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9 UNITED STATES DISTRICT COURT
 10 DISTRICT OF ARIZONA

11 Dusten Mullen, individually and the
 Arizona Conference of Police and Sheriffs
 12 (“AZCOPS”), an Arizona nonprofit
 13 corporation,

14 Plaintiffs,

15 v.

16 Matthew Giordano, in his individual
 17 capacity, as Chief of Police of the Phoenix
 Police Department; Ed Zuercher, in his
 18 individual capacity, as City Manager of
 Phoenix; Dennis Orender, in his individual
 19 capacity, as Executive Assistant Chief of
 Police of the Phoenix Police Department; the
 20 City of Phoenix, a municipal corporation,
 21 and Anna Hernandez, in her individual
 22 capacity, as Phoenix City Council member,
 District 7,
 23

24 Defendants.

Case No: 2:26-cv-02911-SMB

**DEFENDANTS’ MOTION TO
 DISMISS PLAINTIFFS’ AMENDED
 COMPLAINT**

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1 Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants City of Phoenix
2 (the “City”), Matthew Giordano (“Giordano”), Ed Zuercher (“Zuercher”), Dennis Orender
3 (“Orender”) and Anna Hernandez (“Hernandez”) (collectively, “Defendants”) move to
4 dismiss Plaintiffs’ Amended Complaint for failure to state a claim.¹

5 On January 30, 2026, Plaintiff Dusten Mullen (“Mullen”), an off-duty Sergeant,
6 attended an anti-ICE student protest near a high school in Chandler, AZ, wearing a face
7 mask and carrying a gun and extra magazines. [Doc. 50 ¶ 15; Doc. 2 at pg. 2] The City
8 initiated an internal investigation into whether Mullen’s conduct violated Phoenix Police
9 Department (“PPD”) policy. [Doc. 50 ¶ 22] The City ultimately terminated Mullen’s
10 employment for three primary reasons: (1) he admittedly planned to provoke adolescents
11 into assaulting him so they would be arrested; (2) he admittedly lied to Chandler police by
12 misrepresenting that approximately 30 armed individuals would be arriving at the protest;
13 and (3) he omitted material facts when he informed his supervisor of his interaction with
14 Chandler police. [See generally Ex. A to Doc. 20; Ex. H to Doc. 50]²

15 In this lawsuit, Plaintiffs challenge the PPD’s investigation of Mullen’s conduct
16 and the resulting disciplinary action. The Amended Complaint is deficient for multiple
17 reasons: First, the Section 1983 claims against the City fail because Plaintiffs have not
18 plausibly alleged facts sufficient to satisfy the *Monell* standard for municipal liability.³
19 Second, Plaintiffs cannot state a procedural due process claim based on the manner in
20 which the PPD’s investigation was allegedly conducted. Courts have repeatedly held that
21 there is no right to due process in an internal investigation; rather, due process attaches at
22 the deprivation phase. Furthermore, it is undisputed that Plaintiff received notice of the
23 allegations against him and an opportunity to respond before the termination decision was
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25 ¹ Undersigned counsel has conferred with Plaintiffs’ counsel as required by L.R.Civ. 12(c).

26 ² The decision to terminate Mullen was not predetermined. [Doc. 50 ¶ 59] As discussed at
27 the May 18, 2026 oral argument, the May 14 ENS message included a reference to April
28 10, 2026 due to an administrative error. [Declaration of Cmdr. Fortune, attached as Ex. 1]

³ Count VII should be dismissed as there is no separate cause of action under *Monell*.
Instead, it is a way to impute liability to a municipality for a violation of federal law.

1 made. Third, the individual Defendants are entitled to qualified immunity because
2 Plaintiffs have not alleged a violation of any clearly established constitutional right.
3 Fourth, Plaintiffs have failed to plead facts demonstrating that Defendants Orender,
4 Hernandez, and Zuercher were integral participants in any alleged constitutional violation.
5 Fifth, Plaintiffs cannot assert a void-for-vagueness challenge to Operations Order (“Ops
6 Order”) 2.1.01.5 because the policy is procedural in nature. The policy establishes the
7 PPD’s framework for categorizing alleged policy violations, identifying the potential
8 range of discipline, and setting forth the investigative procedures applicable to those
9 classifications. The policy does not independently define prohibited conduct. Thus, it is
10 not subject to a vagueness challenge. Even if the Court were to conclude otherwise (which
11 it should not), Plaintiffs have failed to plausibly allege that any relevant Ops Orders are
12 unconstitutionally vague. Sixth, Plaintiffs’ claim under Section 2-49 of the City Code fails
13 because the Phoenix City Council (the “Council”) has not authorized a private civil action
14 under that provision. Seventh, the Arizona Peace Officer’s Bill of Rights (“POBOR”) does
15 not afford a private right of action under the circumstances presented here. Eighth,
16 Plaintiffs’ claim under the free speech claim under the Arizona Constitution similarly fails
17 because courts have not recognized a standalone private right of action for damages, and
18 the claim is insufficiently pled under the *Twombly/Iqbal* pleading standard.

19 Defendants respectfully request that the Court grant their Motion to Dismiss
20 Plaintiffs’ Amended Complaint (the “Motion”) and dismiss this action in its entirety.

21 **I. PLAINTIFFS HAVE NOT STATED A PLAUSIBLE CLAIM FOR RELIEF.**

22 Rule 8 mandates that every complaint include enough facts to “give the defendant
23 fair notice of what the... claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
24 *Twombly*, 550 U.S. 544, 554 (2007). A complaint must include “more than labels and
25 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
26 *Id.* at 555 (internal quotations omitted). Plaintiffs must plead sufficient facts to establish a
27 plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). As set forth below,
28 Plaintiffs’ Amended Complaint fails to meet the plausibility standard in its entirety.

1 **II. PLAINTIFFS FAIL TO PLAUSIBLY ESTABLISH *MONELL* LIABILITY.**

2 Plaintiffs' § 1983 claims against the City are subject to dismissal for failure to
3 plausibly meet the standard for municipal liability. It is well settled that municipalities
4 cannot be held liable under § 1983 on the theory of *respondeat superior*. *Monell v. Dep't*
5 *of Soc. Servs.*, 436 U.S. 658, 691 (1978). Thus, to hold the City liable for a § 1983
6 violation, Plaintiffs must show that (1) the alleged unconstitutional act was committed
7 pursuant to formal governmental policy or longstanding practice or custom, (2) the
8 violation was a result of the City's deliberate indifference to the need for training, or (3)
9 the violation was committed or ratified by a City official with final policymaking
10 authority. *Id.* at 694. To state a viable § 1983 claim, a complaint "may not simply recite
11 the elements of a cause of action, but must contain sufficient allegations of underlying
12 facts to give fair notice and to enable the opposing party to defend itself effectively." *AE*
13 *ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012).

14 To prevail on a policy, practice, or custom theory, Plaintiffs must plead sufficient
15 facts to show "(1) that [Mullen] possessed a constitutional right of which he was deprived;
16 (2) that the [City] had a policy; (3) that this policy amounts to deliberate indifference to
17 [his] constitutional right; and (4) that the policy is the moving force behind the
18 constitutional violation." *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011).
19 Here, Plaintiffs allege that the City maintained a series of unconstitutional policies,
20 practices, or customs, including "maintaining policies or customs that tolerated retaliation
21 against individuals engaged in protected speech or expression," "failing to adequately
22 train officers and employees regarding First Amendment rights," allowing political
23 pressure from elected officials to influence disciplinary outcomes, and so on. [Doc. 50 ¶¶
24 78, 104] These allegations are unsupported by any facts that would plausibly establish the
25 existence of the purported unconstitutional policies, practices, or customs. The Amended
26 Complaint contains no allegations regarding how many times these purported City
27 policies were applied in an unconstitutional manner, how they caused the alleged
28 constitutional violations, or to whom they were allegedly applied. *Gagne v. City of Mesa*,

1 No. CV-24-01337-PHX-SHD, 2025 WL 2257508, at *7 (D. Ariz. 2025) (*Monell* claim
2 failed where “[t]here [were] no details offered about these supposed policies, nor how they
3 caused the alleged constitutional violations”). Nor do Plaintiffs allege facts showing
4 deliberate indifference or a failure to act in the face of a pattern of violations.

5 Plaintiffs’ allegations fail to establish that the City maintained a policy, practice, or
6 custom of allegedly violating employees’ constitutional rights. Instead, the Amended
7 Complaint focuses exclusively on the circumstances surrounding Mullen’s employment
8 and termination. By Plaintiffs’ own account, the challenged actions were an isolated
9 occurrence. *See Gordon v. Cnty. of Orange*, 6 F.4th 961, 974 (9th Cir. 2021) (“Liability for
10 improper custom may not be predicated on isolated or sporadic incidents; it must be
11 founded upon practices of sufficient duration, frequency and consistency that the conduct
12 has become a traditional method of carrying out policy.”). Indeed, Plaintiffs allege that the
13 City’s classification of Mullen’s conduct as a Class III violation was “**highly unusual**,”
14 that the “final PSB report was rewritten by another lieutenant” which was “an
15 **unprecedented** move,” and that the investigation **deviated significantly from normal** PSB
16 practices[.]” [Doc. 50 ¶¶ 23, 37–38 (emphasis added)] There is no plausible evidence of a
17 widespread policy, practice, or custom of violating employees’ constitutional rights.

18 In *Ledvina v. Town of Marana*, this Court rejected a *Monell* claim that was based on
19 the same type of conclusory allegations relied upon by Plaintiffs:

20 The Complaint baldly alleges that: (1) Defendant maintained policies and/or
21 long standing practices or customs that resulted in the violation of Plaintiff’s
22 rights; (2) those policies, practices, and customs were inadequate; and (3) those
23 policies, practices, and customs demonstrated deliberate indifference. (Doc. 1
at 5.) All three of these allegations are legal conclusions, and none of them are
supported by any factual matter that could “allow the court to draw the
reasonable inference that the defendant is liable for the misconduct alleged[.]”

24 No. CV-14-01989-TUC-CKJ, 2015 WL 464384 (D. Ariz. 2015). In the absence of factual
25 allegations identifying the existence of an unlawful policy, practice, or custom, Plaintiffs’
26 § 1983 claim against the City falls short. To the extent Plaintiffs plead a failure-to-train
27 theory, that theory likewise fails because the Amended Complaint contains no plausible
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1 allegations demonstrating that the City acted with “deliberate indifference” to any need for
2 training, or that any purported deficiency in training caused the alleged harm. Plaintiffs’
3 boilerplate assertion that Defendants failed to train employees on protected speech falls
4 short of the pleading standard required to state a claim.

5 Lastly, Plaintiffs have failed to plausibly allege that the challenged actions were
6 committed or ratified by someone with final policymaking authority. Plaintiffs allege, in
7 conclusory fashion, that Giordano is a “final policymaker for the City of Phoenix with
8 respect to policies at the PPD, including internal investigations, disciplinary
9 classifications, and termination decisions.” [Doc. 50 ¶ 7] However, the District of Arizona
10 has previously rejected this premise as a matter of law.

11 To qualify as a final policymaker, it is not enough for an individual to have the
12 authority to make employment decisions, such as disciplining an employee for
13 misconduct. Instead, a final policymaker must have the authority to develop policies,
14 rules, or regulations with respect to the challenged action (here, alleged First Amendment
15 retaliation & denial of due process). As the Ninth Circuit has explained:

16 Municipal liability does not attach. . . unless the decisionmaker possesses final
17 authority to ***establish policy with respect to the action ordered***. The fact that
18 a particular official - even a policy-making official - has discretion in the
exercise of particular functions does not, without more, give rise to municipal
liability based on an exercise of that discretion.

19 *Gillette v. City of Eugene*, 979 F.2d 1342, 1349 (9th Cir. 1992) (quotations omitted)
20 (emphasis added); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 484 (1986) (“[I]f county
21 employment policy was set by the Board[,], only that body’s decisions would provide a
22 basis for county liability. This would be true even if the Board left the Sheriff discretion to
23 hire and fire employees[.]”). Whether an individual possesses policymaking authority is a
24 question of law. *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 737 (1989).

25 Neither Giordano nor Zuercher is the final policymaker regarding alleged First
26 Amendment violations arising from political affiliation within the City. Instead, under the
27 Phoenix City Charter (the “Charter”), final policymaking authority rests with the City
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1 Council. The Charter, adopted and amended by Council, provides that:

2 The City has determined the necessity of establishing a merit system of personnel
3 administration based on merit principles and professional methods governing the
4 appointment, tenure, promotion, transfer, layoff, separation, discipline, and other
5 incidents of employment relating to City employees. These merit principles
6 include: ... Assuring impartial treatment of applicants and employees in all
7 aspects of personnel administration *without regard to political affiliation*, race,
8 color, national origin, sex, religious creed or handicap, and with proper regard for
9 their privacy and constitutional rights as citizens.

10 [Excerpts from Charter at Ch. XXV, Sec. 1 (emphasis added), attached as **Ex. 2**; *Id.* at Ch.
11 XXII, Sec. 1 (providing for the amendment of the Charter by vote of the Council)] Thus,
12 Giordano’s and Zuercher’s authority to take adverse action against an employee based on
13 political affiliation is constrained and prohibited by the Charter provisions adopted and
14 amended by Council. *See St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988) (“[A] federal
15 court would not be justified in assuming that municipal policymaking authority lies
16 somewhere other than where the applicable law purports to put it”).⁴

17 The Ninth Circuit’s decision in *Gillette v. City of Eugene* is instructive on who
18 qualifies as a final policymaker. 979 F.2d at 1350. There, the plaintiff argued that the fire
19 chief was a final policymaker. *Id.* The Ninth Circuit recognized that the fire chief had
20 authority to hire and fire personnel, but determined that the fire chief was not a final
21 policymaker after reviewing the city charter because he was not responsible for
22 establishing the city’s employment policy. *Id.* The allegations in this matter mirror those
23 in *Gillette*: Plaintiffs’ claim that Giordano was a final policymaker based solely on his
24 authority to discipline Mullen—the very same argument the Ninth Circuit previously
25 rejected. [Doc. 50 ¶ 76] Furthermore, Plaintiffs’ contention that Zuercher is a final
26 policymaker because he allegedly ratified the challenged conduct puts the cart before the

27 ⁴ As further evidence that Zuercher and Giordano are not final policymakers for
28 termination decisions, terminations are appealable to the City’s Civil Service Board. *See,*
e.g., Chung v. Cnty. of Santa Clara, 614 F. Supp. 3d 709, 727 (N.D. Cal. 2022) (district
attorney was not a final policymaker where his personnel decisions were appealable to the
county’s personnel board); *Scala v. City of Winter Park*, 116 F.3d 1396, 1401 (11th Cir.
1997) (“[A] municipal official does not have final policymaking authority over a
particular subject matter when that official’s decisions are subject to meaningful
administrative review.”). Mullen has appealed his termination to the Civil Service Board.

1 horse. Ratification does not create final policymaking authority. Rather, final
 2 policymaking authority is a prerequisite to a viable ratification theory. The Court must
 3 first determine whether Zuercher possessed final policymaking authority under the City's
 4 governing law. Only if that threshold requirement is satisfied can the Court consider
 5 whether Zuercher ratified a subordinate's allegedly unconstitutional conduct. Because
 6 Zuercher lacks final policymaking authority with respect to First Amendment claims
 7 arising from political affiliation, Plaintiffs' ratification theory necessarily fails.

8 If Giordano or Zuercher, or any other City employee, for that matter, disciplined or
 9 took other actions against Mullen for retaliatory reasons (which Defendants dispute), they
 10 would have been acting in contravention of the Charter established by Council. [*See* Ex. 2
 11 at Ch. XXV, Sec. 1] Here, Plaintiffs have not plausibly alleged that the Council committed
 12 or ratified any alleged violation of Mullen's constitutional rights.⁵ Thus, holding the City
 13 liable under these circumstances would require the Court to impose respondeat superior
 14 liability, which is impermissible in the municipal liability context. *Monell*, 436 U.S. at 694.

15 **A. Plaintiffs Have Failed to Plausibly Establish that Zuercher Committed or**
 16 **Ratified a Violation of Mullen's Constitutional Rights.**

17 The District of Arizona has confirmed that the City Manager is the City's final
 18 policymaker for unreviewable PPD disciplinary matters, including the alleged denial of
 19 due process.⁶ *Collins v. City of Phoenix*, No. CV-23-01440-PHX-DLR, 2024 WL
 20 4528165, at *6 (D. Ariz. 2024) ("The City's Personnel Rules outline the appropriate

21 ⁵ A councilmember's alleged comments on Mullen's conduct do not constitute the
 22 commission or ratification of an alleged constitutional violation by the Council itself.
 23 [Doc. 50 ¶ 23] A council may only act through a majority vote. A.R.S. § 38-431.01(A)
 ("All legal action of public bodies shall occur during a public meeting."); City Charter at
 Ch. IV § 10 ("The affirmative vote of a majority of the Members of the Council shall be
 necessary to pass any ordinance, franchise, resolution, or formal recorded action.")

24 ⁶ The City Manager may be viewed as the final policymaker for procedural due process
 25 because he is vested with the authority to develop personnel rules and enforce the
 26 personnel system. [Ex. 2 at Ch. XXV, Sec. 6] Based on this authority, the City Manager
 27 adopted policies requiring that non-probationary employees be afforded due process when
 28 facing disciplinary action. [Excerpts from Personnel Rules at Rule 19, attached as Ex. 3];
Biggs v. Town of Gilbert, No. CV11-330-PHX-JAT, 2011 WL 1793252, at *3, n.4 (D.
 Ariz. 2011) (allowing judicial notice of personnel policies). Giordano's ability to deviate
 from due process requirements was constrained by policies adopted by the City Manager,
 thereby confirming that Giordano is not a final policymaker.

1 procedure for taking disciplinary action, including demotions. The only review of
2 Zuercher’s or his subordinates’ disciplinary decisions is left to a hearing officer—that is, if
3 the employee is properly served with notice of the reasons for the disciplinary decision
4 with enough time to appeal it. Plaintiffs allege that it was exactly this procedure that they
5 were denied. It was only Zuercher or Williams [the former City of Phoenix Police Chief]
6 that could have properly ensured procedure was followed. And as a matter of law,
7 Williams is not a final policymaker; she was merely delegated the power to make certain
8 employment decisions in the police department. As a matter of state law, Zuercher is the
9 final policymaker regarding employee discipline. The Court cannot second-guess state law
10 on this point.”) (internal citation and footnote omitted). Thus, to state a plausible *Monell*
11 claim for Count II based on a ratification theory, Plaintiffs must plausibly allege that
12 Zuercher committed or ratified a violation of Mullen’s due process rights. They have done
13 neither.

14 Plaintiffs assert that Mullen was terminated by Giordano, but claim that Zuercher
15 “reviewed the investigation, was involved in the schedule of proceedings, and personally
16 ratified Chief Giordano’s termination decision[.]” [Doc. 50 ¶¶ 8, 77] To begin, Plaintiffs’
17 allegation is largely conclusory because it merely recites the legal concept of ratification
18 without pleading facts sufficient to establish it. But even accepting Plaintiffs’ allegations
19 as true, the claim still falls short. As the Ninth Circuit has explained, it is not enough for a
20 plaintiff to show that a policymaker acquiesced to a subordinate’s decision; instead,
21 “[ratification] requires that an official policymaker make a deliberate choice from among
22 various alternatives to follow a particular course of action.” *Gillette*, 979 F.2d at 1348.
23 “Likewise, [Section 1983] requires that a policymaker approve a subordinate’s decision
24 **and the basis for it** before the policymaker will be deemed to have ratified the
25 subordinate’s discretionary decision.” *Id.* (emphasis added); *see also Christie v. Iopa*, 176
26 F.3d 1231, 1239 (9th Cir. 1999) (“[R]atification requires ... knowledge of the alleged
27 constitutional violation.”). Assuming Plaintiffs are correct that Zuercher “reviewed the
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1 investigation” into Mullen and “was involved in the schedule of proceedings,” this is not
2 synonymous with *approving a violation of Mullen’s constitutional right to due process*.
3 Simply claiming that Zuercher was aware of the alleged deficiencies in the investigation is
4 not evidence of a constitutional violation. Zuercher may have been unaware that changing
5 a violation from a Class 1 or 2 to a Class 3 and bypassing the investigative review process
6 (“IRP”) could implicate procedural due process (the City’s position is that it does not).⁷
7 Given the paucity of evidence that Zuercher acted with the unlawful mindset required for
8 ratification, Plaintiffs cannot establish *Monell* liability. Thus, Counts I-III should be
9 dismissed as to the City for failure to meet the *Monell* liability standard.⁸

10 **III. DUE PROCESS DOES NOT APPLY AT THE INVESTIGATIVE PHASE.**

11 Plaintiffs’ core grievance—that the PPD bypassed its IRP during the investigation
12 into Mullen’s conduct—does not state a constitutional claim. Due process protects against
13 the deprivation of a protected liberty or property interest without adequate process; it does
14 not constitutionalize the internal investigation procedures that precede any such
15 deprivation. Accordingly, even if the investigation did not strictly comply with the IRP,
16 that allegation, standing alone, cannot establish a due process violation.

17 A Section 1983 claim based upon procedural due process has three elements: “(1) a
18 liberty or property interest protected by the Constitution; (2) a deprivation of the interest
19 by the government; and (3) lack of process.” *Portman v. County of Santa Clara*, 995 F.2d
20 898, 904 (9th Cir. 1993). In the employment context, due process requires only that a

21 ⁷ An employer’s alleged failure to comply with its internal policies does not establish a
22 due process violation. *Garzon v. City of Bullhead*, No. CV-10-8151-PHX-GMS, 2011 WL
23 3471215, at *3 (D. Ariz. 2011) (“Plaintiff’s assertion that Defendants failed to follow their
24 own policies is not sufficient to allege that Defendants deprived Plaintiff of a right
protected by the Constitution or laws of the United States. As a general rule, a violation of
state law or procedures does not lead to liability under § 1983.”).

25 ⁸ Even assuming arguendo that the City Manager is the final policymaker for all
26 disciplinary decisions, including those allegedly implicating First Amendment rights,
27 Plaintiffs’ § 1983 claims still fail. The better view is that the Council is the final
28 policymaker with respect to the First Amendment retaliation claims (Counts I & III) and
the city manager is the final policymaker with respect to the due process claim (Count II).
However, even under Plaintiffs’ theory, the Amended Complaint contains no factual
allegations plausibly establishing that Zuercher committed or ratified any alleged
constitutional violation. As a result, Plaintiffs have failed to state a viable § 1983 claim.

1 tenured employee receive notice of the proposed grounds for discipline and an opportunity
2 to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 544–45 (1985). The right
3 to pre-termination due process is not triggered until there is a proposed deprivation of a
4 protected right; otherwise, the employee’s property interest in continued employment is
5 not implicated. Accordingly, courts have rejected due process claims challenging an
6 employer’s investigation of employee misconduct, rather than the procedures used in
7 connection with the actual deprivation. *See, e.g., Tonkovich v. Kansas Bd. of Regents*, 159
8 F.3d 504, 523 (10th Cir. 1998) (“[T]he fact that University administrators conducted an
9 investigation without Professor Tonkovich’s knowledge does not implicate procedural due
10 process because he ultimately received notice of the charges and a meaningful opportunity
11 to respond in the hearing. . . .”); *Barnes v. City of Phoenix*, No. CV09-1767-PHX-JAT,
12 2009 WL 3425785, at *3 (D. Ariz. 2009) (“Even assuming Defendants did not follow
13 their own internal policies and procedures, such violations amount only to violations of an
14 *internal* process, and not the type of due process protected under the Fourteenth
15 Amendment.”). Indeed, this Court has agreed that “allegations of a biased pre-termination
16 investigation do not implicate constitutional due process rights.” *McClarty v. Tolleson*,
17 No. CV-16-00065-PHX-DJH, at 10 (D. Ariz. 2016). Although the City disputes Plaintiffs’
18 criticism of the investigation process, even an alleged ill-conceived or poorly conducted
19 investigation does not give rise to a due process claim. Count II should be dismissed.⁹

20 **IV. THE INDIVIDUAL DEFENDANTS ARE QUALIFIEDLY IMMUNE.**

21 Qualified immunity shields government officials from suit unless a plaintiff
22 plausibly alleges the official violated a constitutional right that was clearly established at

23
24 ⁹ If Mullen alleges he was denied due process at the pre-deprivation stage, he is mistaken.
25 Due process requires that a tenured employee be provided “a pretermination opportunity
26 to respond, coupled with post-termination administrative procedures.” *Loudermill*, 470
27 U.S. at 547–48. An employee needs only be given “oral or written notice of the charges
28 against him, an explanation of the employer’s evidence, and an opportunity to present his
side of the story.” *Brewster v. Board of Educ.*, 149 F.3d 971, 979 (9th Cir. 1998).
Plaintiffs concede that Mullen was given notice of the grounds for discipline, that he
attended a *Loudermill* hearing, that he was represented by counsel, that multiple City
representatives were in attendance, and that he “presented a two-hour comprehensive slide
presentation addressing the merits of the two sustained allegations[.]” [Doc. 32 at 2]

1 the time of the challenged conduct. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
2 Because qualified immunity is immunity from suit—not merely a defense to liability—it
3 is a question of law for the Court and “ordinarily should be decided by the court long
4 before trial.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). In evaluating qualified
5 immunity, courts consider two questions: (1) whether the facts alleged, taken as true,
6 establish the violation of a constitutional right; and (2) whether that right was clearly
7 established at the time of the alleged conduct such that every reasonable official would
8 have understood that his or her actions were unlawful. *Hopkins v. Bonvicino*, 573 F.3d
9 752, 762 (9th Cir. 2009). If either question is answered in the negative, qualified immunity
10 applies, and the claims against the individual defendants must be dismissed.

11 Plaintiffs cannot overcome qualified immunity as their due process claims because
12 (1) there is no clearly established right to procedural due process during an investigation,
13 *Barnes*, 2009 WL 3425785, at *3; (2) alleged violations of internal policies do not
14 implicate due process, *Garzon*, 2011 WL 3471215, at *3; and (3) even if Giordano
15 prepared a termination announcement prior to Mullen’s Loudermill hearing (which he did
16 not), this would not clearly violate due process. *Walker v. City of Berkeley*, 951 F.2d 182,
17 184 (9th Cir. 1991) (“[T]he failure to provide an impartial decisionmaker at the
18 pretermination stage, of itself, does not create liability, so long as the decisionmaker at the
19 post-termination hearing is impartial.”).

20 Likewise, qualified immunity insulates the individuals from liability for the
21 termination of Mullen’s employment. To resolve a First Amendment claim by a municipal
22 employee, this Court must perform a balancing test to determine whether the interest of
23 the government employer “in promoting the efficiency of the public services it performs
24 through its employees” outweighs the employee’s interests, as a citizen, “in commenting
25 upon matters of public concern.” *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).
26 Pertinent considerations in this balancing test are “whether the statement impairs
27 discipline by superiors or harmony among co-workers, has a detrimental impact on close
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1 working relationships for which personal loyalty and confidence are necessary, or impedes
2 the performance of the speaker's duties or interferes with the regular operation of the
3 enterprise." *Rankin v. McPherson*, 483 U.S. 378, 388 (1987). When applying *Pickering*,
4 courts give substantial deference to a governmental entity's judgment in making personnel
5 decisions concerning a police department. *See, e.g., Aguilera v. Baca*, 510 F.3d 1161,
6 1171 (9th Cir. 2007) ("Law enforcement agencies are entitled to deference, within reason,
7 in the execution of policies and administrative practices that are designed to preserve and
8 maintain security, confidentiality, internal order, and esprit de corps among their
9 employees."); *Cochran v. City of Los Angeles*, 222 F.3d 1195, 1201 (9th Cir. 2000)
10 ("[T]he unit of government in which appellees worked was a police department, a quasi-
11 military organization. Discipline and esprit de corps are vital to its functioning. Given that
12 'a wide degree of deference to the employer's judgment is appropriate' when 'close
13 working relationships are essential to fulfilling public responsibilities,' the balance of
14 interests tips in favor of the City."); *Kannisto v. City and County of San Francisco*, 541
15 F.2d 841, 843 (9th Cir. 1976) (police department "has a substantial interest in developing
16 discipline, *esprit de corps*, and uniformity...to insure adequate promotion of safety of
17 persons and property").

18 As noted above, Plaintiff was terminated for: (1) admittedly planning to provoke
19 adolescents into assaulting him so they would be arrested; (2) admittedly lying to
20 Chandler police by misrepresenting that approximately 30-armed individuals would be
21 arriving at the protest; and (3) omitting material facts when he informed his supervisor of
22 his interaction with Chandler police. The Ninth Circuit has held that "in executing the
23 *Pickering* balance, courts should not require government employers to demonstrate that
24 the employee's speech actually disrupted efficient office operation; rather, 'reasonable
25 predictions of disruption' are sufficient." *Moran v. State of Wash.*, 147 F.3d 839, 846 (9th
26 Cir. 1998). Here, Mullen's conduct could be reasonably expected to: (1) cause lawful
27 protestors lose trust in the police, questioning whether police are present to protect or
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1 entrap them; (2) create discord between Mullen and other officers who must work together
2 closely with him to perform important public safety functions; and (3) fracture the close
3 working relationship between the Phoenix police and its sister agency in Chandler.

4 Importantly, the Court need not resolve the balancing test to determine that the
5 individuals are qualifiedly immune. As the Ninth Circuit has observed: “Because the
6 underlying determination pursuant to *Pickering* whether a public employee’s speech is
7 constitutionally protected turns on a context-intensive, case-by-case balancing analysis,
8 the law regarding such claims *will rarely, if ever, be sufficiently ‘clearly established’* to
9 preclude qualified immunity[.]” *Moran*, 147 F.3d at 846 (emphasis added). Given the fact-
10 intensive nature of the inquiry and the predictable consequences of Mullen’s behavior, the
11 law regarding his First Amendment claim is not clearly established.

12 **V. PLAINTIFFS HAVE NOT STATED A FACIALLY PLAUSIBLE SECTION**
13 **1983 CLAIM AGAINST ZUERCHER, ORENDER, AND HERNANDEZ.**

14 To establish personal liability, a plaintiff must prove that an individual defendant
15 was an “integral participant” in the alleged deprivation of constitutional rights. *Peck v.*
16 *Montoya*, 51 F.4th 877, 889 (9th Cir. 2022). This means liability cannot attach to “a mere
17 bystander” who had no role in the unlawful conduct. *Id.*; *Preschooler II v. Clark Cnty.*
18 *Sch. Bd. of Trustees*, 479 F.3d 1175, 1183 (9th Cir. 2007) (“The requisite causal
19 connection may be established when an official sets in motion a “series of acts by others
20 which the actor knows or reasonably should know would cause others to inflict”
21 constitutional harms.”). Therefore, Plaintiffs must plausibly allege that each individual
22 Defendant played an integral role in the alleged constitutional violation—that is, the
23 alleged retaliatory termination of Mullen for protected speech. They have failed to do so.

24 Beginning with Orender, Plaintiffs claim that Orender knew the investigation into
25 Mullen was rushed and deficient, yet participated in the decision to escalate the matter to a
26 Class III violation and denied investigators’ requests for additional time to complete it.
27 [See Doc. 50 ¶¶ 9, 44] However, nearly all of the allegations directed at Orender concern
28 the investigative phase. As discussed above, Plaintiff has no constitutional right to a

1 particular type of investigation, nor does an allegedly rushed or inadequate investigation
2 itself constitute a constitutional violation. Thus, allegations regarding Orender's
3 involvement in the investigation do not establish liability under § 1983.

4 Perhaps recognizing this deficiency, Plaintiffs include a single conclusory
5 allegation that Orender "participated in...[Mullen's] termination[.]" [*Id.* ¶ 44] That
6 assertion is devoid of any supporting factual content explaining what Orender allegedly
7 did, how he participated, or how his conduct enabled a constitutional violation, and is
8 insufficient to establish integral participation under *Twombly/Iqbal*.

9 Plaintiffs' allegations against Hernandez fare no better. Plaintiffs assert that
10 Hernandez "personally intervened" in Mullen's disciplinary process by communicating
11 with Giordano, discussing the matter with Zuercher, and advocating for Mullen's
12 termination. [*See id.* ¶ 52] Even if those allegations are accepted as true, they do not
13 plausibly establish that Hernandez participated in, directed, or exercised authority over the
14 ultimate termination decision. At most, the allegations suggest that Hernandez expressed
15 her views regarding the matter. But speaking publicly about an issue, or allegedly
16 discussing it with others and advocating a particular outcome, does not, without more,
17 establish personal participation in a constitutional violation.

18 Lastly, the allegations against Zuercher are equally flimsy. Plaintiffs allege, in
19 conclusory fashion, that Zuercher "reviewed and ratified Chief Giordano's termination
20 decision despite being aware of the rushed and deficient nature of the investigation." [*Id.* ¶
21 8] Again, there is no constitutional right to a particular investigative process, and
22 allegations concerning purported deficiencies in the investigation do not state a
23 constitutional claim. An allegedly flawed investigation does not transform every individual
24 tangentially associated with that process into an integral participant in Giordano's decision
25 to terminate Mullen's employment, much less establish that Zuercher personally
26 participated in a termination allegedly motivated by Mullen's protected speech.

27 Plaintiffs' allegations against Orender, Hernandez, and Zuercher are the same kind
28

1 of “unadorned, the-defendant-unlawfully-harmed-me accusations” that the Supreme Court
2 found deficient in *Iqbal*. 556 U.S. at 677. There, the plaintiff alleged that the defendants
3 “knew of, condoned, and willfully and maliciously” subjected him to “harsh conditions of
4 confinement as a matter of policy,” on “account of his religion, race, and/or national
5 origin and for no legitimate penological interest.” *Id.* at 681. The Supreme Court rejected
6 these allegations, stating:

7 These bare assertions, much like the pleading of conspiracy in *Twombly*, amount
8 to nothing more than a “formulaic recitation of the elements” of a constitutional
9 discrimination claim, namely, that petitioners adopted a policy “because of,” not
merely “in spite of,” its adverse effects upon an identifiable group.

10 *Id.* (internal citations omitted). The same reasoning applies here. Plaintiffs’ Section 1983
11 claims should be dismissed as to Defendants Orender, Hernandez, and Zuercher.

12 **VI. PLAINTIFFS CANNOT MAINTAIN A VAGUENESS CHALLENGE.**

13 **A. Operations Order 2.1.01.5 Is Not Subject to a Vagueness Challenge.**

14 Plaintiffs assert an unconstitutional vagueness challenge to the Class III criteria
15 found in PPD Ops Order 2.1.01.5. However, this policy is purely procedural and not
16 subject to an unconstitutional vagueness challenge. To plausibly establish a claim for
17 unconstitutional vagueness, the challenged policy must regulate or sanction conduct—
18 meaning that it exposes an employee to some form of discipline or adverse consequence.
19 *See Zakrajsek v. Armstrong*, No. CIV-04-0449-PHX-SMM, 2006 WL 120327, at *8 (D.
20 Ariz. 2006) (Under the Due Process Clause, “a policy will be deemed unconstitutionally
21 vague if it fails to provide people of ordinary intelligence a reasonable opportunity to
22 understand what conduct it prohibits or if it authorizes or even encourages arbitrary and
23 discriminatory enforcement.”) (internal citations omitted).

24 Here, Ops Order 2.1.01.5 is titled “Classification Guidance Criteria” and
25 establishes the PPD’s framework for classifying policy violations into various disciplinary
26 “classes,” as well as the potential disciplinary consequences associated with each
27 classification. [Doc. 1, Ex. E at pg. 13] However, this policy is purely procedural because
28

1 it governs only the PPD’s internal classification process for alleged policy violations. *See*
2 *Witzke v. Idaho State Bar*, No. 1:22-CV-00478-REP, 2023 WL 3394925, at *5 (D. Idaho
3 2023) (“Plaintiff’s contention that the Challenged Rules are unconstitutionally vague is
4 not persuasive because the void-for-vagueness doctrine does not apply [to] procedural
5 rules. The void-for-vagueness doctrine only applies to statutes which proscribe conduct
6 and are punishable with civil or criminal penalties.”). The Class III criteria do not, by
7 themselves, prohibit conduct or independently subject officers to discipline. Rather, the
8 underlying prohibited conduct is defined elsewhere—specifically in Section 2.1.01.4(D)
9 of the overarching policy. [*See* Doc. 1, Ex. E at pg. 13] Ops Order 2.1.01.5 merely guides
10 how such violations may be categorized for investigative and disciplinary purposes. [*Id.*]
11 Furthermore, the Police Chief is empowered to deviate from the classification guidelines,
12 so they are not binding. [*Id.* at pg. 1]

13 Plaintiffs’ own allegations confirm Ops Order 2.1.01.5 is procedural. Plaintiffs
14 challenge the City’s classification of Mullen’s conduct at the high school protest as a
15 Class III violation, since this determination “would deprive Sgt. Mullen of the opportunity
16 to address this investigation and associated evidence under the IRP procedures.” [Doc. 50
17 ¶ 33] In other words, Plaintiffs’ challenge is directed not at any substantive prohibition on
18 conduct, but at the PPD’s internal procedures governing the handling and investigation of
19 Class III violations. Because the Policy establishes procedural classification criteria rather
20 than standards of prohibited conduct, it is not subject to a vagueness challenge.¹⁰

21 **B. Assuming Operations Order 2.1.01.5 Is Subject to Vagueness Review (It Is**
22 **Not), Plaintiffs Have Failed to Plausibly Allege an As-Applied Challenge.**

23 Even if the Court determines that Ops Order 2.1.01.5 may be challenged under the
24 void-for-vagueness doctrine (it should not), Plaintiffs have not plausibly alleged that the

25 ¹⁰ Mullen has no constitutional right to the procedures in the PPD’s policies, such as the
26 IRP process. *Taylor v. City of Cheney*, 2012 U.S. Dist. LEXIS 156309 (E.D. Wash. Oct.
27 31, 2012) (“The Court rejects Plaintiff’s unsupported argument that the Court should
28 unilaterally adopt the process afforded under the Washington state statute as defining the
scope of process due to Plaintiff under federal law.”); *Garzon*, 2011 WL 3471215, at *3.
Thus, even if the City deviated from its internal policies, this would not give rise to a
constitutional claim. For due process, the dispositive question is whether the City afforded
Mullen notice and the opportunity to be heard. The answer is a resounding “yes.”

1 Policy is unconstitutionally vague. Plaintiffs claim that the Policy is unconstitutionally
2 vague *as applied* to Mullen. [Doc. 50 ¶ 39] Therefore, the Court must assess whether Ops
3 Order 2.1.01.5 is impermissibly vague in light of the facts and circumstances of this case.
4 *Cf. United States v. Osinger*, 753 F.3d 939, 946 (9th Cir. 2014) (“In an as-applied
5 challenge, a statute is unconstitutionally vague if it fails to put a defendant on notice that
6 his conduct was criminal.”).

7 As the U.S. Supreme Court has observed, “Condemned to the use of words, we can
8 never expect mathematical certainty from our language.” *Grayned v. City of Rockford*,
9 408 U.S. 104, 110 (1972). Therefore, the Constitution tolerates a certain degree of
10 vagueness. *See id.*; *see also United States v. Schales*, 546 F.3d 965, 972 (9th Cir. 2008)
11 (“The Constitution does not require impossible standards; all that is required is that the
12 language conveys sufficiently definite warning as to the proscribed conduct when
13 measured by common understanding and practices.”) (internal citation omitted); *State v.*
14 *Trachtman*, 947 P.2d 905, 909 (Ariz. Ct. App. 1997) (“A statute or ordinance is not
15 unconstitutionally vague solely because one of its terms is not explicitly defined or
16 because the provision is susceptible to more than one interpretation.”). The determination
17 of whether a policy is void for being unconstitutionally vague is a matter of law for the
18 court to decide. *Dimaya v. Lynch*, 803 F.3d 1110, 1112 (9th Cir. 2015).

19 As a starting point, Ops Order 2.1.01.5 is entitled to significant deference because
20 (1) it is not criminal, (2) it does not inhibit First Amendment rights, and (3) it is a law
21 enforcement policy where there is a heightened need for safety and security. *See Vill. of*
22 *Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498–99 (1982) (“The Court
23 has also expressed greater tolerance of enactments with civil rather than criminal penalties
24 because the consequences of imprecision are qualitatively less severe.”); *Smith v. Goguen*,
25 415 U.S. 566, 573 (1974) (Where “a statute’s literal scope [addresses] expression
26 sheltered by the First Amendment, the [vagueness] doctrine demands a greater degree of
27 specificity[.]”); *Johnson v. City of Phoenix*, No. CV-25-01300-PHX-SHD, 2026 WL
28

1 799281, at *5 (D. Ariz. 2026) (“[L]aw enforcement agencies are entitled to deference,
2 within reason, in the execution of policies and administrative practices that are designed to
3 preserve and maintain security, confidentiality, internal order, and esprit de corps among
4 their employees.”) (citation omitted).

5 The clarity of Ops Order 2.1.01.5 is further enhanced when considered in the
6 context of Mullen’s knowledge, training, and experience as a PPD Sergeant. Lastly, the
7 challenged language should not be read in isolation. Rather, Ops Order 2.1.01.5 must be
8 considered in light of PPD Operations Order 2.1.01 as a whole, including Section
9 2.1.01.4(D), which expressly identifies the categories of conduct constituting a Class III
10 violation. [Doc. 1, Ex. E at pgs. 11–12]; *Zakrajsek*, 2006 WL 120327, at *8 (“Indeed, the
11 terms used in the policy are common terms, and, when read as a whole, the policy
12 provides sufficient context to furnish patrons with a description of what activities are
13 solicitation activities.”); *see also Recreational Devs. of Phoenix, Inc. v. City of Phoenix*,
14 83 F. Supp. 2d 1072, 1088 (D. Ariz. 1999) (“Courts are permitted to examine the
15 ‘particular context’ in which legislation was enacted in order to determine if it is
16 impermissibly vague.”). Considering the foregoing, Ops Order 2.1.01.5 provided Plaintiffs
17 with adequate notice regarding the type of conduct that may constitute a Class III
18 violation.

19 All policies allow for some degree of discretion for those responsible for
20 enforcement. *See, e.g., Hill v. Colorado*, 530 U.S. 703, 733 (2000) (“As always,
21 enforcement requires the exercise of some degree of police judgment[.]”; *Ward v. Rock*
22 *Against Racism*, 491 U.S. 781, 794 (1989) (upholding law that restricted expressive
23 activity even though it provided “undoubtedly flexible standards” and granted
24 “considerable discretion” to the officials responsible for implementing those standards).
25 Policies will only be held unconstitutionally vague if there is a *significant* risk of arbitrary
26 enforcement. Although Ops Order 2.1.01.5 is procedural (rather than punitive), there is no
27 risk of arbitrary decision-making because the City has implemented measures to ensure
28

1 consistent enforcement. For instance, the City provides a robust process that allows officers
2 facing disciplinary action to provide feedback and rebuttal material (such as commenting
3 on a draft investigation); provides for multiple levels of review (which may include
4 submitting the matter to a Disciplinary Review Board); and allows the discipline to be
5 appealed to an independent Civil Service Board. [See Ops Order 3.18 at pgs. 8, 17–18,
6 attached as Ex. 4¹¹] There are ample safeguards to prevent any misapplication of Ops
7 Order 2.1.01.5.

8 **C. The Operations Orders Are Not Unconstitutionally Vague.**

9 Ops Order 4.7.00.2.E (bringing discredit upon or causing embarrassment to PPD),
10 1.1.2.C(2) (demanding the highest degree of integrity and professionalism), and
11 4.7.00.3.D (prohibiting off-duty officers from carrying a firearm if the reputation of the
12 PPD would suffer) are not unconstitutionally vague for substantially the same reasons that
13 Ops Order 2.1.01.5 is not unconstitutionally vague. First, these Ops Orders are not
14 criminal statutes that expose individuals to criminal penalties, which significantly
15 diminishes the due process concerns typically associated with vagueness challenges.
16 Second, these policies do not regulate or chill protected First Amendment activity. Rather,
17 they govern workplace conduct within a law enforcement agency. Third, they exist in the
18 unique context of law enforcement, where agencies must retain flexibility to address a
19 broad range of conduct that affects operational effectiveness and public trust.¹²

20 Significantly, courts have repeatedly upheld policies prohibiting conduct that
21 brings discredit, disrepute, or embarrassment upon a law enforcement agency. *See, e.g.,*
22 *Flanagan v. Munger*, 890 F.2d 1557, 1569 (10th Cir. 1989) (“[B]road rules such as ones
23 condemning ‘conduct unbecoming an officer’ or, as here, conduct impairing the operation
24 or efficiency of the department or bringing the department into disrepute, have been
25

26 ¹¹ The Court may take judicial notice of Ops Order 3.18 as a public record. *See Biggs*, No.
27 CV11-330-PHX-JAT, 2011 WL 1793252, at *3.

28 ¹² In the interest of brevity, Defendants incorporate by reference the arguments presented
in Part B, as those arguments apply with equal force to the issues addressed in Part C.

1 generally upheld against challenges of facial vagueness.”); *D’Acquisto v. Washington*, 640
2 F. Supp. 594, 621 (N.D. Ill. 1986) (finding that officers accepting bribes is terminable
3 conduct, and thus, a regulation in which the officers were suspended “for the good of the
4 department” is not unconstitutionally vague). Ops Order 4.7.00.2.E falls squarely within
5 this well-recognized category of permissible workplace conduct regulations.

6 Furthermore, courts have consistently upheld broader restrictions on prohibited
7 conduct. The Supreme Court’s decision in *Arnett v. Kennedy* is illustrative. 416 U.S. 134,
8 157 (1974). There, the court considered whether a provision allowing public employees to
9 be terminated for “such cause as will promote the efficiency of the service” was
10 unconstitutionally vague. *Id.* at 158. The plaintiff, who was fired for falsely accusing co-
11 workers of bribery, argued that the provision “failed to furnish sufficiently precise
12 guidelines as to what kind of speech may be made the basis of a removal action.” *Id.* at
13 139. In considering the issue of vagueness, the court recognized that there “are limitations
14 in the English language with respect to being both specific and manageably brief[.]” *Id.* at
15 159. The Court also cited approvingly the following passage from the D.C. Circuit:

16 [I]t is not feasible or necessary for the Government to spell out in detail all that
17 conduct which will result in retaliation. The most conscientious of codes that
18 define prohibited conduct of employees includes “catch-all” clauses
prohibiting employee “misconduct,” “immorality,” or “conduct unbecoming.”

19 *Id.* at 161. The Court ultimately rejected the vagueness challenge, stating: “Because of
20 the infinite variety of factual situations in which public statements by [public] employees
21 might reasonably justify dismissal for ‘cause,’ we conclude that the Act describes, as
22 explicitly as is required, the employee conduct which is grounds for removal.” *Id.* The
23 fatal flaws with Plaintiffs’ vagueness argument are also laid bare in *Tindle v. Caudell*,
24 where the Eighth Circuit upheld the following police department regulation, which is
25 significantly less clear than the challenged policies in this matter:

26 1/4003.00. No officer shall engage in any personal act or conduct which, if
27 brought to the attention of the public, could result in justified criticism of the
28 officer or the department. No officer shall be involved personally in any
disturbance or police incident to his discredit.

1 56 F.3d at 973. The court noted that: “Because police departments function as paramilitary
2 organizations, their members may be subject to stringent rules and regulations that could
3 not apply to other government agencies.” *Id.* Applying this deference, the court stated:
4 “While it is true that the rules do not precisely define what would constitute impermissible
5 conduct, they give adequate notice that high standards of conduct are required.” *Id.*

6 As in the prior decisions, there can be little debate that Mullen understood the
7 conduct expected of him. The policies plainly required Mullen to conduct himself in a
8 professional and truthful manner, both on and off duty, and to exercise sound judgment in
9 his use of a firearm so as not to bring discredit, disrepute, or embarrassment upon the PPD.
10 A reasonable officer reading these provisions would understand that such conduct falls
11 within the scope of the PPD’s professional standards and expectations. Ops Orders
12 4.7.00.2.E, 1.1.2.C(2), and 4.7.00.3.D are not unconstitutionally vague.

13 **VII. § 2-49 OF THE CITY CODE DOES NOT CREATE A CIVIL REMEDY.**

14 Chapter XXI, Section 7 of the City Charter states that:

15 The violation of any provision of this Charter or of any ordinance of
16 the City shall be deemed a misdemeanor, and may be prosecuted by the
17 authorities of the City in the name of the State of Arizona, or may be
18 redressed by civil action, at the option of the Council.

18 [Ex. 2 at Ch. XXI, Sec. 7] In other words, individuals may bring a civil action to enforce
19 the Charter or City Code only when Council has expressly authorized such a remedy.

20 Section 2-49 of the City Code, under which Plaintiffs seek civil relief, states that:

21 Neither the City Council nor any of its members shall direct or request the
22 appointment of any person to, or his removal from, office by the City
23 Manager or by any of his subordinates, or in any manner take part in the
24 appointment or removal of officers and employees in the administrative
25 branch of the City. Except for the purpose of inquiry, the Council and its
26 members shall deal with the administrative branch solely through the City
27 Manager and neither the Council nor any member thereof shall give orders
28 to any subordinates of the City Manager, either publicly or privately.

25 [City Code Art. II, Sec. 2-49, attached as **Ex. 5**] Importantly, Section 2-49 contains no
26 language creating a private right of action. It neither provides a civil remedy nor authorizes
27 enforcement through litigation. The absence of such language indicates that no private
28

1 enforcement mechanism was intended. *Welch v. Cochise Cnty. Bd. of Supervisors*, 494
2 P.3d 580, 590 (Ariz. 2021) (exclusion of remedies is deemed intentional). Because the
3 Council has not authorized a civil remedy, Plaintiffs’ Section 2-49 claim should be
4 dismissed.

5 **VIII. PLAINTIFFS CANNOT PLAUSIBLY STATE A VIOLATION OF POBOR.**

6 Plaintiffs also attempt to assert a claim based on the alleged failure to comply with
7 the POBOR and to satisfy the “just cause” standard. [Doc. 50 ¶ 90] However, the POBOR
8 does not create a private right of action for alleged violations of A.R.S. § 38-1104—the
9 statute governing internal investigations—or for alleged failures to satisfy the “just cause”
10 standard defined in A.R.S. § 38-1101.¹³ *Hinchey v. Horne*, No. CV13-00260-PHX-DGC,
11 2013 WL 4543994, at *12 (D. Ariz. 2013) (“[POBOR] does not appear to provide for a
12 private right of action”); *Blunt v. Town of Gilbert*, No. CV-23-02215-PHX-SMB, 2024
13 WL 2722167, at *5 (D. Ariz. 2024) (same). Rather, the two narrow circumstances under
14 which an officer has the right to institute a private action under the POBOR are for *de*
15 *novi* review of a termination where an agency reversed a decision of a hearing officer,
16 ALJ, or appeals board, or where there is no hearing officer, ALJ, or appeals board to
17 review the termination in the first instance. *Hernandez v. City of Phoenix*, 482 F. Supp. 3d
18 902, 920 (D. Ariz. 2020) (explaining rights to institute court action under POBOR);
19 A.R.S. § 38-1107(A) & (B). Neither of these circumstances is present here.

20 **IX. NO DAMAGES REMEDY EXISTS UNDER THE ARIZONA CONSTITUTION.**

21 Courts do not recognize a standalone private right of action for damages under
22 Article 2, Section 6 of the Arizona Constitution. *Lankford v. Taylor*, No.
23 CV1702797PHXDWLJZB, 2019 WL 4600369, at *9 (D. Ariz. 2019) (“[T]he Court wishes
24 to point out that the Arizona Supreme Court has never held that Article 2, Section 6 creates
25 a private right of action for damages.”). Moreover, Plaintiffs’ claim under the Arizona
26

27 ¹³ Plaintiff wrongly alleges that Defendants violated the POBOR by failing to provide the
28 “mandatory Investigative Review Process.” [Doc. 50 ¶ 98] But the IRP is a PPD policy,
not a POBOR requirement. *See* A.R.S. § 38-1104; [Doc. 1, Ex. C at pgs. 14–16]

1 Constitution independently fails because the allegations are vague, conclusory, and amount
2 to the type of generalized the-defendant-unlawfully-harmed-me” assertions deemed
3 insufficient under *Iqbal*. 556 U.S. at 678. Count VI should be dismissed.

4 **CONCLUSION**

5 Plaintiffs’ claims are legally deficient. Accordingly, Defendants respectfully
6 request that the Court grant their Motion and dismiss the Amended Complaint.

7 RESPECTFULLY SUBMITTED this 30th day of June, 2026.

8 **PIERCE COLEMAN PLLC**

9 By /s/ Stephen B. Coleman

10 Justin S. Pierce

11 Stephen B. Coleman

12 Alexandra N. Cayton

13 17851 North 85th Street, Suite 175

14 Scottsdale, Arizona 85255

15 *Attorneys for Defendants*

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on June 30, 2026 I electronically transmitted the attached
18 document to the Clerk’s Office using the ECF System for filing and caused a copy to be
19 electronically transmitted via email and mailed to:

20 Steven J. Serbalik

21 4925 E. Desert Cove Ave #116

22 Scottsdale, Arizona 85254

23 steveserbalik@gmail.com

24 *Attorney for Plaintiffs*

25 By: /s/ Mary Walker

Declaration of Mercedes Fortune

I, Mercedes Fortune, do hereby declare as follows:

1. I am over the age of eighteen and am competent to testify as to all the matters set forth in this declaration and would so testify if called upon to do so.
2. I have personal knowledge of the matters set forth in this declaration. My personal knowledge is based upon my observations and personal participation in the events described below.
3. I am a Police Commander in the Public Affairs Bureau for the City of Phoenix Police Department (the "PPD").
4. On May 13, 2026, I was directed by PPD Police Chief Matthew Giordano ("Chief Giordano") to prepare a draft ENS Message regarding Dusten Mullen's employment before a final disciplinary decision had been made. The draft ENS message did not include language regarding the specific discipline to be imposed because Chief Giordano had not communicated his decision to me. On May 14, 2026, I emailed Chief Giordano and Dan Wilson ("Wilson"), the City of Phoenix's Communications Director, a copy of the draft ENS message for review.
5. To my knowledge, neither Chief Giordano or Wilson had any modifications to the draft message.
6. On May 14, 2026, Chief Giordano informed me that Dusten Mullen's employment was being terminated. I thereafter finalized the ENS message (hereinafter "May 14 Message from the Chief") and distributed it to the PPD ENS Group. A true and correct copy of the May 14 Message from the Chief is attached as Exhibit 1 to this declaration.
7. In preparing the May 14 Message from the Chief, I used as a template an ENS message from Chief Giordano, dated April 10, 2026, informing recipients that Dusten Mullen's conduct was under investigation (hereinafter "April 10 ENS"). A true and correct copy of

the April 10 ENS, which I used as a template for the May 14 Message from the Chief, is attached as Exhibit 2 to this declaration.

8. When preparing the May 14 Message from the Chief, I inadvertently failed to update the April 10, 2026 date appearing in the bottom right corner of the April 10 ENS to reflect the correct date of May 14, 2026.

I declare under penalty of perjury that the foregoing is true and correct.

6/8/26

Date

/s/ Mercedes Fortune
Mercedes Fortune, Police Commander

EXHIBIT 1
to Declaration of Mercedes Fortune

ENS **Employee Notification System**

MESSAGE FROM THE CHIEF



This afternoon, the following statement from Chief Giordano will be shared publicly:

Since becoming Chief of the Phoenix Police Department, I have been clear about the standards of accountability and professionalism expected of every member of this department. Discipline is not about punishment--it is about correcting behavior. When behavior can be corrected, we take that path. But when an employee's conduct is so serious that continued employment might no longer be viable, the matter proceeds through the Loudermill process.

That process happened this week with Sergeant Dusten Mullen. His actions raised significant concerns about judgment and professionalism. Although he was off duty and not in uniform, the oath we take binds us to a higher standard. After thorough consideration, I made the decision to terminate his employment.

Community trust is not something we are owed; it is something we earn every day. We strengthen that trust through transparency, accountability, consistent expectations, and meaningful engagement with the people we serve. Addressing misconduct swiftly and fairly is essential to maintaining that trust.

Matt Giordano

EXHIBIT 2
to Declaration of Mercedes Fortune

ENS **Employee Notification System**

MESSAGE FROM THE CHIEF



I want to address a recent incident involving an off-duty officer in a neighboring city. As members of this Department, we are held to a high standard of conduct at all times. The community expects integrity, accountability, and sound judgment from us, and those expectations do not change when we are off duty. When we fall short, we must take responsibility, and we will not tolerate actions that undermine the trust placed in this Department.

The incident is currently under investigation, and that process is nearing completion. Once the investigation is finished, the report will come to me for review and any necessary action after a thorough and fair assessment of the facts. The employee involved has been placed on administrative leave during this process.

I remain committed to maintaining community trust through transparency and accountability. I take this matter seriously and will share my findings, both internally and publicly, once the review is complete.

Matt Giordano

EXHIBIT 2

Sec. 6. Personnel Official.

The City Manager shall be the City's Personnel Official. The City Manager may delegate any of the powers and duties conferred upon him as Personnel Official to any other officer or employee of the City.

The Personnel Official shall:

1. Administer all the provisions of this chapter and of the personnel rules not specifically reserved to the Civil Service Board pursuant to Sec. [3](#) herein or to the City Council pursuant to Sec. [7](#) herein.
2. Propose and promulgate personnel rules and amendments thereto.
3. Enforce approved personnel rules.
4. Prepare a position classification plan.
5. Prepare and maintain a compensation plan covering all employees.
6. Provide recruitment and selection for positions in the classified and unclassified service.
7. Perform all other duties required to administer the City Personnel System.

(Election of 11-3-1981)

The Phoenix City Charter is current through the November 6, 2018 election.

Disclaimer: The City Clerk's Office has the official version of the Phoenix City Charter. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.phoenix.gov](http://www.phoenix.gov)

[Hosted by General Code.](#)

Sec. 1. Purpose and policy.

1. It is the purpose of this chapter to designate those City employees in the classified services; set forth the rights and privileges of those employees; and to state the City's obligations in establishing and maintaining a merit system.
2. The City has determined the necessity of establishing a merit system of personnel administration based on merit principles and professional methods governing the appointment, tenure, promotion, transfer, layoff, separation, discipline, and other incidents of employment relating to City employees. These merit principles include:
 - a. Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applications for initial appointment;
 - b. Providing equitable and adequate compensation;
 - c. Training employees, as needed, to assure high-quality performance;
 - d. Retaining employees on the basis of the adequacy of their performance, and separating employees whose inadequate performance cannot be corrected;
 - e. Assuring impartial treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed or handicap, and with proper regard for their privacy and constitutional rights as citizens; and
 - f. Assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

(Election of 11-3-1981)

The Phoenix City Charter is current through the November 6, 2018 election.

Disclaimer: The City Clerk's Office has the official version of the Phoenix City Charter. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.phoenix.gov](http://www.phoenix.gov)

[Hosted by General Code.](#)

Sec. 1. Authority.

This charter, or any part or subdivision thereof, may be amended in the manner provided in the state constitution and this Charter:

1. By initiative petition of the people as herein provided;
2. By referral by affirmative vote of a majority of the Members of the City Council as herein provided;
3. By referral by affirmative vote of all Members of the City Council as provided in Section [3](#) hereof.

(Election of 11-9-1971)

The Phoenix City Charter is current through the November 6, 2018 election.

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Sec. 2-49. Interference with City Manager prohibited.

Neither the City Council nor any of its members shall direct or request the appointment of any person to, or his removal from, office by the City Manager or by any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative branch of the City. Except for the purpose of inquiry, the Council and its members shall deal with the administrative branch solely through the City Manager and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. (Code 1962, § 2-44)

Cross reference—Supervision of officers and employees by City Manager, § [2-5](#).

The Phoenix City Code is current through Ordinance G-7495, passed March 4, 2026.

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Sec. 1. Purpose and policy.

1. It is the purpose of this chapter to designate those City employees in the classified services; set forth the rights and privileges of those employees; and to state the City's obligations in establishing and maintaining a merit system.
2. The City has determined the necessity of establishing a merit system of personnel administration based on merit principles and professional methods governing the appointment, tenure, promotion, transfer, layoff, separation, discipline, and other incidents of employment relating to City employees. These merit principles include:
 - a. Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applications for initial appointment;
 - b. Providing equitable and adequate compensation;
 - c. Training employees, as needed, to assure high-quality performance;
 - d. Retaining employees on the basis of the adequacy of their performance, and separating employees whose inadequate performance cannot be corrected;
 - e. Assuring impartial treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed or handicap, and with proper regard for their privacy and constitutional rights as citizens; and
 - f. Assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

(Election of 11-3-1981)

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Sec. 7. Prosecution of violations of Charter and ordinances; imprisonment of violators.

The violation of any provision of this Charter or of any ordinance of the City shall be deemed a misdemeanor, and may be prosecuted by the authorities of the City in the name of the State of Arizona, or may be redressed by civil action, at the option of the Council. Any person sentenced to imprisonment for violation of a provision of this Charter, or of an ordinance, may be imprisoned in the City jail, or, if the Council, by ordinance, shall so prescribe, in the county jail of the county in which the City of Phoenix is situated; in which case the expense of such imprisonment shall be a charge in favor of said county against the City of Phoenix.

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EXHIBIT 3

CITY OF PHOENIX
PERSONNEL RULES

Amended June 2023

These Personnel Rules are pursuant to
Chapter XXV of the City Charter of the City of Phoenix

CITY OF PHOENIX PERSONNEL RULES
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RULE 19

SUSPENSIONS AND DISMISSALS

19a. **Length of Suspension:**

The appointing authority may, for disciplinary reasons, suspend an employee for a period not to exceed thirty work days at any one time by notifying the employee of the suspension and stating the reasons for the suspension. The notification requirements of Rule 21 shall be followed in giving this notice.

19b. **Appeal from Suspension Order:**

An employee who has completed the probationary period in their class, or who has satisfied the requirements of Rule 10b, shall be entitled to a hearing on a suspension order made by the appointing authority in accordance with the hearing procedures provided in Rule 22.

19c. **Reasons for Dismissal:**

The appointing authority may dismiss an employee for unacceptable conduct or unsatisfactory performance of duties. The employee shall be informed of the dismissal and the reasons for the dismissal in accordance with the notification requirements of Rule 21.

19d. **Appeal from Dismissal Order:**

An employee who has completed the probationary period in their class or who has satisfied the requirements of Rule 10b shall be entitled to a hearing on a dismissal order if the employee meets the appeal requirements specified in Rule 22a.

RULE 22

HEARING PROCEDURES

- **22a – Definitions Applicable to This Rule:**
- **22b – Enforcement of This Rule:**
- **22c – Computation of Time Under This Rule:**
- **22d – Hearing Rights:**
- **22e – Request for Hearing:**
- **22f – Hearing Schedule:**
- **22g – Hearing Officer Role and Responsibilities:**
- **22h – Hearing Procedure:**
- **22i – Board Disposition of Appeals:**
- **22j – Record Filed:**
- **22k – Call to the Public:**
- **22l – Rule Interpretation:**

22a Definitions Applicable to This Rule:

Definitions found in the City of Phoenix Personnel Rules remain applicable to this Rule 22. The following definitions are applicable to Rule 22 only.

The singular of a word includes the plural and the plural includes the singular.

“Appeal” means a written request filed with the Board by an eligible employee to challenge a Qualified Disciplinary Action that has been timely filed and meets the requirements of this Rule.

“Certified Police Officer” means an employee of a law enforcement agency who has met the qualifications, training requirements and has been approved for certification by the Arizona Peace Officer Standards and Training Board.

“For Cause” means the employee’s failure to meet the standards of conduct, duties, or work performance for the reasons listed in Rule 21 of the City of Phoenix Personnel Rules.

“Hearing” means a proceeding conducted by a Hearing Officer to hear and evaluate evidence presented by the parties as part of a challenge to a Qualified Disciplinary Action from which a report and recommendation is made to the Board.

“Hearing Officer” means an arbitrator, fact finder, or other administrative hearing officer hired by the Board to preside over a Hearing of an Appeal.

“Hiring Authority” means the department director or function head within the City of Phoenix for the employee filing an Appeal.

“Just Cause (for a Certified Police Officer)” has the same definitions as provided in A.R.S. § 38-1101(7).

“Police Department Operations Orders” means the policies and procedures adopted by the Chief of Police that apply to the employees within the City of Phoenix Police Department.

“Preponderance of the Evidence” means that the evidence as a whole shows the fact sought to be proved is more probable than not.

“Qualified Disciplinary Action” means a suspension, demotion, or dismissal of an employee in the classified service who is eligible to pursue an Appeal.

22b Enforcement of this Rule:

Any alleged violation of these Rules shall first be brought to the attention of the Hearing Officer assigned to the Appeal for consideration. Such alleged rule violations shall be ruled on by the assigned Hearing Officer. These alleged violations or issues may arise prior to the commencement of the Hearing, or during the Hearing. Hearing Officer rulings on alleged violations of these rules can be appealed immediately to the Board only (1) if both parties certify to the Hearing Officer that the ruling is of such significance that it has the potential to materially prejudice the rights of one or both of the parties, or (2) the Hearing Officer certifies to the Board that the ruling has the potential to materially prejudice the rights of one or both of the parties. If such a certification is made to the Board, the Hearing should be suspended pending the outcome of the Board’s decision on the issue. All other rulings by the Hearing Officer related to alleged violations of these rules will be addressed by the Board after the Hearing Officer has provided the Board with the report and recommendation for the Appeal. The Board and the Hearing Officer have the authority to impose such sanctions as they deem appropriate given the nature of the alleged violation and the potential prejudice to the opposing party. The Board may issue sanctions up to and including dismissal of the Appeal, vacating the discipline, or imposing monetary sanctions on a party, or counsel.

22c Computation of Time Under This Rule:

In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included unless it is a Saturday or Sunday, or a City of Phoenix holiday, in which event, the period runs until 5:00 p.m. of the next day that is not a Saturday, Sunday, or City of Phoenix holiday. All days are Calendar Days.

22d Hearing Rights:

The employee pursuing an Appeal shall be entitled to appear personally, to have counsel or a representative of their choosing at their own expense, produce relevant evidence, and to have a public or private hearing. The Hiring Authority

may also be represented by counsel. All hearings and investigations before the Board shall be governed by these rules of practice and procedure; and in the conduct thereof, the Board shall not be bound by technical rules of evidence, nor shall informality in any of the proceedings or in the matter of taking testimony invalidate any order, decision, rule or regulation made or approved by the Board.

The Board may appoint a paid Hearing Officer to conduct the Hearing.

22e **Request for Hearing:**

1. **Appeal Procedures.** An employee in the classified service must follow these procedures to appeal a Qualified Disciplinary Action to the Board.
2. **Filing of Appeal.** A Notice of Qualified Disciplinary Action, generally referred to as a Discipline Notice or a Letter of Discipline, must be delivered to the employee by hand or sent by certified mail. If notice of Qualified Disciplinary Action is hand delivered to the employee, the employee must file an Appeal of discipline in writing within 14 days of receipt of the notice of discipline. If notice of Qualified Disciplinary Action is delivered by certified mail, an employee must file an Appeal of discipline in writing within 21 days of the date the notice of discipline was mailed. An Appeal of Qualified Discipline must be in writing and may be hand delivered to the Executive Secretary, or sent by e-mail, or sent by First Class U.S. mail postmarked by the applicable deadline. The Executive Secretary will provide a copy of the Appeal to the Hiring Authority and City Attorney.
3. **Appeal Requirements.** A written appeal must include the following information:
 - A. The name, address, email address, and telephone number of the employee who requests the appeal, and the name, address, email address, and telephone number of the employee's representative if the employee is represented.
 - B. The employee shall specify in the written appeal whether they are asserting that they did not commit the alleged violation(s), or that the discipline imposed is too severe, or both. A form that can be used to submit an appeal will be provided to an employee who is eligible to pursue an appeal with the Discipline Notice.
 - C. The employee's preference for a public or private hearing.
 - D. If there are special conditions that may warrant an expedited hearing, a request for expedited hearing must be made at the time the written appeal is first filed, and the appeal must include the legal and factual grounds for an expedited hearing. Any request for an expedited hearing will be considered by the Recording Secretary as part of the Hearing Officer assignment process.

- 4. Failure to Timely Appeal.** Failure on the part of a suspended, demoted or dismissed employee to file a request for hearing within the time allowed in this Rule shall terminate the employee's right to a hearing and the order of suspension, demotion or dismissal made by the Hiring Authority shall be deemed final.

22f **Hearing Schedule:**

- 1. Scheduling of Hearing.** Upon receipt of a timely and properly submitted Appeal, the Recording Secretary will assign each Appeal a docket control number. The Recording Secretary will request five available dates during a specified timeframe for the Hearing from the parties. The parties shall respond as soon as reasonably possible, however, the Hearing Officer and the Hearing date will be assigned at the expiration of 14 days. Hearing Officers will be assigned to the greatest extent possible on a rotating basis, but also consistent with their availability on the date(s) proposed by the parties. The Recording Secretary will inform the parties about the assigned Hearing Officer and Hearing date. The Recording Secretary will maintain the appeal docket, all legal papers, documents and other information submitted by the parties as part of the Appeal, and the record on Appeal.
- 2. City Disclosure.** Within 14 days of receipt of an Appeal, the City shall provide to the Appellant a copy of the disciplinary file maintained by the Hiring Authority in issuing the discipline that is the subject of the Appeal. Production of these documents does not limit the exhibits that can be used at the Hearing.
- 3. Length of Hearing.** The presumed length of the Hearing for an Appeal is one day, or less. If either of the parties reasonably believes that the Hearing will take more than one day, the party seeking the longer Hearing will inform the Recording Secretary not later than 14 days after the Hearing Officer is assigned. The parties shall then participate in a Scheduling Conference with the Hearing Officer as directed in Rule 22f4.
- 4. Scheduling Conference.** For Hearings predicted to take more than one day, the Hearing Officer and the parties' representatives, or the employee if they are not represented, shall participate in a telephonic, or in person, Scheduling Conference. The purpose of the Scheduling Conference is to confirm the time, date, and place of the Hearing, resolve any concerns about the deadlines established in the Standard Scheduling Order required by Rule 22f6, rule on any request for an Expedited Hearing, and discuss the exchange of documents, witness information, and potential exhibits.
- 5. Subpoenas Duces Tecum.** Except for good cause shown, or agreement of the parties, no later than 45 days before a scheduled Hearing, either party may request that the Recording Secretary issue a subpoena duces tecum requiring the production of documents or other materials. The documents or

items requested through the subpoena duces tecum will be produced no later than 21 days after service of the subpoena.

- A. Any party requesting a subpoena duces tecum must provide a copy of the request to the other party at the time the request for the issuance of the subpoena is made.
 - B. The party who would be responding to the subpoena duces tecum has 7 days from receipt of the request for the subpoena, or service of the subpoena, whichever is sooner, to submit written objections to the Hearing Officer. The party requesting the subpoena is not entitled to submit a written response to the objections. The Hearing Officer shall rule on the objections as soon as practical and may set a telephonic conference with the parties to discuss the objections. The Hearing Officer has the authority to uphold the objections and refuse to issue, or withdraw the subpoena, modify the scope of the subpoena, or overrule the objections and issue the subpoena duces tecum as submitted.
 - C. Service of the subpoena duces tecum may be by certified mail, or email to the party, or the party's representative.
- 6. Standard Scheduling Order.** Within 3 days after the Hearing date has been set, the Recording Secretary will provide to the parties a Standard Scheduling Order. The Standard Scheduling Order will set out the following:
- A. The date, time, and place for the Hearing.
 - B. Exchange of Witnesses and Exhibits. No later than 14 days before a scheduled hearing, the parties will exchange the names and contact information for all witnesses, a brief summary of each witness' proposed testimony, and copies of all documents or exhibits the party anticipates offering into evidence at the hearing.
 - C. Supplemental Information. Any supplemental hearing information must be exchanged by the parties no later than 7 days before a scheduled hearing.
 - D. Except for good cause as determined by the Hearing Officer, a party is prohibited from presenting any witness or exhibit that was not timely disclosed and exchanged.
 - E. Filing of Written Motions. If any party anticipates filing a written motion prior to the hearing, the Hearing Officer will specify a schedule for filing any written motions. All pre-hearing motions must be filed 10 days prior to the scheduled hearing to allow at least 5 days for the opposing party to respond. This provision is not intended to preclude oral motions, or objections to evidence, that may arise at the start of, or during, the hearing.

F. Request for Subpoenas. No later than 5 days before a scheduled hearing, a party shall submit all requests for subpoenas for the appearance of witnesses to the Recording Secretary. Any party requesting a subpoena must provide a copy of the request to the other party at the same time the request is made. The Recording Secretary will not issue the subpoena absent confirmation that the other party has received notice of the request.

7. **Objection to Proposed Hearing Officer.** Any objection to an assigned Hearing Officer for an Appeal must be filed with the Recording Secretary no later than 14 days from the date of notice that identifies the assigned Hearing Officer, or such objection shall be deemed waived. If an objection is made, the Recording Secretary will assign a new Hearing Officer. After the new Hearing Officer is assigned, the party that did not object to the original Hearing Officer may object to the new Hearing Officer within 5 days of the notice of the new Hearing Officer. If any objection is made, the Recording Secretary will assign a different Hearing Officer. Each side may submit only one objection to an assigned Hearing Officer for each Appeal. There shall be no administrative change of the assigned Hearing Officer without the consent of both parties.
8. **Request for Expedited Hearing.** After the assignment of the Hearing Officer, the Hearing Officer will rule on any request for an expedited hearing. If the request is granted, to the extent all parties and a Hearing Officer are available and agree, and good cause appearing, the expedited hearing will be placed in priority order for scheduling and to the extent necessary, the other time limits set forth in this Rule may be modified.
9. **Request to Continue Hearing.** Each party may request to continue a scheduled hearing for good cause by providing a written motion. Said motion is to be provided to the assigned Hearing Officer, the Recording Secretary, and to the opposing party. If the request to continue is based on the lack of availability of a material witness due to vacation or other identified schedule conflict, the written request must be made within 14 days after the Recording Secretary or the Hearing Officer sets the Hearing date. Each written request must include detailed information to support the continuance, confirm the opposing party has been notified of the request, and list alternative hearing date(s). The opposing party shall have an opportunity to agree to the request to continue the hearing, or object. The assigned Hearing Officer may grant or deny the request with or without argument. Oral argument may be conducted by telephone conference. Emergency requests made less than 28 days before the Hearing may be handled by a conference call before a written motion is filed and should only be granted for good cause shown. The party making the emergency request should submit the request in writing after the emergency call, and include the same information required for all other motions. If the granting, or failure to grant, an emergency request for a continuance is of such significance that it has the potential to materially prejudice the rights of one, or both, of the parties, the aggrieved party may

appeal that ruling to the Chairman of the Board, or in their absence, the Vice Chairman, who shall have the authority on their own to affirm or modify the decision of the Hearing Officer on the emergency request for a continuance. A delay in a response to a Freedom of Information Act, or public records request, shall not be considered good cause for a continuance.

10. Service of Subpoenas. Subpoenas issued by the Board for the attendance of witnesses must be served by personal service, unless alternative means have been agreed to by the witness or a party. If a Board subpoena is issued at least 5 calendar days prior to the hearing date, a party seeking service on a City employee may contact the human resources representative for the employee's department for purposes of pre-arranging a specific date, time and place during the employee's shift where service can be completed. Upon receiving such request, it shall be the duty of the department to establish a date, time and place reasonably convenient to the employee and the party seeking to serve the subpoena, unless said employee is on leave or vacation.

22g **Hearing Officer Role and Responsibilities:**

1. Hearing Officer Responsibilities. The Hearing Officer shall hear and review all evidence presented at the Hearing, hear all arguments by the parties, make findings of fact, and recommend whether to sustain, modify, or rescind the discipline. The Hearing Officer presiding over a Hearing shall possess all power necessary and appropriate to conduct a full, fair, and impartial Hearing, including the power to exclude irrelevant, immaterial, or unduly repetitive evidence, witnesses, or exhibits. This power includes but is not limited to the following:

- A. To administer oaths and affirmations;
- B. To receive relevant evidence;
- C. To rule upon evidentiary objections and consider offers of proof;
- D. To regulate the course of the hearing and the conduct of the parties and their representatives;
- E. Set reasonable time limits for the presentation of evidence based on the nature and circumstances of the Appeal.
- F. To rule on requests for telephonic testimony where witnesses cannot attend as a result of undue hardship, providing that the telephonic testimony will not cause undue prejudice to any party and the proponent of the telephonic testimony assumes responsibility for costs;
- G. To consider and rule upon procedural requests;

- H. To sanction parties for violations of these Rules, including but not limited to, excluding undisclosed witnesses or exhibits, limiting testimony or limiting claims or defenses, or issuing monetary sanctions. See Rule 22b.
 - I. To examine witnesses and direct witnesses to testify, limit repetitive or cumulative testimony, and set reasonable limits on the amount of time each witness may testify based on the nature and circumstances of the Appeal;
 - J. To conclude the hearing at such time as all relevant testimony has been presented; and,
 - K. To rule on objections to subpoenas duces tecum in order to keep discovery within reasonable limits.
- 2. Hearing Officer Report and Recommendation.** The Hearing Officer shall provide all records and a written report and recommendation to the Recording Secretary within 14 days of the conclusion of the Hearing. The Recording Secretary will deliver a copy of the recommendation to each party and their representative within 2 days of receipt of the Hearing Officer's report.
- 3. Contents of Hearing Officer Report and Recommendation.** The Hearing Officer's written report and recommendation shall contain:
- A. Date or dates of the hearing.
 - B. Name of employee who is appealing the discipline.
 - C. Discipline being appealed.
 - D. Name of employee's representative, if any.
 - E. Name of City's representative.
 - F. Administrative and/or Personnel Rules cited.
 - G. Whether the hearing was private or public.
 - H. List of all witnesses (City and Appellant).
 - I. List of all exhibits admitted (City and Appellant).
 - J. Brief description of the issue/discipline being presented.
 - K. A summary of the relevant evidence presented.
 - L. Summary of findings of fact based on the evidence submitted during the hearing.

- M. Positions of the parties.
- N. Hearing Officer's conclusions.
- O. For Cause finding or a failure to find cause (Just Cause for a Police Officer).
- P. Final recommendation, including whether the discipline imposed was appropriate, or should be modified or rescinded.

22h **Hearing Procedure:**

1. **Ex Parte Communication Prohibited.** A party shall not communicate with the Hearing Officer regarding the merits of a case except: 1) in the presence of all parties to the hearing including a telephonic conference; or 2) unless all parties to the hearing are notified of the communication in advance. The Hearing Officer shall not initiate ex parte communications with any interested person or party, directly or indirectly, in reference to any substantive issue on the Appeal.
2. **Routine Matters.** Nothing shall prevent the Hearing Officer from communicating about routine matters such as requests for continuances or motions, as long as all parties are informed of the substance of the communication. The date and type of communication, the persons involved and the results of such routine communications shall be made part of the record.
3. **Order of Hearing.** The Hearing Officer shall manage the order of the Hearing as efficiently as possible including taking witnesses out of order. As a general matter, the order of the Hearing shall be:
 - A. Hearing Officer to identify the appeal, identify parties present, and witnesses for the record.
 - B. Stipulations will be entered into the record.
 - C. Presentation, argument, and disposition of motions preliminary to the Hearing.
 - D. Opening statement by the City, unless waived.
 - E. Opening statement by the employee, unless waived or reserved until after the City has presented its case.
 - F. Presentation of the City's case.
 - G. Presentation of the employee's case.
 - H. Rebuttal testimony by the City.

- I. All witnesses shall be subject to cross examination at the time they testify, schedules permitting. The party calling the witness is allowed to question the witness on redirect after cross examination, but redirect testimony shall be limited to matters raised during cross examination.
 - J. Closing arguments by the City.
 - K. Closing arguments by the employee.
 - L. Rebuttal closing arguments by the City.
- 4. Public and Private Hearings.** Hearings shall be open to the public unless the employee requests a private hearing. Any employee request that the Hearing be private must be made no later than 14 days prior to the Hearing date. Once the private Hearing option is selected, it cannot be changed by the Appellant less than 14 days before the Hearing. In the event of a private hearing, the Hearing Officer shall clear the room of all persons not directly involved in the Hearing. If the Hearing is open to the public, the Hearing Officer or Board Chairperson may order that no cameras or recording take place if it is deemed to be disruptive to a fair hearing process. The Hearing Officer has the authority to limit, or prohibit, the use of cell phones while testimony is being taken.
- 5. Recording of Hearings.** All Hearings, and to the greatest extent possible, conferences between the Hearing Officer and the parties, shall be recorded by an audio recording device. If either party desires, a court reporter may take down the proceedings. The party requesting a court reporter must make arrangements for and pay the court reporter. If a conference with the Hearing Officer has not been recorded, the Hearing Officer will create a written record of the issues discussed and the outcome of the conference for the record.
- 6. Exclusion of Witnesses.** Witnesses shall be excluded from the hearing room at the request of either party, or by the Hearing Officer. When exclusion of witnesses has been requested, the City may have counsel and a representative of the Hiring Authority present and the appealing employee may have counsel and a union representative present.
- 7. Burden of Proof.** The City must sustain the burden of proof by a Preponderance of the Evidence presented. The rule and policy violations alleged in the Discipline Notice, and only those rules and policy violations, shall be considered by the Hearing Officer and the Board.
- 8. Exchange of Legal Papers.** In accordance with these rules, parties to an appeal shall furnish copies of any pleadings, documents, or written motions to the other party. The Hearing Officer may refuse to admit any document, pleading, or motion that is not timely submitted, that is not disclosed to the other party, or that does not otherwise comply with these rules. A document

or piece of physical evidence sought to be admitted into evidence during the Hearing must first be identified for the record and produced to each party and the Hearing Officer for review. The Hearing Officer retains the discretion to admit or exclude evidence as necessary.

9. **Recorded Information.** It is the responsibility of the offering party to provide the means for presenting any audio or video evidence being offered.
10. **Conduct of Parties and Witnesses.** At all times during a Hearing, the parties to the Appeal are expected to observe professional and respectful conduct. Each party must treat all other parties and witnesses with courtesy, respect and dignity.
11. **Retaliation Prohibited.** No employee shall be disciplined or retaliated against for appealing a disciplinary action to the Civil Service Board, or for participating in a Civil Service Board proceeding.

22i **Board Disposition of Appeals:**

1. **Board Consideration of Hearing Officer Report and Recommendation.** The Board shall consider and rule upon the Appeal at either a regularly scheduled, or special meeting, of the Board following the procedures outlined in this Rule.
2. **Hearing Officer's Report.** The Hearing Officer's report and recommendation will be forwarded to the parties or their representatives within two days after the Recording Secretary receives the report and recommendation from the Hearing Officer. The Hearing Officer's report and recommendation will be provided to the Board members prior to the Board meeting during which the Appeal will be heard and decided.
3. **Exhibits.** The Recording Secretary will have available at the proceeding before the Board all exhibits that were admitted into evidence by the Hearing Officer. Except for audio recordings or video exhibits, either party may present to the Board copies of exhibits admitted into evidence by the Hearing Officer.
4. **Use of Recorded Information Before the Board.** If either party wishes to present an audio or video recording to the Board that was admitted as evidence by the Hearing Officer, the party proposing to use the recording or video must inform the other parties no less than 7 days before the Board meeting. If any party objects to the use of the audio or video, the parties are required to attempt to resolve their objections. If there has been timely disclosure, but there are unresolved objections, those objections are to be submitted to the Board for its determination. If the offering party fails to timely disclose its intention to use the audio or video at the Board meeting, the Board shall not hear the audio recording, or allow the video to be used, in the absence of good cause.

- 5. Presentation by Parties.** Each party to the Appeal will have 15 minutes to present the reasons why the Board should accept, modify or reject the Hearing Officer's report and recommendation and address any perceived errors of fact in the report. The party who disagrees with the Hearing Officer's recommendation shall present first. The employee or employee's representative, but not both, may address the Board. The Chairperson may permit more time for each of the parties if a majority of the Board members deem it beneficial. No party, including the employee, may present evidence that was not admitted into evidence at the Hearing. Nothing in this Rule precludes either party from submitting to the Board any issue related to a decision made by the Hearing Officer to exclude the testimony of a witness, or to fail to admit an exhibit offered during the hearing.
- 6. Presence of Parties.** The appealing employee and/or his or her representative, and a City representative, are expected to be present at the Board meeting when the Appeal is scheduled to be considered. If either party or a representative is not present at the Board hearing, and no request for a continuance has been received by the Recording Secretary, or the Board, the Board can, on its own motion postpone deciding the Appeal, or move forward and decide the Appeal. If a request for a continuance has been made, for good cause shown, the Board may grant a postponement.
- 7. Open Meeting Law.** If the Hearing for the Appeal was conducted as a private hearing, unless waived by the parties, the Board shall vote to go into executive session in compliance with Arizona law to hear the presentation of the parties. All votes to resolve an Appeal will be held in open session. The Board may go into executive session for any reason permitted by law and as indicated in the meeting agenda.
- 8. Board Consideration of Evidence.** The Board will consider the Hearing Officer's report and recommendation, the presentation of the parties, and any of the admitted exhibits that it wants to review in rendering its decision. Each Board Member may ask questions of the parties, or of the Hearing Officer, to clarify any aspect of the presentation, or the report and recommendation. The Board will not require the Hearing Officer to defend the recommendation.
- 9. Board Discretion.** The Board may in its discretion:

 - A. Uphold, modify, or reject the recommendation of the Hearing Officer.
 - B. Direct the preparation of a transcript of the hearing and review the transcript and exhibits before making a determination of an Appeal.
 - C. Make a determination of back pay for terminations and demotions. The Board may order restoration of the employee to their previous position with or without back pay for the period of time between the beginning of the dismissal or demotion and the decision on the Appeal. Law enforcement officers who prevail on their Appeal shall be awarded back pay consistent

with the provisions of A.R.S. §38-1106.J. (2016), or the then current version of that statute as amended. In making a back pay determination, the Board may consider (a) amounts earned during the time the employee was separated from the City, (b) delays in resolving the appeal, and (c) any other relevant considerations. If the decision of the Board orders reinstatement without back pay, time off in excess of 30 working days caused by the Board's hearing procedure shall not be considered a suspension in violation of Personnel Rule 19 and shall not be compensated. Unpaid time off in excess of 30 days will be noted as unpaid leave in the employee's record.

10. Voting Required. Board members present shall not be excused from voting. A failure to vote or a voluntary abstention shall count as an "aye" vote unless excused by an announced conflict of interest. If a Board member fails to vote, or voluntarily abstains, the Board member shall explain the reason(s) for not voting.

11. Conflict of Interest. Each Board member must comply with Phoenix Charter Chapter XI and provisions of state law governing conflict of interest of officers and employees (Arizona Revised Statutes Sections 38-501 and following). Consistent with Arizona law, a Board member must make known a substantial conflict of interest and must not participate in any form or manner in the disposition of the matter.

12. City of Phoenix Ethics Policy. Each Board member must comply with the City of Phoenix Ethics Policy, Phoenix City Code section 2-52. Accordingly, a Board member should maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties, avoid any improprieties in their role as public servants, and never use a Board position or power for improper personal gain.

13. Tie Vote. If there is a tie vote of the Board on any motion pending before it, that motion shall be considered defeated. An initial tie vote on a motion related to an Appeal does not bring consideration of the Appeal to a conclusion. If there has been a tie vote, the Board will first conduct a vote on whether the City met its burden of proof that cause exists for discipline. If the Board continues to be tied, or votes no, then the employee prevails on the Appeal. If the Board votes yes, it will then vote to determine the appropriate level of discipline.

14. Board Decision Final. The findings and decision of the Board shall be final and shall be certified to the Hiring Authority for action.

22j **Record Filed:**

For Appeals conducted as public hearings, the Recording Secretary will retain as the public record the notice of discipline, the Hearing Officer's report and recommendation, the exhibits admitted by the Hearing Officer, any motions filed during the course of the Appeal, the audio recordings of both the Hearing and the

Board meeting where action was taken, and a record of the final action of the Board. For Appeals conducted as private hearings, the Recording Secretary will retain the entire record, but the only records to be made available to the public for inspection and copying will consist of only the conclusions and recommendation of the Hearing Officer adopted by the Board and a record of the final action by the Board.

22k **Call to the Public:**

1. **Open Meeting Law.** Board proceedings are subject to the Arizona Open Meeting Law, A.R.S. § 38-431, *et seq.*, (“Open Meeting Law”). For Board proceedings that satisfy the definition of meeting under the Open Meeting Law, the Board may discuss, consider, or take action only those matters properly posted and listed on an agenda. Each meeting agenda may include a Call to the Public where members of the public may present information to the Board. During Call to the Public, Board members may listen to the information, but may not discuss or take action on the information received.
2. **Public Speakers.** Members of the public who wish to speak during Call to the Public must complete a public comment card, which will be made available at each meeting. A public comment card must be submitted to the Recording Secretary as soon as possible, but no later than before the Call to the Public begins.
3. **General Guidelines for All Speakers.** The Board adopts the following guidelines for all speakers. These guidelines will be available in print at each Board meeting.
 - A. When speaking, a speaker should first state their name for the record.
 - B. No profanity or threats will be tolerated. Each speaker should present comments in a respectful and courteous manner.
 - C. Each speaker will be called in the order recognized by the Chairperson.
 - D. Members of the public attending the meeting should refrain from clapping or otherwise creating distractions that prevent the Board from the orderly conduct of business.
 - E. Comments during Call to the Public are heard at the discretion of the Chairperson. A speaker shall receive one opportunity to make comments to the Board during Call to the Public.
 - F. A speaker may speak for up to three minutes to make comments to the Board during the Call to the Public. The number of speakers permitted to speak at any meeting will be determined by the Chairperson and may be limited by the time of day and any remaining agenda items that must be addressed at the meeting.

- G. A speaker must address the Board and not staff or members of the public.
- H. When the time for a speaker has expired, the Chairperson may ask the speaker to conclude any comments.

22| **Rule Interpretation:**

If a dispute arises over the interpretation of a Personnel Rule, an aggrieved party shall file in writing a request for Rule interpretation by the Human Resources Director. This request shall be filed within fifteen calendar days of the date that the dispute arose.

Within ten calendar days of the receipt of the request, the Human Resources Director shall respond to the aggrieved party. If the party is still dissatisfied with the interpretation, he may submit a request in writing for a review by the Civil Service Board. This appeal shall be submitted within ten days of the receipt of the Human Resources Director's reply.

The Civil Service Board may assign a Hearing Officer to investigate the complaints and the Hearing Officer shall submit findings to the Board within two weeks of the completion of the investigation. The decision of the Board shall be final.

EXHIBIT 4

DISCIPLINE POLICY AND REVIEW BOARDS		Operations Order 3.18
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1. **PURPOSE/GENERAL INFORMATION**

- A. Under the direction of the Police Chief, it is the Department's intent to administer discipline for both sworn and civilian employees in accordance with City and Department policies in a manner which is fair, impartial, and consistent to all employees.
 - Any violation of City or Department policy, whether the employee is on duty, off duty, or off-duty (working off duty in a police capacity), may result in discipline.
- B. Discipline and/or coaching/supervisor initiated training is intended to correct inappropriate behavior or policy violations that have a negative impact on providing services to the community and/or police operations.
 - (1) If an employee is to receive discipline of a written reprimand, suspension, demotion, or termination, as defined in this order and Addendum A of this order, a supervisory investigation/citizen complaint investigation must be completed.
 - Investigation procedures outlined in Operations Order 3.19, Misconduct Investigations, and the employee association's [Memorandum of Understanding \(MOU\)/ Memorandum of Agreement \(MOA\)](#), **will be** followed.
 - Only sustained violations will be considered for discipline.
 - (2) An investigation **is not** required when a coaching/supervisor initiated training or supervisory counseling is conducted/issued to improve performance.
- C. Repeated violations of policy may result in discipline.
- D. In the case of a performance issue/minor policy violation where the employee does not have any previous performance issues/minor policy violations during the same performance rating year, documentation in the employee's Performance Management Guide (PMG) and/or coaching/supervisor initiated training may be offered by the employee's chain of command to prevent future violations of the same policy/procedure.
 - (1) The employee's supervisor will document the performance issue/minor policy violation and corrective action implemented in the supervisor notes.
 - The employee **will be** provided a copy of the supervisor notes on a monthly basis for review and signature as a receipt.
 - (2) Following approval by the commander/administrator to issue coaching/ supervisor initiated training rather than discipline; the affected employee will be notified of the deviation.
 - (3) If a performance issue/minor policy violation is documented in the employee's PMG, the employee will be given specific goals to improve their performance.
 - If goals are not met, the employee will be subject to the unscheduled PMG process.
 - Repeat 'Not Met' performance which has been documented in the employee's PMG may result in discipline.

2. **DEFINITIONS/GENERAL GUIDELINES** - Repeat violations are subject to progressive discipline (see Progressive Discipline Table in section 4 of this order)

A. Minor Policy Violations	<ul style="list-style-type: none"> • Acts not involving repeat offenses or a reckless disregard for policy • May be deemed as a performance issue • Possible corrective action: <ul style="list-style-type: none"> * Coaching/supervisor initiated training * Documentation on the employee's PMG * Supervisory counseling
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2. **DEFINITIONS/GENERAL GUIDELINES** - Repeat violations are subject to progressive discipline (see Progressive Discipline Table in section 4 of this order) (Continued)

B. Coaching	<ul style="list-style-type: none"> A type of “non-disciplinary” counseling designed to help the employee gain greater competence and confidence Assists in overcoming barriers to improve employee performance Used in situations where the employee needs skill development, desires to improve job performance, is not working up to standards, behavior change is needed, and/or desires career advancement
C. Supervisory Counseling	<ul style="list-style-type: none"> A type of “non-disciplinary” counseling conducted in a face-to-face meeting between the supervisor and the employee <p>EXCEPTION: Per Unit 4’s [Phoenix Law Enforcement Association (PLEA)] MOU, a supervisory counseling <u>is</u> formal discipline.</p> <ul style="list-style-type: none"> Will be documented on a Supervisory Counseling Form 80-582D which will be signed/dated by the employee to ensure the employee understands the purpose of the counseling and documentation Must be signed by the employee within two (2) weeks of being advised the supervisory counseling has been issued Does not require the issuance of an Notice of Violation (NOI) or the completion of an investigation Must be included in a Unit 4 employee’s Department personnel file May also be documented in the employee’s performance evaluation and in sustained misconduct investigations, in accordance with the MOU/MOAs
D. Written Reprimand Violations	<ul style="list-style-type: none"> Acts involving repeat offenses or a disregard for policy Listed in Addendum A of this order Possible discipline: <ul style="list-style-type: none"> * Written reprimand * Eight (8) or 24 hour suspension
E. Written Reprimand Form 14-8D	<ul style="list-style-type: none"> Disciplinary documentation detailing a policy violation which requires the authorization of a bureau/precinct commander/administrator Must be reviewed and signed by the employee and a copy given to the employee Requires the issuance of an NOI and the completion of an internal investigation Must be included in the employee’s Department personnel file Information detailed in a Written Reprimand form may be documented in the current performance evaluation year. If within three (3) years of the date of discipline, information in a Written Reprimand form will be documented in sustained misconduct investigations.
F. Suspension	<ul style="list-style-type: none"> A mandatory temporary leave from work without pay from eight (8) to 240 hours Will be authored by the City Human Resources Department
G. Class I Violations	<ul style="list-style-type: none"> Acts involving an increased disregard for policy Will be referred to the Police Chief Listed in Addendum A of this order Possible discipline: <ul style="list-style-type: none"> * Eight (8) or 24 hour suspension
H. Class II Violations	<ul style="list-style-type: none"> Acts adversely affecting Department operations or involve egregious unprofessional behavior Will be referred to the Police Chief or Discipline Review Board (DRB) Listed in Addendum A of this order Possible discipline: <ul style="list-style-type: none"> * 24 or 40 hour suspension * Demotion
I. Class III Violations	<ul style="list-style-type: none"> Acts so serious and malicious in nature, they may require immediate intervention by the Police Chief (or designee) with the immediate removal of all employee responsibilities May be subject to a Loudermill Hearing or referred to the DRB Listed in Addendum A of this order

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2. **DEFINITIONS/GENERAL GUIDELINES** - Repeat violations are subject to progressive discipline (see Progressive Discipline Table in section 4 of this order) (Continued)

I. Class III Violations (Continued)	<ul style="list-style-type: none"> • Possible discipline: <ul style="list-style-type: none"> * 40, 80, or 240 hour suspension * Demotion * Termination
J. Demotion	<ul style="list-style-type: none"> • The removal of an employee from a position in a higher pay class to a position in a lower class for which the maximum rate of pay is lower.
K. Termination	<ul style="list-style-type: none"> • A mandatory dismissal from employment • When an employee is terminated, the employee will receive: <ul style="list-style-type: none"> * A statement citing the reason for termination * A statement of the effective date of the termination * A statement of the status of fringe and retirement benefits after termination * A statement regarding the content of the employee's employment record relating to the termination
L. Loudermill Hearing	<ul style="list-style-type: none"> • Determination of employment status by the Police Chief (or designee) without an Investigative Review Process (IRP) or referral to the DRB
M. Classification Guidance Criteria	<ul style="list-style-type: none"> • Unprofessional conduct violations not listed in Addendum A of this order
NOTE: See the current MOU/MOA for more information	

3. **OFFENSES THAT MAY RESULT IN DISCIPLINARY ACTION**

- A. Any violation of policy, on duty, off duty, or off-duty, may result in discipline, regardless of whether or not the violation is specifically listed in Addendum A of this order.
- B. Employees may recommend, by memorandum through their chain of command to the Police Chief, a new category be created and rated into Written Reprimand Violations, Class I Violations, Class II Violations, and Class III Violations, as outlined in Addendum A of this order.
- The memorandum will be authored in accordance with Operations Order 2.5, Written Directives.

4. **PROGRESSIVE DISCIPLINE**

- A. Progressive discipline is a process of review and consideration of the employee's history of discipline as a factor for a recommendation of discipline on new sustained policy violations.
- B. With commander approval, the following criteria will be used when the chain of command utilizes progressive discipline:
- (1) An employee who has received a non-disciplinary coaching/supervisory initiated training for a minor policy violation and either repeats the same minor policy violation or is found to be in violation of other minor policy violation/s within the time limits, is subject to either a supervisory counseling or written reprimand.
 - (2) An employee who has received a supervisory counseling for a minor policy violation and either repeats the same minor policy violation or is found to be in violation of another minor policy violation within the time limits, is subject to either a second supervisory counseling or written reprimand.
 - (3) An employee who has received a written reprimand and is found to be in violation of a minor policy violation (supervisory counseling designation) within the time limits, is subject to either a supervisory counseling or second written reprimand.

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4. B. (4) An employee who has received a written reprimand and either repeats the same minor policy violation or is found to be in violation of another policy violation (written reprimand designation) within the time limits, is subject to either a written reprimand or being referred to the Police Chief for an eight (8) or 24 hour suspension.
- (5) An employee who has received a suspension and is found to be in violation of a minor policy violation (supervisory counseling designation) within the time limits, is subject to either a supervisory counseling or written reprimand.
- (6) An employee who has received a suspension and is found to be in violation of another policy violation (written reprimand designation) within the time limits, is subject to either a written reprimand or being referred to the Police Chief for an eight (8) or 24 hour suspension.
- (7) An employee who has received a suspension and is found to be in violation of a Class I or Class II violation listed within Addendum A of this order within the last five (5) years from the date of discipline, will be referred to the Police Chief or DRB for a possible demotion and/or a 24, 40, 80, or 240 hour suspension, or termination or will be referred to the Police Chief (or designee) for a Loudermill Hearing.
- (8) An employee who has two suspensions and is found to be in violation of a Class I, Class II, or Class III policy violation listed within Addendum A of this order within the last five (5) years from the date of discipline, will be referred to the Police Chief or DRB for a possible demotion and/or a 40, 80, or 240 hour suspension, or termination or will be referred to the Police Chief (or designee) for a Loudermill Hearing.
- C. Progressive Discipline Table - Time periods for progressive discipline are based on the date of the discipline.

If Corrective Action/Discipline Would Be:	Corrective Action/Discipline May Become:
<ul style="list-style-type: none"> • Second coaching within 12 month period 	<ul style="list-style-type: none"> • Supervisory counseling • Written reprimand
<ul style="list-style-type: none"> • Second supervisory counseling within a 12 month period 	<ul style="list-style-type: none"> • Supervisory counseling • Written reprimand
<ul style="list-style-type: none"> • Supervisory counseling when the employee already has a written reprimand (within a (3) year period) 	<ul style="list-style-type: none"> • Supervisory counseling • Written reprimand
<ul style="list-style-type: none"> • Second written reprimand within a three (3) year period 	<ul style="list-style-type: none"> • Written reprimand • Police Chief suspension (eight (8) or 24 hours)
<ul style="list-style-type: none"> • Supervisory counseling when the employee already has a suspension (within a five (5) year period) 	<ul style="list-style-type: none"> • Supervisory counseling • Written reprimand
<ul style="list-style-type: none"> • Written reprimand when the employee already has a suspension (within a five (5) year period) 	<ul style="list-style-type: none"> • Written reprimand • Police Chief suspension (eight (8) or 24 hours)
<ul style="list-style-type: none"> • Second suspension within a five (5) year period 	<ul style="list-style-type: none"> • Police Chief or DRB suspension (24, 40, 80, or 240 hours) • Demotion • Termination • Loudermill Hearing
<ul style="list-style-type: none"> • Third suspension within a five (5) year period 	<ul style="list-style-type: none"> • Police Chief or DRB suspension (40, 80, or 240 hours) • Demotion • Termination • Loudermill Hearing

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5. **DISCIPLINE PROCESS OVERVIEW - INVESTIGATING SUPERVISOR'S RESPONSIBILITY**

A. Process	<ul style="list-style-type: none"> • Establish the identity of a minor policy violation, written reprimand violation, or an allegation of a Class I, Class II, or Class III violation • If the alleged violation is considered a Class I, Class II, or Class III violation as defined in Addendum A of this order, immediately contact the Professional Standards Bureau (PSB) to commence an internal investigation. • Research employee's prior discipline (if applicable) and work history: <ul style="list-style-type: none"> * See the Progressive Discipline Table in section 4 of this order • Complete the Incident Review Control (IRC) Form 80-58DD • Prepare final recommendation • Submit to commander/administrator for review and recommendation • Prepare final documentation on appropriate form
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6. **DISCIPLINE OVERVIEW**

A. If a supervisory-initiated investigation or citizen complaint investigation has been completed and an allegation of misconduct is sustained, supervisors will refer to Operations Order 3.18, Addendum A, to determine proper recommendations for discipline.

- (1) Repeated sustained policy violations may be referred to the DRB if lesser means of discipline have not improved performance or corrected the behavior.
- (2) For employees responsible for Performance Achievement Plans (PAPs), the Police Chief is the final authority on determining discipline.
- (3) Depending on the seriousness of the sustained violation of policy or the continued repeat violations of policy, in consultation with the Police Chief, a Loudermill Hearing may be recommended.
- (4) The most serious violation among the sustained violations will be designated the primary violation.
- (5) Other sustained violation/s will be considered aggravating circumstances.

B. Placement Recommendations Based on Addendum A of this Order

- (1) When the investigation process is complete [investigation is presented to the employee to prepare for the Investigative Review Process (IRP)], the investigating supervisor will research the employee's discipline history within the following time restrictions calculated from the date that the employee received the discipline.
 - If the investigation is conducted by PSB, the chain of command will complete the work history (see Operations Order 3.19 for information regarding work history).
- (2) Coaching/supervisor initiated training/discipline outside the time restrictions will not be considered, see the table below for time restrictions:

(a) Supervisory Counseling	• One (1) year
(b) Written Reprimand	• Three (3) years
(c) All Suspensions	• Five (5) years
(d) Demotion	• Five (5) years

NOTE: Employees may request a modification of time restrictions (for compounding purposes) by submitting a memorandum through their chain of command to the Police Chief.

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6. B. (3) The investigator will use the most serious of the current sustained violation/s as the primary violation within Addendum A of this order, with additional sustained violation/s listed.
7. **PROCESS TO RECOMMEND DISCIPLINE OR NON-DISCIPLINE COACHING/SUPERVISOR INITIATED TRAINING**
- A. Minor policy violations may be treated as non-disciplinary performance issues.
- (1) In addition to coaching, supervisors may recommend remedial training as part of the non-disciplinary process.
- (2) Supervisors will document the coaching/supervisor initiated training within their supervisor notes and will provide a monthly copy to the employee for review and signature.
- B. Employees who are found to have multiple minor policy violations and have received coaching/supervisor initiated training within the same performance evaluation year, may be subject to a supervisory counseling or written reprimand.
- The employees' chain of command will take into consideration both aggravating and mitigating factors prior to the issuance of a written reprimand.
- C. Employees who are found to have sustained Class I, Class II, or Class III violations will be referred to the Police Chief or DRB as outlined within Addendum A of this order.
- D. Mitigating and Aggravating Factors
- During the DRB review process, mitigating and aggravating factors will be considered.
- E. Chain of Command Final Recommendations - After the internal investigation and prior discipline or non-disciplinary history processes are completed, and it is determined discipline is appropriate, the employee's chain of command will determine the course of action (see the Progressive Discipline Table in Addendum A of this order for more information).
- (1) If **extreme mitigating or aggravating factors exist** relative to the policy violation and/or the employee has a prior Class I or Class II violation, the commander/administrator may request to deviate from the standard recommended level of disciplinary action in Addendum A of this order upon approval of the Police Chief.
- (a) A memorandum will be written and forwarded through the chain of command to the Police Chief.
- (b) The affected employee will be provided a copy of the memorandum.
- (c) The Police Chief may request the commander/administrator and/or the employee (with association representation if desired by the employee) attend a meeting to discuss the deviation request.
- (2) When an employee's sustained violation of policy is considered to be a Class III violation or a repeat of any Class I or Class II violation and the employee has received a suspension within the last five (5) years, the employee's chain of command may recommend to the Police Chief that a Loudermill Hearing be scheduled.
- (a) If the option is a Loudermill Hearing, the involved employee will be given notice at least five (5) working days prior to the hearing and will be provided with a copy of all supporting documentation.
- Employees should be advised to contact the City Human Resources Department in order to make arrangements for benefits.

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7. E. (2) (b) The involved employee and a representative (if the employee requests) may attend the Loudermill Hearing.

NOTE: If a Loudermill Hearing is conducted, an IRP **will not** be conducted.

F. Consideration by the DRB

- (1) Investigations with sustained violations which meet the criteria for a suspension, demotion, or termination will be forwarded through the employee's division chain of command to the DRB.

EXCEPTION:

- (a) A DRB is not required for a probationary employee who does not possess Civil Service appeal rights or an employee in a non-classified position, exceptions may be granted by the Police Chief or designee.
- (b) Based upon a recommendation and approval of the Police Chief, a Loudermill Hearing will be conducted by the Police Chief or designee in lieu of a DRB in cases where the conduct of the employee is egregious in nature, or based on job performance.
- (2) Based upon the employee's chain of command's recommended level of discipline shown within Addendum A of this order, the DRB will consider a 40, 80, or 240 hour suspension and/or demotion, or termination.
- If articulable facts that may mitigate the discipline have been presented to the DRB by the employee or the employee's representative, the DRB chairperson may make a recommendation to the Police Chief outside the level action requirements (suspension range)
- (3) During the DRB executive session, board members will weigh mitigating and aggravating factors to determine the final discipline.
- (4) The employee's commander/administrator may address the DRB and make a recommendation to the board for a level of discipline.
- (5) The chairperson of the DRB will make a recommendation to the Police Chief.
- (6) Once an employee receives discipline for an allegation, they will not receive any additional discipline for the same specific allegation and/or incident of misconduct.
- (7) The Police Chief is the final authority on discipline.

G. Serving a Suspension - Suspension time should begin within 30 days of the date of discipline as determined by the supervisor/operational need.

- (1) Unit 4 employees (PLEA) may exchange up to 40 hours of vacation or compensatory time while serving a suspension; however, when this benefit is elected, the employee must report for duty during the exchange hours.
- (2) Unit 6 employees [Phoenix Police Sergeants and Lieutenants Association (PPSLA)] may exchange up to 30 hours of vacation time while serving a suspension; however, when this benefit is elected, the employee must report for duty during the exchange hours.
- (3) Employees who receive a suspension of 40 hours or less will serve the suspension on consecutive days.

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7. G. (4) Employees who receive a suspension of 40 hours or more must serve a minimum of 40 hours per pay period until the suspension is completed.

8. **TYPES OF REVIEW BOARDS**

A. Driving Analysis Committee (DAC)	<ul style="list-style-type: none"> Objectively reviews police equipment accidents, pursuits, and other employee driving incidents to determine if the action was in or out of policy and to recommend corrective action
B. Discipline Policy Committee	<ul style="list-style-type: none"> Reviews classes of discipline as needed Makes recommendations to the Police Chief
C. Disciplinary Review Board (DRB)	<ul style="list-style-type: none"> Reviews all disciplinary reports that have been reviewed by an assistant chief that may lead to a suspension, demotion, or termination; probationary employees, non-classified employees, or violations in Addendum A of this order which are designated as termination Reviews all disciplinary reports that have been reviewed by an assistant chief that may result in either a suspension up to and including termination Unless directed by the Police Chief, the DRB will not review an investigation that requires termination for the purposes of recommending discipline. Reviews all use of force incidents found to be out of policy by the Use of Force Board (UFB) Make recommendations to the Police Chief regarding the degree and severity of disciplinary action to be taken Will not review matters involving employees responsible for a PAP
D. Personnel Assessment System Board (PASB)	<ul style="list-style-type: none"> Oversee all interventions performed under the auspice of the Personnel Assessment System(PAS) program Determine future direction, needs, and development for the PAS program Meet on at least a quarterly basis Review interventions taken at the bureau/precinct level Review all recommendations for intervention that can only be approved by PASB Discuss modifications to PAS Review new trends and thresholds as recommended by the PAS administrative staff Review monthly/quarterly and annual report prepared by the PAS administrator Reserves the right to meet with the affected employee to help determine intervention needs
E. Use of Force Review Board (UFB)	<ul style="list-style-type: none"> Conducts timely reviews into police shootings and use of force incidents Examines all related support documentation surrounding police shootings and use of force incidents to determine if the incident was consistent with established Department policy Examines all related policies and procedures governing the administrative handling of police shootings and use of force incidents Responsible for making recommendations for change necessary for maintaining Department policy accountability, control and integrity, or training methods

9. **SELECTION OF REVIEW BOARD/COMMITTEE MEMBERS**

A. Review Board Members

TYPE OF BOARD	SWORN EMPLOYEES	CIVILIAN EMPLOYEES
(1) Driving Analysis Committee (DAC)	<ul style="list-style-type: none"> Traffic Bureau commander - chairperson Tactical Support Bureau (TSB) commander One (1) rotating precinct/bureau commander Driver training supervisor Two (2) Traffic Bureau lieutenants (one (1) from north zone and one (1) from south zone) Vehicular Crimes Unit (VCU) supervisor Representatives from each employee association [PLEA, PPSLA, American Federation of State, County, and Municipal Employees (AFSCME), and Administrative, Supervisory Professional and Technical Employee Association (ASPTEA)] 	<ul style="list-style-type: none"> Same as for sworn employees

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9. A. Review Board Members (Continued)

TYPE OF BOARD	SWORN EMPLOYEES	CIVILIAN EMPLOYEES
(2) Discipline Policy Committee	<ul style="list-style-type: none"> • Police Chief - chairperson • PSB commander • Representative from City Human Resources • Representative from each employee association, (PLEA, PPSLA, AFSCME, and ASPTEA) 	<ul style="list-style-type: none"> • Same as for sworn employees
(3) Disciplinary Review Board (DRB)	<ul style="list-style-type: none"> • One (1) assistant chief - chairperson • Two (2) commanders • Two (2) employee peers • Two (2) Phoenix citizens 	<ul style="list-style-type: none"> • One (1) assistant chief - chairperson* • One civilian administrator • One commander • Two employee peers • Two Phoenix citizens
(4) Personnel Assessment System Board (PASB)	<ul style="list-style-type: none"> • Chaired by an executive chosen by the Police Chief • Mental health care professional, M.S. or Ph.D. • City Employee Assistance Program (EAP) coordinator • Community member • Commander • Training representative • Critical Incident Stress Management (CISM)/ peer support representative • Peer representative • Employee association/unit representative • Representative from the commanders mentoring team 	<ul style="list-style-type: none"> • N/A
(5) Use of Force Review Board (UFB)	<ul style="list-style-type: none"> • One (1) executive staff member (assistant chief or director appointed chair by the Police Chief) • One (1) commander • One (1) employee peer • Three (3) Phoenix citizens 	<ul style="list-style-type: none"> • Same as for sworn employees
NOTE: *Permanent members		

B. Guidelines for Selection of Board Members(1) General Guidelines

- Members of each board will be selected on a rotating basis, except for the permanent members.
- Individuals in the affected employee's chain of command will not be selected to participate in the review board.
- The employee peer/s selected to serve on the board cannot be currently assigned to the affected employee's bureau/precinct.
- The Police Chief may participate in the inquiry and examination of any person appearing before the UFB.

(2) Specific Guidelines for the UFB

- Alternates - The other assistant chiefs are alternate members of the UFB and will be invited to participate on boards when the Police Chief is not available or a conflict of interest exists.

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9. B. (2) (b) Advisory Members

(i) Training Bureau Firearms Training Supervisor	<ul style="list-style-type: none"> Serves in an advisory capacity to the board when the incident involves the discharge of a firearm
(ii) Training Bureau Non-lethal Force Supervisor	<ul style="list-style-type: none"> Serves in an advisory capacity to the board in selected use of force incidents
(iii) Legal Unit Attorney	<ul style="list-style-type: none"> Shall serve with the board to provide legal assistance and advise May participate in the inquiry, however, is not a member of the board

- (c) Specialized Assistance - The assistant chief who chairs the board may request the presence of additional Department personnel if specialized or technical expertise is required.

10. **ADMINISTRATION OF REVIEW BOARDS**

- A. Notification of Involved Employee/s - The employee/s involved in an incident to be brought before a review board will be notified of the board in writing at least 10 calendar days prior to the meeting.

(1) DRB - The notification will contain:

- Date and time of the board
- Violation/s
- Basis of each violation that has been sustained
- Name of board members and any board member substitutions
- Investigation number

(2) UFB - The notification will contain:

- Date and time of the board
- Type of incident such as a shooting, animal dispatch, or accidental discharge
- Name of board members and any board member substitutions
- Investigation number

- B. Board Recommendations - This section/procedure does not apply to the PASB.

(1) All Boards - After reviewing an incident, the appropriate review board will make a recommendation and submit it to the Police Chief.

- (a) Such recommendations are advisory only.

- (b) Recommendations of the board will be included in the permanent record of the disciplinary report.

11. **SPECIFIC GUIDELINES FOR REVIEW BOARDS**A. DRB(1) Incidents for Review

- (a) All use of force incidents found to be out of policy by the UFB.

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11. A. (1) (b) All other disciplinary reports involving:
- Criminal acts (for which the employee has been found guilty or has entered into a plea agreement)
 - Violations of law
 - Violations of the rules and regulations of the Department that are classified as a suspension, demotion, or termination
- (2) Incidents That May Bypass the DRB - Cases involving serious violations of the law or rules and regulations of the Department to the extent that the employee could be immediately terminated from employment may bypass the board and be referred to the Police Chief or designee for action through the chain of command.
- (3) Employees Appearing Before the DRB
- (a) Employees and their unit representative shall have the right to appear before the Department DRB when disciplinary matters involving the employee are brought before the board.
 - (b) The purpose of such an appearance is to give employees an opportunity to respond to any sustained assertions made against them.
 - (c) Employees may submit relevant written material in support of their position.
 - (d) Any appearance before the board during employees' regular work shift shall be counted as time worked.
 - (e) Employees are not eligible for overtime pay when appearing before the board during other than regular work shift hours.
- (4) Meeting With Supervisors Prior to the DRB
- (a) Employees may meet with their immediate supervisor and second level supervisor or the bureau/precinct commander/administrator to discuss the matter being reviewed by the board.
 - Employees may be accompanied by an employee association/unit representative.
 - (b) If the immediate supervisor conducted the investigation, employees may meet with the next supervisor in their chain of command
 - Such a request shall be made in writing to the immediate supervisor.
 - An employee association/unit representative may accompany the employee to the meeting.
- (5) Employee Association/Unit Representative
- (a) Employees and their employee association/unit representative may be present in the board hearing room to passively observe all presentations made to the board and to be present for all responses made to questions by board members.
 - (b) If the employee desires, employee association/unit representatives are permitted to present information on the employee's behalf.
 - (c) All non-board members will be excluded from the boardroom during deliberations.

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11. B. UFB

- (1) Incidents for Review - The board is specifically empowered to conduct reviews of the following employee-involved use of force incidents:

(a) Class I	Any unintentional discharge of a weapon without injury, which includes but is not limited to, firearms training, practice, or general handling of the weapon
(b) Class II	Any intentional shooting or attempted shooting of an object or animal, whether or not such object or animal is actually struck
(c) Class III	Any intentional or unintentional incident in which any of the following conditions occurred: <ul style="list-style-type: none"> • Any time a person is injured or killed by an employee's firearm discharge • Any time an attempt is made to injure a person by discharging a firearm • Any time serious injury is inflicted upon a person by an employee by means other than a firearm (excludes vehicular accidents)
(d) Class IV	<ul style="list-style-type: none"> • Any intentional or unintentional discharge of a stunbag shotgun, regardless if it strikes a person or object or not • Any intentional use of a police vehicle against a person on foot or in another vehicle • Any time a person dies while in the custody of an employee

- (2) The Police Chief may direct the review by the UFB of any use of force incident involving an employee or agent of the Department regardless of the specific circumstances.
- (3) The UFB chairperson will review all Class I, II, and IV incidents before the board convenes to determine the necessity for a board review of the incident.
- If the chair determines a review is necessary, the review procedure will be used.
 - If the chairperson determines a UFB is not necessary, a memorandum with recommendations will be forwarded to the Police Chief for approval.
 - The employee's chain of command will be notified of the results and appropriate action will be taken.
- (4) All Class III incidents will automatically be reviewed by the UFB.
- (5) Electronic Control Devices (ECD) - The use of force reports involving an ECD will be forwarded through the chain of command to the involved officer's assistant chief for review.
- At the discretion of the assistant chief, the incident report may be forwarded to the UFB chairperson for additional review.
- (6) Employees Appearing Before the UFB
- (a) Department employees shall be subject to call before the UFB.
- (b) The employee/s involved in the use of force incident **will be** required to appear before the board.
- The purpose of such an appearance will be to give the involved employee/s the opportunity to relate the circumstances and decision process in the use of force incident and respond to board questions.
 - The employee's immediate supervisor (at the time of the incident) will accompany the employee to the review board.
- (c) Employee Association/Unit Representation - Employees are allowed to be accompanied to the UFB by a employee association/unit representative, however, the representative will be a passive observer during the review.

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11. B. (7) UFB Documentation - All documentation, including UFB recommendations, will be forwarded to the Police Chief for review.
- (8) Out of Policy Use of Force Incidents
- (a) All use of force incidents found to be out of policy by the UFB will be referred directly to the DRB.
- (b) A memorandum will be sent to the affected employee's bureau/precinct commander/administrator to request:
- The employee's five year discipline and commendation record
 - The employee's PMG
- (c) These items will be sent to the DRB/UFB coordinator in the Police Chief's office within five working days for inclusion in the DRB package.

12. **DRIVING ANALYSIS COMMITTEE (DAC)**

A. Committee Meetings

- (1) The time and location of the meetings will be announced by the chairperson.
- (2) The presence of any five members constitutes a quorum for doing business.
- (3) Representatives of the labor units are not voting members of the DAC; however, they may observe and discuss issues.
- (4) A Traffic Bureau lieutenant will provide policy guideline assistance.
- (5) In the event of a tie vote, the deciding vote goes to the DAC chairperson.
- NOTE:** Members will make every effort to reach a consensus on DAC rulings/findings.
- (6) The chairperson may designate one of the other commanders from the committee to serve as chairperson in his/her absence.
- (7) The DAC will review Department involved traffic collisions, pursuits, and other employee driving incidents that may be of concern.

B. DAC Driving Incident Review Process

- (1) Upon receipt of the traffic collision, pursuit, or driving incident packet by the DAC chairperson or designee, it will be logged in and then forwarded to the Vehicular Crimes Unit (VCU) supervisor for classification:
- For Review
 - Not for Committee Review (clearly in policy)
- (2) After review by the VCU supervisor, the reports will be returned to the DAC chairperson or designee and the classification will be added to the log.
- This does not apply to those incidents involving serious injury or death and possible felony prosecution.
- (3) The chairperson will send those reports classified as "Not for Committee Review" to the employees bureau/precinct commander/administrator.

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12. B. (4) Reports classified as "For Review", which do not involve possible felony prosecution of the employee, will be reviewed by the DAC, who will deliberate on the following and report its recommendations to the employee's bureau/precinct commander/administrator.
- The extent of the employee's responsibility
 - Whether or not the traffic collision, pursuit, or driving incident was within Department policy
 - Whether or not the actions and decisions made (outside of policy) resulting in the traffic collision, pursuit, or driving incident were an acceptable deviation from policy
- (5) Reports involving possible felony prosecution of the employee will be forwarded by the VCU supervisor to the Police Chief via the DAC chairperson.
- The Police Chief will determine whether or not to forward the report to the County Attorney's Office.
 - After the report has been reviewed by the Police Chief and/or the County Attorney, it will be returned to the DAC for review.
- (6) The committee's recommendation for corrective action may consist of one or more of the following:
- Training needs
 - Disciplinary/corrective action
- NOTE:** A supervisory counseling is the minimum corrective action for any out of policy traffic collision unless the option in section 12.B.(10) of this order is allowed.
- In the case of traffic collisions, the issuance of an Arizona Traffic Ticket and Complaint/s (ATTC) is an additional option.
 - No corrective action is necessary
- (7) Factors for Consideration by the DAC
- (a) Mitigating Factors - Employee was involved in direct law enforcement activity which required prompt action, for example:
- During a pursuit
 - Response to a call that justifies a rapid response
 - An on-view situation requiring immediate action
 - Conducting an investigation/surveillance that involves an immediate level of urgency that justifies deviating from driving regulations.
- NOTE:** Mitigating factors require no serious or flagrant violation of law or Departmental policy.
- (b) Non-Mitigating Factors - Employee was not directly involved in law enforcement related activity, for example:
- Driving to or from court
 - Driving to or from meal break
 - Routine patrol (not enforcement related)
 - Routine investigative follow up
- (8) The DAC's Recommendation to Issue an ATTC
- (a) Employees involved in a traffic collision who have committed a violation that caused the collision (absent mitigating circumstances) should normally be cited for the violation.

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12. B. (8) (b) The committee may determine mitigating circumstances do exist and the issuance of an ATTC is not appropriate.
- (c) The employee's bureau/precinct commander/administrator will direct a supervisor within the bureau/precinct to issue an ATTC to the employee after a review and endorsement to issue the citation is given.
- If that is not possible, the commander/administrator may request the citation be issued by VCU.
- (d) If the employee's precinct/bureau commander/administrator disagrees with the DAC recommendation, the matter will be reviewed by the employee's assistant chief.
- (e) If the employee's assistant chief agrees with the DAC's recommendation, the matter will be referred back to the precinct/bureau commander/administrator for appropriate disposition in accordance with the DAC's findings/recommendations.
- (f) If the employee's assistant chief also disagrees with the DAC's recommendation, the matter, along with new information, will be referred back to the DAC.
- The DAC will further review the matter and submit their decision to change, modify, or retain the original recommendation back to the employee's bureau/precinct commander/administrator for appropriate disposition in accordance with the DAC's findings.
- (g) If the employee's bureau/precinct commander/administrator still disagrees with the DAC's recommendation following the second review process, the matter will again be reviewed by the employee's assistant chief.
- (h) If the employee's assistant chief agrees with the DAC's second review recommendation, the matter will be referred back to the bureau/precinct commander/administrator for appropriate disposition in accordance with the DAC's findings/recommendation.
- (i) If the employee's assistant chief also disagrees with the DAC's second review recommendation, the matter will be referred to the Police Chief.
- The Police Chief will review the matter and render a finding that will be final.
 - The matter will then be forwarded back to the employee's bureau/precinct commander/administrator for appropriate disposition in accordance with the Police Chief's decision.
- (j) A copy of the final disposition and any discipline taken in all police vehicle traffic collisions and other investigated driving incidents will be forwarded to the DAC, which will file and maintain the records in the Traffic Bureau.
- (k) Recommendations for training will be forwarded to the driver-training supervisor who will:
- Coordinate appropriate training
 - Ensure a permanent record of all remedial/refresher driver training received by an employee is maintained
 - Advise the DAC and the employee's bureau/precinct commander/administrator when the training has been satisfactorily completed
- (9) If the DAC sends a case to the DRB for review, the employee, upon request, will receive a copy of the facts supporting the DAC's position.

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12. B. (10) As an alternative to discipline in an out of policy City equipment traffic collision, the employee's assistant chief may allow the employee the option of reimbursing the City for a loss caused by the employee's negligence.

- (a) This option only applies to losses of up to \$1,000.
- (b) If the loss incurred by the City is more than \$1,000, the claim will be processed through normal channels.
- (c) If the employee opts to reimburse the City, documentation of the incident will not be placed in the employee's Department file; a notation will be made in the supervisor notes regarding that employee.

(11) Traffic Collision Review Administrative Documentation:

- The DAC chairperson or designee will collect and store the following data from traffic collision investigative reports that have been reviewed by the committee:
 - * Employee's name and serial number
 - * Employee's assignment
 - * Date of traffic collision
 - * Time of traffic collision
 - * Incident number
 - * Cause of traffic collision
 - * Was the traffic collision preventable
 - * Whether or not officer was at fault

(12) Driving Incident Review Administrative Documentation - The DAC is responsible for:

- Analyzing data from driving incidents that were reviewed by the committee
- Preparing reports on the trend of driving incidents
- Recommending changes to employee driving training

C. File Retention - The following filing procedures will be used by bureau/precinct personnel upon receiving notification from the DAC.

(a) In-Policy Pursuits/Driving Incidents/Traffic Collisions	<ul style="list-style-type: none"> • File finding's memorandum in the employee's division file
(b) Out of Policy Pursuits/Driving Incidents/Traffic Collisions	<ul style="list-style-type: none"> • File only the board's memorandum of findings, a copy of the suspension notice, written reprimand, or documentation of supervisory counseling in the employee's division file • Document any remedial training given in the employee's supervisory notes • Forward the original Written Reprimand form and backup material to the Fiscal Management Bureau (FMB) records center for placement in the employee's Department file • Forward a memorandum reference action taken regarding the traffic collision/pursuit/driving incident to the Traffic Bureau where it will be combined with the original investigation and retained for five years

D. Personnel Assessment System (PAS) Records - The Traffic Bureau administrative staff will be responsible for entering information regarding the driving incident and DAC findings/recommendations into the database accessed by the system.

13. CIVIL SERVICE BOARDS

A. When the Civil Service Board orders that a suspension, demotion, or termination must be **overturned**, the original discipline notice and **all** copies will be removed from **all** files by FMB and sent to the City's Human Resources director.

- (1) The Human Resources director will retain all overturned documentation in a separate file.

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13. A. (2) The overturned discipline will not be used in any future disciplinary actions or any performance evaluations.
- B. When the Civil Service Board orders a suspension, demotion, or termination must be **modified**, the original discipline notice and **all** copies will be removed from **all** files by FMB and sent to the City's Human Resources director.
- (1) An amended discipline notice will be returned by the Human Resources director for retention in the employee's file/s.
- (2) Only the modified discipline can be used in any future disciplinary actions or any performance evaluations.
14. **PASB**
- A. Board Meetings
- (1) The time and location of the meetings will be announced by the chairperson.
- (2) The presence of any five members constitutes a quorum for doing business.
- (3) The chairperson may designate one of the other members from the board to serve as chairperson in his/her absence.
- B. Process
- (1) The board will deliberate as to the issues presented in the PASB review
- (2) The board will report its recommendations to the employee's assistant chief.
- (3) The board's recommendation for intervention may consist of one or more of the following:
- Training needs/revisions (employee/Department)
 - Professional counseling
 - Coaching
 - Department policy revisions
 - No corrective action is necessary
- (4) Recommendations for Department training, when approved by the board, will be forwarded to the Training Needs Committee.

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1. **GENERAL INFORMATION**

- Recommendations for discipline will be based upon this Addendum.

2. **MINOR POLICY VIOLATIONS – SUPERVISORY COUNSELING**

A. Policy violations requiring a minimum of a supervisory counseling:

- (1) Failure to attend court as directed (first incident within a 12 consecutive month period)
- (2) Failure to attend training as directed (first incident within a 12 consecutive month period)
- (3) Out of policy traffic collision resulting in property damage below \$5,000 (no injury/minor injury)

NOTE: See Operations Order 3.18.12.B.(10) for a possible exclusion.

- B. Unless otherwise listed within this Addendum, any acts not involving repeat offenses or a reckless disregard for policy, may be issued a supervisory counseling.

3. **DISCIPLINE**

- A. Written Reprimand Violations – Severity of violation and disregard of policy require a minimum of a written reprimand.

(1) General Requirements/Job Performance

- (a) Failure to complete an Incident Report (IR), Incident Supplement, Arizona Crash Report (ACR), or other paperwork when required
- (b) Failure to obey a lawful order from a supervisor
- (c) Derogatory, inflammatory, or unprofessional remarks over the Mobile Data Computer (MDC)/Computer Aided Dispatch (CAD)
- (d) Excessive use of leave/unscheduled leave (“excessive” as defined by City policy)
- (e) Failure to notify the Department of a medical condition that might inhibit job performance
- (f) Failure to respond to emergency radio traffic when available to do so
- (g) Failure to take appropriate action or provide emergency medical assistance
- (h) Improper political activity while on duty or in a City uniform
- (i) Actions resulting in minor damage or impact to Department (excluding non-criminal traffic accidents)
- (j) Failure to attend court as directed (second incident within a 12 consecutive month period; calculated by date of discipline or notification of missed court)
- (k) Failure to attend training as directed (second incident within a 12 consecutive month period; calculated by date of discipline or notification of missed training)
- (l) Neglect of duty

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3. A. (1) (m) Improper storage/security of police equipment and items identifiable as police equipment
- (n) Violation of Immigration Enforcement rules and regulations
- (o) Failure to adhere to driver qualifications as listed in Administrative Regulation (AR) 2.96
- (p) As defined in the Classification Guidance Criteria, section 4, of this addendum
- (2) Firearms/Use of Force
- (a) Negligent loss of or damage to a City owned firearm
- (b) Failure to secure a weapon in an appropriate location
- (c) Unauthorized modification/s to a Departmental weapon
- (d) Accidental discharge of a firearm without injury (excluding bullet trap incidents)
- (e) Carrying non-approved/unauthorized impact weapons
- (f) Not qualified and/or did not attempt to qualify as directed by AzPOST rules/Training Bureau policy
- (g) Improperly striking another person (no injury)
- (h) Inappropriate use of an electronic control device (ECD) (no injury/minor injury)
- (i) Use of unauthorized ECD (on duty or off-duty)
- (j) Inappropriate use of Oleoresin Capsicum (OC) spray (no injury)
- (k) Employee who fails to immediately notify a supervisor of an in policy use of force incident (use of force options as described in Operations Order 1.5, Use of Force, sections 4.D through 4.H)
- (l) Negligent loss of or damage to a City owned radio
- (3) Impounding
- (a) Inappropriate release of property without proper authorization
- (b) Failure to impound, control, and/or secure property or improper destruction of property as outlined by policy (non-prisoners property)
- (4) Operating a City Vehicle – If an employee commits two or more violations listed below, during the same driving incident, the violations will be combined and elevated to a single Class 1 Violation.
- (a) “Emergency Driving” in a vehicle not meeting the definitions of an emergency vehicle
- (b) Failure to immediately notify a supervisor of a City vehicle (owned, leased, or rented) involved in a traffic collision
- (c) Illegal parking violations; scofflaw designation

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3. A. (4) (d) Without authorization or authority, excessive speed violation as defined in Arizona Revised Statute (ARS) Title 28
- (e) Pursuit Driving – Failure to terminate pursuit on the order of a supervisor
- (f) Pursuit Driving – Failure to notify radio/supervisor of involvement in a pursuit
- (g) Failure to wear a seatbelt while operating a City vehicle (owned, leased, or rented) involved in a traffic collision or photo technology Traffic Violation Notice (TVN)
- (h) Out of policy traffic collision resulting in significant property damage above \$5,000 (no injury/minor injury)
- (5) Prisoners
- (a) Failure to properly search a prisoner leading to an injury to any person
- (b) Improper care of a prisoner/failure to provide medical treatment, if required
- (c) Negligent control/securing of a prisoner
- (d) Failure to impound, control, and/or secure prisoner's property or improper destruction of prisoner's property as outlined by policy
- (6) Supervisors
- (a) Abusive or derogatory language when addressing a direct report/subordinate
- (b) Violation of Equal Employment Opportunity (EEO) rules and regulations
- (7) Unprofessional Conduct
- (a) Sexual activity (off duty) in a Department facility and/or grounds
- (b) Accepting a gratuity (negative impact to the Department)
- (c) Soliciting work for an attorney and/or bail bondsman
- (d) Verbal abuse/confrontation towards another employee
- B. Class I Violations – Increased severity of a policy violation and/or disregard of policy
- Class I violations will be referred to the Police Chief for an eight (8) or 24 hour suspension without pay
- (1) General Requirements/Job Performance
- (a) Abuse of leave benefits
- (b) Intentionally missing a court appearance after proper notification/subpoena
- (c) Intentionally missing a scheduled mandatory training after proper notification
- (d) Obtaining any information for personal use via the record management system/s, such as MDC/CAD/National Crime Information Center (NCIC)/Arizona Crime Information Center (ACIC)

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3. B. (1) (e) Uncooperative and/or interfered with a traffic-related investigation (on duty, off duty, or off-duty)
- (f) While on duty, any access to an adult/pornographic or otherwise similar inappropriate web site on any accessible computer system to include a City owned smart phone device
- (g) Improper use/damage of City property, another's, or personal equipment (used as part of employment), including computer, uniforms, vehicle, etc.
- (h) Attempt/s to convert an enforcement contact (victim, witness, suspect, investigative lead (IL), informant, traffic violator) into a social relationship (on duty contact)
- (i) Failure to impound, control, properly secure evidentiary items as directed by policy
- (j) Neglect of duty
- (k) As defined in the Classification Guidance Criteria, section 4, of this addendum
- (2) Firearms/Use of Force – Employees who fail to immediately notify a supervisor of a use of force incident listed below will be subject to the discipline enumerated in section 3.B of this addendum.
- (a) Sworn employee on duty or working off duty in a police capacity or a firearms certified detention officer on duty carrying/deploying with an unauthorized or unapproved firearm (handgun, shotgun, or rifle) in violation of policy
- (b) Sworn employee taking action with an unauthorized or unapproved firearm (handgun, shotgun, or rifle) while off duty and not working in a police capacity
- (c) Inappropriate use of an ECD (serious injury/hospitalization)
- (d) Improperly striking another person (injury)
- (e) Inappropriate use of OC spray (injury)
- (3) Equal Opportunity
- Inappropriate action/s, comment/s, and/or gesture/s that violate EEO standards (non supervisory personnel)
- (4) Unprofessional Conduct
- (a) Incident not involving an act of violence where elements of a misdemeanor crime are met, regardless of whether the employee was indicted, prosecuted, or convicted
- (b) Soliciting a gratuity
- (5) Operating a City Vehicle
- (a) Overnight use of City vehicle without authorization
- (b) Out of policy traffic collision (serious injury/hospitalization)
- (c) Two or more violations listed in section 3.A.(4) of this addendum

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3. C. Class II Violations – Violations that adversely affect Department operations or involve egregious unprofessional behavior
- Class II violations will be referred to the Police Chief or the Discipline Review Board (DRB) for a 24 or 40 hour suspension without pay and possible demotion.
- (1) General Requirements/Job Performance
- (a) Abuse of prescribed medication
 - (b) Actions amounted to harassment and/or intimidation of a citizen, or a Department or City employee
 - (c) Actions jeopardized the status of a criminal or administrative investigation or prosecution
 - (d) Disseminating information obtained from the record management system/s, such as MDC/CAD/NCIC/ACIC, or other public safety databases, without authorization or not within guidelines of the Terminal Operator Certification (TOC) process
 - (e) Failure to report, uncooperative, and/or interfered with an administrative and/or criminal investigation
 - (f) Installing unauthorized software on the Department network
 - (g) Abuse of disability benefits
 - (h) Neglect of duty
 - (i) Releasing confidential reports, records, and/or information to an unauthorized person
 - (j) Unauthorized use of Department funds (non-criminal activity)
 - (k) Refusal or failure to obey a direct order resulting in minor damage or impact to the Department
 - (l) Inappropriate supervisor/direct subordinate personal relationship that includes sexual activity
 - (m) Unjustified arrest or search (willful false arrest or willful illegal search)
 - (n) Knowingly submitted an internal written document with false information, excluding an IR or internal investigation.
 - (o) Untruthful verbal report, not related or in response to questioning pursuant to a criminal or internal investigation
 - (p) Use of position to interfere with prosecution
 - (q) Failure to complete multiple reports over time as required, such as IRs, Incident Supplements, ACRs, or other required paperwork
 - (r) Failure to adhere to driver qualifications as listed in AR 2.96
 - (s) As defined in the Classification Guidance Criteria, section 4, of this addendum

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3. C. (2) Firearms/Use of Force – Employees who fail to immediately notify a supervisor of a use of force incident listed below will be subject to the discipline enumerated in section 3.C of this addendum.
- (a) Civilian employee in possession of a firearm on duty or in a police facility in violation of policy
 - (b) Accidental discharge of a firearm with any injury to any person
 - (c) Improper use of the carotid control technique
 - (d) Improperly striking another person who is restrained (cuffs, restraint system) (no injury)
 - (e) Intentional discharge of a firearm (without injury) in violation of policy
 - (f) Lending City firearm to another employee without authorization
 - (g) Use of unauthorized impact weapon (sap, knife, cord restraint, etc.)
 - (h) Inappropriate use of an ECD (restrained by cuffs or authorized restraint system)
 - (i) Inappropriate use of OC spray (restrained by cuffs or authorized restraint system)
- (3) Operating a City Vehicle
- Without authorization or authority, excessive speed violation as defined in ARS Title 28 resulting in an out of policy traffic collision (serious injury (hospitalization) and/or significant property damage)
- (4) Supervisors
- Inappropriate actions, comment/s, gestures that violate EEO standards (supervisory personnel)
- (5) Unprofessional Conduct
- (a) Sexual harassment.
 - (b) Unprofessional conduct involving an act of violence where elements of a misdemeanor are met, regardless of whether the employee was indicted, prosecuted, or convicted.
 - (c) Physical abuse/confrontation towards another employee.
- D. Class III Violations – Violations that are so serious and malicious in nature, they may require immediate intervention by the Police Chief (or designee) for the immediate removal of all employee responsibilities.
- Class III violations will be referred to the DRB for a possible demotion and/or 40, 80, or 240 hour suspension without pay, or termination or will be referred to the Police Chief (or designee) for a Loudermill Hearing
- (1) General Requirements/Job Performance
- (a) Bribery
 - (b) Giving false, incomplete, misleading statements, or willful omissions during an investigation

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3. D. (1) (c) Knowingly submitted a criminal investigation/internal investigation report with false information
- (d) Illegal use of drugs
- (e) Reported to work with drugs or alcohol (.02 or above) in their system
- (f) Operated a City vehicle with drugs or alcohol (.02 or above) in their system
- (g) Operated a vehicle while under the influence of drugs or alcohol (.08 or above) DUI (on duty, off duty, or off-duty employment)
- (h) Non-authorized consumption of alcohol while on duty
- (i) Consumption of alcohol or drugs while working off-duty as a peace officer
- (j) Unable to perform essential job duties (court imposed prohibited possessor, AzPOST decertification of peace officer status, driver license status)
- (k) Racial profiling/civil rights type violations (enforcement based solely on race, color, national origin, sex, religion, sexual orientation, or economic status)
- (l) Refusal or failure to obey a lawful direct order resulting in major damage or impact to the Department
- (m) Refusal to take, tampering with, or failure of the substance abuse screening test
- (n) With the intent to defraud, submitting any type of report (overtime, employee reimbursement, etc.) for monetary gain
- (o) Neglect of duty
- (p) As defined in the Classification Guidance Criteria, section 4, of this addendum
- (2) Unprofessional Conduct
- (a) Unprofessional conduct where elements of a felony are met, regardless of whether the employee was indicted, prosecuted, or convicted
- (b) Consensual sexual contact (on duty or off-duty employment).
- (c) Soliciting an act of prostitution.
- (3) Weapons/Use of Force – Employees who fail to immediately notify a supervisor of a use of force incident listed below will be subject to the discipline enumerated in section 3.D of this addendum.
- (a) Intentional discharge of a firearm (with injury) in violation of policy
- (b) Excessive Use of Force – Handcuffed or restrained individual (with injury)
4. **CLASSIFICATION GUIDANCE CRITERIA**
- A. This section identifies non-specific violations of policy not listed in this addendum which amount to general requirements/job performance either on duty, off duty, or off-duty employment.

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4. B. Failure to investigate a subordinate’s act of misconduct or a citizen’s complaint per policy will result in disciplinary action equal to the classification level of the misconduct not investigated.
- C. The following are general guidelines used for classification in each category; each point does not have to be met for placement within a specific category:

(1) Disregard for policy that requires a written reprimand
<ul style="list-style-type: none"> • The employee has received prior recent discipline for the same violation • The incident did not involve violent conduct
(2) Class I violation: Referral to Police Chief for an eight (8) or 24 hour suspension
<ul style="list-style-type: none"> • The incident resulted in minor physical injury to employee/s or citizen/s • Extreme disrespect or willful mistreatment of a citizen or employee beyond that of rude conduct was displayed • Aggravated circumstances outweigh all other factors where conduct is egregious to the extent that a suspension is prudent • The incident resulted in major damage/loss or impact to the Department (\$5,000) This does not apply to out of policy traffic collisions which are covered in section 3.A.4 of this addendum
(3) Class II violation: Referral to Police Chief or DRB for a 24 or 40 hour suspension and/or demotion
<ul style="list-style-type: none"> • The incident jeopardized the status of a criminal or internal investigation • The incident involved violent conduct • The incident involved the inappropriate use of police powers, authority, and privileges • The incident resulted in major reputation damage or discredit to the City or Department • The incident resulted in major damage/loss to City, personal, or a citizen’s property • The incident resulted in serious physical injury to employee/s or citizens • The incident involved an integrity issue not related to a criminal or internal investigation
(4) Class III violation: Referral to DRB for a possible demotion and/or 40, 80, or 240 hour suspension, or termination or referral to the Police Chief (or designee) for a Loudermill Hearing
<ul style="list-style-type: none"> • The conduct was so outrageous that attempts to correct performance would be fruitless • The employee’s actions violated the oath of office or basic Department values • The incident involved an integrity issue related to a criminal or internal investigation • The incident involved the intentional abuse of police powers, authority, and privileges

EXHIBIT 5

Sec. 2-49. Interference with City Manager prohibited.

Neither the City Council nor any of its members shall direct or request the appointment of any person to, or his removal from, office by the City Manager or by any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative branch of the City. Except for the purpose of inquiry, the Council and its members shall deal with the administrative branch solely through the City Manager and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. (Code 1962, § 2-44)

Cross reference—Supervision of officers and employees by City Manager, § [2-5](#).

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The Phoenix City Code is current through Ordinance G-7516, passed May 20, 2026.

Disclaimer: The City Clerk's Office has the official version of the Phoenix City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.phoenix.gov](http://www.phoenix.gov)

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