

## Personnel Complaints

### 1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Mount Hope Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

### 1010.2 POLICY

The Mount Hope Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local laws; and municipal and county rules, and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

### 1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

#### 1010.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

**Informal** - A matter in which the Squad Supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

**Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Squad Supervisor, depending on the seriousness and complexity of the investigation.

**Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Squad Supervisor, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

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#### 1010.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

#### **1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

##### 1010.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in the police facility and be accessible through the department website. Forms may also be available at other Town facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

##### 1010.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

#### **1010.5 DOCUMENTATION**

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

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#### **1010.6 APPLICABILITY**

This general order and all provisions contained herein shall apply to the following employees within the Town of Mount Hope Police Department:

- (a) Employees holding a position by permanent appointment in the competitive class as defined by the Civil Service Law of the State of New York, and/or;
- (b) Employees holding a position by permanent appointment in the classified service of the Civil Service Law of the State of New York, and/or;
- (c) Employees holding a position in the noncompetitive class other than a position designated in the rules of the Civil Service Commission as confidential or requiring the performance of functions influencing policy who have completed at least five years continuous service in the noncompetitive class in a position so designated in the rules as confidential or requiring the performance of functions influencing policy.

Note: Employees holding a position in the noncompetitive class, other than a position designated in the rules of the Civil Service Commission as confidential or requiring the performance of functions influencing policy, who **have not** completed at least five years continuous service in the noncompetitive class in a position so designated in the rules as confidential or requiring the performance of functions influencing policy, can be disciplined up to and including termination without a hearing by the Town Board

#### **1010.7 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

##### **1010.7.1 SUPERVISOR RESPONSIBILITIES**

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  - 1. The original complaint form will be directed to the Squad Supervisor of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant

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is at issue, a supervisor shall orally report the matter to the member's Deputy Chief or the Chief of Police, who will initiate appropriate action.

- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
  - 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
  - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Squad Supervisor.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Squad Supervisor and the Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Personnel Department and the Squad Supervisor for direction regarding the supervisor's role in addressing a complaint that relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Squad Supervisor, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Notifying the complainant that the matter is being handled administratively.
- (h) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (i) Investigating a complaint as follows:
  - 1. Making reasonable efforts to obtain names, addresses, and telephone numbers of witnesses.
  - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (j) Ensuring that the procedural rights of the accused member are followed.
- (k) Ensuring interviews of the complainant are generally conducted during reasonable hours.

#### 1010.7.2 NOTICE OF CHARGES

Any charges brought against an employee shall be in writing and within the time frame prescribed by law (Civil Service Law § 75; Second Class Cities Law § 137; Town Law § 155; Village Law § 8-804).

#### 1010.7.3 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

**Introduction** - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

**Synopsis** - Provide a brief summary of the facts giving rise to the investigation.

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**Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

**Evidence** - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

**Conclusion** - A recommendation regarding further action or disposition should be provided.

**Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

#### 1010.7.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

**Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

**Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

#### 1010.7.5 COMPLETION OF INVESTIGATIONS

Every supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation.

#### 1010.7.6 ADMINISTRATIVE INVESTIGATION PROCEDURES OTHER EMPLOYEES

Whether conducted by a supervisor or the Chief of Police, the following applies to employees:

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the Mount Hope Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.

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- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
  - (a) An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after the employee has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
  - (b) No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
- (i) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All employees shall provide complete and truthful responses to questions posed during interviews.
- (k) No employee may be compelled to submit to a psychological stress evaluator examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Labor Law § 735).

#### 1010.7.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

#### 1010.7.8 SUBSTANTIATED COMPLAINTS

The Chief of Police, the Deputy Chief of Police, or the Chief's designee, shall, upon determination that a complaint against a member of the department is substantiated, prepare and serve a notice

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of discipline in accordance with the current rules and regulations of the Town of Mount Hope Police Department.

#### **1010.7.9 DISCIPLINARY INTERVIEW**

A meeting with the member subject to disciplinary review shall be held within fourteen (14) days of service of a notice served upon a member of the Town of Mount Hope Police Department. The notice shall contain a recital of the charges alleged. The purpose of the meeting shall be to discuss the alleged charges and potential resolution of the charges.

Following the interview, the Chief of Police shall determine if imposition of a disciplinary penalty is required.

If a disciplinary penalty is required, the Chief of Police shall issue and serve a written decision upon the member subject to disciplinary review which shall inform the member of the Chief's determination.

The Chief of Police shall provide a copy of the decision to the Town Board and shall refer the notice of discipline to the Town Board for a determination of charges.

#### **1010.8 ADMINISTRATIVE SEARCHES**

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

#### **1010.9 ADMINISTRATIVE LEAVE**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.
- (d) May be on leave without pay pending the hearing of charges (Town Law § 155).

#### **1010.10 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

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The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Mount Hope Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

#### **1010.11 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

##### **1010.11.1 DEPUTY CHIEF RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Deputy Chief shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Deputy Chief may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Deputy Chief may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Deputy Chief shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

##### **1010.11.2 CHIEF OF POLICE RESPONSIBILITIES**

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Deputy Chief for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.



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1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response, or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

#### 1010.11.3 HEARING BY TOWN BOARD

The member served with a Chief's decision that imposes a disciplinary penalty may request a hearing on charges by having a written demand for a hearing served upon the Supervisor of the Town of Mount Hope within fourteen (14) days or receiving the Chief's decision. The Supervisor of the Town of Mount Hope, acting in the capacity of Police Commissioner, shall do one of the following upon receipt of the written demand for hearing, as prescribed by the rules and regulations of the Town Board as provided in Town Law § 155:

- (a) Designate a member of the Town Board to act as a Hearing Officer and to sit as a trier of fact to make a determination of the charges filed against the member of the Police Department, or;
- (b) Select a Hearing Officer to sit as a trier of facts to determine the charges filed against the member of the police department.

The employee shall be entitled to five days' notice of the hearing and have an opportunity to be heard in his/her defense. The employee has the right to a public hearing and to be represented by counsel (Town Law § 155).

Any member that is served with a notice of discipline may have a representative or legal counsel represent him or her in connection with any proceedings provided for by this order. The hearing of the charges alleged in the notice of discipline, shall be conducted in accordance with the provisions of § 155 of the Town Law of the State of New York, and such hearing shall be transcribed by a stenographer. A copy of the transcript of the proceedings shall be provided to the member free of charge.

#### 1010.11.4 RECOMMENDED DECISION AND FINAL DETERMINATION

The Hearing Officer selected by the Supervisor shall conduct a hearing and shall issue a decision containing recommended findings of fact and a recommended disciplinary penalty, if applicable, to the Town Board.

The decision shall be reviewed by the Town Board, and the Town Board may then accept, or reject the recommended findings of fact and/or the recommended disciplinary penalty, in whole or in part, if applicable.

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The Town Board shall make a final determination of the charges alleged in the notice of discipline and, where applicable, shall impose any penalty consistent with the provisions of the Town Law of the State of New York, or any other penalty agreed to between the Town Board and the respondent member of the police department.

#### 1010.11.5 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee should ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint.

#### **1010.12 PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to conduct further investigation, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

#### **1010.13 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

#### **1010.14 POST-DISCIPLINE APPEAL RIGHTS**

In accordance with Town Law § 155 of the State of New York, the determination of the Town Board shall be subject to review by the Supreme Court in the judicial district in which the Town is located in the manner provided for by Article 78 of the Civil Practice Law and Rules, provided that the proceeding is commenced within 30 days from the date of the Town Board's determination.

Non-probationary employees have the right to appeal a reprimand, withholding of salary, extra hours, suspension without pay or termination of employment. The employee has the right to appeal using the procedures established by Town Law § 155 as noted above.

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#### **1010.15 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee.

In cases where an individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate, the probationary period may be extended at the discretion of the Chief of Police.

#### **1010.16 RETENTION OF PERSONNEL INVESTIGATION FILES**

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

#### **1010.17 DECERTIFICATION**

The Chief of Police, may, at his/her discretion, contact the New York State Department of Criminal Justice Services to make notification that a Police Officer has:

- (a) Been convicted of any felony.
- (b) Been convicted of any misdemeanor.
- (c) Failed to meet any training or certification requirements.
- (d) Been terminated from employment for cause.
- (e) Resigned while facing prosecution for any misdemeanor or felony offense.
- (f) Resigned while under departmental investigation or while facing departmental charges.

The Department of Criminal Justice Services, may, at its discretion, choose to decertify a police officer under the aforementioned circumstances.

#### **1010.18 LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE**

Members who become aware of misconduct concerning corruption, fraud, use of excessive force, criminal activity, conflicts of interest, or abuse by another member relating to their work with the department, or by a person having business dealings with the department relating to those dealings shall, in addition to any requirements in this policy, promptly report it to the Law Enforcement Misconduct Investigative Office (LEMIO) (Executive Law § 75).

##### **1010.18.1 ADDITIONAL CHIEF OF POLICE RESPONSIBILITIES**

The Chief of Police shall advise the governor, appropriate members of the legislature, and the Division of Criminal Justice Services (DCJS) within the required period of any remedial action taken against a member in response to the LEMIO's recommendation. The Chief of Police shall

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also refer complaints that meet the requirements of Executive Law § 75 to the LEMIO (Executive Law § 75).

Additionally, the Chief of Police or the authorized designee shall timely comply with all reporting requirements to the DCJS when required by 9 NYCRR Part 6056 (e.g., reporting new hires, reporting any employee leaves of absences, reporting employee resignations, reporting removal of employees, including probationary employees, for cause, etc.) (9 NYCRR 6056.4; 9 NYCRR 6056.5).