POLICE & FIRE COMMISSION (PFC) HEARING PROCEDURES

I. PURPOSE

These procedures apply when a Statement of Charges is filed against Fire Department or Police Department subordinates and chiefs. These disciplinary procedures are adopted pursuant to authority granted to the PFC under § 62.13 Wis. Stats., to promulgate rules for the administration of disciplinary matters. These disciplinary procedures only apply to chiefs and subordinates. These procedures do not apply to probationary employees, who may be summarily discharged from an initial appointment by the Chief of the Police Department or the Chief of the Fire Department; subordinates of the Department who are serving in a probationary capacity in a promoted rank and who are returned to the previously-held rank by the Chief for failing to satisfactorily complete the period of probation; unsworn employees of the Police Department who are not appointed by the PFC; and employees of the Fire Department who are not appointed by the PFC.

These procedures shall be interpreted in conformity with § 62.13, Wis. Stats., as it may be amended from time to time, and any provisions of these procedures that are not consistent with the statutes shall be void and of no effect. Should any federal or state law or regulation, or the final decision of any court of competent jurisdiction affect any provision of these procedures, the provision or provisions so affected shall be deemed to be amended so as to conform to the law, regulation, or decision or if they may not be so amended to be repealed. However, the amendment or repeal of any provision or provisions by change in law shall not affect any other provision of these Procedures. Time limitations set forth in these procedures are not jurisdictional, except as specifically provided by § 62.13 Wis. Stats. or by these procedures.

II. DEFINITIONS

Aggrieved Person. An 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 or a third party representing an Aggrieved Person’s interests as permitted by the PFC in their discretion as provided in section IX(E)(6) below.

Calendar Days. Where these procedures refer to a specific number of days, days shall be counted as calendar days, excluding the first day and including the last day. If the last day within which an act or proceeding is to be done or taken falls on a Saturday, Sunday or City Holiday, the act or proceeding may be done or taken on the next following business day.

Case Manager. A Case Manager is an individual appointed to assist the PFC with the administrative tasks related to a hearing and/or with the conducting of the hearing.

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.

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.

**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 City Manager 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:

- **Unauthorized Use of Force.** An allegation that an Employee used excessive physical force or more force than was needed under the circumstances.

- **Discourtesy.** Unnecessary, unprofessional, rude, profane, derogatory, inappropriate or belligerent language, actions, or behavior by an Employee.

- **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.

- **Department Procedures.** An unauthorized or inappropriate deviation from established City or Department policies or procedures.

- **Department Services.** An inappropriate, unnecessarily slow, or insufficient response to an incident, call for service, or request for intervention of the Department Employee.

**Department.** The Department refers to the Oshkosh Fire Department and/or the Oshkosh Police Department.

**Dismissal.** Dismissal is a determination to terminate formal action on Charges.

**Employee.** An Employee is a sworn member, including the chief, of the City of Oshkosh Police Department who has been appointed by the PFC or a member, including the chief, of the City of Oshkosh Fire Department who has been appointed by the PFC.

**Extraordinary Circumstances.** Extraordinary Circumstances are a highly unusual set of facts that are not common and which prevent the appearance of a person or the timely completion of a specified task as required by these Procedures.

**Misconduct.** Misconduct is conduct by an Employee of the Fire or Police Department which violates a law or City or Department rules, regulations, policies, or procedures.

**Police and Fire Commission (PFC).** The five citizens appointed by the Mayor and confirmed by the Common Council to perform the statutory functions of the Police and Fire Commission by serving as Commissioners for a five-year term.

**Respondent.** The person against whom Charges are filed.
**Subordinate.** A Subordinate is a sworn member of the City of Oshkosh Police Department who has been appointed by the PFC or a member of the City of Oshkosh Fire Department who has been appointed by the PFC, but does not include the chief of either Department.

### III. COMPLAINTS

Complaints not meeting the definition or requirements of Charges, shall be referred to the City Manager for review, investigation and disposition as he/she may deem appropriate.

### IV. FILING AND SERVICE OF CHARGES.

**(A)** Charges may be filed against an Employee of the Oshkosh 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. Where a specific statute, ordinance, rule, regulation, policy, procedure or standard of conduct or order is not identified, the PFC will review this matter to determine whether the charges define the conduct complained of and the issues/concerns surrounding such conduct with sufficient particularity that the charged party is able to understand the charges and provide a response to those charges. If the PFC determines that the charges do not define the conduct complained of and the issues and concerns raised with sufficient particularity, the PFC may direct the charging party to file an amendment to the charges defining such matters with particularity and setting a time limit for such amendment or dismiss the matter. If the PFC sets a time limit for amendment and such amendment is not timely filed, then the matter shall be dismissed without further formal action of the PFC and staff shall notify the charging party of such dismissal.
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

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  
c/o Secretary of the Police and Fire Commission  
215 Church Avenue, Room 401  
P.O. Box 1130  
Oshkosh, WI 54903-1130

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 section V below, 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 this section.

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 III of these Procedures and the matter will be referred to the City Manager for any further action deemed appropriate.

V. DISCIPLINARY SUSPENSIONS BY THE CHIEF.

The Chief may suspend a Subordinate for disciplinary reasons as a penalty. Such suspension may be imposed only for just cause, as determined under the standards set forth in § 62.13(5)(em)1-7, Wis. Stats. The order of suspension shall be in writing, shall state the reasons for the suspension and the length thereof, and shall indicate the date on which the suspension takes effect, and advise the Subordinate of the right to appeal the suspension to the PFC.
(B) If a suspension penalty is imposed by the Chief, the Chief shall file a report thereof with the Secretary of the PFC at the address specified above within five (5) calendar days after issuing the order of suspension. Said report of suspension shall contain the following information: 1) that a subordinate has been suspended; 2) the duration of the suspension (e.g., number of days); and 3) the commencement date of the suspension.

(C) Subordinate’s Request for Hearing Based on Disciplinary Suspension by the Chief.

(1) A request for hearing by the Subordinate shall be in writing and shall be filed with the Secretary of the PFC at the address specified above within five (5) calendar days after the date on which the written order of suspension was received by the Subordinate. The Secretary shall immediately inform the Chief of the filing of such a request.

(2) If a Subordinate suspended by the Chief requests a hearing on the suspension, the Chief shall file with the Secretary of the PFC within thirty (30) calendar days after the date on which the Subordinate files his/her request for a hearing a Statement of Charges meeting the requirements of section (IV)(B) above and the formal hearing processes described in these procedures shall apply.

(D) The times established within this Section are jurisdictional. If the Request for Hearing is not filed within five (5) calendar days after the date on which the written order of suspension was received by the Subordinate, then no hearing will be held and the Chief’s determination regarding the suspension shall be final. Failure to file the Statement of Charges within thirty (30) calendar days after the date on which the Subordinate files his/her request for a hearing, will result in dismissal of the Charges and no suspension shall be served.

VI. ADMINISTRATIVE LEAVE PENDING DISPOSITION OF CHARGES.

The Chief or the PFC may place a Subordinate on administrative leave, with pay, at any time pending disposition of Charges against the Subordinate. The PFC may place the Chief on administrative leave, with pay, at any time pending disposition of Charges against the Chief.

VII. REPRESENTATIONS BY COUNSEL; PAYMENT OF COSTS AND DISBURSEMENTS.

The Charging Party and the charged Subordinate or charged Chief (the “Respondent”) may be represented by legal counsel, at their own expense, at each stage of a disciplinary proceeding. If the Charging Party is the Chief of the Fire or Police Department and filing charges in his or her official capacity, then the Chief may request the City Attorney to provide representation at the expense of the City to assist the Chief. The PFC shall be represented by the City Attorney or by legal counsel retained for the PFC, at the expense of the City, to assist the PFC in the administration of any disciplinary matter pending before it. If the City Attorney’s Office, is providing representation for both a Chief and the PFC, the City Attorney shall take reasonable steps, including the appointment of outside counsel if necessary, to prevent a conflict of interest during the representation and to ensure a fair and impartial hearing.
The costs of recording the evidentiary hearing shall be borne by the City. The costs of any copies of the recording and the costs of any transcripts shall be borne by the requesting party.

VIII. APPOINTMENT OF CASE MANAGER.

If the PFC believes a Case Manager is appropriate in a given case, the PFC may request that the City Manager assign or appoint a Case Manager at the expense of the City, to assist the PFC in the administration of any disciplinary matter pending before it. Use of a Case Manager, however, does not relieve the PFC of its responsibility for making final findings of fact, conclusions of law, and a determination in the matter. A Case Manager may be discharged by the PFC at any time.

IX. 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 the 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.

(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 IV.(B) of these Procedures, timely service of the Statement of Charges upon the Respondent or a Supervisor within the respective Department as provided in Section IV.(C) of these Procedures, return of the proof of service to the Secretary of the Commission as provided in Section IV.(C) of these Procedures, and the times for action pertaining to disciplinary suspensions by the Chief as provided in Section V of these procedures 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.
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 under Section XI. 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.

(2) 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.

(3) 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. “Good cause” for a filing delay may include a defense attorney’s advice to the Complainant to wait until criminal charges are resolved; a language barrier or a physical or mental disability causing delay or confusion about how to file Charges, a reasonable fear of retaliation, or a reasonable delay in the Charging Party’s discovery of the misconduct.

a. Except for good cause, Charges involving minor misconduct involving discourtesy, disparate treatment, department procedures, or department services should be filed within 60 days of the incident.

b. Except for good cause, Charges of serious misconduct including, for example, excessive force that causes substantial physical injury, egregious acts of disparate treatment, or major rule violations should be filed within 6 months of the incident.

c. There is no specific deadline for Charges alleging serious criminal conduct or corruption. Such Charges will be evaluated on their merits with due consideration for the quantity and quality of available evidence.
The Charges are trivial, frivolous, or not made in good faith.

a. Charges may be dismissed if it is determined that the allegations are intentionally and/or materially false.

b. 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.

c. Charges are not “in good faith” if they are intentionally and materially inaccurate, misstated, or exaggerated.

Grossly illogical or improbable. Charges that are grossly illogical or improbable may be dismissed.

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.

The purpose for requiring a reasonably direct relationship is to help the PFC ensure that it is presented with the best evidence by persons who have the greatest interest in the outcome and who have the most reliable information about an incident. It is not intended to screen out otherwise reliable complaints that deserve investigation. Subject to the exceptions described below, Charges not made by Aggrieved Persons and third-party complaints may be dismissed.

Third-party complaints will not be dismissed if there is a reasonable explanation why a person with standing has not filed Charges, e.g., the person who was directly affected is a minor child, is elderly, disabled or deceased, cannot communicate easily in English, is not a citizen, or is otherwise unable to represent him/herself and the person or organization filing the complaint demonstrates the ability to adequately present competent evidence necessary for the PFC to make the determinations required under these Procedures or is a judge or other governmental official referring a matter over which he/she exercised authority or judgment under his/her discretion.

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.

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.
(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

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.

X. CONCILIATION CONFERENCE.

(A) The PFC may offer the parties the option of participating in a conciliation conference.

(B) If the parties agree to proceed to a conciliation conference, then:

(1) Notice shall be sent to the Charging Party and the Respondent, or their counsel, of the date, time, and place of the conference.

(2) The conference will be conducted by the PFC’s designee. The conference will be informal, with the parties encouraged to discuss the matter in an attempt to resolve it short of hearing. Either party may be accompanied by legal counsel. The purpose of the conference is to seek resolution, not pretrial discovery, and the statements made at the conference will not be admissible at the time of hearing. No individual who participates in the conference may hear or assist in the conduct of an Evidentiary Hearing in the matter unless the parties agree in writing.
(3) If a mutual agreement is reached at the conference, the parties will be asked to sign a statement of resolution stating that the dispute has been resolved and that the matter may be dismissed.

(4) If no agreement is reached or a party to the matter fails to participate, the matter will be returned to the PFC for further proceedings.

XI. PRE-HEARING MATTERS AND CONFERENCE.

(A) The PFC may require the Charging Party and Respondent or their representatives to participate in a Pre-Hearing Conference for any matter proceeding to an Evidentiary Hearing. The Pre-Hearing Conference shall be presided over by the Chairperson of the PFC, by a Commissioner designated by the Chairperson, or by a Case Manager appointed by the PFC. The Pre-Hearing Conference is a status conference and not an evidentiary hearing or a formal meeting of the PFC and need not be attended by all Commissioners or a quorum of the PFC. Only if a quorum of the PFC will attend the Pre-Hearing Conference will the conference be noticed and open in accordance with Wisconsin’s Open Meeting Law. Witnesses need not attend the Pre-Hearing Conference.

(B) Prior to the Pre-Hearing Conference, the parties may be required to submit a list of names and addresses of the witnesses they intend to call at the Evidentiary Hearing and a list of evidence they intend to use at the Evidentiary Hearing. Neither party is required to identify witnesses who will be called solely as rebuttal witnesses, but the parties may not call any other person to testify at the Evidentiary Hearing without a showing of good cause for the failure to timely identify the witness.

(C) At the Pre-Hearing Conference the presiding officer shall:

(1) Define the issues and determine if they can be narrowed;

(2) Determine if the parties can stipulate to any facts or agree to the identity or authenticity of documents;

(3) Set a date(s) for the Evidentiary Hearing in the matter, if one was not set by the PFC during the Initial Hearing and establish reasonable time limits for the presentation of each party’s statements and witnesses;

(4) Set the dates by which the Charging Party and the Respondent may file the list of witnesses and evidence, if the list was not required to be submitted prior to the Pre-Hearing Conference; or the dates by which such list may be amended, if allowed.

(5) Set the dates by which the Charging Party and the Respondent may file any written statements, arguments or motions prior to the hearing.

(6) Consider and report to the parties and the PFC on any other matter which may aid in the disposition of the proceeding.
(D) The PFC may permit the taking and preserving of evidence in advance of the Evidentiary Hearing under the methods available under Wis. Stats. Chapter 804 with respect to a witness who is beyond the reach of subpoena of the PFC; who is about to go out of the state, not intending to return in time for the hearing; or who is sick, infirm, or aged as to make it probable the witness will not be able to attend the hearing.

(E) The parties may compel the attendance of witnesses and the production of evidence by subpoena, which may only be issued by the Chairperson of the PFC, at their discretion, upon request. The preparation and service of the subpoena is the responsibility of the party requesting the subpoena, and the cost of service fees, witness fees and other related expenses shall be borne by the party requesting the subpoena.

(F) The PFC in its discretion may schedule additional hearings or conferences to aid in the fair, impartial, and orderly disposition of any pending proceedings, including for purposes of hearing and deciding any motions.

XII. EVIDENTIARY HEARING PROCEDURES.

(A) The Chairperson of the PFC shall normally preside at the Evidentiary Hearing. The Chairperson calls the Hearing to order, preserves order, sees that the proceedings are conducted in a fair or impartial manner, explains the purposes of the hearing, and describes to those in attendance the general procedures, which will be followed. Unless waived by the Respondent, the Chairperson shall read or cause to be read the Statement of Charges at the outset of the hearing. The Chairperson shall rule on admissibility of evidence and on motions, except motions that result in the final disposition of the Charges. The Chairperson determines the times for recesses and adjournments of the hearing, and times for reconvening. The Chairperson determines when the record is closed for presentation of evidence, and determines the extent to which the record will remain open for submission of closing oral arguments or written memoranda.

(B) In the absence of the Chairperson, or at the Chairperson’s request, the PFC may designate another of its members to preside in the Chairperson’s stead for all or some portion of the hearing.

(C) If a Case Manager has been appointed, then the PFC may delegate tasks and authority to the Case Manager in connection with the proceedings before, during, and after the Evidentiary Hearing, including those tasks and the authority assigned to the Chairperson under these procedures. Notwithstanding the appointment of a Case Manager, however, the Chairperson retains responsibility for the orderliness, fairness, and impartiality of the proceedings.

(D) The Secretary of the PFC, or another person designated by the Chairperson of the PFC, shall administer oaths or affirmations of the witnesses, keep the exhibits, maintain minutes, and otherwise serve as clerk of the proceedings.

(E) The parties, or their counsel, may make opening statements before the presentation of evidence. The PFC may set reasonable time limits on the duration of the opening statements.

(F) Presentation of Evidence and Official Notice.
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.

Each party shall be afforded adequate opportunity to present evidence and to rebut or offer countervailing evidence.

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.

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 Oshkosh and the Police Department and Fire Department.

Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

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.

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.

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.

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.

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.

(2) 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.

(J) Proceedings to be public. Evidentiary Hearings before the PFC shall be conducted in public at all stages, except that deliberations by the PFC may be conducted in closed session. Unless otherwise provided by law, any paper filed in the proceeding is public.

(K) Hearing to be recorded. All public portions of the Evidentiary Hearing shall be recorded verbatim by one of the following methods to be selected by the PFC.

(1) Audio recording;
(2) Transcription; or
(3) Video recording.

XIII. DECISION

(A) 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.

(B) 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.

(C) In accordance with section 62.13 of the Wisconsin Statutes, if the PFC determines that one or more of the Charges have been sustained, the PFC may order any of the following, as the good of the service may require:

(1) That the Respondent be suspended;
(2) That the Respondent be reduced in rank;
(3) That the Respondent be both suspended and reduced in rank, or
(4) That the Respondent be removed from the Department.

Disciplinary action taken shall be placed in the Employee’s personnel file.
(D) If the PFC determines that none of the charges have been sustained, the Charges shall be dismissed and the Respondent, if suspended, shall be immediately reinstated, and all lost pay restored.
CHARGES AGAINST EMPLOYEE OF THE POLICE OR FIRE DEPARTMENT
CITY OF OSHKOSH FIRE AND POLICE COMMISSION
City Hall, 215 Church Avenue, Oshkosh, WI 54901
(920) 236-5110

INFORMATION ABOUT CHARGING PARTY (YOU)

<table>
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<tr>
<th>Last Name: __________________________</th>
<th>First Name: ________________________</th>
<th>Middle Initial: __________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth Date: ________________________</td>
<td>Email: ______________________________</td>
<td></td>
</tr>
<tr>
<td>Address: ___________________________</td>
<td>City: _______________________________</td>
<td>State: __________ Zip: __________</td>
</tr>
<tr>
<td>Main Contact Phone Number: __________</td>
<td>Type: ____________________________ Other: __________________ Type: __________________</td>
<td></td>
</tr>
<tr>
<td>Your Legal Representative: __________________</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address: ___________________________</td>
<td>City: _______________________________</td>
<td>State: __________ Zip: __________</td>
</tr>
<tr>
<td>Phone Number: ______________________</td>
<td>Email: ______________________________</td>
<td></td>
</tr>
</tbody>
</table>

INFORMATION ABOUT THE INCIDENT

<table>
<thead>
<tr>
<th>Location of Incident: ____________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Incident: ____________________________ Time of Incident: ____________________________</td>
</tr>
<tr>
<td>Incident or Report Number if Known: ____________________________</td>
</tr>
</tbody>
</table>

INFORMATION ABOUT THE EMPLOYEE

Department employee(s) involved: Name(s) and/or physical description:

STATEMENT/DESCRIPTION OF INCIDENT

Describe the incident in detail:

(You may use additional sheets or submit a separate written statement)
WITNESSES/OTHERS INVOLVED

Last Name: ______________________ First Name: ______________________ Middle Initial: _______

Birth Date: ______________________

Address: _______________________ City: _______________________ State: _______ Zip: _______

Main Contact Phone Number: _________________ Type: ______________ Other: ______________ Type: ______________

Involvement: ______________________

Last Name: ______________________ First Name: ______________________ Middle Initial: _______

Birth Date: ______________________

Address: _______________________ City: _______________________ State: _______ Zip: _______

Main Contact Phone Number: _________________ Type: ______________ Other: ______________ Type: ______________

Involvement: ______________________

(You may use additional sheets if necessary to list other involved persons)

STATUTE, ORDNANCE, RULE OR POLICY ALLEGED TO HAVE BEEN VIOLATED / DESIRED OUTCOME

State the specific statute, ordinance, rule, regulation, policy, procedure, standard of conduct or order which you allege that the Respondent violated:

What would you like to have happen as a result of filing this complaint?

SIGNATURE

You must sign below in the presence of a Notary Public. Contact the Fire and Police Commission if you have any questions or need help with this form.

STATE OF WISCONSIN )
CITY OF OSHKOSH )

I swear or affirm that the foregoing information is true of my own knowledge, except as to those matters which I have stated upon information and belief, which matters I believe to be true to the best of my knowledge.

Subscribed and sworn to before me

This ________ day of ______________________, 20______  ___________________________ Charging Party

______________________________ County, Wisconsin

My commission expires ____________________________
CERTIFICATE OF SERVICE
For a Matter before the Police and Fire Commission of the City of Oshkosh

Charging Party: __________________________________________

Respondent: __________________________________________

SERVICE: On the ______ day of ______________, 20____, at _____ o’clock ___.m., I served a true and complete copy of Charges filed with the Secretary of the Police and Fire Commission upon the following individual in compliance with the requirements of the Police and Fire Commission Hearing Procedures for the City of Oshkosh:

Served On (name): ________________________________________

At (address): __________________________________________

_____ If to the Respondent, by personally delivering copies to the Respondent of:

_____ the attached. (attach a complete copy of the documents that were served to this certificate)

_____ the following listed documents or information:

________ A copy of the charges consisting of ____ pages

________ Other (specify) ____________________________________ consisting of ____ pages

______________________________ consisting of ____ pages

_____ If to a Supervisor of the Police or Fire Department, by personally delivering copies to the Supervisor of:

_____ the attached. (attach a complete copy of the documents that were served to this certificate)

_____ the following listed documents or information:

________ A copy of the charges consisting of ____ pages

________ Other (specify) ____________________________________ consisting of ____ pages

______________________________ consisting of ____ pages

By: __________________________________________

Print Name: ________________________________________