

**City of Oconomowoc
Police Commission**

**Tuesday, May 25, 2021 - 5:00 PM
Public Safety Building, 630 E Wisconsin
Ave, Multi-Purpose Room
630 E. Wisconsin Ave. Oconomowoc, WI 53066**



Notice: If a person with a disability requires that the meeting be accessible or that materials at the meeting be in an accessible format, call the City Clerk's office at least 48 hours in advance to request adequate accommodations. Tel: (262) 569-2186

- 1. Call to order, roll call and confirmation of appropriate meeting notification**
- 2. Approve minutes from**
 - a. Minutes of March 23, 2021
- 3. Committee Business**
 - a. Closed Session Per Wis. Stats. 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility (Consider appointment of police officer candidate)
 - b. Reconvene into open session, per Wis. Stats. 19.85(2)
 - c. Consider/act on confirming Police Chief's appointment to police officer position
 - d. Discuss Potential Written Procedures of Police Commission
- 4. Comments from Police Commissioners**
- 5. Adjourn**

Diane Coenen, City Clerk
City of Oconomowoc

Members of other city governmental bodies (boards, commissions, committees, council, etc..) may attend the above noticed meeting of the Police Commission in order to gather information. The only action to be taken at the above noticed meeting will be action by the Police Commission. Police Commissioners should notify the City Clerk's Office at (262) 569-2186 if they are unable to attend.

Police Commission Meeting Minutes – March 23, 2021

Chairman Krauski called the meeting to order at 5:00 pm and the Deputy Clerk confirmed appropriate meeting notice had been given.

Members present: Miller, Schmidt, Barry, Krauski, Wiemer and Non-Voting Council Representative Schellpeper
Staff present: Pfister, Timm, Trebatoski, Posnik, Atty Stadler and Wallace

2. Approve minutes from December 14, 2020: Motion by Wiemer to approve the December 14, 2020 minutes as written; second by Miller. Motion carried 5-0.

3.a. Discussion/direction on possible development of rules and regulations of the Police Commission: Krauski stated after going through the handbook last year she asked the Chief if the Commission had a guide and she was informed there wasn't one. She reached out to Atty Stadler for advice and he offered to develop a guide for the Commission. She thought it would be more advisable to discuss what the Commission thinks might be an appropriate document that we can use to guide the Commission. Atty Stadler stated rules and regulations can be helpful especially as Commissioners change. Commissioner's discussed and gave the following comments to help develop the guide: look at bylaws from other communities, establish rules, transparency, process to setup hearings, process for citizen complaints, structure, discipline process, evaluate hiring and firing process, evaluate process for promotions, appeal process, establish public comment rules, scope of authority, commission procedures, appointment of officers, and review guide annually.

Commissioner's agreed to have Atty Stadler create a rough draft guide for the Commissioner's to work off. Atty Stadler stated he will work with the Chief and Krauski. He will have the draft ready by May for the Commissioner's and HR to review and to pick out sections for discussion. This is a great defensive tool.

b. Closed Session: Motion by Wiemer to go into Closed Session, per Wis. Stats. 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility regarding consider appointment of police officer candidates; second by Schmidt. Motion carried 5-0. Closed Session convened at 6:01 PM.

c. Reconvene into open session, per WIS. Stats. 1985(1)(c): Motion by Wiemer to reconvene into Open Session; second by Schmidt. Motion carried 5-0. Open Session reconvened at 6:35 PM.

d. Consider/act on confirming Police Chief's appointment(s) to police officer position(s): Motion by Wiemer to approve the Police Chief's appointments of Joshua Mosher and Justin Hutter for entry level police officer positions; second Miller. Motion carried 5-0.

e. Consider/act on striking name(s) from current police officer eligibility list: Motion by Wiemer to approve striking names from the current police officer eligibility list; second by Miller. Motion carried 5-0.

4. Comments from Police Commissioners: Commissioners thanked the Police Department for all that was done during the Roundy's situation. Wiemer stated Sgt. Rynders was the supervisor at the scene and did very well. Pfister stated the whole department did an outstanding job and Sgt. Rynders did an outstanding job at the scene. He stated the new facility was great with bringing 144 Roundy employees back to interview. Schmidt suggested looking into awards. Pfister stated he is looking at bringing back merit awards and other lifesaving awards.

Motion by Wiemer to adjourn; second by Schmidt. Motion carried 5-0. The meeting adjourned at 6:42 p.m.

Minutes taken by Tina Wallace, Deputy City Clerk
Don Wiemer, Secretary

**BYLAWS OF THE
BOARD OF POLICE COMMISSIONERS
FOR THE CITY OF OCONOMOWOC, WISCONSIN**

Adopted , 2021

**ARTICLE I
ORGANIZATION AND PURPOSE**

1.1 Name and Membership. The entity shall be known as the Board of Police Commissioners for the City of Oconomowoc, Wisconsin (hereinafter “Board”).

1.2 Organization and Purpose. The Board is duly organized in accordance with Section 62.13, Wisconsin Statutes, entitled “Police Department”, for the purpose stated therein. Section (1) thereof provides:

(1) **COMMISSIONERS.** The board of police commissioners shall consist of 5 citizens, 3 of whom shall constitute a quorum. The mayor shall annually, between the last Monday of April and the first Monday of May, appoint in writing to be filed with the secretary of the Board, one member for a term of 5 years. No appointment shall be made which will result in more than 3 members of the board belonging to the same political party. The board shall keep a record of its proceedings.

The Board does not have or exercise the Optional Powers referenced in Section 62.13(6), Wisconsin Statutes.

1.3 Vacancies. Vacancies on the Board shall exist:

1.3.1 Upon the death, resignation or removal of any member; or

1.3.2 Whenever a member has had more than three (3) consecutive unexcused (as determined by the Board) absences. After two (2) initial, consecutive unexcused absences, a member will receive a written notice from the Board that he/she must attend the next Board meeting or provide notice of their absence. For subsequent consecutive unexcused absences, the Board is not responsible for notifying the member. Where a member has had three (3) consecutive unexcused absences, the Board, at a duly noticed and convened meeting, may declare the member's position on the Board as vacant, and will so notify the member. The member may, within ten (10) days of receipt of such notice, file with the City Clerk a notice of appeal, in which event this issue will be determined by the Common Council of the City under State law.

1.3.3 Any member may resign effective upon giving written notice to the Mayor of the City.

1.3.4 Members may be removed from office in accordance with the laws of this State and these By-Laws.

1.3.5 Vacancies on the Board will be filled by the Mayor of the City.

1.4 Authority and Powers. Pursuant Section 62.13, Wisconsin Statutes, the Board, has the following powers:

1.4.1 Appoint the Chief of Police including establishing a selection process.

1.4.2 Approve appointments of subordinates and promotions made by the Police Chief.

1.4.3 Establish selection process and an eligibility list for entry level positions. For the establishing of such list, the Board shall adopt and may repeal or modify, rules calculated to secure the best service in the department.

1.4.4 Establish a selection process and an eligibility list for other than entry level positions in the Police Department for when said positions are not filled by promotion. For the establishing of such list, the Board shall adopt, and may repeal or modify, rules calculated to secure the best service in the departments. The Police Chief shall make the determination as to whether qualified individuals are eligible for promotion, subject to approval by the Board.

1.4.5 Hear an appeal from a subordinate who has been suspended by the Police Chief and who requests a hearing.

1.4.6 Hear charges filed against the Chief or charges filed by the Chief against a subordinate. The Board may also hear charges filed by a member of the Board, the Board as a body or any aggrieved person, and determine whether there shall be a penalty. If a penalty is appropriate, the Board is authorized to impose only one of the following four penalties: suspension, reduction in rank, suspension and reduction in rank, or removal as the good of the Department may require.

1.4.7 Make rules for the administration of the disciplinary appeal review process.

1.5 Standard of Conduct. Board Members are subject to the City of Oconomowoc Standard of Conduct, Municipal Code Section 1.09.

ARTICLE II OFFICE AND ADMINISTRATION; SERVICE OF PROCESS, FILINGS AND RECORDS

2.1 Service of Process and Filings. Service of process and filings shall be upon the Commissioner serving as Board Secretary.

2.2 Records. Records shall be maintained at City Hall and shall be subject to Wisconsin's Public Records Law.

ARTICLE III MEETINGS AND OFFICERS

3.1 Place of Meetings. Board meetings shall be held at the City of Oconomowoc Police Department, 630 E. Wisconsin Avenue, Oconomowoc, Wisconsin 53066 unless otherwise noticed for another location by the Board.

3.2 Meetings. The Board shall endeavor to meet as required to attend to matters. Meetings shall be at dates and times determined by the Board.

3.3 Open Meetings Law. Meetings shall be conducted in accordance with the State of Wisconsin's Open Meetings Law.

3.4 Special Meetings. Special meetings of the Board may be called by the Chairperson or by three (3) members with twenty-four (24) hours' notice to each Board member and the public unless for good cause such notice is impossible or impractical, in which case shorter notice may be given under Wis. Stat. § 19.84(3). In no case may notice be provided less than two (2) hours in advance of a meeting.

3.5 Meeting Agendas. The following provisions shall govern the giving of notice for meetings of the Board:

3.5.1 The Secretary of the Board, or designee thereof, will distribute written agendas of its regular and special meetings to its members in accordance with the Wisconsin Open Meetings Law. The agenda may be delivered personally, by first class mail, equivalent private delivery service, by facsimile machine, and/or through electronic mail, and shall state the place, date and time of the meeting and the matters proposed to be considered or acted upon at the meeting. If a member cannot be found, the agenda may be delivered by leaving the agenda at the member's usual place of abode. The Board shall post agendas of its regular and special meetings on a bulletin board at City Hall.

3.5.2 A copy of the agenda will be sent to the Police Chief, Mayor, City Administrator, Director of Human Resources, City Attorney and to the news media as provided for by Wisconsin's Open Meetings Law.

3.6 Quorum for Meetings. A quorum of the Board shall consist of a majority of the voting Board Members. For purposes of determining a quorum, an unfilled vacancy of the Board shall reduce the Board membership by one (1) until such vacancy is filled. No business shall be considered by the Board at any meeting at which the required quorum is not present, and the only motion which the Chairperson shall entertain at a meeting without a quorum is a motion to adjourn.

3.7 Majority Action as Board Action. Every act or decision made by a majority of the members present at a meeting duly noticed and at which a quorum is present, is the act of the Board, unless these Bylaws, or provisions of law, require a greater percentage or different voting rules for approval of a matter by the Board. There shall be no vote by proxy.

3.8 Conduct of Meetings. Meetings of the Board shall be presided over by the Chairperson; or, if no such person has been so designated, or in his or her absence, by the Vice Chairperson; or, in the absence of each of these persons, by a member chosen by a majority of the members present at the meeting. The Secretary of the Board shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

3.8.1 A member may execute any order, decision or other like document electronically by the electronic submission of his or her signature to such order, decision or other like document.

3.8.2 The rules contained in the current edition of Robert's Rules of Order shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with these Bylaws, provisions of law, and any special rules of order the board may adopt.

3.9 Election of Officers. At a Board meeting held in May of each year, the Board shall elect from among its members its officers: Chairperson, Vice Chairperson and Secretary. Voting for the election of officers shall be by voice vote, unless there is more than one (1) candidate per office. In such circumstances, voting shall be by written ballot. Upon motion of any Board member, said vote shall be by secret ballot pursuant to Wis. Stat. § 19.88(1). Each member present shall cast one (1) vote per candidate, per office. The candidates receiving the highest number of votes shall service for one (1) year. Officers may be reelected to serve in subsequent terms. If one or all of the offices are permanently vacated before the terms of office are completed, the Board, at its next meeting, shall hold an election to fill all vacancies. The newly elected officer or officers shall continue to serve until the annual election held on the first Board meeting in May.

3.10 Order of Business. The order of business of the Board, shall be set in the agenda.

3.11 Accommodations. Anyone who needs special accommodations in order to attend a meeting may contact the City Clerk reasonably in advance so that reasonable accommodations can be made.

3.12 Floor Privilege. Only Board Members shall have the right to speak at Board meetings. The Board may, in its sole discretion, allow anyone else present to speak at the Board meeting, but only to the extent of, and subject to any parameters established by the Board.

3.13 Adoption, Modification, or Repeal of Board Rules. Except where otherwise provided by statute or ordinance, Board Bylaws may be prescribed, amended, or repealed by a majority vote of the Board members present pursuant to the following procedures:

1. Notice of a proposed rule or rules shall be given prior to a meeting; and
2. Final action on a proposed rule, amendment, or repeal shall be deferred to, at least, the next regular or special meeting of the Board. Provided, however, that at least ten (10) days shall have elapsed before final action is taken.

3.14 Emergency Action. Notwithstanding any other provisions, immediate action may be taken on a proposed rule, amendment, or repeal provided that such action has approval of at least 2/3 of the Board members present.

3.15 Temporary Suspension of Rules. The Board may, for good cause, vote to temporarily waive or suspend any of its rules or regulations on a vote of 2/3 of those Board members present and voting. In no event, however, shall such action be taken except by a majority of the entire Board.

ARTICLE IV OFFICERS OF THE BOARD AND THEIR DUTIES

4.1 Duties of the Chairperson. The Chairperson of the Board shall prepare meeting agendas and notice all meetings in accordance with Wisconsin Open Meeting Law. Further, the Chairperson shall:

- a. Preside over all meetings and hearings and ensure their orderly conduct;

- b. Make rulings on motions and objections with or without the advice of the other members of the Board or its legal counsel, but always subject to an appeal of the ruling by the member of the Board as would be allowed under Robert's Rules of Order;
- c. Accept filing of written charges against Chiefs and subordinates;
- d. Issue subpoenas for the attendance of witnesses at hearings pursuant to Wis. Stat. § 62.13(5)(d);
- e. Administer oaths to witnesses appearing before the Board;
- f. Confirm the charge(s) for the accused at any hearing including the provisions alleged to have been violated;
- g. Ask questions and control questions asked by other Board members during any hearing;
- h. Ensure standards for procedural due process are afforded the accused at any hearings; and
- i. Adjourn Board proceedings.

The Chairperson, in the event that the current serving Secretary is temporarily absent from a meeting, shall appoint a Board Member to temporarily service as Board Secretary.

4.2 Duties of the Vice Chairperson. The Vice Chairperson of the Board shall assume all powers and duties, and be subject to all of the restrictions of the Board Chairperson in the Chairperson's absence, inability or refusal to act, and shall have other powers and perform such other duties as may be prescribed by law, by these Bylaws, or as may be prescribed by the Board.

4.3 Duties of the Secretary. The Secretary of the Board shall keep the records of the Board at the office of the City Clerk, in accordance with Wisconsin's Public Records Law, and shall have other powers and perform such other duties as may be prescribed by law, by these Bylaws, or as may be prescribed by the Board.

4.3.1 The Secretary shall keep a minute book, showing all important actions pertaining to each meeting and hearing. The minutes of each meeting and hearing shall be signed by the Secretary and approved by the Board. A copy of the unapproved minutes shall be provided each member, the Chief, the Mayor, City Administrator, Director of Human Resources and City Attorney, as soon after each meeting as is possible.

4.3.2 After the minutes are approved by the Board, one (1) copy shall also be sent to the Chief, the Mayor, City Administrator, Director of Human Resources and City Attorney, as soon after each meeting as is possible.

4.4 Clerical Assistance. The City may provide clerical assistance to the Board. Officers of the Board may delegate clerical duties to such City personnel.

ARTICLE V APPOINTMENTS

5.1 Chief. The Board shall appoint the Police Chief, who shall hold office during good behavior, subject to suspension or removal by the Board for just cause as defined herein. The Board may appoint a suitable person in its discretion, who need not be a member of the department nor a resident of the City. Whenever the position of Chief shall become vacant, the Board shall, as determined necessary by the Board, appoint an interim Chief who shall perform the duties of the Chief until such time as he or she is removed by the Board or a permanent Chief is appointed by the Board.

5.2 Subordinates.

5.2.1 Hiring. Any potential member of the Police Department shall initially fill out an application form. The Board will consider the applicant's written test scores as well as the results of the physical agility test. The examination shall be free for all U.S. citizens over 18 and under 55 years of age, with proper limitations as to health and, subject to ss. 111.321, 111.322, and 111.335, arrest and conviction record.

5.2.2 The examination, including minimum training and experience requirements, shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the board and may include tests of manual skill and physical strength. All relevant experience, whether paid or unpaid, shall satisfy experience requirements. Veterans and their spouses shall be given preference points in accordance with s. 63.08 (1) (fm).

5.2.3 Upon the conclusion of examinations, the Commission in consultation with the Police Chief shall prepare and certify an eligibility pool 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, drug tests, psychological evaluation and the medical examination contingencies. Whenever it becomes necessary to fill a vacancy in the Department, the Chief shall choose an applicant from the eligibility pool and make a conditional offer of employment as a police officer to the applicant. The certified pool will expire twelve months from the date of certification unless extended or discontinued by the Commission

5.2.4 The top five candidates from the eligibility list may be interviewed by the Chief and other members of the Department designated by the Chief. The Department will also conduct a background check on the applicant. The Chief may conditionally appoint the applicant of his/her choosing, subject to approval by the

Board and the applicant's successful completion of physical and mental examinations

5.2.5 Promotion. Promotions may be made from within the department, or the Chief may open up those positions to officers outside the Department. All promotions shall be subject to approval by the Board.

ARTICLE VI DISCIPLINARY ACTION AGAINST SUBORDINATES

6.1 Definition of "Subordinate". A "Subordinate" shall include any sworn member of the Police Department other than the Chief.

6.2 Who May File Charges Against A Subordinate.

6.2.1 Charges may be filed against a Subordinate by the Chief, a member of the Board, the Board as a body, or by an aggrieved party. Such charges shall be in writing and filed with the Chairperson of the Board.

6.2.2 If the Subordinate suspended by the Chief requests a hearing before the Board, the Chief shall be required to file charges with the Board upon which such suspension was based.

6.2.3 When charges are filed by a Board Member, the Board Member filing charges shall remove themselves from the proceedings subject to the approval of the Board so as not to create a conflict of interest between the Board Member and the Board. The Board reserves the right to remove a Board Member who files charges and does not voluntarily remove themselves if good cause exists to believe that a conflict of interest may otherwise exist.

6.3 Suspension of Subordinates.

6.3.1 A Subordinate may be suspended for just cause by the Chief or the Board as a penalty. Such suspension shall be without pay. The Chief shall file a report of such suspension with the Board immediately upon issuing the suspension. No hearing on such suspension shall be held unless requested by the suspended Subordinate.

6.3.2 A Subordinate may be suspended by the Board or the Chief pending the disposition of charges filed against him/her.

6.4 Filing of Charges.

6.4.1 All charges shall be in writing in the form of a verified (notarized) complaint, shall be signed by the person filing charges and shall be filed with the Chairperson of the Board.

6.4.2 The written charges shall include: the name of the individual complained about; the nature of the alleged offense; the rule or law violated; and the date and place of the alleged violation. If any portion of the statement of charges is made upon information and belief, the source of such information and belief shall be identified, including any person's name and address.

6.4.3 Separate charges shall be made against each Subordinate involved in the alleged misconduct resulting from the same event. The charges may be consolidated for hearing, but if either party requests a separate hearing on one or more charges, the Board may allow the charges to be heard separately.

6.4.4 Motions by the parties as to the formal adequacy of the complaint and other procedural matters may be made and shall be considered by the Board.

6.5 Notification of Charges and Answer. Except with respect to Citizen Complaints, following the filing of charges in any case, a copy thereof shall be served upon the person charged. The accused shall file an Answer with the Chairperson of the Board, with a verified (notarized) copy to the Complainant within ten (10) days of service of the charges.

6.6 Prehearing Conference. The attorney for the Board shall conduct a Prehearing Conference with the Chief and the subordinate and/or their counsel, which may be conducted by telephone. The Prehearing Conference shall be conducted at least ten (10) days prior to hearing. The following matters will be addressed:

1. Whether the charges fall within the jurisdiction of the Board.
2. Procedural motions to be considered by the Board.
3. Stipulations as to matters about which the parties agree. Matters which are stipulated to need not be proven by the parties at the hearing.
4. A date for each party to provide the other party with a list of names and addresses of witnesses they intend to call.
5. Stipulations to changes in deadlines.
6. Hearing date.

6.7 Setting Date of Hearing. The Board, through its attorney, shall set a date for a hearing on the charges not less than ten (10) days, nor more than thirty (30) days following service of charges upon the person charged.

6.8 Marking, Exchange and Objections to Exhibits.

6.8.1 To expedite the hearing and the Board's consideration of the evidence, each party shall prepare a numbered list of exhibits which that party expects to offer into evidence, identifying each document by a reasonably descriptive short name or title. These lists shall be filed with the Board no less than ninety-six (96) hours prior to the scheduled commencement of the hearing. These lists and a copy of each document should be exchanged by the parties not less than ninety-six (96) hours prior to the scheduled commencement of evidentiary proceedings. A unified joint list of exhibits filed not less than ninety-six (96) hours prior to the commencement of evidentiary proceedings will fulfill the requirements of this rule if the parties can reach agreement on such a list.

6.8.2 Parties shall exchange and file notice of any objections to such proposed exhibits not less than twenty-four (24) hours prior to the scheduled commencement of the hearing. This notice of objection shall state concisely the grounds for objection but need not present argument or authority.

6.8.3 Unless excused by the Board, each party shall file with the Board the original and six (6) photocopies of each documentary exhibit offered into evidence. Each party offering a documentary exhibit into evidence shall provide at least one (1) photocopy to each party to the proceeding.

6.9 Legal Representation. The accused and the Complainant may represent themselves, or may be represented by an attorney, or with the Board's permission may be represented by a lay advocate acting as the party's agent. The Board, in such proceedings, will be represented by an attorney.

6.10 Witnesses and Subpoenas. Either party to a hearing may compel the attendance of witnesses by subpoena. The form of the subpoena shall be prepared by the requesting party and shall be issued by the Chairperson of the Board, and be served as are subpoenas under Chapter 885, Wisconsin Statutes.

6.11 Hearing and Testimony.

6.11.1 All hearings on the charges will be public. The Chairperson of the Board will preside over the hearing. Generally, any witness may testify regarding matters about which that witness has personal knowledge and may be examined as to their credibility. The rules of evidence regarding the examination of witnesses and evidence obtained as customarily used in Circuit Court will be waived so as not to exclude possible relevant evidence. All evidence will be received and accorded whatever weight and credibility is appropriate. The Board may designate its attorney to act as a hearing examiner and rule on evidentiary issues. Any party may appeal any ruling by the Board's attorney to the Board, who shall rule thereon. Parties will not be prevented from calling rebuttal witnesses whose names are not included on the lists for good cause shown and accepted by the Board. The names of witnesses discovered after the lists are exchanged shall be provided to the opposing party within a reasonable time period. Neither party will be required to call all of the witnesses listed on their witness list.

6.11.2 The accused may be called adversely by the Complainant or the Board and subject to Section 62.13, Wis. Stats., examined by each Board Member as to the charges. If the accused refuses to testify upon the grounds of self-incrimination, the Chairperson or attorney for the Board shall advise the accused that the accused will be questioned on matters specifically, directly and narrowly relating to the performance of the accused's duties concerning the charges filed pursuant to *Garrity*. Any failure to answer may result in disciplinary action, up to and including termination being imposed upon the accused by the Board. However, any answers given and any fruits thereof cannot be used against the accused in any criminal proceedings. The accused will be further advised that failure to answer any of the questions may result in the Board's drawing of an adverse inference as to the accused's credibility and/or innocence of the charges filed against the accused.

6.11.3 Members of the Board may question any witness at any time, but generally shall adhere to the following procedure:

1. Commissioners may reserve their questions of the witness until the parties have completed all direct and cross examination.
2. Before the witness is excused, commissioners may briefly confer in order to identify areas of interest for further inquiry.
3. Questions on behalf of the Board may be posed by the Board's legal counsel or by the Chairperson.

4. The parties may state objections to the questions posed by or on behalf of the Board.
5. At the conclusion of such inquiry, the party who did not call the witness may conduct one round of cross-examination, limited in scope to the questions and responses of the Board's inquiry, following which the party who called the witness may conduct one round of re-direct examination also so limited.
6. The Board may initiate additional cycles of this process for a witness.
7. The witness shall be excused when the Board is satisfied that its inquiry of the witness has been completed.
8. The Board may defer its questioning of a witness until both parties have rested and for that purpose may continue a subpoena.
9. In any proceeding the Board may modify this process.

6.11.4 Upon motion of a party, the Board may order that objections or other discovery matters requiring decision or ruling shall be acted upon exclusively by the Board or by such other person or persons as the Board may designate.

6.11.5. The Board may deliberate in closed session as required during the course of its hearings to act on motions, objections or administrative matters.

6.11.6 The Board may modify the order of testimony or make such additional rules at each hearing as it deems necessary for the conduct of the hearing.

6.12 Decision.

6.12.1 After hearing all the evidence and the argument and summation statements of the parties, the Board may convene into closed session(s) to deliberate for as many days as necessary upon giving notice of convened dates. Within three (3) days of the close of the hearing, the Board shall produce and file with the Secretary of the Board a written decision including Findings of Fact, Conclusions of Law and an Order for penalties, if any, that shall be taken against the accused. If one (1) or more Board Members disagrees with the majority opinion, the member(s) may write and file a dissenting opinion.

6.12.2 No Subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the Board based on charges filed by the Board, members of the Board, an aggrieved person or the Chief, unless the Board determines that there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the Board shall apply the following standards, to the extent applicable:

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 Section 6.13.2.3 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.
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.

6.12.3 If the Board determines that the charges are not sustained, the accused, if suspended, shall be immediately reinstated and all lost pay restored. If the Board determines the charges are sustained, the accused, by order of the Board, may be suspended, reduced in rank, or suspended and reduced in rank, or removed, as the good of the Department may require.

6.13 Hearing Procedure.

6.13.1 The Board will arrange for the proceedings to be recorded by a Court Reporter. The Board or any party may order a transcript at their expense. The Board will order a transcript at its expense in the event of an appeal. The original transcript will be filed with the Secretary of the Board.

6.13.2 The parties and/or their attorney will identify themselves for the record, beginning with the Complainant.

6.13.3 All witnesses will be sworn.

6.13.4 Each party, beginning with the Complainant, will have the opportunity to make a brief opening statement to the Board, stating what evidence they will introduce and what they intend to prove.

6.13.5 Complainant will introduce evidence/call witnesses first. Witnesses called by Complainant will be directly examined by Complainant or his/her attorney, followed by cross-examination by the accused or his/her attorney. Board Members may question the witness at any time. The parties will be entitled to redirect and recross-examination.

6.13.6 Following the close of Complainant's evidence, the accused will have the right to introduce evidence/call witnesses according to the same procedure as set forth in Section 6.14.5, above.

6.13.7 After all witnesses have testified, Complainant may make a closing statement to the Board, which will be followed by accused's closing statement. Complainant will have the opportunity to make a rebuttal argument following accused's closing statement. The Board may invite written briefs or memoranda following the conclusion of testimony in lieu of closing statements or oral argument, formally continuing the hearing for the receipt of the briefs or memoranda and for deliberations.

6.13.8 Failure of a Complainant to appear at the Prehearing Conference or the Hearing or to comply with these rules may be grounds in the discretion of the Board to dismiss the Complaint either with or without prejudice, that is, with or without the right to re-file the complaint.

6.14 Appeal of Decision. Any person suspended, reduced, suspended and reduced, or removed by the Board may appeal from the order of the Board to the Circuit Court by serving written notice of the appeal on the Secretary of the Board within ten (10) days after the order is filed. Within five (5) days after receiving written notice of the appeal, the Board (through the Board Chairperson) shall certify to the Clerk of Circuit Court the record of the proceedings, including all documents, testimony, and minutes.

6.15 Modification of Rules. The Board, on its own motion or on the motion of a party, may modify, extend, waive, or excuse performance of any of these rules and may promulgate additional rules or procedures as appropriate to a case before it.

ARTICLE VII DISCIPLINARY ACTION AGAINST THE CHIEF

7.1 Procedure to File and Hear Charges. The procedure to file and hear charges provided for in Article VI shall also apply to the Chief, where applicable

7.2 Suspension of Chief. The Board may suspend the Chief pending disposition of charges.

ARTICLE VIII CONSTRUCTION OF BYLAWS

Should any Federal or State law, rule or regulation, or the final decision of any court of competent jurisdiction affect any provision of these Bylaws, the provision or provisions so affected shall be deemed to be amended so as to conform to the law, rule, regulation or decision. These Bylaws shall be construed to be consistent with the requirements of Federal and State law.

ARTICLE IX SEVERABILITY

In the event any portion of these Bylaws is found to be invalid or unenforceable by a court of competent jurisdiction, the remaining portion shall remain in full force and effect.

ARTICLE X
ADOPTION

These Bylaws were adopted at a duly noticed and convened meeting of the Board held on the ___ day of _____, 2021. These Bylaws supersede all other Bylaws previously adopted.

