BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD40 Quality Control, Internal Investigations & Discipline

POLICY: To invite citizens and employees to bring forward complaints about the conduct of employees whenever that citizen believes an employee acted improperly. A process has been established which enables the Department to initiate positive, corrective action, discipline, and re-training or education for improper conduct while protecting employees from unwarranted criticism for properly discharged duties. All complaints will be investigated in accordance with the collective bargaining agreement between the City of Burlington and the Burlington Police Officers' Association or the AFSCME bargaining unit and the procedures described herein.

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GENERAL PHILOSOPHY

The Burlington Police Department has a well-established tradition of serving the community with integrity and professionalism. To maintain our proud tradition and continue improving the quality of service the department provides to the community, each and every department member must accept their responsibility for maintaining high professional standards.

I. ORIGIN OF COMPLAINTS

A. Allegations of violations of Department Rules or Regulations may be initiated from within or outside of the Department. Every such allegation and/or charge will be investigated by the Department and reviewed by the Deputy Chief of Administration and the Chief of Police.

B. An employee electing to lodge a complaint against another employee may verbally transmit the complaint to his/her immediate supervisor. The supervisor shall notify the Chief of Police, via the chain of command.

C. A citizen verbally lodging a complaint or charge against an employee will be asked to document the complaint or charge by filling out a "Citizen's Complaint Form," which requires the name, address and telephone number of the complainant and a brief statement describing the incident. If the complaining citizen elects not to document his/her complaint or charge, the officer receiving the complaint shall obtain pertinent facts and refer the complaint to the Officer in Charge, who shall fill out the "Citizen Complaint Form" with as much information as is available. All complaints must be reported to the Chief of Police.

D. This policy does not apply to minor misunderstandings on the part of a complainant, which can be quickly resolved with an explanation of State law and/or Department policy. Such minor

misunderstandings may be resolved by the line supervisor and should be documented on either the Daily Shift report or an e-mail to the Deputy Chief of Administration and the Chief of Police. If the complaining citizen is not satisfied with this resolution, he/she may complete a "Citizen's Complaint Form."

E. The Chief of Police will forward all relative information to the Deputy Chief of Administration when he/she has determined it necessary to commence an internal investigation.

F. Every effort shall be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints. Any employee who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action.

G. A "Citizen's Complaint Form" and the accompanying cover letter explaining the process for filing citizen's complaints shall be available to the public.

II. RIGHTS AND OBLIGATIONS OF THE EMPLOYEE

The rights and obligations of employees who are under investigation and subject to interrogation for any reason which could reasonably lead to disciplinary action are set forth in the collective bargaining agreements. The procedure outlined in the BPOA contract shall be followed for all internal investigations, regardless of the involved officer's rank. The procedure for internal investigations involving non-sworn personnel shall be consistent with the applicable agreement (AFSCME contract or City Personnel Policy). In addition, the following shall also apply:

A. The employee will be informed in writing prior to the interview that they are a subject of investigation, the nature of the investigation, and their rights and responsibilities relative to the investigation.

B. All interviews shall be limited in scope to activities, circumstances, events, conduct or acts, which pertain to the incident that is the subject of the investigation. An employee may be requested to participate in other investigative processes that are specifically directed and narrowly related to the investigation.

C. No employee shall be compelled to take a polygraph, participate in a photo or live line-up, disclose financial records, or submit to medical or laboratory examinations during the course of an internal investigation.

D. Investigations shall be completed promptly, normally within thirty days. The time required may vary from case to case based on the nature of the allegation(s) and the complexity of the investigation. If additional time is necessary to complete the investigation, the Chief of Police may authorize an extension of up to sixty days, for a maximum time limit of ninety days.

III. OFFICE OF QUALITY CONTROL & INVESTIGATIONS

A. Organization
The Chief of Police shall appoint a Deputy Chief to oversee the Office of Quality Control and Investigations. The Deputy Chief shall staff the office as required.

B. The Deputy Chief of Administration shall report on a regular basis directly to the Chief of Police on all complaints investigated by the Bureau and in turn, the Chief of Police shall keep the Deputy Chief advised of all incoming complaints. The Chief of Police will be notified as soon as possible by the affected supervisor of any complaint that may result in an investigation.

C. Procedures
1. The Office of Quality Control will commence any investigation so directed by the Chief of Police. A first-line supervisor may investigate minor complaints (i.e. rudeness) for the purpose of performance counseling and coaching. The Office of Quality Control shall investigate or cause to be investigated any allegation of criminality on the part of an employee or of any conduct that could result in a record of permanent discipline.
2. Upon receiving a complaint from the Chief of Police, the Deputy Chief of the Office of Quality Control will select an investigator (or multiple) to conduct the investigation.
3. The Office of Quality Control shall have freedom of movement, authority to question all personnel regarding infractions of Departmental policy, procedure, or rules and regulations in reference to any ongoing investigation.
4. No retaliatory measures shall be taken against any member of the Office of Quality Control due to any investigation conducted under the proper procedures and policies, unless in the process the law is broken and/or misconduct occurs.
5. During the course of any investigation conducted by the Office of Quality Control, all relevant records and reports shall be made immediately available to the investigators upon request.
6. Upon completion of investigations, the Office of Quality Control will forward all findings to the Chief of Police.

D. The Deputy Chief of Administration shall maintain a complete record of complaints. These records shall be maintained separate from all other department records and shall be strictly confidential.

E. The assignment of functions to the Office of Quality Control does not relieve Supervisors of their responsibilities for the prompt investigation of all alleged acts of misconduct or other breaches of discipline by employees they supervise.

F. It is not practical, nor possible, to establish a firm and set penalty and corrective measure for every conceivable situation necessitating the taking of disciplinary action. Extenuating or mitigating circumstances and other factors will govern the severity of disciplinary action.

G. The Deputy Chief of Administration shall ensure the following with regards to maintaining contact with the original complainant:
1. The complainant shall be advised when their complaint is received.
2. When reasonable, the complainant will be periodically informed as to the status of their complaint.

H. On an ongoing basis, the Deputy Chief of Administration shall compile a statistical summary of all complaints investigated. This summary shall include the number of internal investigations and the category of disposition of each. This summary shall be made available to agency employees and the Police Commission upon request. If a trend indicating the need for training is detected, the summary's author shall make appropriate recommendations to the Training Unit and the Chief of Police. Additionally, each instance in which a complaint is received is an opportunity to examine practices, procedures, and conduct. Each should be examined and alterations to policy, practice, or operations incorporated swiftly as necessary.

IV. AUTHORITY OF THE CHIEF OF POLICE

A. The Chief of Police shall:
1. Review every investigation to determine the appropriate disposition.

2. Make a finding, using the following recommended categories of disposition:
   Unfounded - The investigation indicates that the act or acts complained of did not occur or failed to involve police personnel.
   Exonerated - Acts reported did occur, but were justified, lawful and proper.
   Non-sustained - Investigation fails to disclose sufficient evidence to prove clearly or disprove the allegations made in the complaint.
   Sustained - The investigation disclosed sufficient evidence to clearly prove the allegations made in the complaint.
   Non-involved - The investigation establishes that the individual named in the complaint is not involved in the alleged incident.
3. The Chief of Police or his/her designee shall make reasonable efforts to notify the complainant, in writing, of the outcome of the investigation.

B. The authority of the Chief of Police to suspend employees from duty is derived from the City Charter and the current collective bargaining agreement.

V. DISCIPLINE

The Department strives to engage in progressive and corrective discipline. Whenever it is necessary to discipline an employee, it shall be done fairly and in such a manner as not to embarrass the employee in front of the public or fellow employees.

A. The Department recognizes and encourages the use of training as an effective method of improving employee productivity, morale, and adherence to policies. The Department agrees with the tenants of progressive and corrective discipline, where appropriate.

B. The severity of a disciplinary action shall be commensurate with the cause of the action. The specific types of disciplinary measures to be taken against an employee are defined in the applicable collective bargaining agreement or Personnel Policy.

C. The Department encourages supervisors to verbally counsel and coach employees for minor transgressions, when appropriate. Counseling shall not be considered a disciplinary measure and may not need to be documented. There may be occasions, however, when a supervisor will document an informal verbal counseling in the employee's performance file. This notation is not discipline. It is merely a record of the issue made available to other supervisors should there be additional transgressions of this same nature. The documentation will be on the Department's triplicate form entitled "Employee Performance Entry." One copy is provided to the employee, one copy is sent to the Deputy Chief and one copy remains in the performance file until it is removed. Any action taken beyond informal employee counseling and that documentation shall be considered a disciplinary action and must be consistent with the provisions of this directive and the applicable contract or policy.

D. Factors in Disciplinary Decisions – Commentary

Purpose of Disciplinary Factors

Described here are the factors that will be considered in the disciplinary decision process for alleged breaches of policy or rules. It is critical that a system of discipline be established that contributes to minimizing abuse of police authority and promotes the department's reputation for professionalism. Each department member must understand and be guided by the standards that have been established in this Code.

It is recognized and understood that department members will make judgmental errors from time to time in carrying out their responsibilities. While each error in judgment offers an opportunity for the department and the member to learn, it is also understood some errors will have greater consequences than others for the public, the department and the member.

The department has an obligation to make its expectations as clear as possible to its members. The department has an equal obligation to make the consequences for failing to meet those expectations clear. There are often circumstances that may have contributed to errors of judgment or poor decisions that need to be considered when determining the appropriate consequences for conduct found to be improper.

Disciplinary action must be imposed in a consistent and fair manner. Consistency is defined as holding everyone equally accountable for unacceptable conduct. Fairness is defined as understanding the circumstances that contributed to the conduct while applying the consequences in a way that reflects this understanding. In order to ensure that members are treated in a consistent and fair manner, the application of consequences for conduct that is not in keeping with the department's expectations will be based upon a balanced consideration of factors. Following the careful consideration of all applicable factors in any disciplinary review, every effort will be made to determine the consequences that consistently and fairly fit each specific incident.

Discipline Factors

Employee Motivation: The department exists to serve the public. One factor in examining a member's conduct will be whether or not the member was acting in the public interest. A member who violates a policy or procedure in an effort to accomplish a legitimate police purpose, and who demonstrates an understanding of the broader public interest inherent in the situation, will be given more positive consideration in the determination of consequences than one who was motivated by personal interest. From time to time it may be difficult to distinguish between public and personal interest. As an example, arresting a dangerous criminal is in the public's interest. However, violating the criminal's Constitutional rights in order to do so is not in the public's interest. The greater public interest is for the police to carry out its responsibilities while protecting the public's Constitutional guarantees. But if a member attempts to devise an innovative, nontraditional solution for a persistent crime or service problem and unintentionally runs afoul of minor procedures, the desire to encourage creativity may carry significant weight in determining any discipline that might result.

Degree of Harm: The degree of harm that an error causes is also an aspect in deciding the consequences of a member's conduct. Harm can be measured in a variety of ways. It can be measured in terms of the monetary cost to the department and community. For example, an error that causes significant damage to a vehicle could be examined in light of the repair costs. Harm can also be measured in terms of the personal injury the error causes, such as the consequences of an unnecessary use of force. Another way in which harm can be measured is the impact of the error on public confidence. An employee who engages in criminal conduct could affect the public confidence in the department if the consequences do not send a clear, compelling message that the conduct will not be tolerated.

Employee Experience: The level of experience of department members is a factor. A relatively new member (or an experienced member in an unfamiliar assignment) will be given consideration when judgment errors are made. Conversely, a member who makes a judgment error that would not be expected of one who has a significant amount of experience may expect more serious sanctions.

Intentional and Unintentional Errors: Errors can be classified as intentional or unintentional.

An unintentional error is an action or decision that turns out to be wrong, but based upon the information available at the time it was taken, seemed to be in compliance with policy and the most appropriate course. Unintentional errors also include those momentary lapses of judgment or acts of carelessness that result in minimal harm. Department members will be held accountable for these errors but the consequences will be more corrective than punitive unless the same errors persist.

An intentional error is an action or a decision that an employee makes that is known (or should be known) to be in conflict with law, established training or procedures, rules, or policy. Generally, intentional errors will be treated more seriously and carry greater consequences than unintentional errors. Within the frame- work of intentional errors there are certain behaviors that are entirely inconsistent with the responsibilities of the police profession. These include lying, theft, physical abuse of citizens, and other equally serious breaches of the trust placed in members of the police profession. The nature of the police responsibility requires that police officers be truthful. It is recognized, however, that it is sometimes difficult to determine if one is being untruthful. A member will face discharge from the department when it is clear that the member is intentionally engaging in an effort to be untruthful. It is also a serious breach to have engaged in theft, physical abuse of citizens and other criminal behavior.

Employee's Past Record: To the extent allowed by law and policy, a member's past record will be taken into consideration in determining the consequences of a failure to meet the department's expectations. A member that repeatedly makes errors can expect the consequences of this behavior to become progressively more punitive. A member whose past record reflects hard work and dedication to the community and department will be given requisite consideration in the determination of any disciplinary action.

VI. ROLE OF SUPERVISORS, AUTHORITY TO DISCIPLINE, GENERAL CONTINUUM

A. Outcomes of reviews or investigations may result in a continuum of responses which include education and training, performance counseling, corrective action, or discipline. The continuum includes but is not limited to (responses may include more than one of the items in the continuum in some instances):

1. Verbal performance counseling or coaching
2. Training/re-training
3. Written performance notation / Coaching Report
4. Written counseling/"Performance File Entry"
5. Referral to professional counseling – such as the Employee Assistance Program
6. Written reprimand – the first level of "discipline"
7. Reassignment
8. Suspension or forfeiture of pay
9. Dismissal

B. All supervisory personnel, to include Sergeants, Lieutenants, and Deputy Chiefs, have the authority to take the following disciplinary actions against a subordinate:

1. Issue verbal reprimands
2. Issue written reprimands
3. Temporarily suspend an employee using administrative leave

4. Recommend to the Chief of Police further disciplinary action

C. The Chief of Police may issue verbal or written reprimands. The Chief of Police, or in his/her absence, his/her designee is the only Department member with the authority to impose suspensions and/or terminate employment, as outlined in section 190 of the City Charter.

VII. APPEALS

Any appeal relative to disciplinary action shall be handled according to the applicable collective bargaining agreement or City of Burlington Personnel Policy and the City Charter.

VIII. DISMISSAL

All dismissals shall be in accordance with the applicable collective bargaining agreement or Personnel Policy and the City Charter. If employee misconduct results in dismissal of a non-probationary employee, it shall be the responsibility of the Chief of Police or his/her designee to provide the information regarding the dismissal to the affected employee, including: the effective date; reason; status of benefits; and information regarding the content of the employee's personnel file as it relates to the dismissal.

IX. RECORDS

Maintenance and retention of records of disciplinary action are governed by the applicable collective bargaining agreement or the Personnel Policy and is subject to terms and provisions outlined in the Personnel Directive.

X. ADDITIONAL SOURCES & REFERENCES

Agreement between the City of Burlington and the Burlington Police Officers' Association.
Agreement between the City of Burlington and Local 1343 of the American Federation of State, County and Municipal Employees.
Comprehensive Personnel Policy Manual for the City of Burlington and the Burlington Electric Department.
City of Burlington City Charter, section 190.

Reviewed and adopted by the Burlington Police Commission on February 26, 2013.

Michael E. Schirling, Chief of Police	15 MARCH 2013 Effective Date