

1.0 PURPOSE:

To describe the procedures to be followed when Non-Elective Officials (Executive Service/Department Heads) are subject to possible discipline.

2.0 ORGANIZATIONS AND PERSONS AFFECTED:

This policy applies to all City of West Allis Non-Elective Officials (Executive Service/Department Heads) (hereafter "Department Heads"). This policy shall also apply to those Department Heads whose employment with the City is pursuant to the terms of a written employment contract in the event the contract is silent in this area. This policy does not apply to the Police Department, Fire Department, and Library.

3.0 POLICY:

It is the policy of the City of West Allis to follow a uniform set of procedures when a Department Head is subject to possible discipline.

4.0 REFERENCES:

Wisconsin Statutes Sections 17.12 and 17.16
City of West Allis Revised Municipal Code Sections 2.02, 2.09, 2.095 and 2.76(7.5)
Civil Service Rules and Regulations
Code of Ethics

5.0 RESPONSIBILITY/AUTHORITY

- 5.1 It shall be the responsibility of the appointing authority to coordinate all aspects related to any possible disciplinary actions for Department Heads.
- 5.2 The appointing authority has the authority to discipline a Department Head whenever it is believed the Department Head has acted in such a manner to have merited discipline, shall seek procedural advice from the City Attorney's Office and the Human Resources (HR) Director. If the HR Director is the subject of the potential discipline, then advice shall only be sought from the City Attorney's Office.
- 5.3 The appointing authority shall advise the appropriate Common Council Standing Committee Chair, who has functional oversight over the applicable Department Head and the Administration and Finance Committee Chair at the time an investigation is commenced.

6.0 CAUSES OF ACTION.

- 6.1 The following is a non-exhaustive list of acts and/or failures for which a Department Head may be disciplined. The Department Head:
 - a. Is subject to a pending criminal charge, if the circumstances of the charge substantially relate to the circumstances of the Department Head's particular job.¹
 - b. Has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate

¹ Allegations of criminal activity involving moral turpitude, immoral acts, theft of City funds, or other such offenses of a serious or grave nature, shall be reported to the Police Department and City Attorney's Office. The appropriate individual from these two departments shall notify the appointing authority, Alderpersons, and other City Officials as deemed necessary.

- to the circumstances of the Department Head's particular job.²
- c. Engages in misfeasance, malfeasance, or is incompetent or inefficient in the performance of their duties, tasks and responsibilities.
 - d. Engages in dishonest, misleading, or deceptive conduct.
 - e. Is in the possession of or under the influence of drugs or alcohol while on duty.
 - f. Is insubordinate.
 - g. Violates or causes another to violate federal or state laws, municipal ordinances, policies, rules or procedures.
 - h. Is careless and negligent with City property.
 - i. Engages in unethical, unprofessional, disgraceful conduct or conduct that is not in the best interest of the City or Department.
 - j. Is wantonly offensive in his/her conduct or language towards the public or towards City officers or employees.
 - k. Uses or threatens to use, or attempts to use, personal political influence in personnel matters.
 - l. Has been induced, or has attempted to induce an officer or employee in the service of the City, to commit an unlawful act, or to act in violation of any lawful and reasonable departmental or official policy, regulation or order; or has taken any fee, gift or other valuable thing in the course of his/her work, or in connection with it, for his/her personal use, from any citizen, when such fee, gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other citizens.
 - m. Has induced or attempted to induce any person, firm or corporation doing business with the City to give employment to any relative of said City officer or employee, or has induced or attempted to induce any person, firm or corporation as aforesaid to show any material favor or consideration of any kind to any relative of said City officer or employee, when said officer or employee holds a position in a department, division or office having direct contact with such person, firm or corporation.
 - n. Has stolen or attempted to steal City property, or the property of others, including theft of work time, excessive time on breaks, misuse of sick leave or other designated leave, misrepresenting work time, or failing to accurately record work time.
 - o. Has neglected assigned duties and responsibilities or engaged in prohibited political activities. (Examples of permitted activities for employees as private citizens and those activities which are prohibited are listed in Civil Service Rule IX Section 1 (s) (1, 2 & 3).
 - p. Violates of the City's Ethics Code, as set forth in Chapter II, Subchapter III of the RMC.³

7.0 INVESTIGATION

- 7.1 Upon determining a Department Head may have engaged in behavior meriting discipline, the appointing authority shall authorize an investigation into the behavior.
 - 7.1.1 The appointing authority, City Attorney, Human Resources Director (unless he/she is the subject of the complaint), or outside consultant⁴ will conduct the investigation. The appointing authority shall notify the complainant, if any, and the Department Head involved. Interviews shall be conducted as necessary.
 - 7.1.2 Upon the conclusion of the investigation, the individual conducting the investigation shall prepare a draft report. The draft report shall include, at a minimum, facts, conclusions, recommended disciplinary-and other action, and supporting documentation. The appointing authority shall review the draft report with the Mayor (if the appointing authority is the City Administrator) or City Administrator (if the appointing authority is the Mayor), City Attorney, and Human Resources Director (if he/she is not the subject of the discipline), and incorporate any appropriate additions or deletions into the final draft.
 - 7.1.3 Upon finalization of the report, the appointing authority shall take appropriate actions on behalf of the City as recommended in the report-and consistent with the forms of discipline set forth in section 9.0 below.

² Same as footnote 1 above.

³ Shall be referred to the City's Board of Ethics.

⁴ As designated by the appointing authority, in consultation with the City Attorney and/or Human Resources Director and approved by the Administration and Finance Committee.

7.1.4 The appointing authority shall provide a copy of the report and written notice of any disciplinary action and/or other recommendations to the Department Head involved and the Human Resources Department. The appointing authority shall also notify the Common Council, and, as appropriate, the complainant, of the results.

7.1.5 The Mayor may summarily suspend a Department Head without pay pursuant to the provisions of Section 17.12(3) of the Wisconsin Statutes.

8.0 RIGHT TO APPEAL.

8.1 Any Department Head has the right to appeal a disciplinary action imposed by the appointing authority.

8.2 The initial appeal shall be to the Mayor ~~(if appointed by the City Administrator) or City Administrator (if appointed by the Mayor.)~~ Said appeal shall be in writing and submitted within five (5) working days of receipt of the written notice of the disciplinary action. The written determination of said appeal shall be issued within five (5) working days of receipt of the appeal.

8.3 If the matter is not resolved following the appeal to the Mayor ~~or City Administrator~~, the Department Head may appeal the matter to the Common Council by filing a written request for a hearing within ten (10) working days of receipt of the written determination of the initial appeal.

8.4 If a timely appeal is filed, the Common Council shall appoint a time and place for the hearing of the appeal, the time to be within three (3) calendar weeks after filing of the same, and notify the appointing authority and the Department Head of the time and place of such hearing. This time period may be changed by mutual agreement of the parties and the Common Council. The Common Council shall permit the Department Head to be represented by counsel at no expense to the City. A continuation of the hearing may be requested by either party and allowed with concurrence of the other party and approval of the Common Council. At the conclusion of the hearing, the Common Council shall determine whether the action of the appointing authority shall stand or whether such other action shall be taken as it deems appropriate under the circumstances. The decision of the Common Council shall be a "final determination" as defined in Section 68.12 of the Wisconsin Statutes. The decision shall be in writing, mailed to the appointing authority and the Department Head, and shall contain notice that any appeal to the Circuit Court of Milwaukee County must be commenced within 30 calendar days of receipt thereof.

8.5 The failure of the Department Head to provide the appeal notice (in 8.2, 8.3 or 8.4) within the time prescribed shall be deemed a waiver of any right to be heard and a bar to judicial review.

8.6 Unless specified otherwise, any time limits prescribed above may be extended upon mutual, written agreement by the appointing authority and/or the Common Council and the Department Head.

9.0 FORM OF DISCIPLINE.

9.1 The level of discipline shall reasonably relate to the act, violation, or offense.

9.2 The forms of discipline the appointing authority may impose includes, but are not limited to, a performance improvement plan, verbal reprimand, written reprimand, suspension without pay up to and including 30 days, referral to the Employee Assistance Program, or a combination of the above. Suspensions over 30 days, demotions, or discharges must be may only be imposed by an affirmative $\frac{3}{4}$ vote of the Common Council. In addition, discharges/removals shall comply with Sections 17.12 and 17.16 Wis. Stats. and any applicable provisions contained within the Department Head's employment contract.