The Chief of Police or his/her designee may authorize an Administrative Inquiry for the purpose of determining facts to either disprove or support the allegations. The Administrative Inquiry is conducted as matter of due diligence.
- (ii) Depending on the conclusion of an Administrative Inquiry, Class III complaints may lead to an IA Investigation.

2. Informal complaints are complaints that do not require an investigation.

- (a) In these matters, the complainant is satisfied with the decision reached by the first line supervisor who accepted the complaint.
- (b) Informal complaints are documented in the approved public safety software.
- (c) Documenting informal complaints serve as permanent record that the complainant was satisfied with the resolution and that no further action is required.

V. COMPLAINT AFFIDAVIT

- A. The official Complaint Affidavit for the MPD shall be reviewed annually and updated as needed to ensure that it meets the requirements of all related state and/or federal laws, codes, and related regulations.
- B. The Complaint Affidavit shall be published in both English and Spanish.
- C. The Complaint Affidavit shall include clear instructions for properly completing and submitting the affidavit to an appropriate representative of the MPD.
- D. The Complaint Affidavit shall articulate criminal penalties for filing false reports to the MPD.
- E. The Complaint Affidavit will provide a section for the complainant's signature and a section for the affidavit to be notarized.
- F. Complaint Affidavits shall be made available to the public and the employees of the MPD through:
 - 1. Police personnel;
 - 2. Designated public facilities; and
 - 3. Authorized Websites (Internet and Intranet – as City technologies allow).

VI. ACCEPTING / FILING COMPLAINTS

- A. Complaints may be received by any member of this department in person, over the telephone, in writing, and may be lodged anonymously or by any other means.
- B. Anonymous complaints or complaints from citizens who wish their names to be held in confidence may be accepted for investigation.
- C. Employees shall provide assistance to those who express the desire to lodge complaints against any employee(s) of this department. This includes but is not limited to:

1. Calling a supervisor to the scene to document the complaint;
 2. Explaining the agency's complaint procedures;
 3. Providing referrals to individuals and/or locations where such complaints can be made in person; or
 4. Explaining alternative means for lodging complaints, such as by phone or mail.
- D. Employees should utilize their chain of command to report complaints and/or violations.
- E. Employees may report complaints and/or violations directly to the Office of Internal Affairs if the violation involves a person within their immediate chain of command.
- F. Unless otherwise ordered by the Chief of Police, or his/her designee, any employee who gains knowledge of an alleged violation will immediately report the violation to their supervisor.
- G. A signed Complaint Affidavit must accompany formal complaints lodged against sworn members of the MPD. A notarized affidavit is preferred, but not required.
- H. An MPD Letter of Notification may serve as a Complaint Affidavit
- I. Personnel complaints will not be accepted more than thirty (30) days after the alleged incident, except for the following:
1. When the complaint involves a criminal violation, the criminal statute of limitations will prevail. However, such limitations will not prevent the Chief of Police from initiating an investigation and taking disciplinary action necessary to preserve the integrity of the department.
 2. When the complainant can show good cause for not making a complaint within the specified thirty (30) days. This determination will be made by the Chief of Police.
 3. When otherwise authorized by the Chief of Police.
- J. Supervisors who receive questions and/or concerns from citizens regarding a dispute over guilt or innocence in the issuance of a traffic citation or subsequent to an arrest are to refer the complainant to the proper prosecuting entity.

VII. DOCUMENTING COMPLAINTS

- A. All complaints will be documented.
1. In this section, “documented” means: the supervisor shall record, at minimum, the following information in either the approved public safety software or on the approved departmental form:
 - (a) Date and time the complaint was made;
 - (b) Method the complaint was received;
 - (c) Type of complaint;
 - (d) Nature of the complaint;
 - (e) Complainant information to include:
 - (1) Name;

- (2) Race;
- (3) Sex;
- (4) DOB;
- (5) Age;
- (6) Address; and
- (7) Contact information to include:

- (i) Phone numbers; and
- (ii) Email address if available.

- (f) Name of employee(s) alleged to have been involved with the complaint;
- (g) Names and contact information for any alleged witnesses; and
- (h) Any action taken by the supervisor in an effort to resolve the complaint.

- B. The receiving supervisor may attempt to resolve a complaint with a citizen by providing an explanation of departmental directives where applicable. Attempts to resolve complaints should be noted when documenting the complaint.

VIII. SUBMITTING COMPLAINTS TO THE OFFICE OF INTERNAL AFFAIRS (OIA)

- A. Informal complaints do not need to be submitted to the Office of Internal Affairs. These complaint records are stored within the appropriate module of the department's approved public safety software.
- B. Formal complaints will be submitted to the Office of Internal Affairs via the department's approved public safety software or on the approved form.

IX. THE OFFICE OF INTERNAL AFFAIRS (OIA)

A. Authority and Responsibility

1. The Office of Internal Affairs has the primary supervisory responsibility for the coordination and review of all Administrative Inquiries and IA Investigations.
2. The Chief of Police delegates authority to the Office of Internal Affairs for facilitating and conducting Administrative Inquiries and IA Investigations.
3. The Office of Internal Affairs will promptly report all formal complaints made against employees and volunteers of the MPD to the Chief of Police. (TPCA: 2.07.1)
4. Upon receipt of a complaint, the Office of Internal Affairs will conduct an initial determination on whether to assume the primary investigative responsibility for the complaint or refer the complaint to a first-line supervisor. A supervisor's investigation may be halted at any time and full investigative authority transferred to the Office of Internal Affairs, if more serious allegations of misconduct are discovered and/or at the direction of the Chief of Police.
5. The Office of Internal Affairs will contact the complainant, by phone or writing, and advise him/her that:
 - (a) The matter is under investigation; and

- (b) The complainant will receive written notice of the final disposition of the investigation; and
 - (c) Provide the complainant with the opportunity to ask questions about the department's administrative investigative processes regarding complaints submitted by the public. (TPCA: 2.10.1)
6. At the direction of the Chief of Police, a first-line supervisor may investigate allegations against MPD employees that meet the criteria for Class II complaints. (TPCA: 2.06.1)
 7. All complaints other than those delegated to a first line supervisor, will be investigated by the Office of Internal Affairs. (TPCA: 2.06.1)
 8. The Office of Internal Affairs shall:
 - (a) Maintain a database of all complaints generated internally and externally; (TPCA: 2.09.1)
 - (b) Maintain a central file for complaints in a secured area, kept in conformity with State law; (TPCA: 2.09.1)
 - (c) Conduct a regular audit of complaints to ascertain the need for changes in departmental directives or the need for departmental training;
 - (d) Maintain statistical and related information to identify trends involving all complaints of excessive force and abuse of authority;
 - (e) Review and analyze the data as provided by the Department's approved "Early Warning System"; and
 - (f) Provide the Chief of Police with an annual summary of complaints against employees and final dispositions. These summaries may be made available to the public or otherwise used at the discretion of the Chief of Police. (TPCA: 2.07.1)
 9. The Office of Internal Affairs may recommend to the Chief of Police that a case be referred to the local District Attorney's office for prosecution. All allegations of criminal misconduct shall be referred to the CID.

X. ADMINISTRATIVE WARNING

- A. The Administrative Warning may be issued to all employees under the following circumstances to include, but not limited to:
 1. Prior to any interviews associated with an Administrative Inquiry;
 2. Prior to the commencement of an IA Investigation;
 3. Prior to complying with an order submit a blood, breath, or urine specimen;
 4. Prior to complying with an order to submit to a special examination; and
 5. Any other circumstances deemed appropriate by the Office of Internal Affairs.
- B. The Administrative Warning shall be in a written format.
- C. The Garrity Warning will be a part of the Administrative Warning.
- D. The Administrative Warning will serve as official notice to the employee that his/her statements (written and verbal) are compelled.

- E. The Administrative Warning will serve as notice that the employee will be allowed to review MPD documents and related media respective to the incident(s) under investigation and as approved by the Chief of Police or his/her designee.
- F. Employees will be provided with a copy of the signed Administrative Warning.

Note: Criminal investigations take precedence over administrative investigations. Employees who are the subject of a criminal investigation shall be issued the proper Miranda Warning in accordance with all applicable laws and case law.

XI. ADMINISTRATIVE INQUIRY

- A. Administrative Inquiries will be conducted at the direction of the Chief of Police.
- B. At a minimum, an Administrative Inquiry will be documented in the format approved by the Chief of Police or his/her designee.
 - 1. The approved format will include:
 - (a) A description of the alleged violation(s), misconduct, or the specific reason(s) why the inquiry was conducted, to include the means in which the department gained knowledge of the allegation(s).
 - (b) A summary of the inquiry
 - (c) Applicable and appropriate attachments to include, but not limited to:
 - (1) Pictures;
 - (2) Videos;
 - (3) Digital media;
 - (4) Supporting documents; and
 - (5) Complaint Affidavits.
 - (d) Recommendations
 - (1) “Corrective measures as recommended to the Chief of Police”; or
 - (2) “No additional action(s) recommended”, or
 - (3) “Recommend an IA investigation be conducted”.
 - (e) The Administrative Inquiry will be packaged and filed in a manner so that attachments and documents are easily identifiable and secure.
 - (f) The Administrative Inquiry will bear the name and signature of the investigator assigned the investigation.
 - (g) An Administrative Inquiry is complete after it is reviewed and signed by the Chief of Police.
 - (h) Administrative Inquiries that are closed with the recommendation “No additional action(s) recommended” are filed separately from IA investigations. Each Administrative Inquiry is filed under the tracking number only.

- (i) Administrative Inquiries that are closed with the recommendation “Recommend an IA investigation be conducted” shall be forwarded to the Office of Internal Affairs for inclusion in the respective IA Investigation file.

XII. INTERNAL AFFAIRS (IA) INVESTIGATIONS

A. All IA Investigations are conducted under the direction of the Chief of Police.

B. Concurrent Investigations

1. The Chief of Police may allow an IA Investigation or disciplinary action to proceed prior to the final disposition of the criminal investigation.
2. The Office of Internal Affairs shall immediately report any alleged criminal misconduct to the **Office of the Chief of Police**. The **Office of the Chief of Police** shall ensure that the discovery of alleged misconduct is properly documented in the IA Investigation file.
3. The evidence of the alleged criminal misconduct may be presented for review to a third party agency, in order to determine if elements of a criminal offense exist.
 - (a) The third party agencies referenced in this section include, but are not limited to:
 - (1) The Texas Department of Public Safety (D.P.S.);
 - (2) The Federal Bureau of Investigations (F.B.I.); and
 - (3) The Collin County District Attorney.
 - (b) To promote concise and timely communication between the MPD and the designated third party agency, a supervisor from the CID shall be designated as the Department’s liaison.
 - (c) The report of the cursory review and the recommendations provided by the third party agency will be a permanent part of the IA Investigations file and/or Administrative Inquiry file.
4. Criminal Investigations take precedence over IA Investigations. Employees who are the subject of a criminal investigation shall be issued the proper Miranda Warning in accordance with all applicable laws and case law.
5. To the greatest extent possible, IA Investigations will be coordinated with criminal investigations when applicable.
6. The investigator assigned to the IA Investigation shall shadow the criminal investigation.
7. The IA investigator or supervisor will not contact the prosecutor, unless authorized to do so by the Chief or his/her designee.
8. Information/Evidence
 - (a) The following criteria shall dictate the sharing of information/evidence between the administrative and criminal investigations:
 - (1) All evidence obtained during the criminal investigation may be shared with the administrative investigator, to the extent allowed by law. The CID shall consult with the prosecutor concerning the appropriate time to release this information to the administrative investigator.

- (2) All evidence obtained during the administrative investigation, except for Garrity related materials, may be shared with the criminal investigator and/or prosecutor, to the extent allowed by law, after consultation with and review by the City Attorney.

9. Garrity Related Information and Documents

- (a) Garrity related information and documents are those obtained as a result of an administrative order requiring that an employee give evidence or provide statements as a condition of continued employment. This information and documentation includes, but is not limited to:

- (1) Statements provided by the accused employee (written and/or verbal);
- (2) The results of a Department ordered special examination; and
- (3) The results of a Department ordered blood, breath, or urine specimen.

- (b) Except as provided herein, Garrity related information and documents obtained during the administrative investigation will not be provided to a criminal investigator and/or prosecutor unless:

- (1) The employee who is the subject of the IA Investigation authorizes its release;
or
- (2) The evidence relates to a false statement, given under oath by the employee, which may constitute perjury or aggravated perjury; or
- (3) In response to a lawful subpoena; and
- (4) The City Attorney reviews all potential Garrity related information and documents for the purpose of approving its release.

C. IA Investigations assigned to First Line Supervisors (TPCA: 2.04.1)

1. Upon being assigned an Administrative Inquiry or IA Investigation by the Office of Internal Affairs, the assigned supervisor will begin an immediate investigation of the allegation(s).
2. The supervisor's investigation should include interviewing the employee any witnesses, and complainants. All relevant evidence should be secured, within the scope of the complaint received.
3. Supervisors will document the investigation in the format approved and provided by the Office of Internal Affairs.
4. Upon completion of the first-line supervisor's investigation, the investigation will be forwarded to the Office of Internal Affairs for review.
 - (a) The forwarded information will include all documents and evidence related to the investigation.
 - (b) After review, the Office of Internal Affairs will forward the investigation packet to the appropriate member of the respective employee's chain of command for review and recommendations.

D. Conducting IA Interviews

1. Prior to any interview or special examination, the employee under investigation will receive an official Letter of Notification. This notification will include a copy of the original Complaint Affidavit or a summary listing the relevant facts.
 - (a) The Letter of Notification will be issued by the Office of Internal Affairs or a designee of the Office of Internal Affairs.
 - (b) The notification will articulate the allegation(s) made against the respective employee to include any specific violations of City policy or Departmental Orders.
 - (c) The original notification document will be a permanent part of the IA investigation file.
 - (d) The notification will bear the signature of the Chief of Police or his/her designee.
2. All interviews will be conducted while the officer is on duty, unless the seriousness of the allegation(s) is such that an immediate interview is required.
3. Unless there are extenuating circumstances, all interviews will be conducted at the Police Department.
4. All interviews will be recorded. Any interruptions will be noted, and any relevant discussions transpiring during breaks will be summarized on the recording and verified for accuracy by the employee.
 - (a) Unless otherwise pre-approved, all interviews will be conducted in the interview room(s) designated for the Office of Internal Affairs.
 - (b) The interviews will be recorded on both audio and video.
 - (c) A secondary audio recorder may be used.
5. During interviews conducted by the Office of Internal Affairs or a supervisor, there may be two investigators present; however, only one investigator will be designated as the interviewer. Only the interviewer will ask questions of the employee.

E. Counsel During Administrative Interview(s)

1. The employee will not be permitted to have legal counsel present during an interview concerning administrative violations. The Fifth Amendment right to counsel does not apply to administrative matters. (*Garrity v. New Jersey*, 385 U.S. 483 and *Gardner v. Broderick*, 392 U.S. 273)
2. Employees are permitted to have one personal representative present during an interview associated with an IA investigation.

Note: For the purpose of this order, a personal representative is defined as an employee of the MPD.
3. If at any time the Office of Internal Affairs and/or the investigator believes that the employee's representative is involved in the incident under investigation and/or the representative's actions become more than that of an observer, the representative shall be dismissed from the interview.

F. Written Statements

1. Written statements shall be:
 - (a) Submitted on the departments approved form, unless otherwise authorized by the Chief of Police or his/her designee;

- (b) Submitted in person and to the investigator assigned to the respective investigation;
 - (c) Submitted in a printed format; and
 - (d) Signed by the employee submitting the statement.
2. The written statement form will include instructions for properly completing and submitting written statements.
 3. Garrity protected statements, submitted by employees of the MPD, will be provided to the Office of Internal Affairs only.

G. Format for Documentation and IA investigation Files

1. The investigation header will articulate the following information:
 - (a) Assigned IA#;
 - (b) Involved employee(s) information to include but not limited to:
 - (1) Name;
 - (2) Employee ID#;
 - (3) City Department;
 - (4) Division; and
 - (5) Assignment;
 - (c) Complaint source;
 - (1) Internal; and
 - (2) External; and
 - (d) Specify whether or not a formal Complaint Affidavit was submitted.
2. The investigation document will consist of the following sections:
 - (a) Synopsis;
 - (b) Investigation;
 - (c) Evidence;
 - (d) Classification; and
 - (e) Investigators comments.
3. The Investigation File will:
 - (a) Be packaged in a manner that documentation and evidence are secure; and
 - (b) Consist of the following sections:
 - (1) Administrative Investigation;
 - (2) Recommended Action / Chain of Command;

- (3) Statements – must be accompanied with a coversheet;
- (4) Evidence – must be accompanied with a coversheet;
- (5) Administrative Warning / Garrity Warning / Letter of Notification – must be accompanied with a coversheet; and
- (6) Commendations / Discipline – must be accompanied with a coversheet.

H. Timeframe for Completing Investigations

1. Investigations of complaints filed against departmental personnel shall be completed within 90 days from the date the complaint is received. (TPCA: 2.05.1)
 - (a) An investigation is considered complete when the Chief of Police or his/her designee has signed off on the investigative file.
 - (b) The Chief of Police or his/her designee may authorize an extension of the required completion date. Extensions will be granted for a duration of up to 30-days. (TPCA: 2.05.1)
 - (1) The request for an extension must be made in writing and signed by the investigating officer.
 - (2) The written request must articulate the reasons for which the extension is needed.
 - (3) The written request is considered an official document and it is filed as a part of the investigation packet.
 - (4) Additional extensions can be requested and approved as needed.
 - (5) A copy of the approved request shall be forward to the involved employees and their respective chain of command

I. Status Reports

1. At least bi-monthly (twice a month), the investigator shall provide to the employee(s) under investigation a status report.
2. The status report may be conducted in person, via email, a written memorandum, or by phone.
3. Status reports will be documented in the investigation.

J. Investigation Classifications

1. Upon conclusion of an internal investigation, a finding of each of the allegations will be categorized as one of the following:
 - (a) *Exonerated*: Incident occurred but was lawful or proper.
 - (b) *Inconclusive*: Insufficient evidence to either prove or disprove allegations.
 - (c) *Unfounded*: Allegation is false or not factual.
 - (d) *Sustained*: Evidence sufficient to prove allegations.
2. Findings of investigations will be based upon “substantial evidence”. (TPCA: 2.04.1)

K. Duties of an employee during an Internal Affairs Investigation and/or Administrative Inquiry

1. Prior to an internal interview concerning allegations of administrative violations, the employee under investigation will be read their Administrative Warning, directed to sign the original, and provided with a copy.
2. The employee is required to answer all questions specifically, narrowly, and directly related to the performance of his or her official duties. (*Garrity v. New Jersey*, 385 U.S. 483 and *Gardner v. Broderick*, 392 U.S. 273)
3. Refusal to comply with an order to answer questions is a violation of the MPD's Code of Conduct – specifically Section IX, Subsection "D", which may subject the employee to further discipline, up to and including termination. (*Garrity v. New Jersey*, 385 U.S. 483 and *Gardner v. Broderick*, 392 U.S. 273)

Note: Any required self-incriminatory admission made during the administrative interview may be used only in subsequent administrative proceedings, and cannot be used against the employee in subsequent criminal proceedings. (*Garrity v. New Jersey*, 385 U.S. 483 and *Gardner v. Broderick*, 392 U.S. 273)

4. An employee under investigation or their supervisor may, at any time, contact the Office of Internal Affairs to ascertain the status of the investigation of a complaint filed against them.
5. An employee under investigation will be given an opportunity to respond to the allegations prior to the imposition of any disciplinary action.
6. Prior to an interview (conducted by the CID) concerning alleged criminal misconduct, the officer under investigation shall be read his/her *Miranda* rights. The provisions of *Miranda* will be adhered to throughout the criminal investigation interview.

XIII. PERSONNEL ASSIGNMENTS

The Chief of Police is responsible for all personnel assignments and reserves the right to modify such assignments in the best interest of the MPD. The Chief of Police may at any point during an investigation, modify an employee's assignment and/or reassign the employee if the Chief of Police feels it is warranted for the integrity of the MPD or for any other reason(s) the Chief deems appropriate. Modifications to an employees' assignment or reassignment will be categorized as one of the following:

- A. Administrative Leave;
- B. Special Assignment; or
- C. Restricted Duty.

XIV. CONFIDENTIALITY (TPCA: 2.09.1)

No Employees will discuss or disclose the details of any open IA case except as directed by the Chief or his/her designee and in accordance with the City's Public Information Act policy.

XV. SPECIAL EXAMINATIONS

- A. An employee under investigation may request that he/she be allowed to submit to a special examination.

Note: if approved, the employee will be financially responsible for all monetary responsibilities associated with the special examination.

B. The Chief of Police may order that an employee submit to a special examination.

Note: The MPD will be financially responsible for the monetary responsibilities of special examinations when an employee is ordered by the Chief of Police to submit to a special examination. The financial responsibilities of the MPD are restricted to only the monetary responsibilities associated with the fitness for duty concerns specified by the Chief of Police.

C. All special examinations must be pre-approved by the Chief of Police or his/her designee.

D. Polygraph Examination

1. In some cases, a complainant may be requested to undergo a polygraph test to substantiate his/her allegations made against an employee in an affidavit. When the test reveals no deception on the part of the complainant, the accused employee may be ordered to submit to a polygraph test.
2. An officer may be ordered to submit to a polygraph examination as part of an IA Investigation when:
 - (a) The complainant submits to and passes a polygraph examination first; or
 - (b) The Chief of Police orders a polygraph because the subject matter of the complaint is confined to the internal operations of the police department, the complainant is an employee of the department, or the circumstances are considered to be extraordinary and the Chief of Police believes that the integrity of the police department is jeopardized.
3. Should the accused employee refuse to take the test, after being ordered by the Chief of Police or other competent authority, the accused employee may be subject to disciplinary action up to and including termination for refusal to obey a lawful order, insubordination.

E. Alcohol and Drug Testing

1. The Chief of Police or his/her designee may, based on personal observation, require a Department employee to submit to a test for alcohol or drug use while on duty. The results may be used in the disciplinary process. Refusal to submit to the examination will be considered insubordination and will be grounds for disciplinary actions up to, and including, termination.
2. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall immediately be relieved from duty. The Chief of Police shall be notified immediately when any employee is dismissed from his/her duty as result of a detectable amount an intoxicant.

F. Photograph and Lineup Identification Procedures:

1. Officers may be required to stand in a lineup for viewing by citizens, for the purpose of identifying an employee who is alleged to be the subject of a complaint. Refusal to submit to the examination will be considered insubordination and will be grounds for disciplinary action, up to and including termination.
2. A photograph identification book or electronic photographs of Department employees may be maintained, for the purpose of identification, by citizens, of an employee accused of misconduct and shall be used when narrowly related to the employee's job.
3. Photographs or video footage of employees, with or without an employee's consent, may be taken for the purpose of internal investigations as related to the employee's job when the employee is the alleged subject of a complaint.

G. Fitness for Duty – (Behavioral) Examinations

1. A fitness for duty (behavioral examination) may be ordered when an employee exhibits unusual or abnormal behavior.
2. The Chief of Police may order that an employee submit to a fitness for duty (behavioral) examination whenever he/she believes it is in the best interest of the employee and/or the Department.
3. An employee's supervisor may recommend to the Chief of Police a fitness for duty (behavioral) examination based upon the nature of the complaint and/or the accused employee's disciplinary record.
4. An employee, who is the subject of a fitness for duty (behavioral) examination, will be referred to the designated Departmental psychologist.
5. Fitness for duty (behavioral) examination(s) will be conducted by a psychologist licensed to practice in the State of Texas. The psychologist may be provided with the following information:
 - (a) Biographical and Departmental history of the employee;
 - (b) Any profile resulting from the applicant-level psychological testing; and
 - (c) A summary of the behavior, which was the basis for the fitness for duty (behavioral) examination.
6. Any information obtained by the Psychologist, which does not relate to the specific incident or problem under investigation, will be considered privileged communication and shall not be entered into any Departmental file or history on the employee.
7. The final diagnostic evaluation will be presented to the Chief of Police, by the Office of Internal Affairs, for consideration in determining what action is to be taken.
8. The official report and/or documentation provided to the Department as a result of a fitness for duty examination (behavioral) is to be considered confidential and the information will be released to only those employees who have a legitimate "need to know," as determined by the Chief.
 - (a) The IA file will be amended to show that a copy of the official report was added.
 - (b) A copy of the report will be forwarded to the Human Resources Department (HR) for inclusion into the employee's medical file.
 - (c) The employee who took the examination shall be provided with a copy of the official report.

XVI. CHAIN OF COMMAND REVIEW

A. First-Line Supervisor's Investigation

1. Upon completion of a first-line supervisor's investigation, the investigation along with any supporting documentation will be forwarded to the Office of Internal Affairs for review.
2. The Office of Internal Affairs will review the first-line supervisor's investigation for accuracy and thoroughness. The Office of Internal Affairs may conduct further

investigation if deemed warranted. Once the Office of Internal Affairs has approved the investigation, the investigation will be returned to the appropriate level of supervisor for review and disciplinary recommendations, if applicable.

First line supervisors will not make recommendations on concurrence or discipline on investigations that they conduct.

3. The IA investigation will be reviewed by each supervisory level of the employee's chain of command. Each supervisor will provide an indication of concurrence or disagreement with the disposition of the investigation and recommendation for discipline, if applicable.
 - (a) The investigation will proceed through the respective employee's chain of command for review and recommendations up to the Assistant Chief.
 - (b) The applicable Assistant Chief will return the investigation file to the Office of Internal Affairs.
 - (c) The Office of Internal Affairs will schedule a meeting with the Chief of Police for the purpose of reviewing the IA Investigation packet. The Office of Internal Affairs will facilitate the final steps of the IA Investigation as directed by the Chief of Police.

B. Investigation Conducted by the Office of Internal Affairs

1. Upon completion of an IA Investigation, the Office of Internal Affairs will submit the IA Investigation packet to the respective employee's first line supervisor for recommendations, concurrence or disagreement with the disposition of the investigation and recommendation for discipline, if applicable.
2. The investigation will be reviewed by each supervisory level of the respective employee's chain of command. Each supervisor will provide an indication of concurrence, or disagreement with the disposition of the investigation and recommendation for discipline, if applicable.
 - (a) The investigation will proceed through the respective employee's chain of command for review and recommendations up to the Assistant Chief.
 - (b) The applicable Assistant Chief will return the investigation file to the Office of Internal Affairs.
 - (c) The Office of Internal Affairs will schedule a meeting with the Chief of Police for the purpose of reviewing the IA Investigation packet. The Office of Internal Affairs will facilitate the final steps of the IA Investigation as directed by the Chief of Police.
3. Upon final approval, the Office of Internal Affairs will notify the employee and the employee's supervisor of the final classification of the investigation.
4. If warranted, the Office of Internal Affairs will prepare any disciplinary documents and/or schedule a disciplinary hearing.

XVII. DISCIPLINE/CORRECTIVE MEASURES

All discipline and corrective measures will be consistent with protocol and guidelines established in General Order 502.00 *Corrective Measures*.

XVIII. DISCIPLINE HEARING

- A. When suspension, demotion, or termination of an employee is recommended, the Chief of Police will have two disciplinary hearings with the employee.
- B. Expectations of the employee who is the subject of a disciplinary hearing may have the following expectations:
 - 1. The employee may have one non-participating representative for the hearing;
 - 2. The employee may present evidence and witnesses on his/her behalf; and
 - 3. The proceeding will be recorded or transcribed.
- C. The initial hearing is for the purpose of presenting the summary and findings of the allegation(s) against the employee. The employee will be read the summary and findings recommended by the employee's chain of command. The employee will be presented with a copy of all documentation used to make the recommendation.
- D. The Chief of Police will schedule a second hearing with the employee within seventy-two (72) hours of the initial hearing to allow the employee to present any evidence or witnesses on his or her behalf. Employees may waive the opportunity to wait up to 72 hours for a second hearing and request that second hearing be conducted as soon as possible.
- E. The Chief of Police will make the final decision as to the imposition of any disciplinary measures after a full review at the hearing.
- F. If suspension, demotion, or termination is decided, the Chief of Police will provide the employee with the following:
 - 1. The reason for the disciplinary action;
 - 2. The effective date of disciplinary action;
 - 3. If terminated, the status of fringe and retirement benefits;
 - 4. A statement detailing the contents of the employee's employment record as it pertains to the disciplinary action; and
 - 5. The appropriate procedures to appeal the disciplinary action (suspension, demotion, and termination only).
- G. Only the Chief of Police has the authority to terminate employees of the MPD.

XIX. APPEALS

An employee who receives disciplinary action in excess of a Written Reprimand may appeal the disciplinary action in writing and within the specified period and in accordance with City policy. (TPCA: 2.08.1)

XX. RETENTION/DESTRUCTION OF FILES PROTOCOL

The MPD will adhere to the City's policies regarding the retention and destruction of all MPD records and applicable documents.

XXI. POLICY RESTRICTION

This directive is for Departmental use only and does not apply in any criminal proceeding. The Department policy shall not be construed to create a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for Departmental administrative discipline.

XXII. GENERAL PROVISION

- A. Any previous directive, rule, order, policy, or regulation that pertains to this subject matter and its amendments shall remain in full force and effect prior to the effective date of this General Order.
- B. If any section, sentence, clause or phrase of this General Order is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this General Order.
- C. The effective date of this General Order is stated in the header block.
- D. Any reference made in this General Order to any other law, statute, code, ordinance, rule or regulation is intended to incorporate such material as it presently exists and also any future amendments, changes, revisions, repeals, or recodifications of such material, unless otherwise expressly provided.

[END]

Exhibit D

McKinney Police Department General Orders		502.00	
Subject Corrective Measures			
Reference Professional Standards			
Effective Date January 17, 2006	Reviewed Date November 21, 2012	Revised Date November 21, 2012	
Related General Orders 501.00	Related SOPs	Number of Pages 8	
TPCA Recognition Program Standards		CALEA Standards	
Related Public Safety Software Information		Comments	
Signature and date that this General Order was approved by the Chief of Police			
Date signed:			

I. PURPOSE

This General Order provides a guide for supervisors in their determination of violations and in their selection of disciplinary actions or recommended actions, which are effective but of no greater severity than necessary, to deter repeated incidents and which will maintain integrity and community respect for the police department.

Corrective measures or disciplinary actions are sometimes necessary to deter actions or omissions which are inconsistent with the goals, policies, and rules of the McKinney Police Department and the City of McKinney. Hereafter such actions or omissions are referred to as violations.

II. PHILOSOPHY

Whenever possible, the McKinney Police Department attempts to resolve performance and behavior problems by using an informal process between the supervisor and the employee. However, there are circumstances when work performance and behavior problems must be resolved through a formal disciplinary process.

The image of the McKinney Police Department depends on the personal integrity and discipline of all employees. To a large degree, the public image of the department is determined by the professional response of the department to allegations of misconduct against it or its employees. Therefore, the department must competently and professionally investigate all allegations of violations.

III. DETERMINATION OF VIOLATIONS

Violations include any action or inaction which unnecessarily inhibits the accomplishment of (or progress toward the accomplishment of) a department goal or which violates a rule. The determination of a violation is usually made by an employee's immediate supervisor. Prior to making such determination the supervisor will be careful to consider all reasonably attainable information and to avoid letting personal feelings (positive or negative) about the employee interfere with his/her judgment.

IV. SUSPECTED CRIMINAL ACTS

When an employee suspects another employee has committed a criminal act, any employee having knowledge of the suspected criminal act shall notify the Office of Internal Affairs or the Office of the Chief of Police. The legal rights of an employee suspected of any criminal act should be insured in the same manner as any other citizen's.

Failure to immediately report a criminal act is cause for disciplinary action.

V. PROGRESSIVE DISCIPLINARY ACTIONS

The McKinney Police Department uses a progressive approach to discipline, wherein disciplinary actions for repeated violations increase in severity. Supervisory personnel will take appropriate disciplinary action using the suggested guidelines in the Disciplinary Matrix presented in this General Order as a reference.

In some cases however, due to the nature of the conduct in question, it may be appropriate to invoke a higher or lower disciplinary recommendation than the minimum or maximum level recommended. When these circumstances exist, it is the responsibility of the supervisor making the recommendation to justify the higher or lower level of discipline.

Progressive Disciplinary Actions include:

- A. Coaching, Counseling, or Training: The purpose of coaching, counseling or training is to allow the supervisor to bring the employee's attention to the need to improve his/her work performance, work habits, or behavior and to serve as a warning against further unsatisfactory conduct. The supervisor should use these actions to identify and define in writing the performance area needing improvement and inform the employee as to how improvement can be realistically achieved.
- B. Verbal Reprimand: A verbal reprimand is best suited for minor rule infractions or incidents of substandard performance. A verbal reprimand should identify the violations and indicates areas needing improvement. A written record of this warning shall become a permanent part of the employee's personnel file.
- C. Written Reprimand: The purpose of the written reprimand is to communicate to the employee the need to improve his/her work performance, work habits, or behavior when coaching, counseling, or training has not resulted in expected improvement or when disciplinary action more serious than coaching, counseling, or training is warranted. A written record of this warning shall become a permanent part of the employee's personnel file.
- D. Suspension- Without Pay: The purpose of a suspension, without pay, is to communicate to the employee that his/her work performance, work habits or behavior is not acceptable and does not conform to departmental standards. This form of punitive discipline is more serious in nature and will be used when a previous written reprimand has not resulted in expected improvement or when disciplinary action more serious than a written reprimand is warranted. A suspension without pay cannot exceed thirty (30) days and no employee can be suspended for more than thirty (30) days in a calendar year.
- E. Demotion: A demotion is the movement of an employee from a higher rank or position to a lower rank or position. The purpose of a demotion is to remove employees from a higher position of authority or responsibility when their work performance, work habits, or behavior are not in compliance with departmental standards. This form of punitive discipline is serious in nature and will be used when a suspension- without pay, has not resulted in expected improvement or when disciplinary action more serious than a suspension- without pay, is warranted. Demotions will also result in the reduction of salary of at least five percent (5%).
- F. Termination of Employment: Termination is the most serious form of punitive discipline. The purpose of a termination is to remove an employee from the department when his/her work performance, work habits or behavior cannot be corrected through other means of discipline or when disciplinary action more serious than any other form of discipline is warranted.

VI. REVIEW OF RECOMMENDED ACTIONS

- A. Once a supervisor has determined that an employee is responsible for a violation or at the conclusion of an Internal Investigation in which the allegations of a violation are Sustained, each supervisor in the employee's Chain of Command will make a disciplinary recommendation.
- B. Any of the supervisors in the employee's Chain of Command can concur with the disciplinary recommendation or recommend any other disciplinary action. Supervisors use their best judgment to determine the level of disciplinary action based on the Disciplinary Matrix or recommend alternative disciplinary action(s) based on the nature of the conduct.
- C. The Chief of Police has final authority on all recommendations for disciplinary actions. The Chief of Police can decide to uphold, modify or deny such recommendations and the Chief of Police will communicate the decision to the employee's Chain of Command.

VII. EMERGENCY ACTIONS

- A. A supervisor may relieve an employee from duty whenever the supervisor believes the employee's continued presence is dangerous to himself or others, or that the person's presence constitutes interference with the effective operations of the department. Examples include insubordination of a serious nature or when an employee reports to work intoxicated.
- B. The Chief of Police or his/her designee shall be notified immediately. Such relief from duty will be reviewed by the Chief of Police at the earliest opportunity.
- C. Occasionally, a violation occurs when the employee's immediate supervisor is not available. If another supervisor is present and feels that the behavior in question requires immediate corrective action, that supervisor takes the corrective action believed necessary that would be consistent with the action the supervisor would take with an employee under his/her supervision.
- D. The supervisor shall notify the disciplined employee's immediate supervisor as soon as practical. The action may then be altered by the employee's immediate supervisor.
- E. The supervisor making the decision to initiate disciplinary action in such cases does so only if the supervisor believes it is immediately necessary to maintain effective operations or to uphold the professional reputation of the department.

VIII. DISCIPLINARY MATRIX

- A. In order to insure that discipline is predictable, fair, and consistent among all ranks, the McKinney Police Department has established a recommended disciplinary matrix to assist supervisors in determining the appropriate level of discipline in the instances enumerated below.
 - 1. The application of the disciplinary matrix is designed to take into account any instance of previous discipline of a similar nature.
 - 2. Previously unrelated violations that resulted in disciplinary action will be considered and could result in the appropriate upward adjustment in the amount of discipline.
 - 3. Additionally, the facts and consequences of any violation will be taken into account when making adjustments, either higher or lower, in the amount of discipline.

B. Matrix

C = Counseling/Coaching/Training
V= Documented Verbal Reprimand
W = Written Reprimand
S = Suspension Without Pay
D = Demotion
T = Termination of Employment

Violation	First Offense	Second Offense	Third Offense
Failure to appear in court	V	W	S
On-duty preventable accident (non-injury/minor damage)	C	W	S
On-duty preventable accident (injury/death/major damage)	Dependent upon the severity of the damage/injuries and other factors within the employee's control.		
Loss/damage to City property	C	W	S
Failure to report loss/damage to City property	W	S	T
Tardy	C	W	S
AWOL	S	T	-
Verbal Abuse/Discourtesy	V	W	S
Failure to complete reports	C	V	W
Loss/misplacement of evidence	W	S	T
Outside employment without authorization	W	S	T
Inappropriate email or MDC messages (minor)	V	W	S
Inappropriate email or MDC messages (offensive)	W	S	T
Failure to notify a supervisor as required	V	W	S

<u>Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>
Insubordination (failure to follow an order)	S	T	-
Sexual harassment/discrimination	Dependent upon the facts/investigative results		
Dereliction of duty	W	S	T
Willful misrepresentation	T	-	-
Improper tactics (safety)	C	V	W
Improper tactics (resulting in injury to others)	S	T	-
Excessive use of force/mistreatment	T	-	-
Failure to meet off-duty employment Commitments	C	V	W
Public intoxication (off-duty)	S	T	-
Off-duty altercation	Dependent upon the facts/investigative results		
Improper/unauthorized use of City vehicle/equipment	W	S	T
Criminal violations (Misdemeanor B and above)	Dependent upon the facts/investigative results		

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[END]