

RESOLUTION NO. 2813

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL AMENDING
VARIOUS PORTIONS OF THE TOWN'S PERSONNEL POLICY
MANUAL AND THE TOWN'S ELECTRONIC TECHNOLOGY
RESOURCES (COMPUTER) POLICY .**

WHEREAS, on February 16, 2012, the Town adopted its current Personnel Policy Manual pursuant to Resolution 2650; and

WHEREAS, the Town desires to amend various portions of the Personnel Policy Manual,

**NOW, THEREFORE, THE MAYOR AND TOWN COUNCIL RESOLVE AS
FOLLOWS:**

Section 1. Section 1.2.1 of the Personnel Policy Manual of the Town of Payson ("the Personnel Manual") is amended and shall read as follows:

1.2.1- AUTHORITY OF THE TOWN MANAGER

(A) The Town Manager shall exercise administrative authority over all employees except the Town Attorney and his/her staff. The Town Manager may designate some or all of this authority to other employees.

(B) The Town Manager may interpret the provisions of this Manual and in cases of ambiguities, resolve such ambiguities. Such interpretations and resolutions shall be final and not subject to appeal. The Manager may also promulgate any administrative policies necessary to carry out the intent of this Manual.

(C) The Town Manager shall be the final authority relative to the dismissal of an employee with the exception of the Town Attorney and his/her staff.

(D) For the purposes of this Manual, the Town Attorney shall exercise the authority and obligations of the Town Manager in regard to the employees of the legal department.

Section 2. Section 1.2.5 of the Personnel Manual is amended and shall read as follows:

1.2.5-ESTABLISHMENT OF NEW POSITIONS

When a department would like a new position, the Department head shall forward to Human Resources a description of the duties and responsibilities and recommended pay grade of the position. Human Resources shall, after a study of the duties, responsibilities and qualification requirements, allocate the position to its appropriate pay grade in the pay plan. The position and recommended pay grade shall be submitted to the Town Manager for his/her review and approval.

Section 3. Section 1.2.6 of the Personnel Manual is amended and shall read as follows:

1.2.6-ABOLISHMENT OF POSITIONS

The Town Council may abolish any position in the Town's service which is not established by Arizona law. Employees transferred, demoted or laid off because of the abolishment of positions shall not have the right of appeal.

Section 4. Section 1.2.14 of the Personnel Manual is amended and shall read as follows:

1.2.14-USE OF TOWN VEHICLES

Town vehicles assigned to an employee and approved in writing as a take home vehicle may be used for commuting purposes. On-call vehicles may be taken home by an employee during the on-call period in accordance with Department policy. Except as provided above, no Town vehicle shall be used by any employee for personal use or for commuting purposes.

Except as otherwise provided by written policy, or approved by the Town Manager, Assistant Town Manager or Deputy Town Manager, persons other than Town employees or persons on official Town business are not permitted in Town vehicles.

Section 5. Section 2.2.5 of the Personnel Manual is amended and shall read as follows:

2.2.5-DISQUALIFICATIONS

(A) Any application which is incomplete or indicates on its face that the applicant is not qualified may be rejected.

(B) Applications may also be rejected if the applicant has made any misstatement of any material fact, or has practiced any deception or fraud on his/her application.

(C) Applicants who have been terminated by the Town or resigned in lieu of termination shall not be eligible for rehire if at time of termination or resignation the Department Head indicated that the person would not be eligible for rehire.

(D) Incomplete applications may be returned to the applicant with notice to amend the same, provided that the time for receiving applications has not expired.

Section 6. Section 2.7.1 of the Personnel Manual is amended and shall read as follows:

2.7.1-PROMOTION

No employee shall be promoted to a position for which he/she does not possess the minimum qualifications.

Upon promotion to another position, an employee shall be placed at a new pay grade at a

wage determined with the approval of the Town Manager.

Upon promotion, the employee shall retain the same performance review date effective at the time of promotion.

Section 7. Section 2.7.2 of the Personnel Manual is amended and shall read as follows:

2.7.2-TRANSFER

No employee shall be transferred to a position for which he/she does not possess the minimum qualifications.

Upon notice, the employee may be transferred with the approval of Human Resources at anytime from one position to another position in a comparable pay grade. For transfer purposes, a comparable pay grade is one with the same maximum wage. Upon transfer, the employee shall retain the same performance review date effective at the time of transfer.

The wage of an employee who transfers to a position in another department where the pay grade is lower than that of his/her former position, may generally remain at his/her present rate of pay if it is within two pay grades of the grade to which he/she transferred.

If two or more persons request a transfer to the same vacant position, Human Resources shall require an examination in the same manner as ~~he/she does~~ for promotional vacancies.

Section 8. Section 3.1.10 of the Personnel Manual is amended and shall read as follows:

3.1.10-HOLIDAY COMPENSATION

Non-exempt employees working on a holiday, as required by their Department Head, will receive four additional hours of compensation at the employee's regular rate of pay for working on such holiday.

Firefighters working a scheduled shift on a holiday will receive six additional hours of compensation at the employee's regular rate of pay for working on such holiday.

Section 9. Section 3.1.11 of the Personnel Manual is amended and shall read as follows:

3.1.11-HOURS WORKED FOR PURPOSES OF COMPUTING COMPENSATORY/OVERTIME

(A) For employees hired before July 1, 2012:

Hours worked include the following:

- Regularly scheduled working hours; other hours as approved by supervisor
- Meal periods where the employees are either not free to leave their posts or the time is too short to be useful (i.e., less than 30 minutes)
- On call time where liberty is restricted

- Rest periods of 20 minutes or less
- Training as required by the Town
- Traveling between work sites or traveling out of town during work hours
- Paid Time Off
- Holidays
- Jury and/or Witness Duty

The following are not considered hours worked:

- Compensatory time
- Bereavement time
- Meal periods where the employee is freed from duties
- On call time where an employee's liberties are not restricted
- Overnight trips, during nonworking hours unless the employee is performing work
- Training/school time where the employee on his/her own initiative attends independent school after hours
- Worker's Compensation
- Paid Administrative Leave

(B) For employees hired after July 1, 2012:

Hours worked include the following:

- Regularly scheduled working hours; other hours as approved by supervisor
- Meal periods where the employees are either not free to leave their posts or the time is too short to be useful (i.e., less than 30 minutes)
- On call time where liberty is restricted
- Rest periods of 20 minutes or less
- Training as required by the Town
- Traveling between work sites or traveling out of town during work hours

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- Training/school time where the employee on his/her own initiative attends independent school after hours
- Paid Time Off
- Holidays
- Jury and/or Witness Duty
- Worker's Compensation
- Paid Administrative Leave

Section 10. Section 3.1.13 of the Personnel Manual is amended and shall read as follows:

3.1.13-TEMPORARY DETAIL

Upon the recommendation of the Department Head and approved by Human Resources, an employee may be assigned on a temporary basis to work in a higher capacity and shall be paid 10% over their hourly wage during such assignment.

Section 11. Current section 4.1.2 of the Personnel Manual is renumbered to 4.1.3.

Section 12. Current section 4.1.3 of the Personnel Manual is renumbered to 4.1.4.

Section 13. New section 4.1.2 of the Personnel Manual is added and shall read as follows:

4.1.2 LAST DAY FOLLOWING RESIGNATION.

(A) Employees resigning or retiring shall provide the Town with a date for such resignation or retirement. Such date shall be subject to the following: (1) the employee must work at least 2 days within the pay period during which the date falls; and (2) the employee may not take more than fifteen days leave (either PTO or Comp Time) within the four weeks preceding the date of resignation or retirement.

(B) All leave required to be paid pursuant to this Manual shall be paid to the employee within 14 days of the resignation or retirement date.

Section 14. Section 4.2.1 of the Personnel Manual is amended and shall read as follows:

4.2.1-REASONS FOR DISCIPLINE OR DISMISSAL

The tenure of every regular employee who has passed probation shall be contingent upon acceptable conduct and satisfactory performance of duties. Failure to meet such standards of conduct and work performance for any of the following reasons is sufficient grounds for discipline or dismissal. The list below is not all-inclusive; other conduct by an employee may also constitute reasons for discipline or dismissal.

1. The employee is unable to perform essential functions or is incompetent or inefficient in the performance of his/her duties.
2. The employee has been abusive in his/her attitude, language, conduct or has caused physical harm or injury to an employee or the public.
3. The employee violates any reasonable direction given by the supervisor.
4. The employee violates any reasonable written departmental regulation.
5. The employee violated the substance abuse policy.
6. The employee takes anything of value in exchange for providing a favor or better treatment to another person.
7. The employee is convicted of a felony.

8. The employee has made false statements, written or oral, attempting to conceal any past or present criminal activity.
9. The employee fails to notify Human Resources within one (1) business day of being arrested or charged with a criminal offense.
10. The employee fails to cooperate with any internal investigation by the Town and the failure does not result from the employee's invocation of his/her rights.
11. The employee willfully or recklessly causes damage to public property or waste of public resources.
12. The employee repeatedly causes damage to public property.
13. The employee has been absent without leave, or has failed to report after a leave of absence has expired, or after such leave of absence has been disapproved, revoked, or cancelled by the Town Manager.
14. A non-exempt employee engages in outside business activities on Town time.
15. An employee uses Town property not otherwise available to the public for personal use.
16. The employee has engaged in improper political activities, as prohibited by this Manual.
17. The employee deliberately gave incorrect information on his/her employment application.
18. The employee has been chronically tardy and/or failed to maintain prescribed working hours.
19. The employee has committed any action, on or off the job, which reasonably tends to bring discredit to the Town service.
20. The employee has failed to meet the terms of a disciplinary probation period.
21. The employee has violated any provision of the Manual.
22. The employee has committed any other conduct of equal gravity to the reasons enumerated in this rule.
23. The employee makes false statements affecting their job performance.
24. The employee commits a crime.
25. The employee violates an Administrative Policy.
26. The employee signs and submits any payroll document, including, but not limited to, a time sheet, attendance form, or leave request knowing such document contains false or incorrect information.

Section 15. Section 4.2.8 of the Personnel Manual is amended and shall read as follows:

4.2.8-VOLUNTARY DEMOTION

Upon request of the employee, demotion may be made to a vacant position. No employee shall be demoted to a position for which he/she does not possess the minimum qualifications.

An employee who voluntarily requests a demotion shall be paid at a rate recommended by Human Resources and approved by the Town Manager. The rate shall not exceed the

maximum rate of pay at the lower pay grade. The employee will not be allowed to compete in promotional opportunities for a period of ninety (90) days.

A voluntarily demoted employee shall receive a non-monetary performance review at the time of the demotion. The employee's regular Performance Review date shall remain the same. The non-monetary performance review and the employees regular performance review will be considered in conjunction for any merit increase that may be available.

Section 16. Section 5.1.3(B) of the Personnel Manual is amended and shall read as follows:

5.1.3-PAID TIME OFF (PTO)

B) Use Procedures

In the case of illness of the employee or persons dependent on the employee or other emergency, an employee shall notify his/her supervisor of the use of Paid Time Off as soon as is reasonably possible.

The following procedures shall be followed for all uses of Paid Time Off except illness or other emergency:

- Employees shall schedule the use of Paid Time Off in advance of taking Paid Time Off and are encouraged to work with their supervisor to minimize work disruption when possible
- Paid Time Off shall be approved in advance by the Department head if requested by an employee and Town Manager if requested by a Department Head. The Town Manager and Town Attorney shall notify the Town Council prior to using Paid Time Off; and
- Signed Paid Time Off request forms must be attached to daily attendance forms when Paid Time Off is taken.

Employees may use Paid Time Off only after they have actually accrued Paid Time Off.

For non-exempt employees, Paid Time Off shall be taken in increments of one-quarter hour. For exempt employees, Paid Time Off shall be taken in increments of days (with hours corresponding to the employee's normal work schedule).

Paid Time Off or Comp Time may not be used (1) to exceed an employee's regular number of hours scheduled to work in a twenty-four (24) hour period; nor (2) to exceed an employee's regular number of hours scheduled to work in a work week. The provisions of this paragraph shall not apply if an employee is required to work hours in excess of the employee's regular number of hours by a supervisor.

Employees may not request a cash payment in lieu of using Paid Time Off.

Section 17. Section 5.1.3(C) of the Personnel Manual is amended and shall read as follows:

5.1.3-PAID TIME OFF (PTO)

C) Transfer For Emergency Situations

Paid Time Off may be transferred from one employee to another on an hour for hour basis if an emergency situation exists, both employees agree in writing to the transfer, and the transfer is approved by Human Resources.

Prior to receiving transferred paid time off, an employee must begin FMLA leave.

No employee shall receive more than 480 hours of PTO transfer within a rolling 12 month period.

Section 18. Section 5.1.4 of the Personnel Manual is amended and shall read as follows:

5.1.4-HOLIDAYS

For all employees not mandated to work a 4/10 schedule (four ten hour days a week) the following paid eight (8) hour holidays will be observed:

New Years Day	January 1
Martin Luther King Jr. Day	3 rd Monday in January
Presidents Day	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4 th Thursday in November
Day After Thanksgiving Day	4 th Friday in November
Christmas Day	December 25

When a holiday falls on a Saturday, the preceding Friday shall be observed. When a holiday falls on a Sunday, the following Monday shall be observed.

Public Safety and other essential service employees may be required to be on duty on holidays.

If the Town Manager mandates a 4/10 schedule (four ten hour days a week) for a group of employees, notwithstanding the foregoing or Section 2, Rule 1.7, the following provisions apply:

- 1) Prior to the beginning of each calendar year, Human Resources shall designate eight (8) paid holidays (from the list of paid holidays above) which shall be paid holidays for the employees who are mandated to work a 4/10 schedule.

- 2) On each of the eight (8) holidays, employees mandated to work a 4/10 schedule shall receive ten (10) hours of holiday pay.
- 3) Such eight (8) holidays (ten hours each) shall constitute commensurate time off in lieu of ten (10) paid holidays (eight hours each) the employees would be entitled to working a traditional 5/8 schedule.

If working on an alternate schedule, non-exempt employees shall receive eight (8) hours of holiday pay and must make up the remaining hours from Paid Time Off or accrued Compensatory hours.

PTO cannot be taken on a holiday in addition to the eight (8) hours of holiday pay except for any hours required to supplement an alternate work schedule.

Section 19. Section 6.3.7 of the Personnel Manual is added and shall read as follows:

6.3.7-TEXTING WHILE DRIVING PROHIBITED.

(A) Employees shall not Text while driving a Town vehicle or while operating a personal vehicle on Town business.

(B) This section shall not apply to Public Safety personnel using a Town issued Mobile Digital Computer if such use is done in accordance with Departmental Policy.

(C) For the purpose of this section, Text/Texting means the use of an electronic device to write or read messages. Such messages shall include all messages such as, but not limited to, texts, email, instant messages, or other internet based messaging.

Section 20. Section 6.5 of the Personnel Manual is added and shall read as follows:

6.5 USE OF TOWN ELECTRONIC TECHNOLOGY RESOURCES

6.5.1 All employees shall comply with the Town's Computer, E-mail, and Internet Policy, attached as Appendix C. An exemption from the Computer, E-mail, and Internet Policy, either temporary or permanent, may be granted upon approval of the head of the IT Division and the Department/Division requesting the exemption.

6.5.2 Misuse of Town Electronic Technology Resources.

A) If a member of Information Technology Division determines that an employee has violated the Town Computer, E-mail, and Internet Policy, information concerning the violation(s) shall be provided to the employee's supervisor and/or department head.

B) In determining what action to take in reference to the violation including potential discipline and/or dismissal pursuant to Section 4.2, a supervisor and/or department head who has been made aware of a violation, shall consider, in addition to all other factors, (1) if the violation was a Minor Violation or a Major Violation of the Computer, E-mail, and

Internet Policy; and (2) the level of damage caused to the Town, if any, as a result of the violation.

C) For the purposes of this section the following definitions apply:

Minor Violation – Any misuse of a Town electronic technology resource in violation of the Town’s Computer, E-mail, and Internet Policy that does not cause or result in harm to the Town’s electronic technology resources.

Major Violation – (i) any misuse that results in damage to the Town’s computers, network or other electronic resources; (ii) any unauthorized streaming of audio or video; or (iii) a fourth Minor Violation.

6.5.3 Control of Town Electronic Technology Resources. The Information Technology Division may do any of the following to protect the Town’s electronic technology resources:

1. Suspend or limit an employee’s access to Town computers, network, or other electronic resources. Upon such a suspension or limitation of access, Information Technology shall notify the employee’s supervisor and/or Department Head. If the employee is a Department Head, Information Technology shall notify the Town Manager.
2. Confiscate and/or physically remove an employee’s computer or other electronic resources. Upon such a confiscation, Information Technology shall notify the employee’s supervisor and/or Department Head. If the employee is a Department Head, Information Technology shall notify the Town Manager.
3. Monitor and/or review all employee use of Town electronic resources.

Section 21. Appendix C of the Personnel Manual (Electronic Technology Resources Policy), as referenced in Section 6.5, is amended and shall read as set forth in Exhibit A attached.

Section 22. Section 6.10.3 of the Personnel Manual is amended and shall read as follows:

6.10.3-DEFINITIONS

Threatening or Intimidating shall have the same meaning as used in A.R.S. 13-1202.

Deadly weapon shall have the same meaning as used in A.R.S. 13-3101.

Section 23. Section 7.2 of the Personnel Manual is amended and shall read as follows:

7.2 DEPARTMENT RULES

(A) Departments may adopt supplemental rules, procedures, and/or policies consistent with this Manual.

(B) If there is a conflict between any rules, procedures, or policies adopted by Town departments and the provisions of this Manual, the provisions of this Manual shall supercede such rule, procedure, or policy.

(C) The Town Manager shall approve all rules, procedures, or policies adopted by Town departments.

Section 24. The amendments set forth in this Resolution shall be effective on January 1, 2015.

Section 25. If any portion of this Resolution is held to be invalid or unconstitutional such decision shall not affect the validity of the remaining portions of this Resolution.

ADOPTED BY THE MAYOR AND TOWN COUNCIL, this ____ day of _____, 2014, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

Exhibit A
To
Resolution 2813

Appendix C - ELECTRONIC TECHNOLOGY RESOURCES POLICY

I. Introduction

The Town provides Electronic Technology Resources to Town Staff and Officials. Access to Electronic Technology Resources is a privilege that imposes certain responsibilities and obligations. This privilege is granted subject to Town policies and codes, and Federal and State laws. Electronic Technology Resources are provided to facilitate Official's and Staff's ability to perform their job efficiently and productively. The purpose of this Policy is to promote the efficient, ethical and lawful use of Electronic Technology Resources and ensure that the Electronic Technology Resources are not compromised or damaged.

II. Scope

This policy applies to all Users of Electronic Technology Resources, whether such Users are accessing the Electronic Technology Resources locally or remotely.

III. Definitions

Electronic Technology Resources – All electronic information systems owned or leased by the Town, including, but are not limited to, host computers, file servers, routers, switches, hubs, modems, workstations, stand alone computers, laptops, printers, scanners, software, internal or external data communication networks, and all other network resources.

Users - all employees, elected and appointed officials, independent contractors and other persons or entities accessing or using Electronic Technology Resources.

E-mail is the ability to compose and distribute messages, documents, files, software or images by electronic means over a network connection.

Software is the computer programs that reside on any type computer to perform a desired function. It encompasses programs provided by the manufacturer or a departmental software vendor.

Network resources include the hardware and software necessary to connect computers and resources into a communication system.

IV. Ownership and Privacy Expectations

All Electronic Technology Resources and all information transmitted by, received from, and stored on Electronic Technology Resources are property of the Town. The Town reserves the right to inspect all data and other electronic files at any time on Electronic Technology Resources without advance notice.

E-mail created, sent, or received through the use of Electronic Technology Resources is the property of Town of Payson.

Users can have no expectations of privacy in anything they create, send, store or receive on any Electronic Technology Resources.

The Town utilizes software to monitor all Internet sites visited on Electronic Technology Resources.

The IT Department reserves the right to utilize "Remote Control" software or other such facilities, at any time, to view, modify, and control the screens, programs, of any electronic technology device attached either locally or remotely to the Town network.

V. Personal Electronic Equipment

Users shall not connect or attempt to connect any personal computer, data storage device (such as CDs/DVDs, external hard drives, flash drives, "smart" phones, iPods/iPads/iTouch or similar devices, mobile computing devices, or other data storage media), or image-recording device to Electronic Technology Resources unless expressly permitted to do so by the Information Technology Division.

Any User connecting or attempting to connect a personal computing device, data storage device, or image-recording device to Electronic Technology Resources agrees to allow the Town to inspect such personal computer, data storage device, or image-recording device and to analyze any files, other data, data storage devices, or media that may be within or connectable to the personal computer or image-recording device in question. A User's failure to allow inspection of such items may be subject to disciplinary action.

VI. General Usage

A User of Electronic Technology Resources is representing the Town. Employees and must use good judgment in all Electronic Technology Resources utilization.

Users are expected to use Electronic Technology Resources responsibly and professionally.

Users are individually liable for any and all damages incurred as a result of violating Town of Payson computer usage policy, copyright, and licensing agreements.

The use of Electronic Technology Resources must be consistent with, and directly related to, the objectives of the Town of Payson.

In addition to the remainder of this Policy, the following are specific violations of this Electronic Technology Resources Policy:

1. Use Electronic Technology Resources for any personal or recreational use. Examples of such personal or recreational use would include, but not be limited to (i) seeking, accessing, or downloading material that is not job related; (ii) accessing chat rooms; (iii) playing accessing, or downloading games; and/or (iv) the use of Instant Message unless preapproved and

necessary for work functions.

2. Revealing one's password to anyone else, using anyone else's password, or pretending to be someone else when sending information over the computer network. Mechanisms are in place that would allow personnel access to a coworker's files or e-mail should that co-worker be unexpectedly unavailable. This request should be made in writing to the IT Department from the immediate supervisor.

3. Use of profane, vulgar, threatening, defamatory, abusive, discriminatory, harassing or otherwise objectionable or criminal language in any message.

4. Violating copyright laws. (Users should assume that all materials available on the Internet are protected by copyright.)

5. Forwarding any non work related emails including, but not limited to sending "chain letters" or "broadcast" messages to lists or individuals or subscribing to "listserves" or "newsgroups" without prior permission.

6. Unauthorized streaming of any audio or video. Job related streaming may only be done with supervisor approval.

7. Attempting to harm, modify or destroy data of another user.

8. Vandalizing or causing physical damage, reconfiguring, or destroying data on Electronic Technology Resources.

9. Using Electronic Technology Resources for political campaigning purposes, including attempts to influence ballot questions or to promote or oppose a candidate for public office.

10. Using Electronic Technology Resources in a manner that would violate any Federal or State law or subject the user or the Town of Payson to any civil or criminal action. This includes, but is not limited to, the transmission of threatening material, the spreading of computer viruses, participating in software piracy, using the Town of Payson's technology network for gambling, or arranging for the sale or purchase of drugs or alcohol.

11. Load User owned or non-Town purchased software on Electronic Technology Resources, regardless of purpose. This includes shareware, wallpaper, screensavers, sound effects, freeware, personal software or Internet distributed programs.

12. Send or forward any e-mail without clearly identifying the sender.

13. Altering the system settings of Electronic Technology Resources through any system setup or Windows utility. This includes changing the software or hardware settings on another user's computer.

14. Attempting to gain access to information, computer accounts, or other computing resources in which you are not authorized. This includes other employees email or attempting to override any firewall established on the network.

15. Allowing any non-User (e.g., employee spouse, family member, etc) to use Electronic Technology Resources. This does not include automatic upgrades to authorized software.

16. Abusing special privileges that have been granted for use of Electronic Technology Resources.

17. Knowingly and falsely taking the identity of another employee while accessing any Town owned computer. Example: Finding a computer in which somebody else has signed on and sending e-mail using the other person's identity.

18. Failing to log off, lock, or shut down a PC workstation at the end of a shift. Departmental exceptions, such as computer aided dispatch and 911 computers, are permissible if in accordance with Departmental policy.

19. Use of internet browsers other than Internet Explorer. IT may grant exceptions to the requirement, but such exceptions shall be narrowly tailored to specific needs.

20. Accessing another user's computer, computer files, or electronic mail messages without prior authorization from either the employee or immediate supervisor.

21. Not following any reasonable directive of a member of the Information Technology Division.

22. Knowingly attempting to do any prohibited act, even if the User is unsuccessful in accomplishing the act.