Elko New Market Police Department

Date of Issue August 5th, 2021	POLICY MANUAL – CHAPTER A MN POST POLICY MANDATES	
Date of Revision August 5th, 2021	**Authority:** Chief of Police	**POLICY # 103**
Annual Review **Month:** January	**SUBJECT:**	**ALLEGATIONS OF MISCONDUCT**

I. PURPOSE

The purpose of this policy is to inform all employees and the public of procedures for reporting, receiving, investigating and disposition of complaints regarding the conduct of licensed peace officers of the Elko New Market Police Department. The provisions of this policy are applicable only to the investigation and the disposition of allegations of administrative misconduct. This policy does not apply to a criminal investigation.

II. POLICY

It is the policy of the Elko New Market Police Department to accept and to fairly and impartially investigate all complaints of misconduct to determine the validity of allegations; and to imposeany corrective actions that may be justified in a timely and consistent manner.

III. DEFINITIONS

For the purpose of this policy, the terms set forth below are defined as follows:

A. ***Administrative Investigation:*** An internal investigation conducted in response to a complaint with the goal of determining whether an employee engaged in misconduct.

B. ***Agency:*** means the City of Elko New Market Police Department.

C. ***Chief Law Enforcement Officer*** means the Elko New Market Chief of Police. Within this policy, the chief law enforcement officer will be referred to as CLEO.

D. ***Law Enforcement Officer*** means an individual who holds a peace officer license in the State of Minnesota. Within this policy, a law enforcement officer will be referred to as LEO.

E. ***Complainant*** means a person who submits a complaint to the Agency or CLEO alleging misconduct by an Agency member.

F. ***Complaint*** means a statement alleging behavior that constitutes misconduct.

G. ***Member*** means all voluntary and compensated personnel of the Agency.

H. ***Discipline*** means any of the following or combination thereof:

- Oral Reprimand

- Written Reprimand
- Suspension
- Demotion
- Discharge

I. ***Unfounded*** means there is no factual basis for the allegation. The act or acts alleged didnot occur.

J. ***Exonerated*** means a fair preponderance of the evidence established that either:

1. the Agency member named in the complaint was not involved in the alleged misconduct; or
2. the act(s) that provided the basis for the complaint occurred; however, the investigation revealed that such act(s) were justified, lawful or proper.

K. ***Not Sustained*** means the investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.

L. ***Sustained*** means a fair preponderance of the evidence obtained in the investigationestablished that the LEO's actions constituted misconduct.

M. ***Policy Failure*** means that the complaint revealed a policy failure. The allegation is factual and the LEO(s) followed proper Agency procedure, however, that procedure has proven to be deficient.

N. ***Respondent*** means an individual who is the subject of a complaint investigation.

O. ***Misconduct*** means:

1. a violation of an Agency policy or procedure governing conduct of Agency members;
2. conduct by a peace officer that would be a violation of POST Standards of Conduct per Minn. Rules 6700.1600

P. ***Policies and Procedures*** mean the administrative rules adopted by the Agency regulating the conduct of Agency members.

Q. ***Receiving Authority*** means the entity who receives and is required to investigate the complaint when the subject of the complaint is a CLEO.

IV. PROCEDURE

A. ACCEPTANCE AND FILING OF COMPLAINTS

1. Complaint forms must be made available through Agency personnel, at Elko New Market Police Department public facilities, and online.

2. Complaints may be received either in person, over the telephone, in writing, or via the

internet. A complainant may remain anonymous. The complainant should be advised that remaining anonymous may affect the investigation of the complaint.

3. A complainant may be accompanied by an attorney or other representative at the time a complaint is filed or at any other stage of the process.

4. Employees must provide assistance to individuals who express the desire to lodge complaints against any employee of this Agency.

5. The complainant must be advised of the procedures for submitting the complaint and provided with a copy of their submitted complaint.

6. The complainant should be asked to verify by signature if the complaint is a complete and accurate account. If the complainant elects not to sign, this fact must be documented and the complaint processed according to procedure.

7. The CLEO will forward a copy of the written complaint to the respondent only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation.

8. A CLEO or Receiving Authority may delegate the duties and responsibilities required of a CLEO by this policy to an appropriate designee(s).

9. Any complaint made against a chief of police must initially be made to the city administratoror mayor.

10. The city administrator ormayor must refer investigations of alleged misconductagainst a CLEO to an outside law enforcement agency or criminal justice agency that has no discernible conflict of interest.

B. INVESTIGATION OF A COMPLAINT

1. Upon receipt of the complaint, the CLEO must make an initial determination as to whether or not the facts alleged require an administrative investigation. If the CLEO decides that an investigation is not required, the disposition of the complaint must be cleared as “unfounded”, “not sustained”, or “exonerated.” The complainant and the respondent will be notified of this decision and the basis for determination. If the complainant supplies additional information within thirty (30) days of that initial determination, the CLEO may reverse this decision and order an administrative investigation.

2. If the CLEO determines an administrative investigation is required, an appropriate designee will be assigned to investigate the complaint. When the CLEO believes an external investigation is appropriate or when the CLEO is the subject of the complaint, the investigation will be assigned to an external agency that has no discernible conflictof interest.

3. The investigator must inform the complainant of his or her name, business phone number and the status of the complaint as soon as possible after being assigned the investigation.

4. The investigator must thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation reveals potential misconduct by another agency member, the investigator must report that fact to the CLEO or, in the case of a complaint against a CLEO, the appropriate city administrator or mayor.

5. All Agency members must cooperate with the investigation. When the respondent is a licensed peace officer, the investigation must comply with the requirements of MN STAT 626.89 and acts amendatory thereto.

6. The investigator must prepare a report that contains all relevant information organized into the following three (3) sections:

   - *Allegations:* An itemized summary of the acts of misconduct alleged in the complaint. Reference must be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
   - *Investigation:* A chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused Agency member(s), and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information must be included.
   - *Conclusions:* The investigator's findings and conclusions as to whether any misconduct occurred and the underlying reasons for the findings and conclusions.

7. The investigation must be completed within thirty (30) days of the filing of the complaint unless the CLEO or Receiving Authority determines there is good cause to grant an extension. The complainant and respondent must be informed of any extension.

C. ADDITIONAL INVESTIGATION, REVIEW AND DISPOSITION

1. Upon completion of the investigation, the investigator must submit the report, case file and all investigative notes to the CLEO or Receiving Authority. The CLEO or Receiving Authority may require additional investigation or make one of the following decisions:

   - Unfounded
   - Exonerated
   - Not Sustained
   - Sustained
   - Policy Failure

2. The CLEO or Receiving Authority may postpone making a decision until any related criminal charges are resolved. The complainant and respondent must be informed ofthis decision.

3. If the decision is "unfounded," "exonerated," "not sustained" or "policy failure" the CLEO or Receiving Authority must immediately notify the complainant and the respondent of the decision.

4. If the complaint is "sustained" the CLEO or Receiving Authority will:
   - Issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated; and
   - Take appropriate remedial and/or disciplinary action.
   - Advise the complainant of any public information regarding the disposition
5. Prior to the implementation of remedial and/or disciplinary action the respondent will be provided with a copy of the findings of fact. The CLEO, Receiving Authority and/or designee must review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action.

6. The investigation may be re-opened by the CLEO or Receiving Authority at any time if substantial new evidence is discovered concerning the complaint.

7. When a "sustained" disposition is final the respondent may appeal the disposition pursuant to the rules and law governing the accused member's employment.

D. MAINTENANCE AND DISCLOSURE OF DATA

1. Disclosure to the public, complainant and respondent of data collected, created or received by the Agency in connection with this policy and procedure must be governedby the provisions of the MN Government Data Practices Act. Retention of data collected or maintained in connection with this policy must be retained in accordance with the Agency's "Record Retention Schedule."

2. All data collected, created or received by the Agency in connection with this policy and procedure must be maintained in accordance with the Agency's "Record Retention Schedule."

3. The placement of the disposition report or other data in an employee's personnel file must be governed by the Agency's personnel policy.

4. Access to data collected, created, or received in connection with this policy and procedure may only be authorized by the CLEO or the Agency's Data Practices "Responsible Authority," and as provided by Chapter 13, the "Minnesota Government Data Practices Act," or valid court order.

E. POST BOARD REPORTING REQUIREMENTS

1. Under Minn. Rule 6700.1610, a licensed peace officer must self-report to the POST

Board any violations of the Standards of Conduct for peace officers listed in Minn. Rule 6700.1600.

2. Any person with knowledge of peace officer misconduct constituting grounds for action under Minn. Stat. chapter 214, or Minn. Rules 6700.1600, may report the violation to the Board.

3. Minnesota Stat. 626.8457 Subd. 3 requires CLEOs to submit individual peace officer public and private data related to allegations of misconduct to the POST Board in "real time" via the POST Board Misconduct Reporting System.

4. A chief law enforcement officer must update data within 30 days of final disposition ofa complaint or investigation.

5. Law enforcement agencies and political subdivisions are prohibited from entering into a confidentiality agreement that would prevent disclosure of the data identified inMinn. Stat. 626.8457 Subd. 3 paragraph (b) to the Board. Any such confidentiality agreement is void as to the requirements of this section.