

## NEW BERN POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

<b>Chapter: 26</b>	<b>Disciplinary Procedures</b>
<b>Effective: 03/01/2014</b>	<b>By the Order of:</b>          <b>Patrick L. Gallagher, Chief of Police</b>
<b>Revised: 02/20/2025</b>	

### Chapter 26 Disciplinary Procedures

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##### 26.1.1 Code of Conduct and Appearance

The purpose of the Code of Conduct is to ensure that employees comply with the directives, policies and procedures of the New Bern Police Department. Employees shall obey the Code of Conduct and be held accountable for their adherence to it. Violations of the Code of Conduct that are not specifically addressed in the code shall be referenced to the closest related section for adjudication.

1. Employees shall be courteous to the public, both in person and by telephone, and shall control tempers and exercise patience and discretion; employees shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane, or insolent language or gestures, and shall not express any prejudice concerning race, gender, religion, politics, ethnicity, national origin, lifestyle, economic status, age, culture or other identifiable group characteristic, or similar personal characteristics.

2. Employees shall not engage in offensive verbal or physical conduct directed against a co-worker, or any member of the public based upon race, color, national origin, sex, religion, handicap, age, lifestyle or marital status. Employees are also forbidden from such conduct while off duty if such conduct adversely affects the employee's ability to perform his/her official duties.
3. Employees shall avoid associating or conducting business with persons whom they know, or should have known, are under criminal investigation or indictment, or who have a reputation in the community for involvement in criminal behavior, except as necessary in the performance of official duties or where unavoidable because that individual is a close relative of the employee.
4. Employees shall not solicit or accept any gift/gratuity without the written permission of the Chief of Police or in cases involving the Chief of Police, without the approval of the appointing authority.
5. Employees shall not possess and/or use alcohol while on duty or while in uniform other than in an authorized duty capacity.
6. Employees shall not appear for duty or be on duty while under the influence of intoxicants to any degree whatsoever, or with an odor of intoxicants upon their breath. Employees shall at no time purchase any type of alcoholic beverage while in uniform.
7. Employees shall not consume intoxicating beverages in public while off-duty to such an extent that would reflect discredit upon themselves or the New Bern Police Department.
8. Employees suspected of drinking while on duty or reporting for duty intoxicated shall submit to a chemical analysis as determined by the division captain. Such test may be used in any criminal action if the tests are given according to the rules set forth by the North Carolina Department of Human Resources.
9. Employees shall not possess and/or use any controlled substance while on duty or while in uniform, except with the approval and guidance of a licensed physician and with the knowledge of a superior. At no time may an employee of the department use or be under the influence of a controlled substance where such use or influence impairs or compromises the efficiency and integrity of the department. Employees shall notify their immediate supervisor when they are taking prescribed medication that could impact their performance.
10. Employees shall not engage in any form of illegal gambling at any time, except in the performance of duty and while acting under proper and specific orders from a superior officer.
11. Employees shall use only the degree of force that is reasonably necessary to perform official duties, and is in compliance with Federal law, State laws and Department policies, procedures, rules and regulations.
12. Employees shall only use deadly force as a last resort, and then in compliance with Federal law, State laws and Department policies, procedures, rules, and regulations.
13. Stopping a vehicle or person, issuing a citation, searching a person or vehicle, making an arrest, or taking any action in traffic contacts, field contacts, seizing assets or initiating the forfeiture of property solely because of race, ethnicity, national origin, or any other group characteristic of an individual is prohibited.
14. Sergeants and other first-line supervisors shall make careful inspections of their subordinates to ensure they are properly uniformed, equipped, and fit for duty to include the following:
  - a. General personal appearance to determine proper grooming and appropriate wearing of the uniform. Personnel in plainclothes assignments shall be inspected to ensure compliance with applicable dress codes and clothing allowances.

- b. Exceptions: Officers assigned to undercover, or other such special assignments shall be exempt from the physical appearance and grooming provisions of this general order. Appearance and grooming standards for the undercover officers shall be established by the appropriate Division Captain in accordance with the needs and circumstances of the duties to be performed.
- c. Uniformed employees shall wear uniforms and insignia commensurate with their rank and assignment. The official uniform or any part thereof shall be worn only while on duty, traveling to and from work, or at authorized assignments or ceremonies.
- d. The official uniform shall be worn in its entirety. The official uniform shall not be mixed with civilian clothing except when required for recognition purposes by plainclothes officers during raids or similar emergencies or as authorized by the Chief of Police.
- e. While in uniform, employees shall be neat and clean in personal appearance, and shall wear the uniform with dignity and in conformance with rules and regulations.
- f. When operating a department vehicle, employees shall be attired appropriately. The employee's attire will always project the professional image of the department. Officers must keep in mind that when the public sees a marked police vehicle, they have the expectation that the marked vehicle is an on-duty police officer and capable of providing assistance.
- g. Employees can display tattoos, brandings, or intentional scarring however, they are subject to review to determine if they reflect the professional image of law enforcement. No officer shall display tattoos, body art, or brands on the head, hands, face, neck, or scalp. The only exception to the hand would be on the ring finger of an employee representing a wedding band. The band shall be no wider than a normal size band. Any designs, letters, or other art must be covered.
- h. Content of Tattoos. Tattoos located anywhere on the body that are prejudicial to good order and discipline or are of a nature to bring discredit upon the police department, are prohibited. Examples include, but are not limited to, tattoos that are drug-related, gang-related, extremist, obscene or indecent, sexist, or racist, as further defined below:
  - 1. Extremist. Extremist tattoos are those affiliated with, depicting, or symbolizing extremist philosophies, organizations, or activities. Extremist philosophies, organizations, and activities are those which advocate racial, gender, or ethnic hatred or intolerance; advocate, create, or engage in illegal discrimination based on race, color, gender, ethnicity, religion, or national origin; or advocate violence or other unlawful means of depriving individual rights under the U.S. Constitution and federal or state law.
  - 2. Obscene or Indecent. Indecent tattoos are those that are grossly offensive to modesty, decency, or propriety.
  - 3. Sexist. Sexist tattoos are those that advocate a philosophy that degrades or demeans a person based on gender.
  - 4. Racist. Racist tattoos are those that advocate a philosophy that degrades or demeans a person based on race, ethnicity, or national origin.

15. General Regulations for uniformed employees:

- a. Male Employees:
  - 1. Hair styles shall be worn in a fashion that is professional in appearance and style, and in keeping with normal business standards as determined by the New Bern Police

Department. Hair shall not extend over the top of the ear when groomed and shall not touch the back of the collar in normal posture. If hair coloring is used it must appear natural.

2. Sideburns: Sideburns shall not extend below the earlobe and shall at no point be more than one and one-half inch (1½") wide or more than one half inch (½") in thickness. Sideburns shall not flare and shall be trimmed horizontally across the bottom.
3. Mustaches: Mustaches are permitted and shall be neatly trimmed at all times. Mustaches shall not extend more than one half inch (½") horizontally beyond the corners of the mouth, shall not extend below the corners of the mouth, and shall not cover any part of the upper lip.
4. Facial Hair:

- a. Sworn employees' beards and goatees should be uniform in length, with no portion of the beard noticeably longer than the rest. In addition, employees' facial hair must be kept at a maximum of 1/4 inch in length, neatly trimmed and the neckline shall be groomed in a manner that shows distinct boundaries.

- (1) A beard without a mustache is prohibited.
- (2) No accessories are allowed in facial hair.
- (3) Beards must be a natural color – no patterns or designs.
- (4) A beard will not be allowed to grow ungroomed.
- (5) Employees wearing beards must be able to pass a gas mask fit test and may be required to shave in preparation for an operational need. After testing, the employee will be permitted to regrow their facial hair.
- (6) Sworn employees must have the necessary equipment to trim or shave their beards immediately, depending on departmental needs.

- b. A groomed and maintained mustache, goatee or beard is authorized for non-sworn employees. Non-sworn employees will be held to the same grooming standards as outlined in the City of New Bern employee handbook.

b. Female Employees:

1. Hair styles shall be worn in a fashion that is professional in appearance and style, and in keeping with normal business standards as determined by the New Bern Police Department. Hair may not be worn longer than three inches (3") below the bottom of the collar except for non-sworn personnel. Longer hair must be worn in an upward sweep or bun and not allowed to straggle. These hair styles must present a neat appearance. Braiding, twisting, and locking styles are permitted, provided they are conservative and professional in appearance. Braids should be straight and tight to the scalp. Hair that normally falls below the bottom edge of the collar shall be neatly, professionally and inconspicuously fastened or pinned and must meet the length and bulk guidelines defined within this directive. Hairstyles that are lopsided or distinctly unbalanced are prohibited. If hair coloring is used it must appear natural.
2. Prohibited Hair Styles: Hair styles which are prohibited for all employees (except approved Narcotics assignments) include, but are not limited to:

- b. Mohawks
  - c. Plaits
  - d. Spikes or tails
  - e. Unusual colors.
- 16. Earrings: Male employees shall not wear earrings. Female sworn employees may wear one pair of stud type earrings not in excess of one-half inch (1/2") only to be worn in the ear lobe. Female non-sworn employees may wear one pair of earrings, only to be worn in the ear lobe, which must not dangle more than one inch (1") from the base of the ear lobe or in excess of one inch (1") in diameter. Any other visible piercing is not authorized.
- 17. Jewelry worn with the uniform must be in good taste and not distract from the professional image or work performance of the employee. In addition to the restrictions on earrings listed above, uniformed employees may wear only the following jewelry items:
  - a. One wristwatch
  - b. Medic alert bracelet(s)
  - c. One memorial bracelet
  - d. Jewelry worn around the neck only if it is not visible.
  - e. One ring or ring set is to be worn on each hand.
- 18. Fingernails: The length of employee's fingernails shall not exceed one quarter inch (1/4"). Excessive length of fingernails interferes with the safe and efficient operation of equipment and machinery. Excessive length of fingernails can also contribute to an unintentional discharge of a firearm.
- 19. Plainclothes Personnel: All employees in plainclothes assignments shall wear attire which is in good taste and is normally accepted as business attire. Extreme fashions, T-shirts, blue jeans, shorts, sneakers, flip-flops, sandals, denim, leather, rope or string ties, and other casual wear are inappropriate in the workplace. Sworn employees whose assignment necessitates unusual attire (Narcotics, etc.) may wear such attire as is approved by their Division Captain.
- 20. Display of Firearm by Non-Uniformed Personnel: When a weapon is worn or carried on or about the person and within open display of the public, the non-uniformed officer will ensure that a police badge is clearly visible on the front of the body or in close proximity to the firearm. Sworn officers may also wear other approved department issued accessory clothing when working in plainclothes, such as raid vest, police caps, lightweight jackets or traffic vests that clearly identify them as police officers.
- 21. Detainees will be treated civilly and with appropriate respect.
- 22. When operations permit, bicycle officers are encouraged to interact with citizens seeking photographs and discussion of the Bicycle Program. Bicycle officers should take advantage of the opportunity to act as goodwill ambassadors for the Department and the City.
- 23. New Bern Police Officers shall be alert and shall strive to make each contact both safe for the officer and educational for the violator, leaving the violator with the impression that the officer has performed a necessary task in a professional and friendly manner.

24. No employee will conduct surreptitious audio and/or video recording in the police department, any City of New Bern facilities or vehicles of police department personnel without the expressed authorization of the Chief of Police or his designee. Personnel actions such as Internal Affairs interviews, hearings, etc. may be recorded by the command officer or investigating officer but it will be done in the open. This regulation does not prohibit the use of approved recording equipment (Interview rooms, ECC phone lines, police radio communications, in-car camera system, body worn cameras, etc.) documenting overt or covert police activity or require specific notice of its use. All personnel shall presume that they are being recorded by these systems for the duration of an incident.
25. All communications between Communications and the public, as well as radio traffic with all radio users and other agencies shall be conducted using appropriate professional protocol at all times.
26. Tele-communicators will project a professional demeanor by demonstrating concern, patience, respect, and exceptional listening and verbal communications skills. Provide prompt, positive, calm, and courteous attention to all telephone calls.
27. The relationship between an officer and a confidential informant (C.I.) shall be maintained strictly on a professional basis. Officers shall not socialize with, become overly friendly with, conduct private business transactions with, or be publicly identified with a C.I.

### 26.1.2 Employee Recognition

- A. The New Bern Police Department is committed to providing excellent service to the citizens we serve. When an employee goes above and beyond what is necessary or completes an assignment above the normal standard, it is the policy of the department to recognize the employee for their actions and achievements. There are three levels of recognition: Supervisor Commendations, Chief's Letters of Merit and Valor Awards. It is possible that an employee could receive all three levels of recognition for a single act. There shall be no anonymous submission or self-nomination of awards by any employee of the New Bern Police Department.

Determination of this distinction requires careful consideration of exactly what is or was expected as the ordinary, versus what is or was accomplished as extraordinary and distinctive.

1. **Supervisor Commendations** are less formal acknowledgments to an employee of positive behavior or performance in the completion of their duties. A Supervisor Commendation can be documented using the approved format and issued to an employee by any supervisor. Once a Supervisor Commendation is presented to an employee by a supervisor, the supervisor will enter the commendation into the current tracking program along with a copy of the commendation and forward it through their chain of command for approval and/or recommendations for other awards. The Supervisor Commendation will be filed into the employee's Employee Reference File.
2. **Chiefs Letter of Merit** is a more formal acknowledgment for positive work performance. The Chief of Police or designee will present an employee their Chiefs Letter of Merit. Any employee may nominate another employee for a Chiefs Letter of Merit. The nominating employee will prepare a Chief's Letter of Merit and it to the Awards and Recognition Committee (hereafter known as the Committee). The Committee will review the submission and choose to approve it, edit it, or deny the issuance of the letter. The Committee will furthermore review the nomination for any other possible awards. Once the award is presented, a copy will be filed into the employee's Employee Reference File.
3. **Valor Awards and Service Awards** are awarded to an employee for specific act(s) of valor and meritorious service. A recommendation for a Valor Award or Service Award can be received internally or externally. To recommend an employee for a Valor Award or Service Award, the submitting officer must submit an Award and Recognition Form (Form 41.2) describing the events with the name of the

employee(s) through his chain of command and to the Professional Standards Lieutenant. The request will be accompanied by supporting documentation such as copies of case /incident reports, incident logs, etc. The request must include the name of the employee, the recommended award, the date, time and location of the qualifying act or acts, a brief statement of the facts and circumstances, and the names of any witnesses. All Valor Awards and Service Award submissions will be reviewed by the Awards and Recognition Committee for consideration of a Valor Award or Service Award.

4. **Yearly awards** to include Civitan Officer of the Year, Telecommunicator of the Year and Civilian Employee of the Year will be based on a calendar year. The nomination period is from November 15 – December 1, each year so that it may be acknowledged in the next year evaluation process. For questions related to the requirements of each award refer to the Professional Standards Lieutenant for information.

- B. The committee shall meet as needed to consider nominations for recognition. The Committee may base its decisions on the documentation submitted or may request further investigation, including testimony of witnesses. The committee may determine that an award other than the one listed on the nomination is more appropriate and may amend the request for recognition accordingly. All nominations shall be decided by majority vote and shall be recorded as “passed” or “denied”. In the event of a deadlock vote, the Chief of Police will make the final determination of the vote. If there is no deadlock vote, the committee will forward a copy of their final decisions to the Chief of Police who will make the final determination of award approval. All Valor and Service Awards will be presented to the employee(s) at time and place decided by the Chief of Police. If a Valor Award or Service Award is awarded to an employee, a copy will be included in the employees departmental Employee Reference File and forwarded to Human Resources.
- C. If the Chief of Police determines an employee of the New Bern Police Department or citizen has acted in a manner that merits an award or recognition; with proper support and documentation, the Chief of Police can directly award or recognize the employee without facilitating the use of the committee.
- D. Departmental recognition shall be awarded in accordance with the following criteria. All employees of the department shall be eligible to receive these awards if the individual awards criteria are satisfied:
  1. **Valor Awards:** A Valor Award is one bestowed upon an individual for specific act(s) of gallantry meritorious service:
    - a. **Medal of Ultimate Sacrifice:** Presented to the family of any sworn member who pays the ultimate sacrifice and dies while in the lawful performance of their police duties. The member shall be eligible posthumously for any other awards that may be appropriate.
    - d. **Purple Heart:** Awarded to a member who, in the performance of his duties, receives a significant or life threatening injury or is killed as a result of any hostile or aggressive criminal action. The committee may consider significant injuries sustained during other, non-intentional events such as fires, explosions, collisions, etc., with valid justification.
    - c. **Combat Cross:** Awarded to any member who, while in the performance of his duties, successfully and intelligently performs an act of extraordinary heroism while engaged in personal combat with an armed adversary under circumstances of imminent personal hazard to life.
    - d. **Medal of Valor:** Awarded to any member, while in the performance of his duties, who manifests outstanding bravery, risks his or her life with full and unquestionable knowledge of the danger involved, or where a reasonable person would assume his or her life was in great danger.

- e. **Medal of Distinguished Service:** Awarded to a member while in the performance of his duties, who intelligently, performs an act of outstanding personal bravery at imminent personal risk to life or serious injury and without the knowledge of the dangers involved.
  - f. **Medal of Meritorious Service:** Awarded to any member who has made an exceptional achievement or achievements, including, but not limited to extraordinary valor, crime prevention, criminal investigations, community service and relations, juvenile issues, drug abuse and prevention, training, traffic safety, mentoring, and other innovative approaches to public safety. All nominees should have maintained the highest standard of leadership, distinguishing themselves by superior accomplishments, continuing long-term involvement, communication, skills that encompass problem solving, planning, organizational performance, professionalism, and effectiveness.
  - g. **Lifesaving Medal Award:** Awarded to any member, who rescues, or endeavors to rescue, any person or police K9 from a life-threatening event. The rescue or attempted rescue may take place in or outside the jurisdiction of the New Bern Police Department. The Lifesaving Medal is authorized if the individual attempting the rescue did so with the knowledge of possible risk to his or her own personal safety.
2. **Service Awards:** Service Awards are awarded to an individual recognizing achievement or for participation in designated projects or events:
- a. **Award of Excellence:** Awarded to any member who, performed an act that is well above the expected, that is commendable and exemplary while in the performance of their duties. The act should be an exceptional accomplishment that is usually distinguished by a succession of outstanding acts of achievement over a sustained period in time.

OR

Awarded to a member, whose courage, resourcefulness, tenacity, diligence and/or perseverance in the line of duty goes beyond that which is normally encountered by members in the protection of life or property, such as the prevention of a major crime or the apprehension of an armed and/or dangerous criminal.

- b. **Chief 's Unit Citation:** Awarded to two or more members who perform an act or series of acts over a period of time which demonstrate a high degree of teamwork and professionalism above and beyond normal expectations and/or during adverse conditions and which result in the attainment of department goals, thus increasing the department's effectiveness and efficiency. This award may be presented alone or in addition to any other award. If the award is given because of a particular incident, only those personnel actually working at the time are eligible. If the award is given because of a series of acts over a period of time, all personnel assigned to the unit during that period are eligible.
- c. **Advanced Certificate:** Any member who has been awarded the Advanced Certificate by the North Carolina Criminal Justice Education and Training Standards Commission shall be authorized to wear this ribbon upon providing proper documentation to the Awards and Recognition Committee.
- d. **Intermediate Certificate:** Any member who has been awarded the Intermediate Certificate by the North Carolina Criminal Justice Education and Training Standards Commission shall be



authorized to wear this ribbon upon providing proper documentation to the Awards and Recognition Committee.

- d. **Years of Service:** Presented by the Board of Alderman to sworn officers for their years of service with the City of New Bern, as well as any years of service approved by the North Carolina Criminal Justice Education and Training Standards Commission. May also be awarded to any civilian personnel for their years of service with the City of New Bern, as well as any years of service with a law enforcement agency as approved by the committee.
- e. **Hours of Service Plaque:** Awarded to the reserve officer working the most hours in a calendar year.

3. **Achievement Awards:** Awarded to any member who through some determination has made an achievement, which is deserving of recognition.

- a. **Military Service:** Awarded to any member who has honorably severed in a United States military branch.
- b. **Bachelor Degree:** Awarded to any member who has received their Bachelor Degree as outlined in the City of New Bern policy. Proper documentation must be presented to the committee.
- c. **Master's Degree:** Awarded to any member who has received their Master's Degree as outlined in the City of New Bern policy. Proper documentation must be presented to the committee.
- d. **FBI National Academy:** Awarded to any member who has successfully completed the FBI National Academy.
- e. **Other:** All other achievement awards must be approved by the committee.

4. **Civic Awards:** The Chief of Police may receive requests from various civic associations to recognize members of the department. The Chief shall notify the committee of the criteria established by the association and shall request a list of qualified candidates from other members of the department or the committee's files. The Chief of Police or the association shall choose the recipient of the civic award from that list of candidates. The recipient, in addition to any medal or plaque presented by the civic association, shall receive a designated ribbon from the department, which shall represent all civic awards.

- a. Current employees sworn or non-sworn who have received any of the authorized annual civic association awards during their employment with a law enforcement agency, providing it meets the awards criteria and employee can provide the necessary documentation, shall receive the designated ribbon.

- E. Employees that wish to wear uniform ribbons awarded to them from outside agencies must submit their request to the committee. The request should be completed in writing and must include all supporting documentation. The committee will make a recommendation to approve or deny the request to the Chief of Police. The Chief will make the final determination.
- F. Anytime an employee is formally recognized for positive work performance as identified above, a copy of the recognition letter will be forwarded to Human Resources to be placed in the employees Employment Record.
- G. **Citizen Awards Program:** At times citizens may render services to law enforcement in this community that deserves formal recognition by the New Bern Police Department. The Chief or designee shall present awards to citizen recipients as soon as possible following the committee's deliberation.

1. Citizen Awards Criteria: Citizens shall be recognized in accordance with the following criteria.
  - a. **Certificate of Courage** - Awarded to a citizen who performs an act of outstanding personal bravery to aid an officer or any other person in imminent danger of death or injury or who administers life-sustaining measures to an officer or any other person.
  - b. **Certificate of Appreciation** - Awarded to a citizen who, in the spirit of civic duty, performs an act or a series of acts over a period, which contribute greatly to law enforcement efforts within the City of New Bern.

#### **H. Displaying issued ribbons:**

When worn, all issued ribbons will be in a sequential hierarchy of nominal importance as outlined below or as displayed in the shadow box. The most important ribbon will begin at the top or closest to the center of the body.

Example: While facing the ribbons, the U.S. Flag will always be on top or closest to the centered of the body, Purple Heart will be mounted to its left; the Combat Cross will be mounted under the U.S. Flag etc. This order will continue based on issued ribbons.

Insignias, such as Special Response Team will be centered above the ribbon stack.

### **New Bern Police Department**

#### **Authorized Ribbons Order of Precedence**

##### **1. U.S. Flag**

##### **Valor Awards**

2. **Medal of Ultimate Sacrifice (No ribbon)**
3. **Purple Heart**
4. **Combat Cross**
5. **Medal of Valor**
6. **Distinguished Service**
7. **Meritorious Service**
8. **Life Saving Award**

##### **Service Awards**

9. **Award of Excellence**
10. **Chief Unit Citation**
11. **Civic Awards**

##### **Years of Service**

12. **(5) year Service**
13. **(10) year Service**
14. **(15) year Service**
15. **(20) year Service**
16. **(25) year Service**

17. (30) year Service

#### **Law Enforcement Certificates**

18. Intermediate Certificate
19. Advanced Certificate

#### **Achievement Awards**

20. Military Service V121
21. Bachelor's degree 0414
22. Master's Degree 0515
23. FBI National Academy V231

Other achievement awards authorized by the committee.

#### **Specialty Unit Assignments**

24. Special Response Team
25. Instructor
26. Honor Guard
27. Bike Officer
28. K-9
29. Recruiter
30. Firearms Instructor
31. School Resource Officer
32. Motorcycle
33. Accident Reconstructionist T519
34. Field Training Officer
35. Field Training Sergeant
36. Gang Ribbon
37. Detective Ribbon

Other specialty unit assignments ribbons authorized by the committee.

#### **Specialty Ribbons**

38. CALEA

Other specialty ribbons authorized by the committee.

#### **Qualification Awards**

39. Expert
40. Marksman
41. Sharpshooter

### **I. Displaying Mourning Bands:**

At the direction of our Chief of Police, when special circumstances dictate that a department display of official mourning is appropriate. The Mourning Band will be worn during the dates as stated by the Chief of Police. This policy has been established to define the proper time, period, and etiquette to wear a Mourning Band.

1. **Definition:**
  - a. **Mourning Band:** Black or black with thin blue line band or other band as approved by the Chief of Police.
  - b. **Line of Duty Death:** The death of an active-duty officer by felonious or accidental means during the course of performing police functions while on-duty or off-duty.
2. **Authorization:** Mourning Bands may be worn on both sworn & professional staff law enforcement badges/ID badges, only as authorized in the following section.
  - a. **Law Enforcement Officer Line of Duty Death:** The Mourning Band may be worn on the badge from the date of line of duty death and removed at the conclusion of the funeral/burial service or memorial service.
  - b. **Non-Line of Duty Death of a New Bern Police Officer (Active):** The Mourning Band may be worn on the badge from the date of death and removed at the conclusion of the funeral/burial service or memorial service.
  - c. **Non-Line of Duty Death of a New Bern Police Officer (Retired):** The Mourning Band may be worn on the date of the memorial service.
  - d. **Anniversary of the EOW for Line of Death of a NBPD Officer:** The Mourning Band may be worn on the badge for twenty-four (24) hours on the date of the End of Watch (EOW) of the deceased officer.

### 26.1.3 Sexual Harassment

Workplace Harassment: Employees shall not either personally or sexually harass any employee of the New Bern Police Department.

1. Personal Harassment: Employees shall not either explicitly or implicitly ridicule, mock, deride or belittle any person.
2. Sexual Harassment: Sexual harassment is deliberate or repeated unsolicited verbal comments, gestures or physical contact of a sexual nature, which are unwelcome. (Refer to City of New Bern Policy Handbook - Sexual and Other Unlawful Harassment)
  - a. Supervisors shall not use implicit or explicit coercive sexual behavior to control, influence or affect the career, salary, or job of an employee.
  - b. Employees shall not participate in any deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature, which are unwelcome and/or interfere with work productivity, or create an intimidating, hostile or offensive working environment.

### 26.1.4 Corrective Employee Action / Disciplinary System

## A. Policy Statement

It is the policy of the New Bern Police Department to conduct appropriate investigations of all complaints, including anonymous complaints against the Department or its members. The goal of Internal Affairs is to ensure that the integrity of the New Bern Police Department is maintained through a system of internal discipline where objectivity, fairness and justice are assured by intensive, impartial investigations and review. When members learn of problems, concerns or policy violations impacting upon community relations or the integrity of the organization, those not immediately corrected should be forwarded to a supervisor. The Department will investigate fully all verbal or written allegations of misconduct. Complaints may originate internally or from the public.

The Department's rules of personal conduct and job performance are intended to govern the official and unofficial actions of its members. All members shall conduct themselves, both on and off duty, in a manner that will not in any way reflect negatively upon the professional image of the agency or of any of its members. Each member charged with a violation of the rules of conduct, or job performance should be charged with the most appropriate violation under a specific section, when applicable. Depending on the facts, an employee can be charged with multiple rule violations. The decision to investigate, charge and render corrective action on any one or multiple rule violations will be carefully considered to ensure the most fair and objective conclusion is reached. This policy, other than the guidelines, applies to all employees within the Department. The guidelines only apply to sworn personnel. Disciplinary action for civilian employees will be consistent with Chapter 54 of the Code of the City of New Bern.

## B. Definitions

1. ***Coaching and Counseling:*** A non-disciplinary supervisory action in response to an employee's inappropriate or improper behavior or performance. The primary purpose of the coaching and counseling process is to assist an employee in understanding a performance problem, or where an opportunity for improvement exists. The focus of a coaching and counseling session may be on a specific incident, a particular aspect of the employee's performance that needs improvement, or the employee's overall performance or conduct. A coaching and counseling session is a face-to-face meeting between the supervisor and employee, conducted in private, and is intended to have a constructive goal of providing feedback to the employee to correct the problem. A coaching and counseling session can be verbal or can be in the form of a written memo depending on the nature of the performance issue as determined in the discretion of the supervisor. If the counseling session is to be confirmed in a written memorandum after it takes place, the employee must be informed during the session that a memorandum summarizing the discussion will be written and placed in the employee's personnel file. The employee will receive a copy of the memorandum that will be placed in their file. Coaching and counseling sessions will not be entered into the department's internal affairs data repository. Coaching and counseling sessions will be limited to level 1 rule violations only.
2. ***Corrective Action:*** Coaching/counseling sessions, training, close supervision, performance improvement plan, or other acceptable options as described herein.
3. ***Demotion:*** A disciplinary action issued by the Chief of Police resulting in a reduction in rank and/or pay grade and may be imposed in conjunction with any suspension.
4. ***Departmental Rules:*** A set of explicit regulations, principles, and expectations that govern the actions or conduct within a particular activity. Rules are established to clarify or categorize actions for which each member will be held accountable depending upon their job function. Rules govern the actions performed or neglected to be performed as required by policy, law, training, code of ethics, departmental values, or established procedures.
5. ***Disciplinary Action:*** An adverse personnel action, involving suspension, reduction in pay, rank, or termination of employment. These are punitive actions taken against the employee involving benefits, such as pay and rank.

6. **Dismissal:** A disciplinary action for (i) sworn employees consistent with the procedural requirements set forth in Section 5.5 of the City Charter; and (ii) civilian employees consistent with the procedural requirements set forth in Chapter 54 of the City Code that results in the termination of employment. A dismissal will contain a written statement citing the basis for the dismissal, the effective date of the dismissal, and the status of accrued employee benefits after termination of employment. (26.2.2)
7. **Guidelines:** The guidelines provide levels of rule violation from the least to the most egregious, and are ONLY applicable to sworn police officers. There are five (5) levels within the guidelines, each progressively more serious and resulting in more punitive disciplinary outcomes. Within the levels, a progression of punitive/disciplinary action is recommended to provide consistency in how best to treat the violation and any repeated violations that are reasonable and proportional. For purposes of imposing punitive/disciplinary action, sustained offenses are cumulative within any given level and as to all lower levels. By way of example, a sustained Level 3 offense will constitute a Level 1, Level 2, or Level 3 offense for purposes of imposing punitive/disciplinary action. However, a sustained Level 3 offense will not be considered when determining cumulative Level 4 or Level 5 offenses. When imposing punitive/disciplinary action, the more punitive disciplinary outcome shall apply.
8. **Internal Affairs Investigative Repository:** A database containing information pertaining to internal investigations and other workflow processes involved in police employee management.
9. **Letter of Reprimand:** A non-disciplinary action used by division head or higher to advise an employee when performance is negative, and that unless there is immediate corrective action discipline will be taken. The Chief of Police shall be consulted prior to the issuance of a written reprimand.
10. **Non-disciplinary Action:** Actions taken by a supervisor that is less than suspension and is not punitive. No impact on the employees' pay or rank status is involved.
11. **Written Warning:** A non-disciplinary action used by an immediate supervisor or any higher-level supervisor to advise an employee of negative performance that requires correction.
12. **Suspension:** A disciplinary action issued by the Chief of Police to relieve from duty without compensation for a specified period of time. Days imposed as a result of disciplinary action shall be calculated in hours based upon the assignment at the time of the infraction. While on suspension, employees shall not interfere with other employees who are on duty. All suspended employees will surrender issued equipment including but not limited to, the following where applicable: (i) department ID; (ii) badge; (iii) city vehicle and contents (to be inventoried by a supervisor); (iv) department issued key; and (v) firearms. Employees receiving suspensions totaling five (5) days or more during their annual evaluation period will not be awarded a merit increase during the following fiscal year and their performance appraisal will reflect such disciplinary action. Employees who receive a suspension are not eligible for internal job transfers or promotion consideration for a period of six (6) months from the date discipline is imposed. Each day of a suspension shall be served consecutively.

As required by City Code Section 54-81 when an employee separates, either voluntarily or involuntarily from the city, the employee's last paycheck shall be forwarded to the Human Resources Department in order that an exit interview may be conducted, and the employee's personnel file may be closed out. (26.2.2 C)

## **C. Procedures for Corrective or Disciplinary Action Investigation**

### **1. General**

The procedures for implementing corrective employee actions or disciplinary action will be followed when a supervisor observes unacceptable performance or inappropriate behavior of employees of the Department. It is the

responsibility of each supervisor to be consistent, fair, and proportional in how to address performance related issues. All employees will be granted their rights under state and federal guidelines.

An employee must be advised of the allegations and given an opportunity to respond. Transparency in this regard is an important factor, and delays should be minimized. Based on the circumstances of the allegation(s), employees should be given as much information as practical to ensure they can knowingly and accurately respond to allegations. Employee input regarding both the allegations and the proposed disciplinary action is essential. In cases involving the proposed disciplinary action of suspension or higher-level discipline, a pre-disciplinary meeting shall take place between the Division Commander of the employee and the employee after the response period has ended and before the disciplinary action is finalized. The purpose of this meeting is to allow the employee the opportunity to respond to or explain the charges and/or any mitigating facts or circumstances they feel are relevant. The employee shall be given written notice of the pre-disciplinary meeting (email, memo or letter to home address sent certified mail, return receipt requested) with a minimum twenty-four (24) hour notice.

When employees are notified that they have become the subject of an investigation of a complaint, the investigator will issue the employee a written statement of the allegations and the employee's rights and responsibilities relative to the investigation. (26.3.5)

In a complaint investigation, an employee will be advised of their rights according to *Garrity v. New Jersey*, 385 US 493 (1967). All questioning in a complaint investigation shall be conducted at a reasonable time and manner; the investigator may take into consideration an employee's schedule and other work-related matters prior to setting up appointments, interviews, and conducting other investigative matters that require an employee to participate in an investigation.

Those employees who are required to cooperate in an investigation, and are off duty, shall be compensated for their time. An employee who is the subject of a complaint investigation does not have the right to have an attorney present while being questioned. An employee involved in a complaint investigation shall not discuss the investigation with others unless authorized by the investigative authority.

Disciplinary actions should be administered without undue haste, but as quickly as reasonably possible following the unacceptable conduct. Imposition of suspension or more serious disciplinary action may be delayed pending the outcome of the appeals process.

The Office of Internal Affairs shall be made aware of and record all disciplinary action taken on department employees.

### **26.1.5 Role and Authority of Supervisors**

- A. Persons employed in supervisory positions are in crucial management roles. Guidelines for corrective and disciplinary action are established to ensure that sworn police officers are treated fairly whenever an issue of misconduct arises. The guidelines provide recommended penalties for specific offenses; however, it is recognized that violations of rules that affect the safety, health, and welfare of citizens or co-workers may necessitate more serious corrective/disciplinary action than that recommended by the guidelines (26.3.2). Documentation for all complaints will be submitted to the Chief of Police through the Chain of Command by use of the Internal Affairs Investigative Repository tracking system.

In the corrective action/disciplinary process, the role of the supervisor is:

1. To receive allegations of employee misconduct;

2. When within the scope of their authority and responsibility, resolve less serious allegations by offering professional explanation and submit initial documentation to the Chief of Police through the chain of command by utilizing the Internal Affairs Investigative Repository system; and
3. Implement any disciplinary action approved by the Chief of Police.
4. The Department has departmental rules that range from minor (level 1) to very serious (level 5). The following will represent supervisory responsibilities based on the severity of the rule violation. Note that any supervisor of higher rank may, depending on the circumstances, take appropriate action based on any rule violations that is at or below the outline below:
  - a. Sergeant: Level 1 violations
  - b. Lieutenant: Level 2 violations
  - c. Captain: Level 3 and 4 violations
  - d. Chief: Level 5 violations

The following will be the procedure for initial investigative action between a supervisor and a subordinate with respect to rule violations:

**B. First-Line Supervisor (CALEA 26.3.1 a)**

Supervisors have the responsibility and authority to make inquiries concerning complaints of less serious allegations of employee misconduct. Supervisory or command personnel will document the facts of observed infractions or complaints received. Documentation for all complaints will be entered into Internal Affairs investigative repository tracking system. These may include:

1. Minor performance observations or a minor complaint offered by a citizen. Immediate supervisor may engage in coaching and counseling by discussing the matter quickly and documenting it on a memorandum. The issues involved in minor observations or complaints are generally performance-based and likely are training issues that will be resolved quickly. If the employee disagrees with the outcome, they will be afforded the opportunity to utilize the chain of command for further clarification.
2. General complaints concerning less serious allegations of infractions of regulations or the manner in which employee duties are performed.
3. Complaints relative to differences of opinion between an employee and a citizen arising from the performance of duty.
4. Complaints concerning the manner or method in which an employee investigated a crime, traffic collision or service incident.
5. Complaints concerning an officer's authority to arrest or the propriety of a particular charge.
6. Level 1 violations. The employee will be given his/her violation notification prior to any interview. The employee will have an opportunity to provide their own articulated statement in writing if they elect. A recorded statement may take place between the supervisor and the employee. Note: any BWC recording must be immediately flagged by the Internal Affairs Lieutenant to ensure compliance with employee confidentiality requirements. Generally, this level will be initiated and completed by the first-line supervisor. The Internal Affairs Lieutenant may also initiate and investigate the rule violation based on the Chief's direction. All documents will be housed in the Internal Affairs Investigative Repository.
7. Mid-level or Command-level Supervisors



- a. Level 2 and 3 violations. The employee will be given his/her violation notification prior to any interview. The employee will have an opportunity to provide their own articulated statement in writing if they elect. A recorded statement may take place between the supervisor and the employee. These levels will generally be managed by either a Lieutenant or Captain. The Internal Affairs Lieutenant may also initiate and investigate the rule violation based on the Chief's direction. All documents will be housed in the Internal Affairs Investigative Repository.

8. Internal Affairs Function (CALEA 26.3.1 b)

- a. Level 4 and 5 violations. The employee will be given his/her violation notification prior to any interview. The employee will have an opportunity to provide their own articulated statement in writing if they elect. A recorded statement may take place between the supervisor and the employee. The Internal Affairs Lieutenant will generally investigate and manage these investigations. When appropriate, the Chief of Police may assign a Division Commander to investigate these violations. All documents will be housed in the Internal Affairs Investigative Repository.
- b. On occasion, the Chief of Police may assign Internal Affairs to investigate matters that may not fall within a criminal or misconduct rule. In these cases, the Chief of Police will make clear that the investigation is a fact-finding process to gather information relating to the function and management of the police department.
- c. Scheduling. In most cases, the employee will be scheduled a date/time for an interview. Depending on the circumstances and the likelihood of diminishing evidence, interviews, lab analysis or other investigative matters may be accelerated. The Chief of Police, or his/her designee will make that decision.
- d. Criminal Matters. If, in the opinion of a supervisory member, and after consultation with the entire chain of command, the allegation is believed to be criminal in nature, no administrative interviews will take place. The entire matter will be referred to the investigative authority with jurisdiction over the alleged criminal violation. Once the criminal matter has been finalized, the Chief of Police will make the final decision on when to initiate or reengage the administrative investigation.
- e. Reporting Requirements. Department personnel will follow the North Carolina Training and Standards Minimum Standards for Criminal Justice Officers, 12 NCAC 09B .0101, for all reporting requirements.

All notifications will be made via department memorandum sent through the chain of command. The reporting requirements address some of the following situations:

- (1) Being charged with a Class B misdemeanor traffic offense, as defined by the North Carolina Department of Justice Class B Misdemeanor Manual, and DWI or DUI.
- (2) Report any disposition of cases charged as a Class B misdemeanor traffic offense and DWI or DUI.
- (3) Any officer who is issued a Domestic Violence Order(s) and Civil No Contact Paper(s).

The required notifications in this requirement shall be in writing and shall specify the nature of the offense or order, the court in which the case was handled, the date of the arrest, criminal charge, or service of the order, and the final disposition. The notification shall include a certified copy of the order or court documentation and final disposition from the Clerk of Court in the county of adjudication. The requirements set forth herein shall be applicable at all times during which the officer is employed and certified by the Commission and shall also apply to all applicants for

certification. Receipt by the Standards Division of a single notification from the officer or the agency head shall be sufficient notice for compliance with this item.

- f. Additional responsibilities. Internal Affairs will also be responsible for the following:
  - (1) It should be the responsibility of the Internal Affairs Lieutenant to maintain records and/or files pertaining to any documentation resulting from internal investigations in a secure area that is separate from the Department's central records system and personnel files. These files are to be maintained and stored in accordance with the Records Retention and Disposition Schedules. (26.2.3)
  - (2) All complaints, whether internal or citizen complaints, shall be entered into the Internal Affairs Investigative Repository tracking system. All complaints and employee records shall be considered confidential with any physical documentation maintained in the Office of the Chief of Police. The employee designated to manage the Internal Affairs function will be responsible for maintaining the confidentiality of all Internal Affairs investigations and records. No information shall be released unless approved by the Internal Affairs Lieutenant or Chief of Police. (26.2.5)
  - (3) The administrative investigative function will be the responsibility of a person at the rank of sergeant or greater assigned by the Chief of Police. On matters involving internal investigations the Internal Affairs Lieutenant will report directly to the Chief of Police. (26.2.6)
  - (4) The Department will make available to the public, information on procedures regarding the registering of commendations and complaints. Information will be available in a handout in the lobby of the police department and on the department webpage. (26.2.7)
  - (5) The confidentiality of internal affairs investigations in no way precludes reporting to the public statistical information on the processing of all complaints and internal investigations that were received by the Internal Affairs function. Annually the Chief of Police will cause a review and have published a report of internal affairs investigations. Copies of this report will be made available to all members and the public upon request. (26.2.8)

## C. Procedural Process

In most cases, the steps outlined in this policy are linear and will occur in a predictable sequence. However, unforeseen factors may alter the process. Any alteration to the steps outlined in this policy will require written justification and approval from the Chief of Police.

### 1. Initial notification or observation

- a. Minor. If the matter is considered minor, as described in 26.1.5 B.1, it may be handled by the supervisor on a memorandum.
  - (1) Level 1 or higher rule violation.
    - i. Complaint is received by a supervisory staff member

- ii. Complaint is entered into Internal Affairs Investigative Repository
- iii. Employee's Captain is notified

2. Review

- a. The complaint is reviewed by involved employee's Captain, assigned as deemed appropriate by the Chief of Police.
- b. Citizen complaint. A letter is sent to the complaining citizen acknowledging receipt of their complaint. (26.3.4)
- c. Internal complaint. Employee is notified in writing prior to any interviews

3. Investigation (CALEA 26.3.3)

- a. The investigating supervisory member has 45 workdays to complete the investigation unless circumstances develop which necessitate additional time to ensure a thorough investigation. To receive an extension, employees completing internal investigations must submit a memo to the Chief of Police requesting approval. If the investigation extends beyond the 45 workdays limit to complete, the investigator shall periodically notify the complainant of the status of the investigation and document the date and time the complainant was notified.
- b. Prior to any interviews with accused officers, the officer will be given their administrative notification (Garrity Rights).
- c. The Investigating Supervisor will review all relevant evidence to include BWC and In-Car Camera footage. The Investigating Supervisor will also interview all witnesses and others who may have relevant information.
- d. Any extension of time must be submitted prior to the deadline.
- e. All information obtained via an internal investigation is considered confidential and shall not be shared with anyone other than those who have a need to know and/or right to know.

4. Submission to Tests, Procedures (CALEA 26.3.6)

If, during the course of a complaint investigation, the investigating authority determines cause exists to justify an employee's submission to a medical, physical, psychiatric, laboratory, or truth verification examination, the employee shall submit to such test or exam. The investigating authority must receive approval from the Chief of Police before moving forward. These tests may include:

- a. Medical or laboratory examinations. Testing blood or urine specimens to determine whether employees have used drugs or alcohol shall be in accordance with the City of New Bern, Personnel Ordinance 54-203: Employee Conduct.
- b. Photographs: The Department will maintain employee photographs that may be used in a complaint investigation. If additional photographs are required for this purpose, the employee may be directed to submit for additional photographs. Refusal by the employee to comply with such direction may result in disciplinary action.

- c. Audio or Video Recordings. No one will conduct surreptitious audio and/or video recording in the police department or City of New Bern facilities, vehicles, or on police department time of police department personnel without the expressed authorization of the Chief of Police or Division level designee. Personnel actions such as Internal Affairs interviews, hearings, etc. may be audio or video recorded by the Division Captains or investigating officer, but it will be done in the open. This regulation does not prohibit the use of approved recording equipment (interview rooms, Emergency Communication Center phone lines, police radio communications, in-car camera system, body worn cameras, etc.) documenting overt police activity or require specific notice of its use. All personnel shall presume that they are being recorded by these systems for the duration of an incident.
  - d. Line-up. In a complaint investigation an employee may be asked to participate in a physical lineup for the purposes of eyewitness identification. If the employee refuses to comply with such direction, non-compliance may result in disciplinary action.
  - e. Financial disclosure statements. Employees who are subject to a complaint investigation may be directed to submit financial disclosure statements when such records are necessary for the investigation. Failure to comply may result in disciplinary action.
  - f. Instruments for the detection of deception. In a complaint investigation, an employee may be asked to submit to a truth verification examination. Additionally, the complainant may also be asked to submit to such examinations. The truth verification examination, if requested, shall be specifically directed, and narrowly focused upon those aspects of the internal investigation that are pertinent to the employee's job performance. The employee involved in the internal investigation must comply with a request for a truth verification examination and if said employee refuses, such refusal may result in disciplinary action, up to and including dismissal.
5. Conclusion of Facts (CALEA 26.3.8)
- a. The Investigating Supervisor will generate a complete investigative report in a memorandum formatted in six (6) specific sections as follows:
    - (1) Summary of Complaint
    - (2) Investigation
    - (3) Evidence
    - (4) Background
    - (5) Conclusion
    - (6) Recommended Charges
  - b. Upon completion of the review, the Division Captain will recommend one of the following conclusions:
    - (1) Unfounded - Allegation is false;
    - (2) Exonerated - Incident or allegation occurred, but was lawful and proper;
    - (3) Not Sustained - Insufficient evidence exists to either prove or disprove the allegation or violation;
    - (4) Sustained - Allegation or violation is supported by sufficient evidence. Only findings in this category will be included in the employee's personnel file. Findings of a sustained violation will result in appropriate corrective measures; or
    - (5) Policy Failure: Allegation true but action taken was not inconsistent with policy and there is an indication of a need for policy review.

- c. The conclusion of facts must have sufficient articulated facts to justify the conclusion and a recommendation for a disposition for each allegation

## 6. Division Review and Recommendation

- a. The Division Commander will review the completed Investigative report and supporting document.
- b. The Division Commander will also review all captured video evidence associated with the complaint.
- c. If, in the opinion of the Division Commander, additional investigative measures are needed, the file will be sent back or reassigned for follow-up. The Division Command will ensure that if an extension is needed that one is approved prior to the deadline.
- d. Once completed, the Division Commander will render an opinion of the fact patterns.
- e. Depending on the circumstances, or any level 4 or 5 rule violations, the Division Commander will consult with the Chief of Police for a recommendation for a final disposition.
  - (1) If the disposition is anything other than sustained, the complaint is closed
  - (2) The employee is notified via a memorandum
  - (3) A citizen who initiates a complaint will receive a general, written response consistent with North Carolina public record and employee privacy laws.
- f. If the complaint is sustained, a decision will be made to move forward with either non-disciplinary or disciplinary action.

## 7. Non-Disciplinary Action

- a. The Division Commander will meet with the employee.
- b. A Written Warning is delivered to the employee.
- c. If a Letter of Reprimand is considered, the employee will have the right to provide a written rebuttal, on a memorandum, for final consideration within three (3) days of the employee's receipt written notification that a Letter of Reprimand is being considered. The written notification shall explain the employee's right to provide a written rebuttal within three (3) days of employee's receipt of the notification.
- d. The Chief of Police shall be consulted when a written reprimand is considered.
- e. A written reprimand may only be finalized and delivered to the employee after the Division Commander receives and considers any written rebuttal.
- f. All written warnings or written reprimands will include a warning that if any further violations occur, more serious disciplinary action, up to and including termination may occur as outlined in the guidelines.

- g. Copies of all written documents associated with a written warning and written reprimand shall be provided to the City's Human Resources Department.
- 8. Disciplinary Action
  - a. Internal Affairs Lieutenant will prepare charging documents and deliver to the employee in a Notice of Charges letter.
  - b. The Division will meet with the employee to discuss the charges and deliver the Notice of Charges letter. All evidence supporting the charges will be provided to the employee at that time. The Notice of Charges letter shall provide that the employee has three (3) days from the date of receipt of the Notice of Charges letter to respond to the Notice of Charges.
  - c. The Division Commander will recommend disciplinary action to the Chief of Police.
  - d. The Chief of Police will consult with the Human Resources Director before rendering a final decision.
  - e. The Chief of Police will make the final written decision in the form of a final disposition letter which shall be provided to the employee
  - f. The employee will have three (3) working days from the date of receipt of the final disposition letter to file an appeal as provided in Section 10 below. As used in this subsection, a working day is any day the employee is scheduled to work.
  - g. If no appeal is taken within three (3) working days from the date of receipt of the final disposition letter, the imposition of discipline shall be final.
- 9. Notification of the Results of the Investigation Upon Conclusion
  - a. If the complaint was initiated by a citizen, the Internal Affairs Lieutenant will prepare a letter of "completion" for the signature of the Chief of Police. The Internal Affairs Lieutenant will send written notification to the complainant that a resolution of the investigation has been reached.

#### **26.1.6 Appeal Process (civilian vs. sworn / Section 5.5 of Charter)**

- 1. Any civilian employee suspended, demoted, or dismissed, except those employees on probation, may file an appeal in accordance with Code of Ordinances of the City of New Bern.
- 2. Any sworn employee suspended or demoted, except those employees on probation, may file an appeal in accordance with the Code of Ordinances of the City of New Bern.
- 3. Any sworn employee suspended more than once within a 90-day period or dismissed, except those employees on probation, may file an appeal as provided in Section 5.5. of the City Charter.

#### **26.1.7 Procedures for Imposing Corrective or Disciplinary Action**

- A. Procedures and criteria for using training as a function of corrective action/discipline.
1. Remedial training may be required whenever an employee has engaged in conduct or used language that is reasonably interpreted as violating this policy.
  2. Each pursuit or use of force will be reviewed by way of the internal affairs investigative repository system to ascertain the need for remedial training.
  3. When the employee's performance falls below standard and the officer is not responding to training, formal remedial training is required. The Department Remedial Worksheet Form #98 must then be used outlining the assignment given to the officer to correct the performance. The supervisor should develop a training plan to address specific tasks to correct specific performance problems.
- B. Procedures and criteria for using counseling as a function of corrective action/discipline.
1. Supervisors must counsel and correct employees concerning any action or language that reasonably indicates a violation of policy, safety, or negative workplace performance. Counseling could be used as the first step in a progressive ladder of correcting an employee's behavior or work performance and is not considered discipline. The supervisor's counseling of employees must be properly recorded in the Internal Affairs Investigative Repository or within the employee's personnel file.
- C. Procedures and criteria for taking punitive actions in the interest of discipline.
1. If an employee's poor performance or conduct is not appropriate for non-disciplinary action, disciplinary action should be proportional and appropriate for the violation. To help in determining the appropriate disciplinary action to be taken, the Guidelines should be utilized. If disciplinary action is recommended, Human Resources will be consulted prior to imposing any action.
- D. Guidelines
1. The guidelines are divided into five (5) levels that reflect the seriousness of the offense. Mitigating and/or aggravating circumstances will be evaluated by Department leadership when deciding on the appropriate disciplinary action to be taken. See guidelines attached to this policy for additional context and information.
  2. Written Reprimands are not disciplinary actions as defined by this policy; however, when considering future disciplinary action, a written reprimand that occurred more than twenty-four (24) months prior to the current offense will not be considered when imposing new discipline. Twenty-four (24) months shall be calculated from the date on which prior discipline was imposed.
  3. Disciplinary action that resulted in a suspension of less than fifteen (15) days that occurred more than thirty-six (36) months prior to the current offense will not be considered when imposing new discipline. Thirty-six (36) months shall be calculated from the date on which prior discipline was imposed.
  4. Disciplinary action greater than a suspension of fourteen (14) days that occurred more than sixty (60) months prior to the current offense will not be considered when imposing discipline. Sixty (60) months shall be calculated from the date on which prior discipline was imposed.

5. Coaching and Counseling and Written Warnings that occurred more than twelve (12) months prior to the current offense will not be considered when imposing new discipline. Twelve (12) months shall be calculated from the date on which prior discipline was imposed.
6. The dates associated with disciplinary actions are maintained in the Internal Affairs Investigative Repository.
7. Understanding that successive violations of the same rule may occur over a period of time, corrective or disciplinary action will be applied as established in the guidelines. When an employee commits several unrelated offenses over a period of time, the Department may combine the penalties in a cumulative manner as the offenses warrant.

#### **26.1.8 Relieved from Duty/Emergency Suspensions (CALEA 26.3.7)**

- A. Relief from duty is a temporary administrative action to expedite a member's immediate removal from duty when it appears such action is essential to protect the interests of the Department. Relief from duty is warranted when a supervisor observes conduct and/or appearance of an employee not acceptable for the work environment. Relief from duty shall involve one of the following actions:
  1. Suggest that the employee use sick leave or vacation leave and return home instead of continuing with the work period; or
  2. Reassign the employee for the work period, if an appropriate task or location is available; or
  3. Contact the Chief of Police for authorization to invoke an Emergency Suspension as defined in the City Code Section 54-347. Such suspensions will originate as non-disciplinary suspensions with pay and will last no longer than one working day.
- B. Reasons for relief from duty may include, but are not limited to:
  1. Involvement in a use of lethal or less lethal force;
  2. Alleged violation of department rules, regulations, policies and/or procedures;
  3. Alleged violation of federal, state, and/or local laws/ordinances;
  4. When physical condition or behavior indicates an actual or potential risk to the public, the department or the individual;
    - a. Unapproved absence from work; or
    - b. Alleged acts of insubordination.
- C. Authority
  1. Any supervisor may immediately relieve from duty any member of subordinate rank, regardless of the organizational assignment of either party. The Chief of Police will be notified immediately. In the absence of the Chief of Police, the next highest-ranking officer will be notified. The Director of Human Resources, Assistant City Manager and City Manager will be notified immediately by the Chief of Police or his/her designee.
  2. Members who have been relieved from duty may only enter the police facility when approved by a supervisor or to perform reassigned duties.



3. A member relieved from duty and denied access to the facilities will have access removed from the automated locking system and must be escorted while he/she is in a police facility.

**D. Arrest Authority**

1. When the relief from duty involves an officer, the authority initiating the relief shall decide, based on the totality of the facts, whether police authority should be suspended. The period of relief shall continue until an administrative hearing is held and reinstatement is authorized by the Chief of Police.

**E. Process of Relief**

1. Documentation of Action Taken. Within 24 hours of the relief of duty, the initiating supervisor shall forward a memorandum through the chain of command to the Chief of Police describing the nature of the alleged violation or event and the date and time of relief. A copy of the memorandum shall be given to the relieved employee.
2. If relief of duty involves an officer, a statement as to whether police powers were suspended, and a list of equipment removed shall be included in the memorandum.
3. If police authority is suspended, the officer shall relinquish at a minimum, their:
  - a. Badge;
  - b. Identification card;
  - c. Issued weapon(s) to include less lethal weapon(s) such as a taser and OC spray, if assigned;
  - d. Radio and all equipment issued with the radio; and
  - e. Vehicle and all associated contents.
4. Administrative Hearing: The employee's Division Captain shall hold an administrative hearing the next regular business day to determine appropriate actions.
  - a. The administrative hearing will facilitate a review of the facts surrounding the relief from duty and a recommendation to the Chief of Police as to reinstatement, and if applicable, restoration of police authority.
  - b. A memorandum documenting the finding of the administrative hearing shall be forwarded to the Chief of Police by the Division Captain within 24 hours for final disposition.
  - c. Employee relieved from duty shall be reassigned or use personal leave. Every effort should be made to assign the employee to a productive assignment while relieved from duty.
  - d. Determine if employee's action involved violation of policy and warrants further investigation.
5. Notification of Disposition. The Internal Affairs Lieutenant will notify the relieved employee of the finding of the administrative hearing.

**26.1.9 Code of Conduct**

The code of conduct is intended to help guide police employees towards appropriate ethical behavior and avoid actions or inactions that are contrary to and conflict with the duties and responsibilities of our members. It also helps guide our employees to conduct themselves and their affairs in a manner that reflects the high standards of professionalism required of law enforcement employees. Additional guidance on matters of conduct may also be found in specific policies, procedures, and directives disseminated by the agency.

The purpose of the Code of Conduct is to ensure that employees comply with the directives, policies, and procedures of the New Bern Police Department to provide professional services to the community. The Departmental Rules, by contrast, are more specific in relating policy to performance, or lack thereof.

Employees shall obey the Code of Conduct and by extension, all policies, procedures, and directives. Violations of any of the below will be linked to a specific rule. Rules are assigned levels of poor performance. These levels will guide the appropriate disposition for sustained violations.

Disciplinary action taken against an employee shall apply to internal administrative investigations alone and will not preclude possible criminal sanctions.

Decisions rendered by New Bern Police Department leadership regarding disciplinary action for sustained violations can be determined, in part, by evaluating mitigating or aggravating circumstances. Although not an exclusive list, the below will help guide the outcome. On limited occasions, there will be extraordinary circumstances which would justify an action less than or greater than that allowed under the matrix. The authority to declare extraordinary circumstances is within the discretion of the Chief of Police.

Mitigating	<ul style="list-style-type: none"> <li>• “Substitution Test” – could this have happened to anyone else in the same circumstance (e.g., system, policy, or training issue)?</li> <li>• Receptive to correction/displayed proper attitude</li> <li>• Efforts were made to correct the problem</li> <li>• Lack of intent</li> <li>• Acts would not have come to light without self-report</li> <li>• Member new to the assignment</li> <li>• Prior work history, such as positive evaluations and/or work performance, or voluntary, advanced, job-related training</li> <li>• Minimal or lack of prior disciplinary history relative to the officer's years of service</li> </ul>
Aggravating	<ul style="list-style-type: none"> <li>• High degree of operational impact</li> <li>• Unreceptive to correction (attitude)</li> <li>• Uncooperative with investigation</li> <li>• Dishonesty on the part of the officer</li> <li>• Delayed report or attempted cover-up</li> <li>• Loss or damage to city or private property</li> <li>• Injury, harm, or endangerment of a member of the public or an employee</li> <li>• The existence of an actual and demonstrable legal or financial risk to the Department or the City (including, but not limited to, cases involving allegations of civil rights violations, unlawful search and seizure, excessive use of force or unlawful detention or arrest)</li> <li>• Speed (in vehicular crash or operation)</li> <li>• Bias- or harassment-based action</li> <li>• Supervisory or command rank, length of time in position</li> <li>• Constitutional implications</li> <li>• Intentional act or lack of due regard</li> <li>• The officer’s prior disciplinary or corrective action history as dictated by this policy</li> </ul>

	<ul style="list-style-type: none"> <li>• Criminal conviction of the involved officer arising out of the underlying event</li> <li>• Prejudicial conduct regarding race, color, creed, national origin, ancestry, gender/sex (including pregnancy, childbirth, or caregiver status), sexual orientation, age, religion, political affiliation, physical or mental disability, military status, marital status, or other protected classifications</li> <li>• Harassment or retaliatory conduct</li> </ul>
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### 26.2.1 Departmental Rules

A. All members of the New Bern Police Department are governed by the following Rules. These rules are designed to support existing policies, procedures, and the Code of Conduct for our members. If any section, sentence, clause, phrase, or portion of these Rules, for any reason, are held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

#### B. Violation Roll-Off Periods

- |   |           |
|---|-----------|
| 1. Coaching & Counseling, Written Warnings: | 12 months |
| 2. Letter of Reprimand:                     | 24 months |
| 3. Suspensions (<15 days):                  | 36 months |
| 4. Suspensions (15+ days):                  | 60 months |

Rule #		Title	Narrative
<b>Level 1 Rules</b>			
<b>Minor violation</b>			
<b>Minimal negative impact on Department image or operation</b>			
1		Safety  Level 1  Level 3	Employees shall not neglect, be careless, or fail to observe Departmental safety rules or disregard common safety practices.  a. When the employee's actions do not endanger or result in an injury to the public or co-workers b. When the employee's actions endanger the public or co-workers
2		Tardiness	Employees must report for duty at the scheduled time, or be excused by immediate supervisor prior to 30 minutes of the start of their scheduled duty shift.
3		Absence from Assignment	Employees shall be present and perform all duties associated with all assignments during the tour of duty unless authorized by a supervisor.
4		Unsatisfactory Performance	Members shall maintain sufficient competency to properly perform their duties and assume the responsibility of their

		<p>Level 1</p> <p>Level 2</p>	<p>position. Members shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance will be evaluated within one of the following two categories:</p> <ul style="list-style-type: none"> <li>a. Unintentional failure to meet the basic job functions of an employee's job requirement. This can include, but not limited to, a lack of knowledge of the application of laws required to be enforced, failure to read and comply with all written directives given to the employee or failure promptly and accurately complete all assigned duties, reports, records and forms as required by Department policy before leaving the employee's tour of duty, unless excused by supervisory authority.</li> <li>b. The intentional failure to meet the job function of an employee's job requires. This can include, but not limited to, an unwillingness to perform assigned tasks, failure on the part of an employee to properly notify a supervisor of critical information pertaining to a situation that may require immediate action, failure to take appropriate action on the occasion of a crime, disorder, or other conditions deserving police attention.</li> </ul>
5		Personal Appearance	Employees shall maintain a neat and clean personal appearance which does not adversely reflect upon the individual's competency, efficiency and pride as a member of the Department, or the ability of the City and Department to foster and enhance a professional image.
6		City Telephone or personal cell phone	Habitual and/or excessive personal use of the City telephones or personal cell phone are prohibited.
7		Lock City Vehicles	Employees shall lock City vehicles, unless performing emergency duties and the emergency precludes locking the vehicle or when the vehicle is within immediate control of the driver.
8		Address and Telephone Number	Employees shall maintain their correct address (Post Office Box numbers are not acceptable) and phone number within the agency. Each employee shall maintain an operating telephone, or cell phone with connectivity at their residence.
9		Personal Equipment	Employees shall not use or be in possession of another employee's equipment without the consent of the employee or their supervisor.
10		Official Identification	Employees shall possess an official Department photo identification card at all times while on duty, unless excused by their immediate supervisor.

11		Leaving Municipal Limits	Employees shall remain within the municipal limits while on duty unless in the performance of their duty, driving to another annexed part of the city, or upon the approval of a supervisor.
12		Paperwork to Be Filed on Time	Employees shall ensure that all official paperwork is filed by the scheduled due date. Official paperwork includes, but is not limited to, evaluations, incident reports, crash reports, use of force reports, employee conduct reports, 96-hour reports, time sheets, etc. This includes the review and submission of paperwork by supervisory staff.
13		Use of tobacco products or vaping on duty	Employees shall not use any tobacco products or vape while on duty and in direct contact with the public.
14		Radio Discipline	Employees operating a police radio shall strictly observe all FCC regulations for such operations, as well as Department policies and procedures.
15		Transporting Passengers in City Vehicles	Employees shall not transport any unauthorized passengers in city vehicles without prior supervisory approval.
<p style="text-align: center;"><b>Level 2 Rules</b></p> <p style="text-align: center;"><b>More than minimal negative impact on Department image or operations, relationship with other officers, or the community</b></p>			
16		Absence from Court	Employees shall be present for all regularly scheduled and or subpoenaed court appearances, trials, hearings or other court appearances to which they have been called except for good cause and with proper notification.
17		Absence from Duty/failure to notify supervisor	Employees shall promptly report for duty at the time and place specified by their assigned work schedules or orders to include scheduled overtime, special assignments or shifts, and shall not be absent from duty without having made proper notification.
18		Reporting On-Duty Injury	Employees shall report an on-duty injury using the proper forms to their immediate supervisor as soon as they are aware of the injury, or by the end of their tour of duty.
19		Loss of Equipment	Employees shall promptly report to their immediate supervisor the loss of any Department property or equipment that has been furnished to the employee. Loss of Department property or equipment as a result of negligence on the part of the employee shall render the employee liable for reimbursement to the City in an amount equivalent to the value of the property at the time of its loss.
20		Safe Operation of a Motor Vehicle	Employees shall operate all Department owned vehicles in a careful and prudent manner, and shall obey all laws of the

			state, local and departmental policies and procedures pertaining to such operation. Employees shall always set a proper example for other persons by their operation of a vehicle.
21		Valid Operator's License	Employees shall possess a valid North Carolina driver's license while operating a city vehicle. The class of license shall be appropriate for the type or class of vehicle being operated.
22		Police Identification	A sworn officer shall properly identify himself/herself as a police officer by the display of the badge or shield before taking police action, except when impractical or infeasible.
23		Furnishing Information/Identification	Employees shall furnish information as is consistent with their duty. Employees shall furnish their name and employee number in a respectful manner when requested. This would not apply to officers who are acting in an undercover capacity.
24		Off-Duty and Extra Duty Employment	Employee shall engage in off-duty or extra duty employment only as authorized by the Chief of Police or his/her designee.
25		Scheduled Overtime and Emergency Callback	Employees shall report as directed for overtime work or to emergency callback.
26		Use of Private Vehicles/Equipment	Employees shall not use private vehicles/equipment for official purposes unless directed or authorized by the Chief of Police or his/her designee.
27		Reporting Criminal Activity	Employees shall have a responsibility to report criminal activity to which they become aware. The North Carolina General Statute mandates that police officers report certain offenses to the appropriate city, state or federal agency. Common sense and good judgment should guide how, when, and what other types of criminal activity shall be reported as required by this rule. Any felony or crime of violence shall be reported to the appropriate law enforcement jurisdiction in which the crime takes place. Minor offenses are not required under this rule; however, on-duty personnel will need to take appropriate action in those situations covered by Rule # 31 (neglect of duty) and/or Rule# 4 (unsatisfactory performance).
28		Personal Business on Duty	Employees shall not engage in any activity or personal business while on duty which may cause neglect or inattention to duty
29		Loitering at ABC establishments	On-duty employees shall not loiter in any bars or nightclubs without a legitimate law enforcement purpose.

30		Respect to the Flag	Employees in uniform shall render full military honors to the national colors and anthem at appropriate times. On-duty employees in civilian dress shall render proper civilian honors to the national colors and anthem at appropriate times.
<p style="text-align: center;"><b>Level 3 Rules</b></p> <p style="text-align: center;"><b>Major policy infraction</b></p> <p style="text-align: center;"><b>Pronounced negative impact on Department operations, relationships with other officers, or the community.</b></p>			
31		Neglect of Duty	Employees shall devote their on-duty time and efforts to the performance of their assigned duties and responsibilities. Employees shall report to work mentally and physically fit to perform their duties and will cooperate with and assist other members of the Department. Violations of this section shall include but are not limited to failure to take appropriate action on the occasion of a crime scene, disorder or other act or condition deserving attention.
32		Departmental Property - Reporting Damage:	Employees shall maintain Department property and equipment assigned to them in good condition. Employees shall immediately report in writing all damage, defects, or hazardous conditions of vehicles, equipment, and property. This report shall contain all known facts surrounding the cause and nature of the damage.
33		Reporting Vehicle Crash	Employees must report immediately to their immediate supervisor or the on-duty supervisor all vehicle crashes involving the employee while on duty, or while off-duty in a Department vehicle.
34		Sleeping on Duty	Employees shall remain awake and alert at all times while on duty.
35		Supervision	Supervisory personnel (including acting supervisors) shall properly supervise subordinates, refer corrective action, and take appropriate disciplinary action, when necessary, in accordance with Department procedures.
36		Requests for Assistance/Rendering Aid	When any person requests assistance, advice, makes a complaint, or files a report either by telephone or in person, all pertinent information will be obtained in a professional and courteous manner and will be properly documented and acted upon consistent with established Department procedures.
37		Department Records Duplication	Employees shall not obtain or duplicate or attempt to obtain or duplicate any information from Department files, sources, or reports other than that to which the employee is properly entitled in accordance with his/her duties and assignment.

38		Search Subsequent to Arrest	Sworn personnel shall ensure a proper search of an arrested person and the area within the immediate control of all arrested person.
39		Permitting Escape	Sworn personnel shall observe proper prisoner handling procedures and shall not allow a prisoner to escape through carelessness or neglect.
40		Recovered Property/Evidentiary Material	Employees shall turn over to the designated agent of the Department all lost, stolen, recovered, abandoned or evidentiary material which comes into their possession as a result of the performance of their official duties. All such material shall be turned over prior to the completion of the tour of duty during which the material came into the possession of the employee
41		Conduct Unbecoming	<p>a. Members shall conduct themselves at all times, in such a manner as to reflect most favorably on the department. Conduct unbecoming is any conduct in which an employee knowingly engages, to include associations with questionable groups or persons, that may adversely, when viewed objectively, affect the morale, operations or efficiency of the department or any intentional conduct that may adversely affect, lower, or destroy public respect and confidence in the department or the employee. Conduct unbecoming also includes any intentional or negligent conduct that, based on an objective standard, may bring the department into disrepute, or may bring discredit upon the officer, employee or department.</p> <p>b. Members who knowingly interact on social media sites including but not limited to; social networking sites Facebook, Twitter, LinkedIn, etc., blogs, photo, and video sharing sites, wikis, and news sites that permit user contributed content are subject to the standards outlined in Rule 41 A. No member shall knowingly post official photographs, video images, audio files or text documents that belong to the Department without the expressed written permission of the Lieutenant of Internal Affairs. No employee shall post any unbecoming images that shows the employee in a department uniform on any social media sight.</p>
42		Discourtesy	Employees shall be courteous to the public and city staff, both in person and by telephone, and shall control tempers and exercise patience and discretion; employees shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane, or insolent language or gestures to demean another.



43		Testifying for the Defendant	Employees shall notify their immediate supervisor upon receipt of a subpoena or other notice requiring the employee to testify on behalf of a defendant or against the City of New Bern or the Department in any trial or hearing, civil or criminal.
44		Serving as a Character Witness	Employees shall not give testimony as a character witness for any defendant in a trial without prior notification, in writing to the Chief of Police.
45		Participation in Civil Matters	Employees shall not give deposition, affidavit or appear as a witness in a civil matter stemming from the performance of official Department duties without prior notification, in writing to the Chief of Police.
46		Prohibited Association	Employees shall avoid associating or conducting business with persons whom they know, or should have known, are under criminal investigation or indictment, or who have a reputation in the community for involvement in criminal behavior, except as necessary in the performance of official duties or where unavoidable because that individual is a close relative of the employee.
47		Referral of Attorneys, Bondsmen, Towing or Other Services	Employees shall not suggest, recommend, or otherwise influence a decision regarding the retention of any specific attorney, bail bondsman, towing or other services to any person coming to the employee's attention as result of police business.
48		Gifts - Solicitation/Acceptance	Employees shall comply with the provisions of Code Section 54-195.
49		Fees/Rewards	Employees shall not accept or receive any fee or reward from any source for any services rendered in the line of duty without the knowledge and written consent of the Chief of Police.
50		Valuable Items - Buying/Selling/Receiving	Employees shall not knowingly buy, sell, or receive any item of value that has come to the attention of the employee during the performance of their official duties, except as may be specifically authorized by the Chief of Police.
51		Private Benefit from Department Association	Employees shall not use the prestige or influence of their official position, or use the time, facilities, equipment or supplies of the Department for the private gain or advantage of the employee or another person unless authorized by the Chief of Police.
52		Unauthorized Repair of Vehicles	Employees shall not allow repair work, service, or alterations of any kind to be performed on any Department vehicle by any person or firm, unless specifically authorized by the commanding officer on duty.

53		Impartiality	Employees shall remain completely impartial in their dealings with all persons coming to the attention of the Department.
54		Endorsement of Products or Services	Employees shall not permit their name or photograph to be used to endorse any product or service while being identified as an employee of the Department without the written consent of the Chief of Police.
55		Unauthorized Political Activity	Employees shall comply with the provisions of G.S. 160A-169, and City Code Section 54-198 while on-duty. No employee may use city supplies or equipment, specifically including uniforms, while off-duty without the express permission of the Chief of Police.
56		Use and Handling of Weapons	Employees shall use and handle weapons in a careful and prudent manner and in accordance with law and Department policies and procedures.
57		Obedience to Laws and Regulations	Employees shall observe and obey all Local, State and Federal laws and ordinances, all rules, and regulations of the Department and all General and Special Orders of the Department. For purposes of this rule, a violation of a minor traffic infraction will not constitute a violation of this rule.
58		Violation of Laws	Employees shall report immediately in writing to the Chief of Police if they have been charged with a violation of a criminal or traffic law or ordinance listing all pertinent facts concerning the violations.
59		Reporting Violations of Department Policies and Procedures	Employees shall immediately report known or perceived violations of all Department's policies and procedures to their immediate supervisor.
60		Subject of Criminal Investigation	<p>Employees who become aware that they are the subject of a criminal investigation by any law enforcement agency, shall immediately advise the Chief of Police, in writing.</p> <p>Consistent with the responsibility every member of this department, immediately upon learning of any information which leads to reasonable suspicion that any other member(s) of this department, whether on or off-duty, is in violation of, or has violated, any local, state, or federal criminal statute, law or ordinance, shall immediately notify a supervisory member and that supervisor must immediately notify Internal Affairs.</p>
<b>Level 4 Offenses</b>			
<b>Major misconduct</b>			

Significant negative impact on Department operations, relationship with other officers, or the community			
Actions contrary to core Department values or involves substantial risk of Public or officer safety			
61		Careless and Reckless Driving	<p>Employees shall not drive a Department owned motor vehicle in a careless and reckless manner as defined by General Statue 20-140 Reckless Driving.</p> <ul style="list-style-type: none"> <li>a. Any person who drives any vehicle upon a highway or any public vehicular area carelessly and heedlessly in willful or wanton disregard of the rights of safety of other shall be guilty of reckless driving.</li> <li>b. Any person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger a person or property shall be guilty of reckless driving.</li> </ul>
62		Emergency Vehicle Response and Pursuit	<p>Sworn employees shall operate all department emergency vehicles in emergency mode in compliance with established policy and procedure as set forth in Chapter 41 Emergency Vehicle Response and Pursuit.</p> <ul style="list-style-type: none"> <li>a. Failure to comply with established policy and procedure for the operation of all department emergency vehicles as set forth in Chapter 41 Emergency Vehicle Response and Pursuit.</li> <li>b. Flagrant, willful disregard of established policy and procedure for the operation of all department emergency vehicles as set forth in Chapter 41 Emergency Vehicle Response and Pursuit.</li> </ul>
63		Medical Aid for Prisoners	<p>Employees shall promptly summon medical aid for any person in the employee's care or custody who is unconscious, ill, or injured and requires or requests such aid. The employee shall promptly report any unconscious, injured or ill person in custody to their immediate supervisor.</p>
64		Threatening/Intimidating Other Employees	<p>Employees shall not threaten, intimidate, or coerce, fellow employees, supervisors, or citizens at any time.</p>
65		Interfere with a Fellow Employee	<p>Employees shall not unlawfully or unnecessarily interfere with the lawful or authorized duties of a fellow employee at any time.</p>
66		Malicious/Unnecessary Complaints	<p>Employees shall not make malicious or unwarranted complaints against another employee of the Department.</p>
67		Public Criticism of the Department	<p>Employees shall not publicly criticize the Department, its policies or employees either orally, in writing or through expression of any manner which could be considered:</p> <ul style="list-style-type: none"> <li>a. Defamatory;</li> </ul>

			<ul style="list-style-type: none"> <li>b. Obscene;</li> <li>c. Unlawful; or</li> </ul> <p>Has a negative impact on the operation of the Department by impairing its efficiency, interfering with the ability of supervisors to maintain discipline, or made with reckless disregard for truth.</p>
68		Divulging Confidential Information	<p>Employees shall not discuss the operations and official business of the Department which are of a confidential nature with anyone outside the Department without the permission of a superior.</p> <p>(For purposes of this section all Department documents and orders are to be considered confidential unless otherwise directed by a supervisor.) This section does not apply to orders that are of such a nature that they must be communicated to others.</p>
69		Gambling	<p>Employees shall not engage in any form of illegal gambling at any time, except in the performance of duty and while acting under proper and specific orders from a superior officer.</p>
70		Arrests, Search and Seizure	<p>Employees shall respect the constitutional and civil rights of all persons. Employees shall not knowingly make an unlawful arrest or conduct an unlawful search/seizure that is not in compliance with current Department policies and procedures.</p>
71		Improper Use of a City Computer	<p>Employees shall not intentionally access internet sites containing any sexually explicit materials, gambling or other inappropriate material using Department equipment for non-law enforcement purposes. Unintentional access shall be reported in accordance with Chapter 41 Internet Usage.</p>

72		Biased Based Policing and Conduct	<p>Bias-Based Profiling is the knowing and intentional interdiction, detention, arrest, or other treatment of an individual based inappropriately upon one's race, national origin, citizenship, religion, ethnicity, age, gender, economic status, or sexual orientation. Members of this department shall not consider race, national origin, citizenship, religion, ethnicity, age, gender, or sexual orientation as the primary reasons in determining whether individuals should be stopped, searched, or property seized.</p> <p>Employees shall not engage in offensive verbal or physical conduct directed against a co-worker, or any member of the public based upon race, color, national origin, sex, religion, handicap, age, lifestyle, or marital status. Employees are also forbidden from such conduct while off duty if such conduct adversely affects the employee's ability to perform his/her official duties.</p>
73		Fraternization	Supervisors are forbidden to date or pursue romantic or sexual relationships with employees whom they supervise directly. Such relationships often create compromising conflicts of interest, or the appearance of such conflicts. In addition, such a relationship may give rise to the perception by others that there is favoritism or bias in employment decisions affecting employees. Moreover, given the uneven balance of power within such relationships, consent by the staff member may be suspect and/or may be viewed by others, or at a later date by the staff member, as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, coercion or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work environment

Level 5 Rules			
Significant Misconduct			
Criminal involvement that can disqualify an officer from continued employment			
Actions of sustained moral turpitude			
Demonstrates serious lack of integrity, ethics, or character			
74		Aiding Fellow Officers	Sworn personnel shall take appropriate police action to aid a fellow officer exposed to danger or in a situation where danger might be impending.
75		Department Records/Stealing/Forging	Employees shall not steal, unlawfully alter, forge, or unlawfully tamper with any police Department record, report or citation. The removal of any record, card, report, letter, document, or other official file from the Department,

			except by process of law or as directed by the Chief of Police or a superior, is prohibited.
76		Fighting with Other Employees	Employees shall not engage in a physical altercation with another employee that does not involve a legal and justifiable use of force.
77		Exposure of Undercover Officer	Employees shall protect and not intentionally expose the identity or occupation of officers engaged in covert operations.
78		Tampering with Witnesses	Employees shall not interfere with the attendance or testimony of witnesses through coercion, bribery or other means.
79		Truthfulness	<p>No member shall knowingly make a false statement, report or document to any department supervisor or city official. Upon the order of the Chief, the Chief's designee, or a supervisory member, members shall truthfully answer all questions specifically directed and narrowly related to the scope of employment and operations of the Department which may be asked of them. Failure to provide true and accurate information and facts, or to truthfully answer all questions specifically directed and narrowly related to the scope of employment may result in termination.</p> <p>A. Employees shall answer all questions, respond to lawful orders and render material and relevant statements in an internal administrative investigation when such orders, questions and statements are directly related to their job responsibilities. Nothing in the section shall constitute authority to violate the Constitutional rights of any employee.</p>
80		Subversive Organizations	Employees shall not knowingly seek or hold membership or associate with any subversive organization, except when necessary, in the performance of duty and then only with the knowledge and consent of the Chief of Police.
81		Possession/Use of Alcohol	
		A.	Employees shall not appear for duty or be on duty while under the influence of intoxicants to any degree whatsoever, or with an odor of intoxicants upon their breath. Employees shall at no time purchase any type of alcoholic beverage while in uniform.
		B. Level 3	Employees shall not consume intoxicating beverages in public while off-duty to such an extent that would reflect discredit upon themselves or the New Bern Police Department.

		C.  Level 3	Employees suspected of drinking while on duty or reporting for duty intoxicated shall submit to a <u>chemical</u> analysis test. Such test may be used according to the rules set forth by the North Carolina Department of Human Resources.
82		Possession/Use of Controlled Substance	Employees shall not possess and/or use any controlled substance while on duty or while in uniform, except with the approval and guidance of a licensed physician and with the knowledge of a superior. At no time may an employee of the Department use or be under the influence of a controlled substance where such use or influence impairs or compromises the efficiency and integrity of the Department. Employees shall notify their immediate supervisor when they are taking prescribed medication that could impact their performance.
83		Workplace Harassment	Employees shall not either personally or sexually harass any employee of the New Bern Police Department.
		A. Level 3	Personal Harassment: Employees shall not either explicitly or implicitly ridicule, mock, deride or belittle any person.
		B.	Sexual Harassment: Sexual harassment is deliberate or repeated unsolicited verbal comments, gestures or physical contact of a sexual nature which are unwelcome. (Refer to City of New Bern Policy Handbook Sexual and Other Unlawful Harassment) A. Supervisors shall not use implicit or explicit coercive sexual behavior to control, influence or affect the career, salary or job of an employee. B. Employees shall not participate in any deliberate or repeated unsolicited verbal comments, gestures or physical contact of a sexual nature which are unwelcome and/or interfere with work productivity, or create an intimidating, hostile or offensive working environment.
84		Use of Physical Force  1) Unreasonable Use of Force  Level 3  2) Excessive Use of Force	The use of physical force shall be prohibited except to the extent reasonably necessary to accomplish a valid police objective.  When an officer has the authority to use force, however, exceeds the reasonable force needed, the actions of the officer may be deemed unreasonable. Unreasonable in this context will be evaluated based, in part, on the following. Force that does not cause additional injuries and/or the actions and outcomes of the officer are minimal in nature.  No officer or member shall use force that is not justified by law, policy or training and exceeds the unreasonable force provisions of this rule.

		<p>Level 4</p> <p>3) Deadly Force</p> <p>Level 5</p> <p>4) Intervention</p> <p>Level 4</p>	<p>Employees shall only use deadly force, and then in compliance with Federal law, State laws and Department policies, procedures, rules, and regulations.</p> <p>In situations where the force used by an officer appears to be unnecessary or excessive, the officer observing the incident has an affirmative responsibility to intervene. Any such intervention or failure to intervene will be reported to a supervisory member as soon as safe and practicable and investigated by the office of Internal Affairs.</p>
85		Insubordination	<p>The refusal of an employee to promptly obey any lawful order, written or verbal, from a ranking officer or supervisor is prohibited.</p> <p>Employees will obey all lawful orders from superiors, whether written or oral, except when compliance with such orders would require the commission of an illegal act. No employee without adequate justification will intentionally issue an order that is contrary to an order issued by a superior. Employees to whom conflicting orders are issued will call immediate attention to such conflict; however, if the conflict is not resolved, the last order will be obeyed.</p> <p>Any order may be countermanded in an emergency. An employee countermanding a prior order will immediately report the reason for his actions to the Chief of Police.</p> <p>Responsibility for all prudent and reasonable action necessary for compliance with orders will remain with the supervisor who issued the order.</p> <p>Accountability for all action taken in compliance with orders remains that of the person taking such action.</p>
86		Domestic Violence	Employees shall not commit, or <u>be</u> convicted of any violation of domestic violence laws as stated in North Carolina General Statute 50 B-1.
87		Theft and moral turpitude criminal violations	Notwithstanding Rule # 57 obedience to laws, no members will commit any crime of moral turpitude DUI or DWI, felonies, or other serious misdemeanors.

### **Guidelines**

	1 <sup>st</sup> offense	2 <sup>nd</sup> offense	3 <sup>rd</sup> offense	4 <sup>th</sup> offense	5 <sup>th</sup> offense
Level 1	Coaching and Counseling,	Written Warning,	Letter of Reprimand,	3-5 day suspension	5-7 day suspension



	Written Warning	Letter of Reprimand	1-3 day suspension	*Demotion	*Demotion
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	1 <sup>st</sup> offense	2 <sup>nd</sup> offense	3 <sup>rd</sup> offense	4 <sup>th</sup> offense	5 <sup>th</sup> offense
Level 2	Written Warning, Letter of Reprimand	Letter of Reprimand, 1-4 days suspension  *Demotion	3-7 days suspension  *Demotion	7-15 days suspension, Dismissal  *Demotion	Dismissal

		1 <sup>st</sup> offense	2 <sup>nd</sup> offense	3 <sup>rd</sup> offense	4 <sup>th</sup> offense
Level 3		Letter of Reprimand, 1 day suspension	3-7 days suspension  *Demotion	7-15 days suspension, Dismissal  *Demotion	Dismissal

			1 <sup>st</sup> offense	2 <sup>nd</sup> offense	3 <sup>rd</sup> offense
Level 4			1-7 days suspension  *Demotion	7-15 days suspension, Dismissal  *Demotion	Dismissal

				1 <sup>st</sup> offense	2 <sup>nd</sup> offense
Level 5				30 days suspension, Dismissal  *Demotion	Dismissal

### 26.2.2 Dismissal Procedures (CALEA 26.1.7)

The Chief of Police may recommend an employee's dismissal for **just cause**, in accordance with the City of New Bern Code of Ordinances, City Ordinance 5-346\_ and City Ordinance 5-5 to the City Manager. The following information must be contained in the supporting documentation:

- A. **A written statement citing the reason for dismissal.**

Such recommendation must be made in writing to the Human Resources Director and shall contain the reasons for such recommendation. If the City Manager approves of the recommended dismissal, the Chief of Police will notify the employee in writing of the outcome of the recommendation.

**B. The effective date of the dismissal**

A recommendation for dismissal to the Human Resources Director shall contain a proposed dismissal date. The dismissal date will be provided to the employee in writing as outlined in 26.2.1 (A).

**C. A statement of the status of fringe and retirement benefits after dismissal**

As per City of New Bern City Ordinance 54-81 when an employee separates, either voluntarily or involuntarily, from the city, the employee's last paycheck shall be forwarded to the Human Resources Department in order that an exit interview may be conducted and the employee's personnel file may be closed out.

**26.2.3 Procedure for Maintenance of Disciplinary Actions Files (CALEA 26.1.8)**

It should be the responsibility of the Professional Standards Lieutenant to maintain records and/or files pertaining to any documentation resulting from internal investigations in a secure area that is separate from the Department's central records system and personnel files. These files are to be maintained and stored in accordance with the Records Retention and Disposition Schedules.

**26.2.4 Complaint Investigation (CALEA 26.2.1)**

It is the policy of the Department to conduct appropriate investigations of all complaints, including anonymous complaints against the Department or its members. The goal of Internal Affairs is to ensure that the integrity of the New Bern Police Department is maintained through a system of internal discipline where objectivity, fairness and justice are assured by intensive, impartial investigations and review. The Department will investigate fully all verbal or written allegations of misconduct. Complaints may originate internally or from the public.

**26.2.5 Records, Maintenance and Security (CALEA 26.2.2)**

All complaints, whether internal or citizen complaints, shall be entered into the IA Pro or Blue Team tracking system. All complaint records shall be considered confidential with any physical documentation maintained in the Office of the Chief of Police. The employee designated to manage the Internal Affairs function will be responsible to maintain the confidentiality of all Internal Affairs investigations and records.

**26.2.6 CEO, Direct Accessibility (CALEA 26.2.3)**

The Internal Affairs function will be the responsibility of a person at the rank of sergeant or greater assigned by the Chief of Police. On matters involving internal investigations the incumbent will report directly to the Chief of Police.

**26.2.7 Complaint Registering Procedures (CALEA 26.2.4)**

The New Bern Police Department will make available to the public, information on procedures regarding the registering of commendations and complaints. Information will be available in a handout in the lobby of the police department and on the department webpage.

**26.2.8 Annual Summaries - Public Availability (CALEA 26.2.5)**

The confidentiality of internal affairs investigations in no way precludes reporting to the public statistical information on

the processing of all complaints and internal investigations that were received by the Internal Affairs function. Annually the Chief of Police will cause a review and have published a report of internal affairs investigations. Copies of this report will be made available to all members and the public upon request.

### **26.3.1 Complaint Types**

The New Bern Police Department is dedicated to developing policies and implementing programs and services that will establish a positive relationship between the citizens of the community and police in order to enhance the quality of life and provide a safer environment. It is the responsibility of every member in the Department to work toward improved community relations. When members learn of problems or concerns from the community impacting upon community relations, those problems and concerns not immediately corrected should be forwarded to the appropriate Division Captain through the Chain of Command.

### **26.3.2 CEO, Notification**

Documentation for all complaints will be submitted to the Chief of Police through the Chain of Command by use of the IA Pro or Blue Team tracking system. If it is necessary to obtain an arrest warrant for an employee, the Chief of Police will be notified without delay.

### **26.3.4 Informing Complainant**

#### **A. Verification of receipt that the complaint has been received for processing**

Upon receiving a complaint of misconduct upon an employee of the New Bern Police Department, the assigned investigator shall prepare a memo for the chief notifying the complainant that the complaint has been received for investigation.

#### **B. Periodic status reports (CALEA 26.3.3)**

If after receiving a complaint it appears that the complainant will not be contacted by the investigative authority for a period of time exceeding 45 days, the Office of the Chief of Police shall notify the complainant, in writing or by a documented phone call, of the receipt of their complaint, the estimated delay in processing, and an estimated date for completion.

If the investigation extends beyond the 45-day limit to complete, the investigator shall periodically notify the complainant of the status of the investigation and document the date and time the complainant was notified.

#### **C. Notification of the results of the investigation upon conclusion**

The investigating authority will prepare a letter of “completion” for the signature of the Chief of Police. The Office of the Chief of Police will send written notification to the complainant that a resolution of the investigation has been reached.

### **26.3.5 Statement of Allegations/Rights**

When employees are notified that they have become the subject of an investigation of a complaint, the investigator will issue the employee a written statement of the allegations and the employee’s rights and responsibilities relative to the investigation. In criminal investigations, the employee is afforded all of the constitutional rights given to any person who may be a suspect of a criminal investigation. As such, there shall be no action taken against an employee who exercises

their constitutional rights in criminal investigations.

In a complaint investigation an employee will be advised of their rights according to *Garrity v. New Jersey*, 385 US 493 (1967). All questioning in a complaint investigation shall be conducted at a reasonable time and manner; the investigator may take into consideration an employee's schedule and other work-related matters prior to setting up appointments, interviews, and conducting other investigative matters that require an employee to participate in an investigation. Those employees who are required to cooperate in an investigation, and are off duty, shall be compensated for their time.

An employee who is the subject of a complaint investigation does not have the right to have an attorney present while being questioned. An employee involved in a complaint investigation shall not discuss the investigation with others unless authorized by the investigative authority.