

**AN ORDINANCE AUTHORIZING THE ADOPTION OF AN INVESTIGATION
OF EMPLOYEE CONDUCT POLICY AND THE ADDITION OF THE POLICY AS
DEFINED TO THE VILLAGE EMPLOYEE HANDBOOK**

WHEREAS, Brewster Village Council desires to adopt an Investigation of Employee Conduct Policy and to modify the Village Employee Handbook to include an Investigation of Employee Conduct Policy.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BREWSTER, THAT:

SECTION 1: The Village shall adopt an Investigation of Employee Conduct Policy as defined below and shall add Section 8.07 - Investigation of Employee Conduct Policy to the Village Employee Handbook as follows:

8.07 - Investigation of Employee Conduct

A necessary part of the disciplinary process is a proper investigation. Prior to imposing discipline, an investigation must be undertaken to discover whether an employee did in fact violate a Village rule(s), and/or policy(s), and/or procedure(s), and/or Ohio Revised Code provision(s). This policy outlines in general terms the steps that will normally be taken in the investigation process. Additional guidance will be provided in advance that will guide managers in the investigation process. Managers should also seek guidance if they have any questions, or if issues arise during the investigatory process, from their Appointing Authority and/or the Solicitor.

A. Initial Inquiry

Not all allegations or issues will give rise to potential discipline or other adverse consequence. A number of allegations or issues raised regarding the performance of the myriad of day-to-day functions in the Village of Brewster should be subject to a simple inquiry - asking an employee(s) to describe and/or verify their actions. These initial or simple inquiries do not automatically give rise to a full-scale investigation and or initiate the disciplinary procedure.

If there are no indications that the alleged action or inaction of an employee violated a work rule or policy and/or could be grounds for discipline, then the department head is not be obligated to begin a formal investigation process or to initiate the disciplinary process. Inquire!

B. Non-Discipline Issues That Are Not Subject to Formal Investigation Requirements

The following are examples that are considered non-disciplinary, and therefore are not subject to the requirements of the formal investigation or disciplinary procedures:

- Informal investigative proceedings (initial inquiry)
- Proceedings where the employee will not be required to answer questions
- Annual or periodic evaluations
- Lateral transfer
- Reassignment
- Denial of sick leave, vacation, or other leave
- Counseling sessions which do not impose discipline (i.e. below a verbal warning)

C. Initiation of the Formal Investigation Process

If the following issues are raised by an initial complaint and/or information, then the manager should follow the "Formal Investigation" process as established by the Village of Brewster:

- If more information is needed that can come only from interviewing additional sources
- Layoff or abolishment of a position, except for economic reasons
- Demotion
- Involuntary retirement of an employee
- Placing an employee on involuntary disability leave
- Placing an employee on Administrative Leave

- Complaints and/or information that if true would subject the employee to **suspension** and/or termination for a first offense.
- Complaints and/or information that if true about an employee who, based on their work record, would be subject to **suspension** and/or **termination**

D. Formal Investigation

If the following issues are raised by an initial complaint and/or initial inquiry, then the manager should follow the disciplinary and “Formal Investigation” process as established by the Village of Brewster:

- Complaints and/or information that if true would potentially subject the employee to discipline, especially either **suspension** and/or **termination** for a first offense.
- Complaints and/or information that if true about an employee who, based on their work record, would potentially subject the employee to discipline including **suspension** and/or **termination**.
- If you need additional information that can come only from interviewing additional sources to determine by “substantial evidence” what has occurred, especially the employee who could be subject to potential discipline.
- Complaints and/or information that if true would potentially result in an employee’s demotion.
- Complaints and/or information that if true would potentially result in an employee being placed on involuntary disability leave

E. Formal Investigation Based on Violation(s) of Work Rules and/or Policy(s) and/or Ohio Revised Code

Generally discipline should be initiated (and imposed) for a violation of a Village rule(s), and/or policy(s), and/or procedure(s), and/or Ohio Revised Code Provision(s). Identify at the outset if possible what Village rule(s), and/or policy(s), and/or procedure(s), and/or Ohio Revised Code Provision(s) that have been violated based on the allegations.

As information is gathered and proceed with the investigation, additional violations of Village rule(s), and/or policy(s), and/or procedure(s), and/or Ohio Revised Code Provision(s) may become apparent. Village rule(s), and/or policy(s), and/or procedure(s), and/or Ohio Revised Code Provision(s) cannot anticipate every possible action of our employees. There may be incidents or conduct which occurs that are not enumerated in Village of Brewster’s work rules, policies, or procedures. If a manager believes conduct is especially egregious and deserves discipline, but cannot identify a Village rule(s), and/or policy(s), and/or procedure(s), and/or Ohio Revised Code Provision(s) that may apply, they should consult with their Appointing Authority and/or the Solicitor.

Occasionally conduct outside the working hours may also be the basis for discipline. In those cases where conduct occurs outside work hours, a conference should be held with the manager, the Appointing Authority, and potentially the Solicitor before proceeding.

F. Conduct of the Formal Investigation

The investigation of alleged violation of a rule(s), policy(s), procedure(s), and/or Ohio Revised Code provision(s) should:

- be timely
- occur before discipline is imposed
- be thorough
- consider all “evidence”, both in favor and against discipline
- be fair and objective
- not be based and not be conducted in a discriminatory manner
- be consistent as much as possible

The investigation should be conducted in a fair and objective manner. The investigation ultimately should develop substantial evidence that an employee violated a Village rule(s), and/or policy(s), and/or procedure(s), and/or Ohio Revised Code provision(s) before discipline is imposed. The result of the

investigation must not be a foregone conclusion. Don't work towards a pre-determined conclusion. Let the facts discovered lead to a result/conclusion.

G. Witnesses and Employee Witnesses

- An employee who fills out a **POTENTIAL DISCIPLINARY INFRACTION REPORT** is a witness
- An employee who is identified in a **POTENTIAL DISCIPLINARY INFRACTION REPORT** as being present, or who is identified during an investigation as being present, is also a witness

H. Interviewing Witnesses

All witnesses should be interviewed during an investigation.

Additional guidance will be provided in advance that will guide managers in the interview process.

Managers should also seek guidance if they have any questions, or if issues arise during the investigatory process, from their Appointing Authority, the Solicitor, and potentially outside counsel.

I. Interviewing an Employee Who May be Subject to Discipline

An employee is the subject of an investigation should also be interviewed.

Additional guidance will be provided in advance that will guide managers in the interview process.

Managers should also seek guidance if they have any questions, or if issues arise during the investigatory process, from their Appointing Authority and/or the Solicitor.

J. Criminal Conduct

At any time there is a credible allegation or suspicion of (or evidence of) that indicates potential criminal misconduct by an employee, it is of **HIGHEST** importance to preserve the ability to pursue criminal charges. At that point there is a credible allegation or suspicion of (or evidence of) that indicates potential criminal misconduct by an employee, any administrative investigatory activity shall cease and the Appointing Authority shall be notified, who will then notify the appropriate legal authority.

K. Proceed with Discipline Once Investigation is Complete

An investigation is complete and a manager should proceed with disciplinary process once there are enough facts gathered in the investigation that provide substantial evidence that a Village rule(s), and/or policy(s), and/or procedure(s), and/or Ohio Revised Code Provision(s) that have been violated.

L. Suspension Pending Discipline

There are circumstances which **MAY** dictate that an employee be removed from the workplace until a disciplinary decision is made. Those circumstances include but are not limited to:

- Work rule(s) and/or policy(s) violation that could result in termination
- Complaints of harassment and/or sexual harassment
- The employee has actually become physical with another employee and/or the public and /or has made threats.
- Alleged criminal conduct
- Preventing an employee from altering or interfering in an investigation

In such cases, until a pre-disciplinary meeting has been held, the employee **can be** suspended with pay in accordance with 4.09 Administrative Leave with Pay Policy. If any of the forgoing circumstances exist and/or it appears prudent to suspend an employee, the manager should immediately notify their Appointing Authority. Ultimately, the Appointing Authority will make the decision whether or not to suspend an employee.

Administrative Leave with Pay in accordance with 4.09 Administrative Leave with Pay Policy is at the sole discretion of the appointing authority (the Village Administrator, Mayor, or Clerk-Treasurer) or their designee.

M. Pre-Disciplinary Meeting

Once the investigation is completed, the manager (or person conducting the investigation) shall conduct a Pre-Disciplinary Conference/Meeting **prior to** the determining the appropriate discipline and/or imposing discipline anytime an employee's potential discipline could be a reduction in pay or position, a fine, suspension, or removal (termination).

Managers should seek guidance from their Appointing Authority and/or the Solicitor prior to setting up and/or conducting a Pre-Disciplinary Conference/Meeting.

Prior to commencing a Pre-Disciplinary Conference/Meeting, insure that a **Pre-Disciplinary Conference/Meeting Notice** has been sent to the employee. Consult the Village Administrator or the Solicitor for the appropriate format. The Pre-Disciplinary Conference/Meeting may be conducted by someone other than the manager, as determined by the applicable Appointing Authority.

The purpose of the Pre-Disciplinary Conference/Meeting is to permit the employee to respond to the information gathered in the *Initial Inquiry* and *Formal Investigation* phases. Ultimately, the manager can simply recite what has been found to this point and provide an opportunity to respond verbally or in writing.

Additional guidance will be provided in advance that will guide managers in the Pre-Disciplinary Conference/Meeting process.

N. Applicability – Police Department

This policy does not apply to the Brewster Police Department, who will be governed by the policy(s) set forth in Lexipol.

SECTION 2: The above policy replaces any previous version of this policy and supersedes any current policy which may be in conflict with this policy.

SECTION 3: This ordinance shall be in full force and effect at the earliest date provided by law.

Mayor Michael E. Schwab

ATTEST:

Village Clerk Treasurer K. Kris King

CERTIFICATE

I, K. Kris King, hereby certify that the above is a true copy of an ordinance passed at a regular meeting of the Brewster Village Council held on March 18, 2019

Clerk K. Kris King

I, K. Kris King, Clerk of the Council of the Village of Brewster, State of Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by Council as follows: Office of Brewster Utilities, Belloni's IGA, Brewster Federal Credit Union, Post Office and Brewster Laundromat.

Clerk K. Kris King