



## **Warrensburg Police Department**

### **Department Memorandum 21- 2**

**Date Issued:** August 25, 2021

**Subject:** Administrative Personnel Investigation or Questioning of Law Enforcement Officers

The following procedure will be used during any administrative personnel investigation or questioning of law enforcement officers. The procedure is developed from RSMo 590.502.

### **Definitions**

**Administering Authority** – The City Manager.

**Color of Law** – Any act by a law enforcement officer, whether on or off duty, that is performed in furtherance of his or her sworn duty to enforce laws and to protect and serve the public.

**Economic Loss** – Any economic loss including, but not limited to, loss of overtime accrual, overtime income, sick time accrual, sick time, secondary employment income, holiday pay, vacation pay or personal time off (PTO).

**Good Cause** – Sufficient evidence or facts that would support a party's request for extensions of time or any other requests seeking accommodations outside the scope of the rules set out herein.

**Law Enforcement Officer** – Any commissioned peace officer with the power to arrest for a violation of the criminal code who is employed by the City. Law enforcement officer shall not include the Chief of Police, for whom separate procedures apply under state law.

### **Procedure**

1. Whenever a law enforcement officer is under administrative personnel investigation or is subjected to questioning that the officer reasonably believes could lead to disciplinary action, demotion, dismissal, transfer, or placement on a status that could lead to economic loss, the investigation or questioning shall be conducted under the following conditions:
  - 1.1. The law enforcement officer who is the subject of the investigation shall be informed, in writing, of the existence and nature of the alleged violation

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- and the individuals who will be conducting the investigation. Notice shall be provided to the officer along with a copy of the complaint at least 24 hours prior to any interrogation or interview of the officer.
- 1.2. Any person, including members of the same agency or department as the officer under investigation, filing a complaint against a law enforcement officer shall have the complaint supported by a written statement outlining the complaint that includes personal identifying information of the person filing the complaint. All personal identifying information shall be held confidential by the investigating agency.
  - 1.3. When a law enforcement officer is questioned or interviewed regarding matters pertaining to his or her law enforcement duties or actions taken within the scope of his or her employment, such questioning shall be conducted for a reasonable length of time and only while the officer is on duty unless reasonable circumstances exist that necessitate questioning the officer while he or she is off duty.
  - 1.4. Any interviews or questioning shall be conducted at a secure location at the City or at a place where the officer reports to work, unless the officer consents to another location.
  - 1.5. Law enforcement officers shall be questioned by up to two investigators and shall be informed of the name, rank, and command of the investigator or investigators conducting the investigation; except that, separate investigators shall be assigned to investigate alleged department police violations and alleged criminal violations.
  - 1.6. Interview sessions shall be for a reasonable period of time. There shall be times provided for the officer to allow for such personal necessities and rest periods as are reasonably necessary.
  - 1.7. Prior to an interview session, the investigator or investigators conducting the investigation shall advise the law enforcement officer of the rule set out in *Garrity v. New Jersey*, 385 U.S. 493 (1967), specifically that the law enforcement officer is being ordered to answer questions under the threat of disciplinary action and that the officer's answers will not be used against the officer in criminal proceedings.
  - 1.8. Law enforcement officers shall not be threatened, harassed, or promised rewards to induce them into answering any question; except that, law enforcement officers may be compelled by their employer to give protected *Garrity* statements to an investigator under the direct control of the employer, but such compelled statements shall not be used or derivatively used against the officer in any aspect of a criminal case brought against the officer.
  - 1.9. Law enforcement officers under investigation are entitled to have an attorney or any duly authorized representative present during any questioning that the law enforcement officer reasonably believes may result in disciplinary action. The attorney or representative shall be permitted to confer with the officer but shall not unduly disrupt or interfere with the interview. The questioning shall be suspended for a period of up to 24 hours if the officer requests representation.

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- 1.10. Prior to the law enforcement officer being interviewed, the officer and his or her attorney or representative shall have the opportunity to review the complaint.
- 1.11. The City shall have 90 days from the receipt of a citizen complaint to complete such investigation. The City shall determine the disposition of the complaint and render a disciplinary decision, if any, within 90 days. The City may, for good cause, petition the City Manager for an extension of the time to complete the investigation. If the City Manager finds the City has shown good cause for the granting of an extension of time to complete the investigation, the City Manager shall grant an extension of up to 60 days. The City is limited to two extensions per investigation; except that, if there is an ongoing criminal investigation, there shall be no limitation on the amount of 60-day extensions. For good cause shown, the internal investigation may be tolled until the conclusion of a concurrent criminal investigation arising out of the same alleged conduct. Absent consent from the officer being investigated, the City Manager shall set the matter for hearing and shall provide notice of the hearing to the law enforcement officer under investigation. The officer shall have the right to attend the hearing and to present evidence and arguments against extension.
- 1.12. Within 5 days of the conclusion of the administrative investigation, the investigator shall inform the officer, in writing, of the investigative findings and any recommendation for further action, including discipline.
- 1.13. A complete record of the administrative investigation shall be kept by the law enforcement agency conducting such investigation. Upon completion of the investigation, a copy of the entire record, including, but not limited to audio, video, and transcribed statements, shall be provided to the officer or the officer's representative within 5 business days of the officer's written request. The agency may request a protective order to redact all personal identifying witness information.
- 1.14. All records compiled as a result of any investigation subject to the provisions of this section shall be held confidential and shall not be subject to disclosure under Chapter 610, except by lawful subpoena or court order, by release approved by the officer, or as provided in RSMo section 590.070.
2. Law enforcement officers who are suspended without pay, demoted, terminated, transferred, or placed on a status resulting in economic loss, shall be entitled to a full due process hearing. The components of the hearing shall include, at a minimum:
  - 2.1. The right to be represented by an attorney or other individual of their choice during the hearing.
  - 2.2. Seven days' notice of the hearing date and time.
  - 2.3. An opportunity to access and review documents, at least seven days in advance of the hearing, that are in the employer's possession and that were used as a basis for the disciplinary action.

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- 2.4. The right to refuse to testify at the hearing if the officer is concurrently facing criminal charges in connection with the same incident. A law enforcement officer's decision to not testify shall not result in additional internal charges or discipline.
- 2.5. A complete record of the hearing shall be kept by the agency for the purposes of appeal. The record shall be provided to the officer or his or her attorney upon written request.
- 2.6. The entire record of the hearing shall remain confidential and shall not be subject to disclosure under RSMo Chapter 610, except by lawful subpoena or court order.
3. Any decision, order, or action taken following the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order accompanying findings and conclusions along with the written action and right of appeal, if any, shall be delivered or mailed promptly to the law enforcement officer or to the officer's attorney or representative of record.
4. Law enforcement officers shall have the opportunity to provide a written response to any adverse materials placed in their personnel file, and such written response shall be permanently attached to the adverse material.
5. Law enforcement officers shall have the right to compensation for any economic loss incurred during an investigation if the officer is found to have committed no misconduct.
6. Employers shall defend and indemnify law enforcement officers from and against civil claims made against them in their official and individual capacities if the alleged conduct arose in the course and scope of their obligations and duties as law enforcement officers. This includes any actions taken off duty if such actions were taken under color of law. In the event the law enforcement officer is convicted of, or pleads guilty to, criminal charges arising out of the same conduct, the employer shall no longer be obligated to defend and indemnify the officer in connection with the related civil claims.
7. Law enforcement officers shall not be disciplined, demoted, dismissed, transferred, or placed on a status resulting in economic loss as a result of the assertion of their constitutional rights in any judicial proceeding, unless the officer admits to wrongdoing in which case the provisions of this section shall not apply.
8. Any aggrieved law enforcement officer or authorized representative may seek judicial enforcement of the requirements of this policy. Suits to enforce this section shall be brought in the Circuit Court of Johnson County, Missouri.

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Chief of Police

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