

Administrative Investigations

1011.1 POLICY

All sworn law enforcement officers and civilian employees of the Bozeman Police Department must understand expectations regarding their on and off duty conduct and be fully aware of the ethical responsibilities of their position. To ensure these standards are upheld, all complaints against the agency or its employees shall be answered or investigated. All investigations will be done in a fair, impartial and timely manner and take into account the rights of the accused employee, impacts on the department and perceptions of the community. Administrative investigations may also be necessary for use of deadly force or other critical incidents.

1011.2 INVESTIGATION PROCEDURES

The Chief or Deputy Chief of Police will decide whether an administrative investigation will commence and will then designate a commander who will investigate the incident.

- (a) An administrative investigation may be initiated following the lodging of a formal complaint (refer to Personnel Complaints Policy).
- (b) An administrative investigation may also be initiated by the Chief or Deputy Chief of Police in cases where a concern or allegation may not have come in through a formal citizen complaint, and/or if it is determined the nature of the concern is particularly sensitive or important to the proper operation of the department and the public's trust.

In the event the complaint alleges violations that are criminal in nature, a parallel criminal investigation may be required. The Chief or Deputy Chief of Police will determine if this is necessary and coordinate requests for investigation by an appropriate law enforcement agency.

An employee may be placed on Administrative Leave with pay by any command officer.

- (a) Administrative Leave with pay may be done when it is in the best interest of the employee due to overall safety or job performance concerns or when the Commander feels the seriousness of the allegation warrants administrative leave.
- (b) The command officer will notify the Chief of Police of this action as soon as practicable. Continued assignment to paid leave will be authorized solely by the Chief of Police.
- (c) Desk Duty: In lieu of Administrative Leave, an employee under investigation may be removed from field work and assigned duties which restrict direct interaction with the public. This is done at the discretion of the Commander.

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- (a) Desk duty assignments may be used when an allegation against an employee relates to concerns with their interaction with the public.
- (b) Desk duty assignments shall not be used when there are concerns that the presence of the employee in the workplace would create potential concern that they had

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an opportunity to tamper with any evidence or witnesses in the incident under investigation.

- (c) Desk duty assignments should generally not be used when the allegation under investigation, if sustained, is likely to result in the termination of the employee.

Commanders shall complete the administrative investigations in accordance with standard investigatory procedures.

1011.3 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.

1011.4 EMPLOYEE EXPECTATIONS

The employee who is subject of the investigation may be required to participate in or provide the following in those cases where the information is material to the investigation:

- (a) Be interviewed by the investigator;
- (b) Submit to an alcohol or controlled substance test where there is reason to suspect an employee's faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption.
- (c) Be required to provide fingerprints or related major case prints;
- (d) Be required to be photographed or participate in a line-up;
- (e) Be required to submit financial disclosure statements.

At no time may the employee who is the subject of the investigation interfere with the investigation or contact the complainant or witnesses.

The investigator shall notify the employee who is the subject of the investigation in writing of all the allegations and the employee's rights and responsibilities relative to the investigation. This notification shall be done as soon as practicable using the **Employee Notification of Rights form**, but should provide a reasonable time prior to conducting a formal interview(s). The formal interview may be conducted at a time that is agreeable for both the employer and employee, but shall not be delayed for longer than 36 hours from the time of the notification. This notification will include the following:

- (a) The name of the investigating officer;
- (b) The nature of the allegation;
- (c) The investigation is administrative, rather than criminal in nature;
- (d) At no time may the employee knowingly interfere with the investigation, or contact the complainant or witnesses;

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- (e) The employee may have a representative from their bargaining unit present during any interview(s) or proceedings.
- (f) In the event a formal interview is conducted of an employee who is the subject of an investigation, the following shall apply;
- (g) The interview shall be conducted at a reasonable hour
- (h) The interview shall take place at the Bozeman Police Department or at a location designated by the investigating officer and in such a manner as to minimize any negative attention being brought upon by the employee subject to the investigation;
- (i) The interview may be recorded by either the investigator or the employee, but notice must be given of this being done prior to commencement of the interview;
- (j) The interview will be done under circumstances devoid of intimidation, abuse, or coercion;
- (k) The employee shall be informed of the name of the investigating officer as well as names of all persons present during the interview;
- (l) Prior to beginning the interview, the investigator shall read and complete the Administrative Investigative Admonishment, listed as Appendix A of this policy, ensuring the employee understands both the obligations and conditions of the interview for both the employee and the investigator;
- (m) The interview shall be for a reasonable period and shall allow for rest periods as are reasonably necessary;
- (n) All interviews shall be limited in scope to activities, circumstances, events, conduct or acts which pertain to the nature of the investigation;
- (o) The employee may have an attorney and/or union/association representative with them, so long as the individual is not involved in any manner with the incident under investigation.
- (p) The employee representative's role is primarily that of observer.

1011.5 CONCLUSION OF INVESTIGATION

Upon completion of an investigation, the investigator will prepare a comprehensive report that will include all related documentation, evidence and recordings. The report may only be released to the accused employee(s) upon request and with the approval of the Chief of Police.

The division commander shall forward a recommendation for disciplinary action, if warranted, to be the Chief of Police. The Chief of Police will make a determination, based on all information presented, on the final status of which are outlined in the "Personnel Complaints" policy.

In the event disciplinary action is being requested, the employee shall be notified of the disciplinary procedures. If no disciplinary actions are being recommended, the employee's division commander shall notify the employee of the investigation results.

The Chief of Police, in coordination with the employee's division supervisor, shall determine what content and manner the complainant will be notified of the investigation findings.

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All documents, recordings, evidence or electronic data shall be kept in a confidential manner and only accessible by those persons the Chief of Police designates.

1011.6 DISCIPLINARY PROCEDURES

Disciplinary Actions are actions taken to correct or address behavior that involves violation(s) of Policy, Protocols, or State or Federal Law. There are five (5) separate and distinct Discipline Actions:

- (a) Written Reprimand
- (b) Disciplinary Probation
- (c) Suspension, with or without pay
- (d) Demotion
- (e) Termination

The following guidelines will be used in determining the level of disciplinary action:

- (a) Final determination of applicable discipline action(s) is that of the Chief of Police
- (b) The Chief may use the level of discipline deemed appropriate based on the findings of the investigation. Any of the first four (4) discipline actions may be combined.
- (c) Consideration in deciding which disciplinary action(s) is most appropriate includes:
 - 1. The nature and seriousness of the violation;
 - 2. Relative job knowledge and experience;
 - 3. Motive or intent in committing the violation
 - 4. Damage (both tangible and intangible) to other employees, the Department, and the community;
 - 5. Past violations, similar behavior or disciplinary action(s) taken and the amount of time since these occurred;
 - 6. The manner in which the employee addresses the violation(s);
 - 7. Other mitigating or aggravating information regarding the violation(s).
- (d) In the event the Chief of Police determines the discipline action(s) taken is beyond that of a written reprimand, the employee shall be entitled to a Due Process Hearing. The Due Process Hearing allows for the employee to respond to the allegations, findings and initial decision of the Chief of Police. Notification and conduct of the hearing shall be in accordance with the City of Bozeman Employee Handbook, the employee's Collective Bargaining Agreement and any applicable State or Federal Law.
- (e) If an employee does not agree with the final discipline action, they may file a grievance in accordance with the City of Bozeman Employee Handbook and the employee's Collective Bargaining Agreement or applicable State or Federal Law.
- (f) Final notices of disciplinary actions will be maintained in the employee personnel file and in a controlled location as determined by the Chief of Police. The use of information from the discipline action shall be governed by the City of Bozeman Employee

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Handbook, the employee's Collective Bargaining Agreement and any applicable State or Federal Law.

1011.6.1 NOTICE OF TERMINATION

When an officer is terminated from employment, the Chief of Police shall, at the time of termination, serve upon the officer a statement in writing that sets forth the cause or causes for the termination (§ 7-32-2108, MCA).

1011.7 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any police commission, collective bargaining agreement and/or personnel rules (§ 7-32-4155, MCA).