

105.7 Disciplinary and Discharge Procedures Ordinance

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SECTION I – ORGANIZATIONS AFFECTED; CONTRACT SUPERSEDES

This section applies to all Town of Berry employees unless an employment contract is in place between the Town and the employee, in which case the terms of the contract supersede any conflicting provisions contained below.

SECTION II – EMPLOYMENT AT-WILL

As a matter of policy, the Town does not generally enter into written or oral contracts or agreements guaranteeing employment or compensation for any particular period of time with any individual employees. No employee is authorized to make guarantees of employment or compensation. Employment with the Town is at-will; that is, employment may be terminated with or without cause and with or without notice at any time by the employee or by the Town unless as otherwise set forth in this Chapter. Nothing in this Chapter, any Town employee handbook, or any other document or statement shall limit the right to terminate employment at-will except for notice provisions as may be contained herein. No express or implied agreement to the contrary may be made unless it is made by the Town Board and only if the Town Board does so in a formal written agreement that is properly executed by both the Town Board and the employee.

SECTION III – CAUSES OF SUSPENSION, REDUCTION OR DISCHARGE

Unless governed by a separate contract, the following will be considered causes for discharge, suspension or reduction, although discharges, suspensions or reductions may be made for other causes.

An employee:

- A. Has been convicted of a criminal offense or of a misdemeanor involving moral turpitude; or,
- B. Has been guilty of an immoral or criminal act substantially related to the employee's functions for the town. However, if the employee is involved in a criminal proceeding before a grand jury or the courts at the time the charges are before the Town Board on hearing, the officer or employee may request that the hearing be postponed or continued until the criminal proceedings are terminated. This request shall be granted, provided the employee executes a waiver of all rights to pay during the period of adjournment. The

- employee may have the hearing or investigation proceed before the Town Board at any time on a ten (10) days notice in writing; or,
- C. Has willfully violated any of the provisions of this Section; or
 - D. Has violated any lawful and reasonable official regulation or order, or has failed to obey any lawful or reasonable direction made and/or given by the Town Board, or his superior officer, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline, or results, or might reasonably be expected to result, in loss or injury to the Town, or to the public; or,
 - E. Has been intoxicated or under the influence of drugs or alcohol while on duty; or,
 - F. Has contracted some infectious disease or has some physical ailment or defect which makes him or her unfit for Town service; or,
 - G. Is/has been offensive in his or her conduct or language toward the public or toward Town officers or employees; or,
 - H. Is incompetent or inefficient in the performance of the duties of his or her position; or,
 - I. Is careless or negligent of the property of the Town or uses such property in violation of any policy herein; or,
 - J. Possesses, distributes, sells, transfers, or uses illegal drugs or alcohol in the workplace, while on duty, or while operating Town-owned or leased vehicles or equipment; or,
 - K. Has been guilty of sexual or other unlawful harassment; or,
 - L. Without proper authority or permission, possesses dangerous or unauthorized materials, such as explosives or firearms, in the workplace; or,
 - M. Engages in excessive absenteeism, tardiness and/or any absence without notice; or, uses Town property for personal purposes without prior appropriate approval; or,
 - N. Disregards safety rules; or,
 - O. Creates or contributes to unsanitary conditions; or,
 - P. Engages in any other behavior that may be inappropriate and/or unnecessary that is not in the best interest of the Town, visitors, or fellow employees. All employees will treat each other and their property with respect. This includes but is not limited to customers and suppliers and their respective property; or,
 - Q. Has used or threatened to use, or attempted to use, personal political influence in securing promotion, leave of absence, transfer, change of grade, pay or character of work; or,
 - R. Has induced, or has attempted to induce an officer or employee in the service of the Town to commit an unlawful act or to act in violation of any lawful and reasonable departmental or official regulation or order; or has taken any fee, gift, or other valuable thing in violation of these policies in the course of his or her work or in connection with it, for his or her personal use from any citizen, when such fee, gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other citizens; or,
 - S. Has induced or attempted to induce any person, firm or corporation doing business with the Town to give employment to any relative of said Town officer or employee, or has induced or attempted to induce any person, firm or corporation as aforesaid to show any material favor or consideration of any kind to any relative of said Town officer or employee; or,
 - T. Has, with respect to political activities and management;

1. Neglected assigned duties and responsibilities or engaged in prohibited political activities.
 2. Promised or used influence to secure public employment, or any other benefit financed from public funds as a regard for political activity.
 3. Discriminated in favor of, or against, an officer, employee, or job applicant on account of his or her political contribution, permitted political activity, or neutrality.
- U. Or has violated any Town ethics policy or ordinance, or State ethics requirements for his/her position.

SECTION IV – EMPLOYMENT TERMINATION

As provided above, employment with the Town is based on mutual consent and is at-will employment. Both the employee and the Town have the right to terminate employment at will, with or without cause, at any time. The Town is not required to provide notice of termination, but the employee shall provide notice as required at Section (V), below. The Town reserves the right to take corrective action in the form of oral warnings, written warnings and suspensions in an attempt to correct inappropriate action or behavior prior to terminating an employee. However, the right to use corrective action does not limit in any way the Town's right to terminate an employee with or without cause, at any time with or without notice.

SECTION V – RESIGNATION

Resignation is a voluntary act initiated by the employee to terminate employment with the Town. The Town requests at least two (2) weeks written notice of resignation from all employees, except that supervisory employees are requested to give at least thirty (30) days written notice.

SECTION VI – MISCONDUCT – UNACCEPTABLE PERFORMANCE; PROCEDURE

- A. Form of Discipline. The continued employment of Town employees shall be contingent upon acceptable conduct, satisfactory job performance and compliance with the personnel rules and regulations. Non-compliance with such rules and regulations shall be cause for disciplinary action including reprimands, suspension without pay, or dismissal. The exact form of discipline shall depend on the seriousness of the offense committed. Whenever an employee violates any of the rules and regulations outlined in this policy document or in the entire personnel policies and handbook, the employee's supervisor shall begin disciplinary action in any of the steps listed below, depending on the seriousness of the offense committed.
1. Oral Reprimand Only. For very minor offenses, the employee may only need a verbal notice of improper behavior or violation. This type of minor reprimand requires no written follow-up statement, being very minor in nature and correctable.
 2. Oral Reprimand/Written Follow-Up. For minor offenses where follow up is required, the employee should be given a verbal warning and also a written statement of the oral warning should be placed in the employee's file. The employee shall acknowledge receipt of the warning by signing and dating the notice.
 3. Written Reprimand. When the seriousness of the offense committed is such that the warning should be in writing, it shall include the nature of the offense and extent of the warning. The employee shall acknowledge receipt of the warning by signing and dating the notice of written reprimand. A copy of the reprimand shall be placed in the

employee's file within twenty four (24) hours of the action taken. This step may only be exercised by the Chairperson.

4. Suspension. Any action on the part of any employee which is in violation of the orders of his/her supervisors or contrary to the policies or rules of his/her department or the Town, but not serious enough to warrant dismissal, may be disciplined by suspension without pay. Prior to suspension, the employee shall be given an opportunity to discuss the reason(s) being considered for his/her suspension in a meeting with the Chairperson. Employees who are exempt from the Fair Labor Standards Act may be suspended in increments of one week. During the suspension period, the suspended employee is not permitted in the Town work places unless prior permission is granted by the Chairperson. Immediately upon suspension of any Town employee, the Town Board shall be notified. This step may only be exercised by the Chairperson.
 5. Dismissal. The Chairperson may dismiss any subordinate employee for just cause, including those listed above. Prior to dismissal, the employee shall be given an opportunity to discuss the reason(s) being considered for his/her dismissal in a meeting with the Chairperson. The notice of dismissal shall be in writing and shall state the specific charges with such clarity and particularity that the employee will understand the charges made against him/her and will be able to answer them if he/she so desires.
- B. No Required Disciplinary Order; Who Disciplines. It should be emphasized again that it is not a requirement to go through all the steps in this disciplinary procedure as listed above. Discipline may begin at any step in the procedure depending on the seriousness of the offense committed. Any discipline administered should be commensurate with the offense committed. If there is any doubt with what step to begin, the Chairperson should be consulted. Direct supervisors of employees who are not the Chairperson may undertake the Oral Reprimand Only or Oral Reprimand/Written Follow-Up steps above and do not have authority to issue Written Reprimands, Suspend or Dismiss.
- C. Appeal of Disciplinary Action. Employees may appeal any disciplinary action following the Grievance Procedure set forth herein below.

SECTION VII – SCOPE OF GRIEVANCE PROCESS

No grievance or complaint shall be considered unless all steps set forth in this procedure are followed. If a grievance relates to discipline or discharge, the discipline or discharge will not be delayed pending resolution of the grievance, except by the Town Chairperson. It should be noted that the Chairperson also has an "open door" policy to informally attempt to resolve grievances rather than utilize the formal procedures included herein, and employees are encouraged to utilize this informal process prior to commencing the procedure outlined below.

- A. An Employee may file a Grievance to appeal the action or inaction of the Town with respect to:
 1. Discipline; or
 2. Termination; or
 3. Workplace safety.
- B. The purpose of a Grievance is to afford Employees the opportunity to present their side of a dispute concerning Discipline, Termination or Workplace safety. The Grievance may result in discipline being vacated, a termination rescinded or unsafe workplace conditions modified if the Grievant proves, in proceedings conducted under this ordinance, that the Employer's action was erroneous. An action is erroneous if it was based on facts proven

not to be true; if no reasonable person could have imposed Discipline or Termination on the basis of the facts proven to have existed at that time; or if the working conditions violate a Workplace Safety standard.

- C. Employees may not file Grievances, nor may relief be granted, which concern any other matter or subject, including but not limited to:
 - 1. Scheduling, shift selection, work assignments, changes in job duties, or other conditions of employment.
 - 2. Wages, benefits, expense reimbursement, or any other form of compensation.
 - 3. Employer actions or inactions with respect to any other Employee.
 - 4. Lay-offs or reductions in hours of the Employee.
 - 5. The manner in which work shall be performed, except insofar as it implicates workplace safety.
 - 6. Performance evaluations which do not impose discipline.
 - 7. Any matters not otherwise mentioned above.
 - 8. Any claim an Employee possesses under discrimination, wage and hour, prevailing wage or other protective labor legislation.
- D. Non-disclosure during Processing.
 - 1. In order to preserve the impartiality of the Town Board, the Grievance and its details should not be shared with the Town Board until it is resolved or in the course of an appeal to the Town Board. This provision shall not apply where the Town Board is the Employee's supervisor. Upon resolution of an informal Grievance or a Grievance appealed to the hearing officer, the Grievance and its resolution shall be shared with the Town Board.
 - 2. In order to allow free discussion of issues related to Employee performance, discipline and evaluation, the Grievance, the fact of its filing and the processing of the Grievance shall be confidential during the process from filing to resolution of the Grievance. The authority for withholding the Grievance and related information is that sec. 19.85 (1)(b) and (c), Wis. Stats., provides exceptions to the open meetings law allowing closed sessions for consideration of matters related to Employee discipline or termination or working conditions. These subsections are an expression of public policy which allows withholding this information during the Grievance process. Upon completion of the process, however, Grievance records may be open to public inspection and copying unless another rule of law applies.
- E. **The Town Board shall be the sole and final determiner of whether a subject contained in a Grievance is within the scope of the Grievance procedure.**

SECTION VIII – GRIEVANCE PROCEDURE

- A. Any grievance or complaint must be made in writing to the Chairperson specifically stating the complaint and the relief sought. Upon receipt of the grievance or complaint, the Chairperson shall make an independent investigation of the facts of the situation, interviewing the grievant, the supervisor, and any other persons the Chairperson deems appropriate, and making any other inquiries and conducting any research the Chairperson deems necessary
- B. The Town shall make a Grievance Form available to Employees. All Grievances must be filed using the written Form before the Grievance will be processed. The Grievance Form shall include a verification section under which the Grievant swears under oath that the

allegations in the Grievance are true. The Grievance shall identify the facts which support the Grievance, and indicate which persons have personal knowledge of the facts alleged. The Grievance shall state the specific relief the Grievant requests. If a Grievance concerns workplace safety, the Grievance shall identify the specific safety issue and standard involved.

- C. Time to File. Grievances arising from specific events must be presented within ten (10) calendar days of the event. The time to file a Grievance is counted from the day after the date on which the employee receives actual notice of a disciplinary action, and is not extended by the continuation of an alleged violation. If a Grievance is filed by mail, three (3) Days shall be added to the filing deadline. Any complaint which is not timely filed as a Grievance is barred. The time to file a Grievance may not be extended except by mutual written agreement of the Town of Berry and the Town employee.
- D. Personal Nature of Grievances. Preparation of and pursuing a Grievance is for the personal benefit of an Employee, and is not part of the details or conditions of employment. Accordingly, all time an Employee spends in preparing and processing a Grievance shall not be compensated as work hours, nor may and employer resources (including other Employees' time and expertise) be used to prepare or process a Grievance.
- E. Where to File. A Grievance shall be filed with the Town Chairperson and the Town Clerk. If the Grievance involves the Town Clerk, the Grievance shall be delivered to the Town Chairperson or, in the case of a terminated Employee, by mail. Email and fax filings are not acceptable.
- F. Informal Handling. When a Grievance has been filed, the Grievant and the supervisor shall meet within two (2) business Days to discuss the Grievance and attempt to conciliate the matter. No statements or discussions made during the informal conference are binding admissions or evidence in later proceedings. If a resolution is reached, however, the resolution shall be placed in writing and signed by both parties. Matters where an Employee is terminated are not required to go through an informal conference
- G. Appeal to Hearing Officer.
 - 1. If an Employee is dissatisfied with the results of Informal handling, the Employee may present the Grievance to a Hearing Officer by filing an appeal with the Town Clerk within seven (7) business days of the conclusion of the informal handling process. An appeal not timely filed is barred.
 - 2. The Hearing Officer shall be an attorney familiar with town governance. The Hearing Officer may not be an Employee of the Town or have any disqualifying conflict of interest with the Grievant, the Town Chairperson or any Town Board member.
 - 3. The Hearing Officer shall schedule and conduct the Grievance hearing within thirty (30) days after filing appeal. The Hearing Officer shall act within seventy two (72) hours after receipt of on any application to temporarily suspend, pending appeal, disciplinary action.
- H. The hearing shall be conducted as follows:
 - 1. The Grievant shall present evidence and argument in support of the Grievance. The Grievant shall explain the facts of his/her Grievance. The Grievant shall provide evidence under oath. The Grievant may present documentary evidence. The Grievant also may present oral statements by witnesses who have personal knowledge of relevant facts, but such statements shall be provided under oath and in person.

2. The Town Chairperson may present evidence in response, under oath. The Chairperson may present documentary evidence. The supervisor or manager also may present oral statement by witnesses who have personal knowledge of relevant facts, but such statements shall be provided under oath and in person.
3. The Grievant may present additional information which rebuts evidence produced by the Chairperson. Rebuttal evidence is limited to information responding to the material presented by the Chairperson and may not raise new issues, facts or arguments.
4. The Grievant and the Chairperson may be allowed to summarize their positions.
5. The rules of evidence which apply to courts do not apply in Grievance hearings, but the presiding officer shall not allow receipt of evidence which is uncorroborated hearsay, immaterial or repetitive. If evidence is sensational, emotional, or lurid and has little probative value, it may be excluded. The Hearing Officer may limit the time allotted to the parties based on the nature of the Grievance presented, and may curtail or cut off presentations that are immaterial or repetitive.
6. The Grievant shall have the burden of proof on all Grievances. The action or omissions by the Employer, supervisor or manager shall be presumed to be valid. In all matters involving judgment or discretion of the supervisor, the Hearing Officer shall not substitute his or her opinion or judgment, but shall sustain the action or omission of the Employer, supervisor or manager if they find that a reasonable supervisor might have made the decision under the circumstances.

I. Standard of Decision.

1. The decision of the supervisor or manager shall be upheld unless the Grievant establishes by clear and convincing evidence that the supervisor or manager's actions were in violation of the Employer's rules or standards, or an applicable workplace safety standard. The decision, action or omission of the supervisor or manager may not be modified, but shall be affirmed or vacated.
2. The relief to be afforded shall be limited to the least possible action necessary to uphold the rule or standard which was violated, and shall be no more than requested by the written Grievance.
3. No Requirement of Consistency or Waiver From Inaction. The Employer's rules are neither invalidated nor subject to question on the basis that they may have been enforced selectively, inconsistently, sporadically or arbitrarily. A rule or standard is not waived and remains enforceable despite its non-enforcement or inconsistent enforcement.
4. Even in the absence of a specific rule or standard, the action, omission or decision of a supervisor or manager shall be affirmed if the action, omission or decision comports with efficient administration of the Town and the policies expressed in the Town Personnel and Policy Manual.
5. The decision shall be based solely to the facts of the individual Grievance and the applicable rules and performance standards.

J. Rules of Decision. In determining Grievances, the Hearing officer and Town Board shall not apply, rely upon or consider:

1. The Seven Standards of just cause or just progressive discipline, as developed by Elkouri and Elkouri, or any other "just cause" or "just progressive discipline" standard;
2. Decisions of the Wisconsin Employment Relations Commission or its staff members;
3. Arbitration decisions, decisions of administrative agencies, courts or other sources of workplace jurisprudence.

4. Any decision based on authority other than the Employer's rules and standards is void and may be vacated by the Town Board.
5. Prior decisions on grievances. No Grievance decision has any precedential effect. The Town is free to modify or repeal any policy after a Grievance decision, even if the effect of the Town's action is to overturn the Grievance decision.
- K. This Ordinance does not create, nor does the procedure hereunder allow for, the grant, denial, suspension, non-renewal or revocation, of any right, privilege or thing of value which the meaning of sec. 68.02, Wis. Stats.
- L. The Grievance hearing shall be recorded using audio recording equipment, which shall be the official record of the proceedings.
- M. The Hearing Officer may deliver his decision at the close of proceedings but shall file a written decision with the Clerk, with a copy to the employee making the grievance, within seven (7) days of the close of the hearing.
- N. Costs and Expenses. The Grievant shall pay her or his own expenses and costs of presenting the Grievance. The Town shall pay its own expenses and costs. The Grievant and the Town shall each be responsible for one-half of the fees and costs of the Hearing Officer. Each Party shall pay its share of the Hearing officer's fees and costs in advance. If pre-payment of at least \$250 for the Hearing Officer fees is not made within the time allowed for an appeal, the Grievance shall be closed and may not be reopened.

SECTION IX – BOARD HEARINGS ON GRIEVANCES

A. Appeal to Board.

1. Employee appeal. If the Hearing Officer denies a Grievance, the Employee may appeal the Hearing Officer's decision to the Town Board. An appeal must be filed in writing within a seven (7) days of the date the decision is issued, ten (10) days if the decision is mailed to the grievant, or is barred.
 2. If the Hearing Officer sustains a Grievance, the Employee supervisor who imposed the discipline or termination, or who was responsible for the workplace safety issue, may appeal the matter to the Town Board by filing a written appeal within seven (7) days of the date the decision is issued, ten (10) days if the decision is mailed to the supervisor.
 3. If the Town Chairperson has participated in the contested Grievance proceedings, the Chairperson shall be recused from adjudicating the appeal.
 4. The Town Board shall provide the Grievant with at least ten (10) days' written notice of the time and date of the hearing. The Record shall be available to parties and provided to the Board at least ten (10) days prior to the scheduled hearing on the appeal.
 5. The record before the Town Board shall include the original grievance, a written transcript of the audio tape of the proceeding before the Hearing Officer, the findings and recommendations of the Hearing Officer, all prior submissions of parties, and any documentary or physical evidence submitted to the Hearing Officer. Prior to the meeting, the parties may supplement the record with additional written argument. The record shall be open for inspection by the grievant and the Town Chairperson during normal Town business hours. The record of the case shall be a part of the grievant's and supervisor's personnel files and shall be treated as personnel records for purposes of Ch.19, Wis. Stats, (the Public Records Law).
- B. The Board shall review such appeal at its next regularly scheduled meeting being held at least fifteen (15) days after the appeal is filed with the Town Clerk. No further evidence or

argument shall be taken by the Board, which shall make its decision solely on the record created and considered by the Hearing Officer and the written argument of parties.

- C. The Board shall apply the same Standards and Rules of Decision as are forth above for the Grievance Hearing Officer.
- D. If the Board deadlocks on the matter, the recommendation of the Hearing Officer shall be affirmed.
- E. The Board may deliver its decision at the close of proceedings, but shall file a written decision with the Town Clerk, with a copy to the employee and/or supervisor making the grievance, within seven (7) days of the close of the Appeal Hearing.

SECTION X – PERSONNEL FILES

A personnel file shall be maintained for each Town employee. Employees may access their personnel records pursuant to the process set forth by State law.

SECTION XI – EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the day after passage and publication as required by law.

Dated this 22nd day of January, 2018

Posted: January 23, 2018

Brenda Kahl, Clerk/Treasurer
Jeff Davis, Supervisor
Joe Kruchten, Supervisor

Anthony Varda, Chairperson
Michael Statz, Supervisor
Duane Haag, Supervisor