

**CITY OF WAUWATOSA**

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WAUWATOSA, WI 53213  
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**RULES AND REGULATIONS  
of the  
POLICE AND FIRE COMMISSION**

**CITY OF WAUWATOSA**

Scope of Authority

1.01 The rules as stated shall be applicable to all positions in the police and fire services. The words “police or fire service” shall include all positions in the police and fire departments of the City of Wauwatosa which are under the jurisdiction of the police and fire commission.

1.02 The word “Commission” shall refer to the board of police and fire commissioners.

1.03 Notwithstanding the provisions contained in these rules, the standards established by the Law Enforcement Standards Board of the State of Wisconsin under Section 165.85, Wisconsin Statutes, for police recruits, and the administrative rules contained in Ch. LES2, “Recruitment Qualifications,” Wisconsin Administrative Code, are incorporated in the rules of the police and fire commission by reference. The LES Standards are minimum standards and requirements, Section 165.85(4), and in applicable areas the Commission has imposed higher standards.

1.04 The Commission exercises those powers specified in §62.13(1) - (12) of the Wisconsin Statutes pertaining to boards of police and fire commissioners, but it does not exercise the “optional powers” specified in §62.13(6) of the Statutes.

1.05 Officers.

A. President

- 1) Election. The Commission shall elect a President at the first meeting of the Commission that occurs after May 1st of each year. The President shall hold office until his or her replacement is duly elected by the Commission.
- 2) Duties. The President of the Commission shall have the responsibility to:
  - a. Work with the City Administrator to set the agenda for Commission meetings, which shall include items requested by Commission members;
  - b. Preside over Commission meetings;
  - c. Preside over any disciplinary hearings involving the Chief or subordinate members over whom the

Commission has jurisdiction and perform such other functions in the disciplinary process as are identified in these Rules or in §62.13 of the Wisconsin Statutes;

- d. Appoint Commission members to any committees that are created by the Commission as needed;
- e. Approve all official correspondence of the Commission;
- f. Take such other action as is necessary to assure that the duties of the Commission are properly discharged, provided that such action is not inconsistent with these Rules or with the Wisconsin Statutes.
- g. Appoint a Secretary for the Commission.
- h.
- i. Act as the spokesperson for the Commission.

B. Vice President.

- 1) Election. The Commission shall elect a Vice President at the first meeting of the Commission that occurs after May 1st of each year. The Vice President shall hold office until his or her replacement is duly elected by the Commission.
- 2) Duties. The Vice President of the Commission shall have the responsibility to:
  - a. Preside at Commission meetings when the President is absent;
  - b. Assume the responsibilities of the President when requested to do so by the President; and
  - c. Perform such other Commission duties as requested by the President, provided that such duties are not inconsistent with these Rules or with the Wisconsin Statutes.

C. Secretary.

- 1) The President of the Commission shall appoint a Secretary at the first meeting of the Commission that occurs after May 1st of each year. The Secretary shall serve until his or her replacement is appointed by the Commission President.
- 2) Duties. The Secretary of the Commission shall have the responsibility to:
  - a. Attend all meetings of the Commission, prepare the Minutes thereof for approval by the Commission.

- b. Cause to prepare and publish official notices of Commission business, including meeting notices and agendas, as required by these Rules or by the Wisconsin Statutes;
- c. Perform such other Commission duties as requested by the President, provided that such duties are not inconsistent with these Rules or with the Wisconsin Statutes.
- d. The Secretary may delegate any of these duties.

D. Press Spokesperson.

- 1) The President of the Commission shall serve as the official spokesperson for the Commission.
- 2) The President may delegate the role of spokesperson to the City Administrator or other appropriate individuals.

1.06 Address of the Commission. All correspondence with the Commission, its officers, and its members shall be sent to the following address:

Wauwatosa Police and Fire Commission  
7725 W. North Avenue  
Wauwatosa, WI 53213

1.07 Service of Process on the Commission. The Commission designates the City Clerk, whose offices are located at 7725 W. North Avenue, Wauwatosa, WI 53213, as its agent to receive legal process addressed to the Commission or to any of its members in their official capacities.

1.08 Rules of the Commission.

- A. These Rules of the Commission shall govern the conduct of all business relating to the duties and responsibilities of the Commission and shall further apply to the positions of Police and Fire Chief and to all subordinate positions within the Police and Fire Departments that are under the jurisdiction of the Commission.
- B. These Rules of the Commission and any amendments thereto shall take effect upon adoption by the Commission at a regular meeting thereof and shall remain in effect until such time as they are repealed and amended in whole or in part.
- C. These Rules of the Commission are subject to the applicable provisions of state and federal law. It is the express intention of the Commission to comply with all applicable state and federal laws as they relate to hiring, promotion, discipline, and termination of Department members within the jurisdiction of the Commission.
- D. Should any provision of these Rules be declared unlawful by a court of competent jurisdiction, all other provisions shall remain in full force and effect.
- E. These Rules shall be provided to each newly appointed member of the Commission.

## 1.09 Definitions.

- A. “Aggrieved Person” is a person with a legal interest that is alleged to have been injured by or through the misconduct of an Employee of the Fire or Police Department.
- B. “Chief” means the person officially appointed by the Commission to the position of Police Chief or Fire Chief of the City of Wauwatosa and, in the event of a vacancy in the position of Police or Fire Chief, the person appointed by the Commission to serve as Acting Chief.
- C. “Charging Party.” A Charging Party is any Aggrieved Person, a member of the PFC, the PFC as a body, or a Chief that files Charges meeting the requirements of section 62.13 of the Wisconsin Statutes and these Procedures and alleging misconduct by a Fire or Police Department Employee.
- D. “Charges.” Charges are a sworn written statement meeting the requirements of § 62.13 of the Wisconsin Statutes and these Procedures which are filed by an Aggrieved Person, a member of the PFC, the PFC as a body, or a Chief alleging misconduct by an Employee of the Fire or Police Department. Charges shall be in writing and meet the requirements of these Procedures as noted in section (IV)(B) below before the PFC will accept jurisdiction.
- E. “Commission” means the Commission officially known as the Wauwatosa Police and Fire Commission.
- F. “Commissioner” means a duly appointed member of the Wauwatosa Police and Fire Commission.
- G. “Complaints.” Complaints are written or verbal statements alleging inappropriate conduct by an Employee of the Police or Fire Department. Complaints which do not meet the definition of Charges will be referred to the appropriate department as noted below but will not invoke the hearing process.

*Categories of Complaints/Charges.* Complaints and Charges will generally relate to one of five major categories:

- 1) ***Unauthorized Use of Force.*** An allegation that an Employee used excessive physical force or more force than was needed under the circumstances.
- 2) ***Discourtesy.*** Unnecessary, unprofessional, rude, profane, derogatory, inappropriate or belligerent language, actions, or behavior by an Employee.
- 3) ***Disparate Treatment.*** Language, conduct, or behavior that is inappropriate, demeaning, or derogatory concerning a person’s race, religion, nationality, physical appearance, disability, gender, or sexual orientation.
- 4) ***Department Procedures.*** An unauthorized or inappropriate deviation from established City or Department policies or procedures.

- 5) ***Department Services.*** An inappropriate, unnecessarily slow, or insufficient response to an incident, call for service, or request for intervention of the Department Employee.
- H. “Day” is defined as per State Statute 801.15 which excludes weekends and holidays when the period is less than 11 days.
- I. “Department” means the Wauwatosa Police or Fire Department
- J. “Member” means all personnel employed by the Wauwatosa Police or Fire Department, including the Chiefs, who are within the jurisdiction of the Commission.
- K. “President” means the duly elected President of the Commission.
- L. “Rules” means the Rules of the Wauwatosa Police and Fire Commission.
- M. “Secretary” means the duly appointed secretary of the Commission.
- N. “Subordinate” and “subordinate member” mean all personnel employed by the Wauwatosa Departments, except the Chiefs, who are within the jurisdiction of the Commission. As used in these Rules, the terms “subordinate” and “subordinate member” do not include non-firefighters and unsworn employees of the Police Department.
- O. “Vice President” means the duly elected Vice-President of the Commission.

Examination of Subordinates for Eligibility Lists (Amended 6/14)

2.01 When appointments are to be made from an eligible list the rules for the examination process for such list shall be approved by this commission prior to the commencement of the process. The rules for the examination process shall be in writing and once approved by this commission shall be incorporated by this reference herein.

2.02 Any misrepresentation in regard to any material fact in the application process shall be sufficient cause for excluding the applicant from the examination removing the applicant’s name from the eligible list or discharging the personnel from the service.

2.03 Any person dismissed from either of the departments for a reason other than those set forth under rules regarding layoff shall thereafter be ineligible to make application for appointment to any position in the police or fire service.

2.04 Any former employee of the police or fire service other than a person dismissed for a reason set forth under the rules regarding layoff who desires to re-enter the police or fire service shall undertake the same examination as a new applicant.

2.05 Upon approval by the commission, applicants who are candidates from the Wisconsin Police Corps are not required to take the written examination and physical performance test under these rules but shall be subject to all other examination required herein.

2.06 Information relative to applicants' scores, as transmitted to the chiefs of the departments and the commission, shall be considered strictly confidential and shall not be divulged except insofar as it may be necessary to determine those applicants eligible for additional tests, unless otherwise approved by the commission.

2.07 Applicants shall not be permitted to give assistance in any manner whatever during the examination to any other applicant. A violation of this rule shall subject each applicant involved to exclusion from the examination.

2.08 No applicant shall be given a second or special competitive test in connection with any examination held unless it be shown to the satisfaction of the commission that the applicant's failure to take or complete such test was due to a manifest error or mistake for which the commission or its designated assistants are responsible, the nature of which shall be set forth in the minutes, or that such failure was the result of other good and valid reasons.

2.09 Examination papers shall be retained for two (2) years and then destroyed.

### Conduct of Examinations for Entry Level Applicants

#### Appointments

7.01 The commission shall appoint the chiefs of the police and fire departments. The chiefs shall hold office during good behavior, subject to suspension or removal by the commission for just cause.

7.02 The commission may appoint someone to be the Acting Chief of Police or Acting Fire Chief when the permanent chief has been unable to perform his/her duties for a three day period and is incapacitated and the nature of his/her incapacity indicates he or she will continue to be incapacitated for more than a 20 day period. The Mayor will notify the president of the commission as soon as possible when a chief has been incapacitated.

7.03 For the position of chief, the commission may appoint a suitable person in its discretion who need not be a member of the department or a resident of the city.

(b) The commission may amend the eligibility list to add the names of applicants who are unable to complete the interview portion of the examination process because they are on military leave if the applicants successfully complete the interview upon return and would otherwise have been on the eligible list but for the military leave. *(Created 3/06) (Amended 6/14)*

7.04 Reserved.

7.05 (a) Except when the appointment can be made with advantage by promotion from within the department, the chief shall make appointments to all positions from the eligible list so provided.

7.06 Reserved.

7.07 All appointments, except for chief officer, shall be probationary for one year. If during the first year of actual service in the new position the person appointed proves unsatisfactory or undesirable for the position, the chief may dismiss the person from service, where his/her appointment was original, or may reduce the subordinate in rank, where his/her appointment was promotional. The appointee shall not be entitled to an appeal to the commission from such a dismissal or reduction.

#### Discharge, Suspension

08.01 The Commission may suspend a chief for just cause pending the investigation of written charges filed with the president of the commission by the mayor or by a commissioner. The commission shall not remove a chief except when acting upon written charges filed with the president of the commission by the mayor, a member of the commission, or the commission as a body.

08.02 (a) The Commission or the chief may suspend a subordinate for just cause. If the chief suspends a subordinate, he/she shall immediately report the same in writing to the president of the Commission. The Commission shall hold hearings for an appeal of a chief's orders of discipline only if the subordinate personally serves a written request for a hearing upon the secretary of the Commission within 15 days of the written order. The subordinate may personally serve the City Clerk's office in lieu of service upon the secretary of the Commission. *(Amended 11/06)*

(b) The Commission may remove or reduce in rank a subordinate for just cause only upon written charges filed by the chief, a member of the commission, or the commission as a body.

08.03 Aggrieved persons may file complaints against fire or police service personnel on the approved "Citizen Complaint Form." Such signed complaints will be investigated by appropriate department personnel to determine whether written charges should be filed.

08.04 Every person, chief or subordinate, against whom charges are filed with the commission shall be entitled to a copy thereof and shall have an opportunity to be heard in his/her own defense.

08.05 No chief or subordinate shall be deprived of compensation while suspended pending disposition of charges before the commission.

08.06(a) If the Commission shall determine after a hearing that the charges are not sustained, the accused, if he/she has been suspended pending hearing, reduced in rank or removed, shall be immediately reinstated, and any lost pay restored.

(b) If the Commission shall determine after a hearing that the charges are sustained, the accused by order of the commission shall be suspended, reduced in rank, suspended and reduced, removed, or otherwise punished.

08.07 Orders of suspension by the commission or a chief officer, all findings and determinations of the Commission made after a hearing on charges, and all disciplinary orders based on such findings and determinations shall be in writing and, if made following a hearing, shall be filed within 3 days of their date with the secretary of the Commission.

08.08 Any person suspended, reduced, suspended and reduced, or removed after hearing may appeal from the order to the circuit court by serving written notice of the appeal, stating the grounds upon which the appeal is based, on the secretary of the Commission within 10 days after the order is filed. Within 5 days after receiving written notice of the appeal the secretary of the Commission shall certify to the clerk of the circuit court the records of the proceedings, including all documents, testimony and minutes. After the taking of such appeal, the proceedings thereafter shall be governed by the provisions of Subsection 62.13(5)(I) of the Wisconsin Statutes.

08.09 Filing and Service of Charges.

- A. Charges may be filed against an Employee of the Wauwatosa Police or Fire Department by a member of the PFC, by the PFC as a body, by the Chief, or by any Aggrieved Person.
- B. To invoke the formal disciplinary process described in these Procedures, or for the Chief to comply with the requirement to file a Statement of Charges upon appeal by a Subordinate after a disciplinary suspension as described within the next section of these Procedures, the Charging Party shall file a Statement of Charges which shall:
  - 1) Be in writing;
  - 2) Be addressed to the PFC;
  - 3) Identify the person against whom the Charges are made (the



Respondent);

- 4) Identify the person making the Charges (the Charging Party);
- 5) State the address of the Charging Party, and of the Charging Party's legal counsel (if one is retained), for purposes of receiving notices in connection with the proceedings;
- 6) State sufficient facts to allow the Respondent to know and understand the nature of the conduct subject to the Charges and to be able to prepare a defense. The Statement of Charges shall indicate the underlying facts, dates and locations of the alleged offenses;
- 7) State the specific statute, ordinance, rule, regulation, policy, procedure, standard of conduct or order which the Respondent is accused of violating.
- 8) Include a declaration under oath or affirmation, signed before a Notary, that the contents of the Statement of Charges are true to the Charging Party's own knowledge, except as to those matters stated upon information and belief, and as to those matters the Charging Party shall state that the Charging Party believes those matters to be true; and
- 9) Be filed by mailing or delivering a properly executed Statement of Charges to the Secretary of the PFC at the following address:

Police and Fire Commission  
7725 W. North Avenue  
Wauwatosa, WI 53213

08.10 Service of a copy of the Charges. After the Statement of Charges is filed with the Secretary of the PFC, the Charging Party shall immediately cause a copy of the Statement of Charges to be served on the Respondent or the Respondent's agent. Service shall be by personal service or if with reasonable diligence the Respondent cannot be served personally, then by leaving a copy of the charges at the Police or Fire Department main offices with a Supervisor of the respective Department. If the charges are left with someone other than the Respondent, the person receiving the copy shall be informed of the nature of the papers served. Supervisors shall, as soon as practicable, serve the Respondent with the Charges and shall notify the Secretary of the Commission in writing that the Supervisor accepted Service of the Charges and has served the Respondent with the Charges and the date and time of service. In the case of a Statement of Charges filed by a chief under, the Chief shall cause the Charges to be served upon the Respondent personally and shall file an affidavit of service with the Secretary of the Commission as provided in these Rules. Service shall be proved by certificate of service indicating the date, time, place and manner

of service; ; the name of the person served, whether that person was the Respondent or Department Supervisor, and that a true and complete copy of the charges filed were left with the Respondent or Department Supervisor. The Charging Party shall deliver the original certificate of service to the PFC at the address above within ten (10) calendar days after filing of the Charges. Failure to deliver the required Proof of Service within ten (10) calendar days after filing of the Charges will result in the matter being treated as a complaint under section 8.03 of these Rules and the matter will be referred to the appropriate department for any further action deemed appropriate.

#### 08.11 Initial Hearing.

- A. The purpose of the Initial Hearing shall be for the PFC to read and examine the Charges, not as to merit, but as to the sufficiency of their form and nature. The Charges may be deemed sufficient as to their form by the PFC if they meet the requirements of these Procedures and set forth allegations in regard to the criteria found in § 62.13(5)(em)1-7, Wis. Stats., to the extent that they may be applicable. The initial hearing shall be held in open session, however, the PFC may deliberate the disposition of a matter on procedural grounds in closed session.
- B. In this Initial Hearing, which shall not be evidentiary in nature, the Respondent and the Charging Party and their attorneys may be heard at the discretion of the PFC.
- C. Notice of an Initial Hearing shall be given in the normal and customary manner for a PFC meeting not less than 24 hours prior thereto and shall, in addition, be given to the Charging Party and Respondent through appropriate means by the Secretary to the Commission. This Initial Hearing shall be set within the time periods established by Wisconsin Statute and shall constitute the commencement of the hearing process as required in § 62.13(5)(d), Wis. Stats and these Rules.
- D. If the Charges are found to be sufficient as to form and nature to warrant additional proceedings thereon, the PFC shall proceed to consider administrative details to be involved in disposition of the Charges and may set a schedule for submission of any materials that the PFC may require from the parties and a date for hearing the matter.
- E. Nature of Charges. Grounds for dismissing Charges at the Initial Hearing:
  - 1) *Failure of the Charging Party to appear or to comply with Procedures, Rules, or Orders of the PFC.* The requirements of these Procedures related to the Statement of Charges as specified within Section these Rules, timely service of the Statement of Charges upon the Respondent or a Supervisor within the respective Department as provided in Section 8.10 of these Rules, and the time to return of the proof of service to the

Secretary of the Commission as provided in Section 8.10 of these Rules must be strictly adhered to and failure to adhere to these requirements shall result in dismissal of the charges. Upon dismissal under this paragraph, the Charging Party shall be permitted to pursue the matter or refile charges pertaining to the matter only upon a showing of extraordinary circumstances and good cause as to why the specific rule was not complied with.

- 2) *Failure of the Charging Party to appear at the Initial Hearing, Pre-Hearing or Evidentiary Hearing or to provide required information or submittals in compliance with any Pre- Hearing Order this Section.* of these Procedures shall result in dismissal of the charges. Upon dismissal under this paragraph, the Charging Party shall be permitted to pursue the matter or refile charges pertaining to the matter only upon a showing of extraordinary circumstances. Failure to substantially comply with any other procedures, rules or orders of the PFC at any stage of the proceedings may be grounds, in the discretion of the PFC, to dismiss the Charges.
- 3) *The Charges relate to a pending criminal, civil or administrative matter.* The PFC may adjourn the evidentiary hearing in the matter or dismiss charges with the ability to refile if the substance of the Charges are subject to review as part of a criminal charge, traffic or ordinance citation, civil claim or proceeding or other matter subject to court or administrative review by a licensing or other agency. In these cases, the PFC will generally defer to the court or administrative law judge on the legal issues and merits of the matters contained in the Charges, but retains the right and discretion to allow the Charges to proceed through the PFC proceedings when circumstances warrant. The PFC may re-open a dismissed Charge if the judge, one of the attorneys, or the Complainant renews the misconduct allegation after the other proceedings are finished and the allegation is supported by objective evidence.
- 4) *Filing delay.* Charges may be dismissed if it is determined that there was an excessive or unreasonable delay in the filing of the Charges. It is desirable that Complaints and/or Charges be filed soon after the incident. Memories are fresher, witnesses are easier to locate, and physical evidence may still be recoverable. If misconduct was committed, it is in the best interests of the Department, the public, and the Employee(s) to take disciplinary or corrective action as soon as possible. If misconduct was not committed, Employees are entitled to swift exoneration. The PFC may waive the time requirements of these Procedures at any time for good cause. Except for good cause, all charges shall be

served upon the PFC within 120 days from the date the alleged incident took place.

- 5) *The Charges are trivial, frivolous, or not made in good faith.*
- 6) Charges may be dismissed if it is determined that the allegations are intentionally and/or materially false.
- 7) Charges may be dismissed if they contain only trivial or frivolous complaints. “Trivial” or “frivolous” complaints allege minor technical violations of procedural rules which have negligible adverse effects on the public or the credibility of the Department.
- 8) Charges are not “in good faith” if they are intentionally and materially inaccurate, misstated, or exaggerated.
- 9) *Grossly illogical or improbable.* Charges that are grossly illogical or improbable may be dismissed.
- 10) *Charges not made by an Aggrieved Person / Third Party Complaints.* Section 62.13 of the Wisconsin Statutes provides that Charges may be filed by the Chief, a member of the PFC, the PFC as a whole or any aggrieved person. Charges filed by someone other than the Chief, a member of the PFC, the PFC as a whole or an Aggrieved Person may be dismissed. For the purposes of these Procedures the PFC normally requires that a person filing Charges is a person with a legal interest that is alleged to have been injured by or through the misconduct of an Employee of the Fire or Police Department.
- 11) *The Charging Party withdraws the Charges.* Charges shall be dismissed if the Charging Party requests that they be withdrawn or agrees that the PFC need not take any further action on the Charges.
- 12) *The identity of the employee cannot be determined.* Occasionally a complaint or Charges are received in which there is no reasonable means of identifying the employee who is alleged to have committed misconduct. Charges may be dismissed if, after a good faith effort, investigation cannot identify the involved employee and the PFC concludes that it would be unlikely that a continued investigation would be able to identify the employee.
- 13) *Charges were previously adjudicated by the PFC.* Charges that were previously reviewed and decided by the PFC may be dismissed. This circumstance may arise if a second person files

Charges about an incident that was previously resolved. It might also arise if the same party files a second Charge about a matter that was previously decided.

- 14) *No jurisdiction.* Charges over which the PFC has no jurisdiction will be dismissed. For example, the PFC lacks jurisdiction to discipline persons it does not employ or no longer employs. Charges may be dismissed if the Employee resigns, retires, or will no longer be employed by the Department by the time the investigation and discipline process can be completed or a hearing held on the Charges.
- 15) *Complaints about a Department policy generally, not related to the actions of a specific employee during a specific incident.* Charges that a Department policy violates the law or is simply a poor policy may be dismissed provided that it does not include an allegation of employee misconduct in a specific incident.
- 16) *Charges alleging conduct that clearly does not violate a law, rule, policy, or procedure.* Charges may be dismissed if the material facts are undisputed and it is clear that the alleged conduct does not violate a law, rule, policy, or procedure.
- 17) *Charges seeking reimbursement or money damages.* The PFC cannot award money damages. Charges may be dismissed if they claim a monetary award or reimbursement for damages or relate to a claim for monetary award or reimbursement of damages and do not include an allegation of Employee misconduct.
- 18) *Charges on which the PFC would not take action.* In some instances, proper charges may be filed that include allegations of violations which, even if true, the PFC would not take any action to remove or otherwise discipline the employee accused.

The PFC may, in the exercise of its discretion, dismiss the Charges with or without the ability of the Charging Party to refile the Charges after correcting the deficiencies noted.

### Layoff, Re-employment and Compensation

9.01 Layoffs will be conducted according to pertinent union contract provisions and the provisions of Section 62.13(5)(m), Wisconsin Statutes.

9.02 It shall be the duty of the commission to consider and to recommend to the Common Council in writing whether it approves or disapproves any decrease in salary for a chief, pursuant to Section 62.13(7), Wisconsin Statutes.

## Meetings and Hearing Procedure

10.01 (a) The Commission shall hold regular meetings in the City Hall at 4:00 30 p.m. on the third Wednesday of each month other than the months of July, ~~and August~~ and December. The meeting may be scheduled for a different date or time by the president of the commission with the consent of at least two other members.

(b) Notwithstanding the provisions of this section, the meetings of the commission shall conform to the provisions of "Open Meetings of Government Bodies," Subchapter IV of Chapter 19, Wisconsin Statutes.

10.02 Annually, at the May meeting, the Commission shall elect from among its members a president, vice president, and the president shall appoint a secretary.

10.03 All special meetings of the commission shall be held at the place where the regular meetings are held, and such special meetings may be called at any time by the president, or by any 2 members, by causing a written notice thereof to be delivered to each commissioner personally, if he/she can be found, and if he/she cannot be found, by leaving a copy of such notice at his/her usual place of abode in the presence of a member of his/her family of suitable age and discretion.

10.04 Whenever there is no other business on the agenda for a regular meeting other than roll call, minutes of the previous meeting, and department reports, the president may dispense with such meeting by notifying each of the commission members not more than 3 days nor less than 24 hours prior to the time for such meeting.

10.05 Three members of the Commission shall constitute a quorum in order to transact business. All determinations of the commission shall be made by a majority of all members present at a meeting.

10.06 The regular order of business of the Commission shall be:

- (a) Roll call
- (b) Minutes of the preceding meeting
- (c) Correspondence
- (d) Reports of the chiefs of the departments
- (e) Old, unfinished or miscellaneous business
- (f) New business
- (g) Whatever business the commission deems pertinent
- (h) Next meeting

10.07 Floor Privileges. Only duly appointed members of the Commission shall have the right to speak at Commission meetings. The Commission may, in its sole discretion, allow anyone else present at a Commission meeting to speak at the meeting and then only to the

extent of and subject to any parameters established by the Commission.

10.08 Voting. The act of a majority of the Commissioners present at a Commission meeting at which a quorum is present shall be the act of the Commission. Only duly appointed members of the Commission may vote on matters at a Commission meeting. Proxy voting is not permitted at Commission meetings.

10.09 Where a hearing is to be held the president of the Commission shall set the date. Notice of the date, time and place of the hearing shall be given the accused and the complainant, by mailing notice thereof by registered or certified mail to the address of the accused as obtained from the files of the department, or by personal service, in either case not less than 10 days nor more than 30 days prior to the date of the hearing. A copy of the charges shall accompany such notice.

10.10 Hearings may be held at regular or special meetings of the commission, at such time as shall be determined by the Commission. Hearings will be conducted in accordance with Section 19.85, Wisconsin Statutes, which are herein incorporated by reference.

10.11 The accused and the complainant shall be entitled to representation by counsel at any hearing. In the event the accused fails to make an appearance, the Commission will proceed to dispose of the matter on such evidence as may be before it. In the event the complainant fails to make an appearance, the commission shall dismiss the charges without consideration.

10.12 All testimony of witnesses at hearings shall be given under oath, administered by the secretary or other member of the Commission or the Commission's designee, in the form and manner provided by Section 887.03, Wisconsin Statutes.

10.13 At the hearing the order shall be as follows:

- (a) Statement of the charges by the secretary.
- (b) Testimony and introduction of evidence by complainant to substantiate the charges and the accused shall have the right to confront and cross-examine any complaining witness.
- (c) The accused may present witnesses under oath and introduce other evidence on his/her own behalf. The accused may also request the subpoenaing of witnesses.
- (d) Complainant's rebuttal.
- (e) Accused's rebuttal.
- (f) The hearing shall be recorded.
- (g) The accused may have a verbatim transcript made upon his/her own initiative.
- (h) Upon the conclusion of the hearing, the Commission shall cause to be prepared written findings of fact based upon evidence submitted at such hearing. For purposes of deliberation after quasi-judicial hearing, the commission may choose to adjourn into closed session pursuant to Section 19.85, Wisconsin Statutes. *(Amended 6/05)*
- (i) The decision of the commission shall be in writing.

10.14 The secretary shall keep a record of each hearing, name and address of the accused and complainant, if there be one, a brief description of the charges involved, and the final disposition of the case. The secretary shall also show on the docket for each case all other important data and dates concerning the case, such as date of filing notice of appeal, date of sending out notices and to whom sent, date of posting of notice of hearing, and dates of hearings, continuances and final determination. Records of closed hearings shall remain confidential.

10.15 No request for a rehearing shall be entertained unless substantial new evidence is submitted which could not reasonably have been presented at the previous hearing. In all cases the request for a rehearing shall be in writing, reciting the reasons for the request.

10.16 Subsequent to the filing of charges, but prior to hearing thereon, the commission or the president may set a pre-hearing conference and appoint a commissioner or other person as conferee to preside at such pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be heard and also to shorten the length of time necessary to complete the preparation of evidence.

10.17 The pre-hearing conference shall be scheduled at least 5 days before the hearing. The accused and the complainant shall be notified in writing of such pre-hearing conference. The accused and the complainant shall appear at such pre-hearing conference and may be represented by counsel.

10.18 The following matters shall be accomplished at the pre-hearing conference:

- (a) Witness lists and any prior written or recorded statements or reports of witnesses will be exchanged between the parties (or their counsel).
- (b) Exhibit lists will also be exchanged between the parties (or their counsel), and each party (or their counsel) shall be permitted to physically inspect all exhibits of the other party.
- (c) Witnesses not on the list submitted at the pre-hearing conference will be permitted to testify at the hearing and exhibits not on the list submitted at the pre-hearing conference may be introduced at the hearing only if the commission determines that the party (or counsel) can demonstrate a satisfactory reason for the exclusion of such witness or exhibit from the list(s) submitted at the pre-hearing conference.

10.19 If a party does not appear at the pre-hearing conference either in person or by counsel, the conferee shall so report to the commission. In the event the complainant or counsel fails to appear at the pre-hearing conference, the commission shall dismiss the charges, unless the party or counsel can demonstrate a satisfactory reason for non-appearance.

10.20 The PFC shall not be bound by common law or statutory rules of evidence. The PFC Shall admit all testimony having reasonably probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. The PFC shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality, and probative force



shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

- (A) Each party shall be afforded adequate opportunity to present evidence and to rebut or offer countervailing evidence.
- (B) The PFC may take official notice of any generally recognized fact or any established or technical fact, but parties shall be afforded an opportunity to contest the validity of the official notice.
- (C) The PFC shall take notice of all duly adopted ordinances of the City and of all duly adopted and published rules, regulations, policies, and procedures of the City of Wauwatosa and the Police Department and Fire Department.
- (D) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available.
- (E) Each party may call witnesses. Each party may conduct cross-examination reasonably required for a full and true disclosure of the facts. Parties may be called to testify adversely. The PFC may question witnesses. The PFC may order witnesses to be sequestered.
- (F) The PFC may establish reasonable time limits for the duration of examinations of witnesses, may modify the order of testimony or make such additional or modified orders or rules at such hearing as it deems necessary for the orderly, fair, and impartial conduct of the proceedings.

10.21 The Charging Party shall have the Burden of Proof. The Burden of Proof is by the preponderance of the evidence; that is, by the greater weight of the credible evidence to a reasonable certainty. The greater weight of credible evidence means that the evidence has more convincing power than the evidence opposed to it. Credible evidence means evidence that the PFC believes in light of reason and common sense. Reasonable certainty means that the PFC is persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet this burden.

10.22 In determining whether just cause has been established for imposition of discipline, the PFC shall consider each of the standards, as they may be applicable, set forth in § 62.13(5)(em)1-7, Wis. Stats.

10.23 Closing arguments. At the close of the presentation of evidence, the Charging Party may make a closing argument, the Respondent may make a closing argument, and the Charging Party may make a final argument, limited to matters in rebuttal. The PFC may set reasonable time limits on the duration of closing arguments. The PFC may invite written briefs or memoranda, including, at the PFC's discretion, proposed findings of fact and conclusions of law, following the close of presentation of evidence. The PFC may continue the hearing for the receipt of written submissions and for the PFC's deliberations.

10.24 Hearing to be recorded. All public portions of the evidentiary hearing shall be recorded verbatim by one of the following methods: audio recording, transcription, or video recording.

10.25 Decision. The PFC shall issue a written decision in each proceeding, file such decision with the Secretary of the PFC, and deliver or mail a copy to the parties and their representatives within three (3) calendar days after the conclusion of the PFC's deliberations. The decision shall contain the PFC's order determining the outcome of the material matters at issue in the case, and may contain findings of fact, conclusions of law, and a memorandum decision. The PFC's decision shall make specific reference to the standards of just cause contained in § 62.13(5)(em)1-7, Wis. Stats., as applicable.

10.26 Rules of Order. The then current edition of Robert's Rules of Order shall be the rules of order for the conduct of business at Commission meetings, unless otherwise provided by these Rules of the Commission or by the Wisconsin Statutes or unless the Commission waives those rules of order or specified provisions thereof for a particular meeting.