

Before the Board of Supervisors
County of Placer, State of California

In the matter of: an Ordinance amending
Chapter 3, Article 3.08 relating to disciplinary action
for employees in the classified service

Ordinance No: _____

First Reading: October 20, 2009

The following ORDINANCE was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____, by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chairman, Board of Supervisors

Attest:
Clerk of said Board

Ann Holman

The Board of Supervisors of the County of Placer, State of California, does hereby ordain as follows:

Section 1: That Article 3.08, Part 12, Section 3.08.1190 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1190 Grounds for discipline.

* * *
H. Negligence of, or willful damage to, waste of, or unauthorized use or theft of, public supplies or equipment;

4 I Willful violation of civil service laws and procedure;
* * *

Section 2: That Article 3.08, Part 12, Section 3.08.1200 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1200 Initiating discipline—Review by county executive officer.

A. **1. DSA Represented Employees:** Prior to initiating any discipline as hereinafter provided, an appointing authority considering discipline consisting of discharge, suspension without pay for four or more days, demotion or cancellation of wages for four or more days, shall first review the matter with the county executive officer.

2. PPEO Represented Employees, Classified Management and Confidential: Prior to initiating any discipline as hereinafter provided, an appointing authority considering discipline consisting of discharge, suspension without pay for thirty-two (32) or more scheduled work hours, demotion or reduction of wages shall first review the matter with the county executive officer.

B. **DSA Represented Employees:** No appointing authority shall impose any discipline greater than that recommended by the county executive officer except by express authorization of the board of supervisors.

C. No appointing authority shall dismiss any disciplinary action or impose any discipline less than that recommended by the county executive officer, without the express authorization of the county executive officer.

D. The appointing authority may review minor proposed discipline with the county executive officer.

E. Employees classified as exempt under the Fair Labor Standards Act shall not be disciplined by suspension without pay for less than a full work week, unless it is a penalty imposed in good faith for infractions of safety rules of major significance. (Ord. 5478-B (Attach. A), 2007; Ord. 5044-B (part), 2000; prior code § 14.2213)

Section 3: That Article 3.08, Part 12, Section 3.08.1210 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1210 Initiating discipline—Notice of proposed action.

* * *

D. Any materials upon which the action is based.

E. A statement informing the employee of his or her rights to respond, either orally or in writing, to the appointing authority within **seven (7) calendar days, or** five working days **for DSA represented employees.** (Ord. 5478-B (Attach. A), 2007; prior code § 14.2215)

* * *

Section 4: That Article 3.08, Part 12, Section 3.08.1230 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1230 Filing charges.

At the expiration of the time specified in Section 3.08.1210(E), and after investigating and considering such responses, oral or written, as the employee may have made, the appointing authority may file, within forty (40) calendar days, or thirty (30) working days for DSA represented employees, a written order initiating discipline containing the following:

* * *

Section 5: That Article 3.08, Part 12, Section 3.08.1240 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1240 Filing and service of order.

A. DSA Represented Employees: The appointing authority or designated representative shall personally serve one copy on the employee and send one copy to the personnel director not later than three working days after the date of the disciplinary action. No copy of such order may be placed in such employee's personnel file until the proposed discipline has become effective as provided in Section 3.08.1260. (Ord. 5478-B (Attach. A), 2007; prior code § 14.2222)

B. PPEO Represented Employees, Classified Management and Confidential: The appointing authority or designated representative shall personally serve one copy on the employee and send one copy to the personnel director. No copy of such order may be placed in such employee's personnel file until the proposed discipline has become effective as provided in Section 3.08.1260.

Section 6: That Article 3.08, Part 12, Section 3.08.1250 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1250 Interim suspension (administrative leave) with pay.

A. 1. DSA Represented Employees: Pending investigation by the appointing authority of charges against an employee, the appointing authority may, in writing, order the employee placed on immediate paid leave of absence until charges are filed under Section 3.08.1230 or for a specified period of time not to exceed fifteen (15) working days, whichever comes first. Such suspension may only be made if the appointing authority determines that the security or efficient operation of the department requires such suspension. Such suspension shall be accompanied by the notice specified by Section 3.08.1210.

2. PPEO Represented Employees, Classified Management and Confidential: Pending investigation by the appointing authority of charges against an employee, the appointing authority may, in writing, and with the approval of the CEO order the

employee placed on immediate paid administrative leave of absence until charges are filed under Section 3.08.1210. Such interim suspension may only be made if the appointing authority and CEO determines it is in the best interest of the department or county to do so.

B. 1. DSA Represented Employees: If charges are thereafter filed under Section 3.08.1230, the appointing authority may, in writing, order that such paid leave of absence continue until such discipline becomes effective as provided in Section 3.08.1260, or such charges are dismissed. Such further suspension may only be made if the appointing authority determines that the security or efficient operation of the department requires such further suspension.

2. PPEO Represented Employees, Classified Management and Confidential: **If notice is served under Section 3.08.1210, the appointing authority may with CEO approval, in writing, order that such interim suspension continue until such interim discipline becomes effective as provided in Section 3.08.1260, or such charges are dismissed. Such further suspension may only be made if the appointing authority determines that it is in the best interest of the department or county to do so.**

C. 1. DSA Represented Employees: No suspension under subsection A or B of this section shall be valid unless first approved by the county executive office. (Ord. 5478-B (Attach. A), 2007; prior code § 14.2225)

2. PPEO Represented Employees, Classified Management and Confidential: **No interim suspension under subsection A or B of this section shall be valid unless first approved by the CEO.**

Section 7: That Article 3.08, Part 12, Section 3.08.1260 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1260 Effective date of discipline.

A. General Unit, Professional Unit, and **Classified Management, and Confidential.**

1. Discipline shall become effective when either the employee has not filed a request for **an** appeal hearing (within the ten (10) **calendar** days as required under Section 3.08.1280) or at the conclusion of a hearing when findings have been made by the commission.

2. In the event the order initiating discipline involves discharge from employment or termination **and where progressive discipline has been followed or the allegations are of theft, violence, willful destruction of county property, protected-class harassment, retaliation, or immoral conduct that brings grave disrepute upon the county, the appointing authority may opt for immediate termination and** the discipline shall become effective when the appointing authority has served the employee with a copy of the order and filed the original order with the personnel director pursuant to Section 3.08.1240. ~~in cases~~

~~where progressive discipline has been followed or the allegations are of theft, violence, willful destruction of county property, sexual harassment or immoral conduct that brings grave disrepute upon the county. **An employee terminated under this sub-paragraph retains all other procedural rights under Part 12 – Disciplinary Action.**~~

* * *
Section 8: That Article 3.08, Part 12, Section 3.08.1280 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1280 Appeal—Procedure.

An employee desiring to appeal shall file with the hearing body an answer admitting or denying, in whole or in part, the allegations of the order. Matters not admitted by the filed answer shall be deemed denied. Such answer must be filed within ten (10) calendar days, 10 work days for DSA represented employees, of receipt of such order by such employee. The clerk of the hearing body shall stamp on the answer the date it was filed and shall:

* * *
Section 9: That Article 3.08, Part 12, Section 3.08.1290 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1290 Appeal—Hearing.

A. **1. DSA Represented Employees:** Within twenty (20) days after the date the answer is filed with the hearing body, such body shall hold a hearing at special meeting to determine whether such disciplinary action shall be sustained.

2. PPEO Represented Employees, Classified Management and Confidential: A.
After the date the answer is filed with the hearing body, such body shall hold a hearing at special meeting to determine whether such disciplinary action shall be sustained. The hearing shall be schedule at the earliest possible date taking into consideration adequate time to schedule the parties, commissioners and counsel.

B. **1. DSA Represented Employees:** The appointing authority and employee each shall have the right to be represented by legal counsel.

2. PPEO Represented Employees, Classified Management and Confidential:
The appointing authority or designee and employee each shall have the right to be represented by legal counsel.

C. The hearing body shall have the right to the assistance of counsel in the conduct of the hearing.

D. **1. DSA Represented Employees:** Hearings shall be private and all persons excluded there from except the appointing authority, employee, attorneys involved, court reporter, and witnesses actually testifying, unless the employee files a written request for a public hearing with the hearing body.

2. PPEO Represented Employees, Classified Management and Confidential:
Hearings shall be private and all persons excluded there from except the appointing authority, or designee, Personnel Director, Secretary to the Commission, employee, employee organization representative, attorneys, legal assistants or investigators as designated by an employee organization representative or attorney for either party, court reporter, and witnesses actually testifying, unless the employee files a written request for a public hearing with the hearing body.

E. **1. DSA Represented Employees:** The appointing authority shall present his or her evidence first. The employee may then present his or her evidence. Each shall then have the right to present evidence in rebuttal.

2. PPEO Represented Employees, Classified Management and Confidential: All testimony shall be given under oath. The hearing body or counsel to the hearing body shall have the authority to administer the oath. All facts must be established by a preponderance of the evidence. The appointing authority shall have the burden to prove the grounds for the disciplinary action and that the proposed sanction is appropriate. The appointing authority shall be required to present its case first. The hearing body and its counsel shall have the right to ask questions of the parties and of any witnesses and each party shall have the right to present evidence in rebuttal.

F. **1. DSA Represented Employees:** Any evidence may be received relevant and material to the disciplinary action and the hearing body shall not be bound by the formal rules of evidence required of a formal court hearing.

2. PPEO Represented Employees, Classified Management and Confidential: Any evidence which is relevant and material to the disciplinary action may be received and the hearing body shall not be bound by the formal rules of evidence required of a formal court hearing.

* * *

Section 10: That Article 3.08, Part 12, Section 3.08.1300 of Chapter 3 of the Placer County Code is hereby amended and shall read as follows:

3.08.1300 Appeal—Findings.

A. **1. DSA Represented Employees:** At the conclusion of the hearing, the hearing body, being governed by a preponderance of evidence, may sustain the major discipline, modify it in whole or in part, or order reinstatement of the employee.

2. PPEO Represented Employees, Classified Management and Confidential:
At the conclusion of the hearing, the hearing body, may sustain, modify or reverse the discipline imposed by the appointing authority and may make such findings and enter such orders as it deems appropriate.

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B. **1. DSA Represented Employees:** Findings by the hearing body, other than reinstatement, shall be effective as prescribed by Section 3.08.1260. (Ord. 5478-B (Attach. A), 2007: prior code § 14.2245)

2. PPEO Represented Employees, Classified Management and Confidential:
If the hearing body orders reinstatement of the employee the findings shall specify the effective date of the reinstatement.

**MEMORANDUM
PERSONNEL DEPARTMENT
COUNTY OF PLACER**

To: Board of Supervisors
From: Nancy Nittler, Personnel Director *NN*
By: Becky Nelson, Personnel Services Manager
Date: October 20, 2009
Subject: Approve a Side Letter Agreement with Placer Public Employee's Organization; Extend the Same Rules to Classified Management and Confidential Employees and Introduce an Ordinance Amending Chapter 3

Recommended Action:

1. Approve the attached Side Letter Agreement with Placer Public Employee's Organization. This agreement will implement revisions to the County's Disciplinary Action policies and practices as required by the current Memorandum of Understanding between the Placer County and the Placer Public Employee's Organization for the period July 1, 2006 through June 30, 2010 (**Exhibit 1**).
2. Extend the same Disciplinary Action rules to classified management and confidential employees.
3. Introduction of an Ordinance amending Chapter 3 to reflect the side letter changes and extension of these provisions to classified management and confidential employees.

Background:

The current Memorandum of Understanding (MOU) with Placer Public Employee's Organization (PPEO) contains the following provision:

The Parties agree that following the conclusion of these negotiations they will jointly work to create a comprehensive Memorandum of Understanding that will incorporate bargained MOU sections, appropriate County Code, side agreements and other appropriate information into one document including the Drug & Alcohol and Layoff Policies, leave of absence procedures and grievance & discipline timelines.

As a result of several meetings with PPEO representatives the attached language changes are being proposed as summarized below.

- Change working days to calendar days throughout for consistency in application
- Clarify suspension of four days to be equal to 32 hours (8 hours per day for 4 days) to eliminate any differences caused by alternative work schedules
- Clarify when the filing and service of the order of discipline should occur
- Clarify paid administrative leave provisions
- Clarify that termination in specific situations can be effective prior to employee filing an appeal

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- Add acknowledgment that the employee would retain the right to appeal the termination and the effective date of the termination
- Clarify the scheduling of an appeal hearing will be at the earliest possible date
- Clarify which individuals can be present during the appeal hearing to include the Secretary to the Commission, the Personnel Director and the Appointing Authority or designee
- Clarify language regarding the giving of testimony
- Clarify the possible findings from the hearing body and the requirement to establish an effective date for any reinstatement finding

Fiscal Impact:

There is no fiscal impact associated with the Disciplinary Action language changes.

cc: Tom Miller, County Executive Officer
Mike Boyle, Assistant County Executive Officer
Chuck Thiel, Business Representative PPEO

**Side Letter Agreement
with Placer County Public
Employee's Organization**

Part 12. Disciplinary Action

Exhibit 1

3.08.1180 Power to discipline.

An appointing authority, for cause, may impose discipline on an employee.

3.08.1190 Grounds for discipline.

The following shall be grounds for disciplinary action:

A. Unauthorized absence;

B. Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section;

C. Disorderly or immoral conduct;

D. Incompetence or inefficiency;

E. Insubordination;

F. The use of intoxicating liquor or beverages or intoxication while on duty. The use of drugs or narcotics and/or medications that affects job performance and/or the safety of other persons;

G. Neglect of duty other than incompetence or inefficiency or failure to meet reasonable work performance standards and requirements;

H. Negligence of, or willful damage to, waste of, or unauthorized use or theft of, public supplies or equipment;

I. Willful violation of civil service laws and procedure;

J. Fraud in securing appointment;

K. Failure to meet reasonable work performance standards and requirements;

L. Discourteous treatment of the public or other employees;

M. Improper political activity;

N. Violation of the county's discrimination and harassment policy, voicemail, internet and computer use policy, or policy against violence in the workplace;

O. Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to his/her agency or employment. The county shall be held to a standard of expectation which is no less than those standards of the state civil service system and applicable case law. (Ord. 5089-B (part), 2001; Ord. 5058-B (Attach. 24), 2000: prior code § 14.2210)

**Side Letter Agreement
with Placer County Public Employee's
Organization**

3.08.1200 Initiating discipline--Review by county executive officer.

A. Prior to initiating any discipline as hereinafter provided, an appointing authority considering discipline consisting of discharge, suspension without pay for thirty-two (32) or more scheduled work hours, demotion or, reduction of wages shall first review the matter with the county executive officer.

B. No appointing authority shall dismiss any disciplinary action or impose any discipline less than that recommended by the county executive officer, without the express authorization of the county executive officer.

C. The appointing authority may review minor proposed discipline with the county executive officer.

D. Employees classified as exempt under the Fair Labor Standards Act shall not be disciplined by suspension without pay for less than a full work week, unless it is a penalty imposed in good faith for infractions of safety rules of major significance. (Ord. 5044-B (part), 2000: prior code § 14.2213)

3.08.1210 Initiating discipline--Notice of proposed action.

Except as provided in Section 3.08.1250, disciplinary action shall be commenced by an appointing authority preparing a written notice of proposed action containing the following:

- A. The name of the employee.
- B. The section number or numbers of the rules or regulations violated constituting the charges.
- C. The reasons for which the disciplinary action is proposed to be taken on such charges.
- D. Any materials upon which the action is based.
- E. A statement informing the employee of his or her rights to respond, either orally or in writing, to the appointing authority within seven (7) calendar days.

3.08.1220 Service of notice of proposed action.

The notice of proposed action shall be personally served on the employee. The person serving this notice shall prepare an affidavit of service.

3.08.1230 Filing charges.

At the expiration of the time specified in Section 3.08.1210(E), and after investigating and considering such responses, oral or written, as the employee may have made, the appointing authority may file, within forty (40) calendar days, a written order initiating discipline containing the following:

- A. The name of the employee.
- B. The section number or numbers of the rules or regulations violated constituting the charges.
- C. The reasons for which the disciplinary action is proposed to be taken on such charges.
- D. Any materials upon which the action is based.

3.08.1240 Filing and service of order. Classified Service.

The appointing authority or designated representative shall personally serve one copy on the employee and send one copy to the personnel director. No copy of such order may be placed in such employee's personnel file until the proposed discipline has become effective as provided in Section 3.08.1260.

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3.08.1250 Interim suspension (administrative leave) with pay.

A. Pending investigation by the appointing authority of charges against an employee, the appointing authority may, in writing and with the approval of the CEO, order the employee placed on immediate paid administrative leave of absence until charges are filed under Section 3.08.1210. Such interim suspension may only be made if the appointing authority and CEO determine it is in the best interest of the department or County to do so.

B. If notice is served under Section 3.08.1210, the appointing authority may, with CEO approval, in writing, order that such interim suspension continue until such discipline becomes effective as provided in Section 3.08.1260, or such charges are dismissed. Such further interim suspension may only be made if the appointing authority determines that it is in the best interest of the department or County to do so.

C. No interim suspension under subsection A or B of this section shall be valid unless first approved by the CEO. (Prior code § 14.2225)

3.08.1260 Effective date of discipline.

A. General Unit, Professional Unit.

1. Discipline shall become effective when either the employee has not filed a request for an appeal hearing (within the ten (10) calendar days as required under Section 3.08.1280) or at the conclusion of a hearing when findings have been made by the commission.

2. In the event the order initiating discipline involves discharge from employment or termination, and where progressive discipline has been followed or the allegations are of theft, violence, willful destruction of county property, protected-class harassment, retaliation, or immoral conduct that brings grave disrepute upon the county, the appointing authority may opt for immediate termination and the discipline shall become effective when the appointing authority has served the employee with a copy of the order and filed the original order with the personnel director pursuant to Section 3.08.1240. An employee terminated under this sub-paragraph retains all other procedural rights under Part 12- Disciplinary Action.

3.08.1270 Appeal--To whom made.

An appeal by an employee in the classified service shall be made to the civil service commission except that the personnel director shall appeal to the board of supervisors.

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Organization**

3.08.1280 Appeal—Procedure.

An employee desiring to appeal shall file with the hearing body an answer admitting or denying, in whole or in part, the allegations of the order. Matters not admitted by the filed answer shall be deemed denied. Such answer must be filed within ten (10) calendar days of receipt of such order by such employee. The clerk of the hearing body shall stamp on the answer the date it was filed and shall:

- A. Place one copy in his or her file.
- B. Send one to the appointing authority.
- C. Send one to the county counsel.
- D. Send one to the county executive.
- E. Send one to the personnel director if the employee is in the classified

service.

3.08.1290 Appeal--Hearing.

A. After the date the answer is filed with the hearing body, such body shall hold a hearing at a special meeting to determine whether such disciplinary action shall be sustained. The hearing shall be scheduled at the earliest possible date taking into consideration adequate time to schedule the parties, commissioners and counsel,

B. The appointing authority or designee and employee each shall have the right to be represented by legal counsel.

C. The hearing body shall have the right to the assistance of counsel in the conduct of the hearing.

D. Hearings shall be private and all persons excluded there from except the appointing authority or designee, Personnel Director, Secretary to the Commission, employee, employee organization representative, attorneys, legal assistants or investigators as designated by an employee organization representative or attorney for either party, court reporter, and witnesses actually testifying, unless the employee files a written request for a public hearing with the hearing body.

E. All testimony shall be given under oath. The hearing body or counsel to the hearing body shall have the authority to administer the oath. All facts must be established by a preponderance of the evidence. The appointing authority shall have the burden to prove the grounds for the disciplinary action and that the proposed sanction is appropriate. The appointing authority shall be required to present its case first. The hearing body and its counsel shall have the right to ask questions of the parties and of any witnesses and each party shall have the right to present evidence in rebuttal.

F. Any evidence which is relevant and material to the disciplinary action may be received and the hearing body shall not be bound by the formal rules of evidence required of a formal court hearing.

G. All oral testimony received by the hearing body shall be recorded in some appropriate form.

H. The hearing body shall have the power to compel the attendance of witnesses by subpoena. The subpoenas shall be issued by the clerk to the hearing body, upon request of any party to the hearing. The subpoenas shall be signed both by the clerk to the hearing body and the party requesting issuance. No more than six such subpoenas

**Side Letter Agreement
with Placer County Public Employee's
Organization**

shall be issued to a side unless the requesting party establishes to the satisfaction of the chairperson of the hearing body that such additional requested subpoenas:

1. Relate to relevant and material evidence pertaining to the disciplinary action; and
2. Such evidence cannot be produced through means of a stipulation as to the testimony proposed to be introduced; and
3. Such evidence is not merely duplication of other evidence. (Prior code § 14.2240)

3.08.1300 Appeal—Findings

A. At the conclusion of the hearing, the hearing body may sustain, modify or reverse the discipline imposed by the appointing authority and may make such findings and enter such orders as it deems appropriate.

B. Findings by the hearing body, other than reinstatement, shall be effective as prescribed by Section 3.08.1260. If the hearing body orders reinstatement of the employee, the findings shall specify the effective date of the reinstatement.

3.08.1310 Exhausting administrative remedies.

Administrative remedies shall be exhausted when findings have been made by the hearing body.

Agreed to by:

Becky Wilson
For Placer County

10/29/07
Date

[Signature]

For Placer Public Employees Organization

[Signature]
[Signature]

COUNTY OF PLACER

Chairman, Board of Supervisors

Date

Thomas Miller, County Executive Officer

Date

Supersedes document signed 9/27/07