

City of _____

POLICE AND FIRE COMMISSION

By-Laws and Rules of Procedure

ARTICLE 1: MISSION AND JURISDICTION	1
1.1 Mission.....	1
1.2 Jurisdiction	1
1.3 Scope of Rules	1
ARTICLE 2: EMPLOYMENT QUALIFICATIONS AND ELIGIBILITY	1
2.1 Qualifications of the Chief.....	1
2.2 Qualification for Subordinate Positions	2
2.3 Conviction Record History	2
2.4 Job Description Criteria	2
2.5 Qualifications for Limited Term or Part-Time Police Officers	2
ARTICLE 3: RECRUITMENT, TESTING AND HIRING	2
3.1 Chiefs	2
3.2 Subordinates	2
3.3 General Processes for All Positions	2
3.4 Hiring Process for Entry Level Subordinates	5
3.5 Certified List	8
3.6 Medical Examination	8
3.7 Psychological and Personality Testing.....	8
ARTICLE 4: PROMOTIONS AND TRANSFERS WITHIN THE DEPARTMENT	8
4.1 Promotions.....	8
4.2 Transfer.....	9
543 Acting Chief or Supervisory Officers.....	9
ARTICLE 5: PROBATIONARY PERIOD.....	10
4.1 Probation	10
ARTICLE 6: DISCIPLINE, SUSPENSION, REDUCTION OR DEMOTION	10
6.1 Suspension or Discharge of the Police or Fire Chief.....	10
6.2 Discipline, Demotion, Suspension and Termination of Subordinates	111

ARTICLE 7: HEARING PROCEDURE FOR COMMISSION DELIBERATIONS ON DISCIPLINE, SUSPENSION, DEMOTION OR CHARGES	11
7.1 Filing Charges and Preliminary Meeting.....	11
7.2 Scheduling Conference.....	12
7.3 Hearing on Charges	144
7.4 Administrative Matters.....	166
7.5 Hearing Examiner.....	166
ARTICLE 8: LAYOFFS AND REEMPLOYMENT.....	177
8.1 Layoffs.....	177
8.2 Reemployment.....	177
ARTICLE 9: COMMISSION ADMINISTRATION	177
9.01 Meetings.....	177
9.2 Officers.....	177
9.3 Special Meetings	177
9.4 Quorum	177
9.5 Order of Business.....	188
9.6 Commission Chair Duties	188
9.7 Vice Chair Duties.....	188
9.8 Commission Secretary Duties	188
ARTICLE 10: CONSTRUCTION OF BY-LAWS	199
10.1 Federal or State Law	199
10.2 Repeal of Rules	199
10.3 Severability	199

ARTICLE 1: MISSION AND JURISDICTION

1.1 Mission. The mission of the City of _____ Police and Fire Commission (“Commission”) shall be to provide citizen oversight of the Police and Fire Departments (“Departments”), Chief of Police and Fire Chief (“Chief”), and other sworn law enforcement officers and firefighters (“subordinates”) so that the Departments may protect and assist the people of the City of _____.

1.2 Jurisdiction. The Commission shall have the authority vested in it by Wis. Stat. §62.13 and Chapter 164 of the Wisconsin Statutes. These include the power to:

- a. Appoint the Chief and exercise the power to suspend or remove the Chief for cause;
- b. Approve the Chief’s appointment of “subordinates”;
- c. Adopt rules of procedure for selection of subordinates, including their qualifications, provide for the competitive examination of applicants for subordinate positions; and establish certification lists of applicants for subordinate positions;
- d. Review and act on charges filed with the Commission Chair pursuant to Wis. Stat. § 62.13(5);
- e. Supervise reductions in the Departments in the event it is necessary to reduce the number of subordinates;
- f. Schedule a date, time, and place for its meetings subject to Wisconsin’s Open Meeting Law requirements; and
- g. Exercise other powers conferred upon the Commission by the Wisconsin Statutes or the City Ordinances.

1.3 Scope of Rules. These rules apply to the Chiefs and subordinates. Use of the words “Department,” “Chief,” and “subordinate” shall refer to both the police and fire departments, the police and fire chiefs, and sworn police officers and fire department employees engaged in fire suppression activities unless otherwise specified. The statutory Chair of the Commission shall be referred to in these By-laws as the “Chair.”

ARTICLE 2: EMPLOYMENT QUALIFICATIONS AND ELIGIBILITY

2.1 Qualifications of the Chiefs. The Commission may appoint as Fire and Police Chief (Chiefs) a suitable person who need not be a member of the Department or a resident of the City. The Commission shall adopt a Job Description for the Chief. The Police Chief must establish residency within a fifteen (15) mile radius of the City’s jurisdictional limits within twelve (12) months of appointment. The Fire Chief must establish residency within the Fire Department’s service territory within twelve (12) months of appointment.

2.2 Qualifications for Subordinate Positions. The qualifications for subordinate positions shall be set forth in the Job Descriptions for each position. Before an individual may be appointed as an entry level subordinate or promoted to a higher subordinate position, the individual must meet the minimum qualifications for the position as set forth in the job description for that position. Subordinates must establish residency within a thirty (30) mile radius of the City's jurisdictional limits within six months of completion of probation unless otherwise proscribed in an applicable collective bargaining agreement. The Commission may waive or extend the time for compliance with the residency requirement on a case-by-case basis consistent with law and any collective bargaining agreement.

2.3 Conviction Record History. An applicant shall not be subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the protective service position. An applicant shall not have been convicted of any felony, misdemeanor, or other offense the circumstance of which substantially relate to the circumstances of the applicant's position.

2.4 Job Description Criteria. Each police subordinate must meet the minimum criteria established by Wis. Stat. § 165.85, the Wisconsin Administrative Code Chapter LES 2, and the Law Enforcement Standards Board. Each subordinate must be able to perform the essential functions of the position with or without a reasonable accommodation. Each fire subordinate must complete the Entry Level and Firefighter I Training of the Wisconsin Vocational, Technical and Adult Education within the probationary period.

2.6 Qualifications for Limited Term and Part-Time Police Officers.

The Department may, from time to time, employ individuals a subordinate on a limited term or part-time basis provided the Commission has authorized the position; the City has appropriated funds for it; the subordinate meets all minimum qualifications to be a subordinate and the subordinate is not offered regular full-time work in the Department. A "part-time" officer is one who is regularly scheduled less than "full-time" as determined by City contracts, policy and/or ordinance.

ARTICLE 3: RECRUITMENT, TESTING AND HIRING

3.1 Chiefs. The Commission shall appoint the Chiefs, who shall hold office during good behavior, subject to suspension or removal by the Commission for cause. The Commission shall, prior to commencement of recruitment, adopt a specific recruitment and examination procedure designed to assure the most qualified candidate is selected as Chief.

3.2 Subordinates. The Chiefs shall appoint all subordinates using the selection and promotion procedures in these By-Laws, subject to the Commission's approval.

3.3 General Processes for All Positions.

The following processes apply to the hiring of all positions within the Commission's

jurisdiction. The Commission may forego or modify any of the examinations set forth in these By-laws whenever it determines such is in the best interest of the Department.

a. Application. For Police Department hiring, the Commission may utilize the Department of Justice form application (DJ-LE-330) or a form approved by the Commission. Notice of the time and place for the issuance of such forms shall be by any means that the Commission may direct. For Fire Department hiring, the Commission may utilize the City of _____'s employment application or a form approved by the Commission. The Chiefs may waive this requirement with respect to promotions.

Applicants will be required to submit copies of the appropriate degrees or certifications for verification upon request.

Applicants will also be required to submit with the application a signed release authorizing the Department to conduct a background investigation.

b. Equal Opportunity Policy. The Commission will hire the most qualified applicant for a vacancy regardless of sex, race, religion, creed, color, national origin, age, disability, sexual orientation, ancestry, marital status, arrest or conviction record, military service, or any other legally protected status.

c. Misrepresentation. Misrepresentation of any material fact contained in the application shall be sufficient cause for excluding the applicant from the examination process, removing the applicant's name from the eligible list or discharging the employee.

d. Insufficient Application. If an application reveals that the applicant cannot meet the eligibility requirements or the qualifications of the position, that application shall be rejected by the Commission or its designee, without further examination.

e. Terminated Employees. Any person dismissed from the Department for performance issues or misconduct shall be ineligible to make application for appointment to any position in the Department for period of three (3) years from dismissal.

f. Re-entry Applications. Any former Department employee who desires to re-apply shall undergo such examinations as determined by the Commission, except as provided in § 3.3(e).

g. Delegation. The Commission may authorize other public or private agencies to conduct the written examination and provide a certified list of those applicants successfully completing the examination.

h. Position Description. The Commission shall approve position descriptions for every subordinate position. The description shall include the position title or classification; a brief description of the position; the basic or minimum qualifications

to be considered for employment in the position; the level or type of supervision received by the subordinate; who the subordinate is responsible to; the type or level of independent judgment used by the subordinate when performing tasks; the essential functions performed by the subordinate in the position; other duties that may not be essential but are typically undertaken by the subordinate in the position; basic abilities and knowledge the subordinate will need to perform adequately in the position; the type of equipment used by the subordinate; the location and environment in which the job is usually undertaken; any special environmental or physical requirement the subordinate may encounter. All position descriptions shall be reviewed and, as necessary, revised regularly.

i. Eligibility for Examination. Examinations shall be open only to those persons who are eligible for appointment and who possess the requisite qualifications in conformity with the provisions of these By-laws. Each application shall be screened for completeness. Those applications meeting the minimum requirements shall be forwarded for examination. The Commission may return an application to an applicant for correction or completing.

j. Examination Protocol. All examinations shall be carried on under the Commission's supervision. The Commission may designate any suitable municipality, state agency or person to conduct or assist in conducting the examinations. The Commission may use the assistance of the Department including the Chief, the City Administrator, outside consultants, and citizens, as appropriate, in carrying out the Commission duties, provided that the final selection of a Chief, and the creation of a Certified List is approved by the Commission.

All examinations shall comply with the following protocol:

1. The examination shall be an assessment process that fairly tests the capacity of the applicants to successfully perform the duties of the position;
2. Any applicant who fails to pass a pass/fail examination shall be removed from the process at that point and denied the opportunity to participate in further examinations;
3. Each stage of the examination process shall be administered the same for all applicants eligible for that stage, except for those applicants who are provided with a reasonable accommodation in the examination process as a result of a disability;
4. The Commission shall establish the criteria used to assess whether applicants pass an examination prior to the examination;
5. Reasonable accommodations shall be made for an applicant with a disability under federal or state law for any examination. Application forms shall advise applicants of this right;
6. Each applicant taking an examination shall follow the instructions given by the person conducting the examination; and

7. Information relative to applicants' scores shall be strictly confidential and shall not be divulged, except insofar as disclosure is required by law, necessary to determine those applicants eligible for additional testing, is permitted by these By-laws, or, if deemed necessary by the Commission, for a purpose related to administration of the selection process.

8. Applicants, Commission members, or Department employees shall not give any material assistance to any applicant in any manner during the examination process. A violation of this rule shall subject each applicant involved to exclusion from the examination. Any Commission member or Department employee who violates this rule shall be subject to appropriate sanctions.

9. No applicant shall be given a second or special competitive test in connection with any examination held, unless it is shown to the Commission's satisfaction that the applicant's failure to take or complete the test was due to a manifest error or mistake for which the Commission or its designated assistants are responsible. The Commission may, in the interest of fairness, void the examination and re-test all applicants.

10. The Commission shall apply the appropriate veteran's preference points as provided by Wis. Stat. § 62.13(4)(d) and § 230.16(7).

11. Documents generated during the examinations shall be retained by the Commission or its designated representative for seven years after the expiration of the eligibility list for which the examination was held.

12. A candidate for employment previously rejected by a medical examiner shall not take the examinations provided for in these rules until a certificate from a medical examiner shows that the cause for rejection has been corrected or that some reasonable accommodation of the condition has become available.

3.4 Hiring Process for Entry-Level Subordinates.

3.41. The Chief shall secure approval from the Commission prior to taking steps to fill a vacancy for a full-time entry-level subordinates or volunteer firefighters. The Commission shall also approve a job description for a vacancy or a newly created position authorized to be filled.

3.42. A Department vacancy or opening shall be filled by an open recruitment, unless otherwise approved by the Commission.

3.43. The Chief shall announce the Department's intent to fill a vacancy or opening by posting or advertising such opening for a period of not less than ten (10) calendar days, unless otherwise determined by the Commission, on WILENET, the City website and/or any other medium determined appropriate by the Chief for which funds are available for such advertising.

The job posting shall contain at least the following information:

- a. Title of the position;
- b. Hourly wage or salary;
- c. Concise description of job duties;
- d. Education, training, and work experience required;
- e. Where to obtain, the closing date for applications and where to file; and,
- f. An Equal Opportunity statement.

3.44 Applicants for the position shall apply for an announced vacancy or open position on an application conforming to Section 3.3(a) which will at a minimum seek disclosure of such information as will inform the Chief that the applicant possesses the minimum qualifications for the announced position.

3.45. Applications shall be filed as directed on the application materials no later than the time set forth in the job announcement.

3.46. The application will be reviewed to determine whether all applications have been timely submitted by the deadline established in the job announcement, whether each application has been completely filled out pursuant to the application's instructions, and whether the applicant meets the minimum qualifications for the announced position. Applicants who did not fill out the application appropriately or who do not meet the minimum qualifications for the announced position shall be removed from the process and the Chief shall send them a letter informing them of their status.

3.47. No person shall be eligible for appointment as a subordinate unless that person has been examined pursuant to the requirements of this section. The Commission shall hold or authorize the holding of examinations for appointment as subordinate, and shall fix the date, place, and conditions whenever necessary to meet the needs of the Department.

3.48 The examination shall be a multi-stage assessment process that fairly tests the capacity of the applicants to successfully perform the positions they seek. The examination may consist of the following stages to be determined by the Commission prior to the commencement of the hiring process, including the order of each stage. Any applicant who fails to pass any examination shall be removed from the process at that point and denied the opportunity to participate in further examinations.

a. Written examination. Police applicants may be tested using a suitable written law enforcement recruitment exam such as the standard promotional test or some similar, validated, instrument. The Commission shall establish a passing score prior to commencement of recruitment. Fire applicants may be tested using a test approved by the Commission and the Commission shall establish a passing score prior to commencement of recruitment.

b. Oral Examination. Applicants shall undergo an oral examination to

evaluate the applicant's demeanor, character, personality, communication skills and ability of an entry-level subordinate. The Commission will determine the composition of the oral examination panel. The following criteria will be applied to all oral examination:

1. All applicants shall be asked the same questions other than follow-up questions;
2. Questions shall be work-related and designed to measure job knowledge, experience, and education and to solicit responses that reflect personal qualities that are work-related;
3. Questions shall be designed so as to not lead to the disclosure by an applicant of any protected status (e.g., age or disability);
4. The interview panel will be provided in advance with a copy of the position description, application materials for each applicant, and interview questions;
5. The same interview panel will interview all applicants interviewed for the posted position;
6. The interview panel will independently rank the applicants at the conclusion of the interviews and develop an average ranking for submission to the Chief and Commission. The method of ranking will be determined by the Commission prior to the recruitment process; and
7. The Chief may sit in on the interviews but shall not participate in them.
8. The Chief may conduct a personal interview with applicants prior to certification by the Commission and/or commencement of a character investigation.

c. Character Investigation. A character investigation shall be conducted to determine whether the applicant possesses any disqualifying criminal record or specific disqualifying personal history, all of which shall relate specifically to qualifications of the position involved. For police subordinates, "good character" shall be determined from a written report containing the information required by the Department of Justice. This investigation can take place following the creation of a certification list by the Commission provided any offer of employment be conditioned upon an acceptable character investigation.

d. Other examinations as deemed warranted by the Chiefs and approved by the Commission in the case of individual position selections, including physical strength and agility, provided, however, that the determination of which examinations are to be required is made prior to commencement of recruitment and is applied to all applicants for a position.

3.5 Certified List.

a. The Chief may only appoint an entry-level subordinate from a list of applicants who have completed the examinations and have been certified by the Commission as eligible for appointment for that examination process.

b. Upon the conclusion of examinations, the Commission shall review the results of those examinations according to the criteria established prior to the commencement of those examinations and prepare and certify a list that contains the names of applicants who have passed all necessary examinations and are eligible to be appointed if they successfully pass the character investigation and the medical and psychological examinations.

c. The Chief may conduct a personal interview with the certified applicants. The Chief may extend a conditional offer of employment as an entry-level subordinate to any of one the certified applicants. The offer shall be conditioned upon the applicant's satisfactory completion of a medical and psychological examination and the character investigation. The Chief does not need to secure further Commission approval to extend an offer of employment to a certified applicant.

d. The certified list will expire twelve (12) months from the date of certification.

3.6 Medical Examination. Every person to whom a conditional offer of employment has been made pursuant to Section 3.5 shall be examined by a physician licensed to practice medicine in Wisconsin or other Wisconsin licensed medical professional approved by the Commission. The applicant shall complete a personal medical history, a copy of which is to be submitted to the examining medical professional.. The examination shall be solely for the purpose of verifying that the candidate can meet the essential occupational requirements of the position, and to address those physical and health requirements that relate to the occupational qualifications for the position involved, or the nature of reasonable accommodations required to enable the applicant to meet these qualifications.

3.7 Psychological and Personality Testing. Upon successful completion of the medical examination, an applicant for a police department position and the Fire Chief who has received a conditional offer of employment shall undergo a psychological evaluation and personality inventory by a psychiatric social worker, psychologist, psychiatrist, or such other person designated by the Commission who has sufficient psychological expertise for the purpose of testing the applicant's psychological fitness for duty. The results of the exam will be maintained in a segregated, confidential, Department medical file.

ARTICLE 4: PROMOTIONS AND TRANSFERS WITHIN THE DEPARTMENT

4.1 Promotions.

a. The Chief may promote a subordinate in the Chief's discretion or through the hiring process set forth in Article 3 to establish an eligible list approved by the Commission.

This Article does not apply to the position of Chief, which shall be open to qualified candidates from both inside and outside the Department.

b. The Chief shall initially determine whether to promote in the Chief's discretion without examination. If the Chief selects that option, the promotion must be approved by the Commission.

c. If the Chief determines to promote with examination, the promotional process shall be as follows:

- i. The Commission shall determine at the beginning of each promotional process the number of internal applicants who can potentially be certified for promotion to determine whether the position should be filled internally or should be extended to include external applicants.
- ii. Consistent with the established position description for a vacant position, specific criteria for promotional eligibility will be established by the Commission prior to the beginning of the selection process.
- iii. Notice of the promotional opportunity and the scheduling of promotional examinations shall be authorized by the Commission. Appropriate notice to subordinates of the promotional opportunity shall be posted on the Department bulletin board by the Chief. The notice of the promotional opportunity shall be posted at the time the requirements are posted. That posting will be at least ten days prior to the beginning of the process.
- iv. All qualified subordinates desiring to compete shall apply using a written application for promotion developed by the Commission.
- v. The promotion examination shall consist of an appropriate examination in accordance with Article 3.

4.2 Transfer.

a. Movement of a subordinate from one position to another within the same pay scale is a transfer. The Chief may transfer a subordinate without Commission approval provided the transfer does not violate any collective bargaining agreement.

b. Transfers may be made with or without the consent of the personnel involved.

c. The Chief will advise the Commission of all transfers at the next regular Commission meeting. Transfers are not to be considered appointments.

4.3 Acting Chief or Supervisory Officers.

a. The Commission may appoint a subordinate officer as a temporary acting Chief in the event the Chief retires, resigns, or is temporarily unable to fulfill the Chief's duties.

b. The Chief, only after receiving Commission approval, may appoint a subordinate officer as a temporary acting supervisory officer if one of those supervisory officers retires, resigns, or is temporarily unable to fulfill their duties.

c. Temporary acting appointments under this subsection shall be for a period not to exceed six months, except that the Commission, in its discretion, may extend the temporary acting appointment for an additional three-month period(s), or to a date or event certain within an additional three-month period.

ARTICLE 5: PROBATIONARY PERIOD

5.1 Probation.

a. All appointees, except the Chief, shall serve a probationary period. Police Lieutenants shall serve a six (6) month probationary period from the date of appointment. Police subordinates shall serve a probationary period consistent with the applicable collective bargaining agreement. Firefighters shall serve a twelve (12) month probationary period from the date of hire. When on probation:

1. The subordinate has no expectation of continued employment, nor any contractual or other vested property right in employment;

2. The subordinate may be terminated at any time for any reason in the sole discretion of the Chief;

3. The subordinate is not entitled to any showing of cause for termination; and

4. The subordinate is not accorded any formal hearing rights of any kind other than those that are necessary to meet constitutional requirements or those specified in Chapter 164 of the Wisconsin Statutes.

b. If during the probationary period, the appointed subordinate proves unsatisfactory in the position, the Chief may terminate the subordinate's employment. Promoted probationary subordinates may be terminated or demoted consistent with Wis. Stat. §62.13(5).

c. A dismissed or demoted probationary subordinate is not entitled to an appeal to the Commission, a grievance hearing, or a hearing pursuant to Wis. Stat. §62.13(5) except as permitted by the applicable collective bargaining agreement or law.

d. The Chief may extend the probationary period in the Chief's discretion and consistent with any applicable collective bargaining agreement, however, the period may not be extended beyond twenty-four (24) months without Commission approval.

ARTICLE 6: DISCIPLINE, SUSPENSION, REDUCTION OR DEMOTION

6.1 Suspension or Discharge of the Chiefs.

a. Investigatory Suspension. The Commission may suspend the Chief upon its own initiative or pending the investigation of written charges made by a citizen that have been filed with the Commission. The suspension shall be with pay and benefits and shall be for the shortest reasonable duration within which the charges may be investigated and resolved.

b. The Commission may suspend, demote, suspend, and demote or terminate the Chief for cause shown pursuant to the filing of charges pursuant to Wis. Stat. §62.13(5).

c. The Chief shall be notified in writing of the filed charges filed and the hearing on such charges shall be as set forth in Article 7 to the extent they apply to the Chief.

6.2 Discipline, Demotion, Suspension and Termination of Subordinates

a. The Chief may discipline a subordinate subject to the terms of any applicable collective bargaining agreement. The Commission may review any disciplinary action taken or approved by the Chief if the disciplined subordinate request such a review.

b. The Chief may suspend a subordinate and must report such suspension to the Commission Chair who must confidentially advise the remaining Commissioners. A suspended subordinate may request in writing that the Chief file charges with the Commission to support such suspension and upon receipt of such request, the Chief must file those charges within seven (7) calendar days.

c. The Commission may order the suspension, demotion, or termination of a subordinate for just cause pursuant to the filing of charges against the subordinate under Wis. Stat. §62.13(5).

ARTICLE 7: HEARING PROCEDURE FOR COMMISSION DELIBERATIONS ON DISCIPLINE, SUSPENSION, DEMOTION OR CHARGES

7.1 Filing Charges and Preliminary Meeting.

a. Filing Charges

The Chief, a Commission member, the Commission, or any aggrieved person may file charges against the Chief and/or a subordinate officer and shall be notified of this right upon making a complaint. No offer of reduction of fines or agreement not to prosecute shall be offered to induce the complainant to not file or to withdraw filed charges. Charges shall be in writing. The Commission shall make a form available for filing charges, but charges need not be filed on the form. The charges shall include a statement, pursuant to Wis. Stat. § 66.0511(3), that “Whoever makes a false complaint regarding the conduct of a law enforcement officer is subject to a Class A forfeiture.” The Charges should be filed with the Commission Chair. No person shall be deprived of compensation while suspended pending disposition of charges.

b. Notice of Meeting

The Commission shall set a date for a preliminary meeting not less than ten (10) days nor more than thirty (30) days following the date charges are filed with the

Commission Chair.

c. Preliminary meeting

1. When charges against an officer or the Chief are filed with the Commission Chair, if the date of filing is more than ten (10) days prior to the next regular meeting the Commission Chair shall call a special meeting of the Commission. Such meeting shall be conducted in accordance with Wis. Stat. § 19.85, Stats. Should such filing be within ten (10) days of next regular meeting, the subject matter shall be considered at the regular meeting.

2. Notice of such regular or special meeting shall be given in normal and customary manner, but not less than twenty-four (24) hours prior to the meeting. In addition, notice shall be given to the complainant and the accused. A copy of the charge shall be furnished along with the notice to the accused with explanation that delivery does not constitute formal service.

3. At the preliminary meeting, the Commission shall read and examine the charges to assure that the charges are sufficiently specific, related to police or fire duties, sufficient to warrant imposition of discipline within the scope of §62.13(5), and to avoid defamation of the accused.

4. The Commission shall also determine whether the accused should be suspended with pay pending the hearing on the charges.

5. The accused and the complainant and/or their attorneys may be heard. However, the preliminary meeting shall not hear or evaluate evidence. Upon request of the Commission Chair, the Commission's legal counsel shall attend such meeting and advise the Commission as to the proceedings.

6. If at the preliminary meeting the charges are found to be sufficient as to form and nature, the Commission shall recess its meeting and reconvene at a later date for purposes of conducting a formal evidentiary hearing pursuant to Wis. Stat. § 62.13(5). The Commission shall also make arrangements for service of the charges on the accused pursuant to § 62.13(5)(d).

7. Should the charges be found at the preliminary meeting to be insufficient as to form and nature, the charges shall be dismissed. If it appears that the defects in the charges may be cured by provision of additional detail or facts, the Commission may grant the complainant up to thirty (30) days in which to supplement the complaint.

8. If at the preliminary meeting the Commission concludes that even if the allegations are proven, the discipline would not reach the level of suspension, reduction-in-rank or termination, the Commission shall refer the complaint to the Chief for further handling as warranted or, if involving the Chief, shall determine whether lesser discipline is warranted.

7.2 Scheduling Conference

a. If at the preliminary meeting the Commission concludes that the charges are sufficient to warrant an evidentiary hearing, the Commission shall conduct a scheduling conference to be held at least five (5) days before the hearing. The accused and the complainant shall be notified in writing of the date, time, and place of the pre-hearing conference.

b. The following matters shall be accomplished at the scheduling conference:

1. Prior to the scheduling conference, the accused party shall file with the Commission a written answer to the complaint which either shall be signed and verified by the accused party in the same manner that a complaint is to be verified, or alternatively may be signed by legal counsel appearing for the accused party. The Commission may attempt to obtain stipulations as to matters about which the parties agree. Matters which are stipulated need not be proven by the parties at the hearing.
2. A date established when witness lists and any prior written or recorded statements or reports of witnesses shall be exchanged by the parties and/or counsel;
3. A date established when exhibits, if any, shall be exchanged. Parties should exchange and file notice of any objections to such proposed exhibits not less than twenty-four (24) hours prior to the scheduled commencement of evidentiary hearing. This notice of objection shall state concisely the grounds for objection but need not present argument or legal authority.
4. Witness or exhibits not submitted as required by the schedule established at the scheduling conference may be introduced at the hearing only if the Commission determines that there was a satisfactory or sufficient reason for such exclusion from the pre-hearing conference.
5. Establish the course of any discovery. Discovery shall be allowed using the procedures established by Wisconsin Statutes Chapter 804. No formal or compulsory discovery shall commence prior to the scheduling conference. No discovery may be made of the accused party. The Commission may restrict discovery as justice requires.

c. If neither the complainant nor the complainant's counsel appears at the scheduling conference, the Commission shall dismiss the charges unless a satisfactory reason for the nonappearance is provided in writing within two (2) days of notification of the parties of the dismissal. Such dismissal shall be documented in writing to each of the parties and/or counsel within two (2) days of such dismissal. If the accused or designated counsel does not appear, and no satisfactory reason for non-appearance is provided, the Commission may impose sanctions prohibiting the introduction of exhibits or witnesses on behalf of the accused and reimbursing other parties (including the Commission) for expenses incurred in attending the scheduling conference.

7.3 Hearing on Charges. A public evidentiary hearing with respect to the charges may be held at regular or special meetings of the Commission at such time as shall be determined by the Commission. Hearing procedures are as follows:

a. Hearings shall be open to the public, except that the Commission may deliberate in closed session. The Commission's vote following deliberations will take place in closed session unless the accused requests that the vote take place in open session.

b. The accused and the complainant shall be entitled to representation by counsel. An attorney appointed by the Commission shall serve as counsel for and advise the Commission on specific matters, its hearing procedures, the merits of alleged infractions of department rules and its determinations, and the rendering of advice as requested by the Commission or the Chief. Attendance at meetings by the attorney shall be at the direction of the Commission. The Commission shall designate an attorney to serve as prosecuting counsel for all charges filed by the Chief. Complainant citizens shall prosecute their complaints before the Commission either by themselves or by counsel they retain at their own expense.

c. All testimony of witnesses shall be under oath in the form and manner provided by Ch. 887, Stats.

d. At the hearing, the order shall be as follows:

1. Reading of the charges by the Secretary;
2. Testimony and introduction of evidence by the complainant to substantiate the charges with right of cross-examination by the accused. A complainant shall not be permitted to call the accused adversely, but may cross-examine the accused when the accused becomes a witness voluntarily.
3. Testimony and introduction of evidence by the accused with right of cross-examination by the complainant;
4. Complainant's arguments; and
5. Accused's arguments

Commissioners may question any witness after the parties have completed all direct and cross-examination. The parties may ask follow-up questions based upon the Commission questions. Before the witness is excused, commissioners may briefly confer to identify areas of interest for further inquiry. Questions on behalf of the Commission will be posed by the Commission's legal counsel and the parties may state objections to the Commission's questions.

The Commission may permit written briefs or memoranda following the conclusion of testimony in lieu of closing statements or oral arguments, formally continuing hearing for the receipt of the briefs or memoranda and for deliberations, and shall then issue a written decision as soon as possible

following receipt of final briefs or memoranda.

e. Disciplinary Standard. No subordinate may be suspended and/or reduced-in-rank, or removed by the Commission based on charges filed by the Commission, the Chief or any aggrieved person unless the Commission determines that there is just cause to sustain the charges. In making its determination, the Commission shall apply the following just cause standards, to the extent applicable, as required by Wis. Stat. § 62.13(5)(em):

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct;
2. Whether the rule or order that the subordinate allegedly violated is reasonable;
3. Whether the Chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order;
4. Whether the effort described under subsection 3 was fair and objective;
5. Whether the Chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate;
6. Whether the Chief is applying the rule or order fairly, and without discrimination against the subordinate; and
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the Chief's department.

f. Decision of the Commission

1. The Commission shall carry out its decision in conformity with Wis. Stat. § 62.13 (5)(e). If the Commission finds the charges are not sustained, the accused shall be immediately reinstated and all lost pay restored. If the Commission determines that the charges are sustained, the accused, by order of the Commission, may be suspended or reduced-in-rank and/or removed, as the good of the service may require.

2. The decision and findings of the Commission shall be in writing and shall be filed with the Commission Secretary within three (3) days of the hearing.

3. The Secretary shall keep a record of each hearing, name and address of the accused and complainant, a brief description of the charges involved, and the final disposition of the case.

4. The Secretary shall also record for each case all other important data and dates concerning the case, such as the date of filing the notice to appear, date of

service and to whom served, date of posting of notice of hearing, and the dates of hearings, continuances, and final determinations. All exhibits and documents involved in the hearing, including a transcript or recording of the proceedings, shall be filed with the Secretary.

g. Appeal. Any persons suspended or terminated after the Commission's hearing may appeal the Commission's order to the Circuit Court by serving written notice stating the grounds upon which the appeal is based, to the Commission Secretary within ten (10) days after the order is filed. Within five (5) days of service, the Commission Secretary shall certify to the Clerk of Circuit Court the records of the proceedings, including all documents, testimony and minutes. After the taking of such appeal, the proceedings shall be governed by the provisions of Wis. Stats. § 62.13(5)(i).

7.4 Administrative Matters. The Commission shall adopt procedures in advance of any hearing further defining the following administrative details with respect to disposition of the charges filed with the Commission:

a. Set a preliminary meeting date within the time frame provided by the § 62.13(5)(d), not less than ten (10) days nor more than thirty (30) days after service of the charges on the Commission Chair;

b. Establish procedures for service of charges on the accused (by way of the Commission attorney or otherwise) and notice of hearing to be served in the same manner that a summons is served;

c. Direct the retention of a court reporter or recording equipment for the hearing;

d. Establish procedures for issuance of subpoenas by the Commission Chair and policy as to payment of witness fees;

e. Direct the format of the public hearing and provide relevant information to the parties and their attorneys, if any;

f. Issue any required notice of public hearing; and

g. In the event the parties reach agreement prior to the scheduled hearing and have expressed an interest in canceling the hearing, such cancellation requires the concurrence of the Commission Chair or designee.

7.5 Hearing Examiner.

a. The Commission may engage a Hearing Examiner to conduct the Initial Hearing and the continuing evidentiary hearings.

b. The Hearing Examiner shall conduct and preside at proceedings in conformity with these rules and in consultation with Commission counsel. References to the Commission in this rule shall be construed to refer to a Hearing Examiner as context requires.

c. All evidentiary proceedings conducted by a Hearing Examiner shall be videotaped and a certified transcript shall be prepared.

d. Promptly following completion of the evidentiary proceedings and receipt of briefs, the Hearing Examiner shall forward the complete record to the Commission and shall prepare a comprehensive report including an evaluation of witness credibility and demeanor for review by the Commission and including the recommendations of the Hearing Examiner regarding disposition of the charges. The report of the Hearing Examiner shall be included in the record of Commission proceedings.

e. Promptly following receipt of the Hearing Examiner's report the Commission shall convene for deliberations. The Commission may require further proceeding before the Hearing Examiner or before the Commission. Following the close of any such further proceedings and deliberations the Commission shall issue its decision in the matter.

ARTICLE 8: LAYOFFS AND REEMPLOYMENT

8.1 Layoffs. When it becomes necessary because of need for economy, lack of work or funds or for other good cause to reduce the number of subordinates, emergency, special temporary, part-time, or provisional subordinates shall be laid off first. Thereafter, subordinates shall be laid off in the order of the shortest length of service in the Department or as set forth in the applicable collective bargaining agreement. Those with identical seniority shall be laid off in order of least ability to serve as determined by the Commission.

8.2 Reemployment. The name of a subordinate laid off shall be retained on an eligible reemployment list for a period of two (2) years after the date of the layoff. If any vacancies occur, or if the number of subordinates is increased in the Department, the vacancies or new positions shall be filled by persons on re-employment list in the inverse order of the layoffs.

ARTICLE 9: COMMISSION ADMINISTRATION

9.1 Meetings. The Commission shall meet as necessary to meet its statutory obligations but no less than one time per year. The meetings shall be held in the City Hall or any other designated place selected by the Commission within the City of _____.

9.2 Officers. The Commission shall annually elect from among its members a Chair, Vice-Chair, and Secretary. Should a permanent vacancy occur within the Commission officers, that vacancy will be filled, by election, at the next regularly scheduled meeting

9.3 Special Meetings. All special meetings of the Commission shall be held at the place where the regular meetings are held, if possible. Special meetings may be called at any time by the Chair, or by any two members, by causing a written notice of the special meeting to be personally delivered to each Commissioner. If a Commissioner cannot be found, notice may be delivered by leaving a written copy of the notice at the Commissioner's usual place of abode in the presence of a member of their family of suitable age and discretion.

9.4 Quorum. Three Commission members constitute a quorum in order to transact business. All Commission decisions shall be made by a majority vote of members present except as otherwise provided by these By-Laws.

9.5 Order of Business. The Commission's regular order of business shall be:

- a. Call to Order
- b. Roll call.
- c. Proof of compliance with Open Meetings Law.
- d. Approval of Agenda
- e. Consideration of the preceding meeting minutes.
- f. Consideration of communications from the Chiefs.
- g. Unfinished and miscellaneous business.
- h. New business.
- fi Citizen appearances.
- j. Adjournment

9.6 Commission Chair Duties. The Commission Chair shall preside over all Commission meetings and hearings. The Commission Chair shall receive written charges filed against the Chief or subordinates, and when necessary, may issue subpoenas to compel the attendance of witnesses in accordance with Chapter 885 of the Wisconsin Statutes.

9.7 Vice Chair Duties. In the event of the Commission Chair's absence or disability, the Vice Chair shall assume the duties of the Chair.

9.8 Commission Secretary Duties.

The Commission Secretary is responsible for the following duties, however, the Commission may delegate them to a City employee.

- a. The Secretary shall receive appeals from action of the Chief, send out notices required by law, ordinance, these By-Laws, or as requested by the Commission, make official publications as may be necessary, attend all Commission meetings and hearings, provide for the taking and recording of testimony and other evidence received at hearings, preserve the evidence in a permanent record, and certify the record to the Circuit Court when required by law.
- b. The Secretary shall keep a minute book, showing all important facts pertaining to each meeting and hearing. The minutes of each meeting and hearing shall be signed by the Secretary and approved by the Commission. A copy of the unapproved minutes shall be provided each Commission member and the Chief as soon after each meeting as is possible.
- c. After the minutes are approved by the Commission, one copy shall also be filed with the City Administrator.
- d. The Secretary at the direction of the Commission Chair may conduct

correspondence on behalf of the Commission. Any Commission member designated by the Commission Chair may also conduct correspondence on the Commission's behalf.

ARTICLE 10: CONSTRUCTION OF BY-LAWS

10.1 Federal or State Law. Should any Federal or State law or regulations, or the final decision of any court of competent jurisdiction affect any provision of these By-Laws, the provision or provisions affected shall be deemed to be amended to conform to the law, regulation or decision. These By-Laws shall be construed to be consistent with the requirements of Federal and State law.

10.2 Repeal of Rules. These rules shall not be repealed, amended or modified except by majority action of the Commission at a Commission meeting.

10.3 Severability. In the event any portion of these By-Laws is found to be invalid, the remaining portion shall stand.