

RULES OF THE BOARD OF POLICE AND FIRE COMMISSIONERS OF THE CITY OF MADISON
Revised and effective August 17, 2020; published on September 4, 2020

1. Scope

- a. These rules are adopted pursuant to WS 62.13(4) and WS 62.13(5) to guide the Board of Police and Fire Commissioners of the City of Madison (“Board”) in the course of its statutory responsibilities. Except as may be specifically noted, rules apply without distinction to both the Police and Fire Departments (“Department”).
- b. No provision of these rules and regulations shall be applied or construed in a manner contrary to any provision of WS 62.13 nor otherwise contrary to law.

2. Appointments to the positions of Fire Chief or Police Chief

- a. For the position of Chief, the Board shall appoint a suitable person in its discretion, who need not be a member of the Department or a resident of the City. The appointee shall establish residence within 15 miles of the jurisdictional boundaries of the City within 60 days after appointment.
- b. The Board shall plan and implement arrangements for appointment to the position of Chief promptly upon determining that a vacancy will occur.
- c. If a vacancy in the position of Chief occurs, the Board shall promptly designate a Department officer to act as Chief during the pendency of the appointment process.

3. Appointments of Subordinates

a. Classification of Positions

- i. The Board recognizes the following subordinate ranks for purposes of appointment pursuant to statute.

(1) Police Department

- (a) Police Officer
- (b) Investigator
- (c) Detective
- (d) Sergeant
- (e) Lieutenant
- (f) Captain
- (g) Assistant Chief
- (h) Inspector
- (i) Deputy Chief

(2) Fire Department

- (a) Firefighter
- (b) Apparatus Engineer
- (c) Lieutenant
- (d) Captain
- (e) Deputy Chief
- (f) Division Chief
- (g) Assistant Chief

- ii. The Chief shall inform the Board regarding the duties and requirements associated with each rank, including any standing assignment to act in the absence of or on behalf of the Chief.

4. Appointments pursuant to WS 62.13(4)

- a. This rule is adopted for the convenience of the Board and Chiefs and to assist and guide the Board and the Chiefs in the exercise of their discretion in the appointment process. The Board may modify or revoke this rule at any time. This rule does not establish a right, entitlement, or legitimate expectation of initial, promotional, or continuing appointment in any subordinate or other individual. By acting in conformity with this Rule neither the Board nor any Chief abandons or waives any responsibility, authority, or right otherwise provided by law.
- b. In carrying out its responsibilities for appointments the Board may in its discretion seek the advice of, and delegate administrative tasks to, the Chief, other employees and agents of the City, Board legal counsel, and other persons.
- c. Eligibility List: Application
 - i. The Board shall authorize forms for making application for initial appointments. Notice of the availability of such forms shall be given as required by law and by such additional means as the Board may authorize.
 - ii. Any misrepresentation in regard to any material fact contained in the application shall be sufficient cause for excluding the applicant from the examination, or for removing the name of the applicant from the Eligibility List, or for the discharge of the applicant from the service.
 - iii. Whenever the application reveals on its face that the applicant cannot meet the qualifications of the position the applicant applies for, such application shall be rejected by the Board or its designated representative and the applicant shall be notified of the reason therefor.
 - iv. Incomplete applications shall be cause for rejection or shall be returned to applicants for correction.
- d. Eligibility List: Examination
 - i. From time to time as staffing and administrative considerations require, the Board will establish procedures and instruments for examination of applicants, including such written, oral, and physical aptitude examinations as the Board may determine to be appropriate and necessary.
 - ii. From time to time as staffing and administrative considerations require, the Board will schedule and administer the examination of applicants.
 - iii. The Board will determine the methods of scoring of all examination procedures and instruments.
 - iv. Upon review and scoring of all examination procedures and instruments, the Board shall prepare an alphabetical list of individuals eligible for appointment by the Chief (“Eligibility List”). The Board shall establish the term of each Eligibility List and may extend or shorten the term. The Eligibility List list shall be kept in the files of the Board and copies thereof shall be furnished to the Chief of the appropriate Department.

e. Initial Appointment

- i. The Chief shall identify individuals for appointment from the Eligibility List based upon the Chief's professional judgment and discretion and using such procedures as the Chief deems appropriate, but which shall include the following:
 - (1) A thorough background investigation including, without limitation, review criminal records, personal financial history, and confirmation of educational and professional credentials and references; and
 - (2) An interview of all persons on the Eligibility List (or all persons in a band or section of the Eligibility List approved by the Board) conducted by the Chief before proposing the appointment of any person from the list or from the approved band or section of the list.
 - (3) The Chief shall inform the Board of the procedures and criteria used by the Chief in identifying individuals for appointment from the Eligibility List.
- ii. When staffing and other administrative considerations require, the Chief shall forward to the Board the names of individuals proposed for appointment from the Eligibility List, including the proposed effective date of the appointments.
- iii. The Board shall promptly consider and act upon appointments from the Eligibility List proposed by the Chief.
- iv. Offers of employment by the Chief following Board approval of a proposed appointment may be conditional upon successful completion of a medical examination.
- v. Probation
 - (1) All initial appointments shall be probationary for a period of eighteen months, and both the initial recommendation by the Chief for appointment and the initial approval of appointment by the Board shall to that extent be conditional.
 - (2) Probation will include training, orientation, and intensive evaluation, for the purposes of assuring successful performance and confirming the qualifications and fitness of the appointee for service.
 - (3) If the Chief decides on a non-disciplinary basis during the course of probation to terminate the employment of an appointee, the Chief may withdraw the recommendation for appointment of that individual, who shall then be discharged and separated from the Department. The Chief shall then promptly report that decision and the resulting discharge and separation to the Board.
 - (4) At the regular meeting of the Board immediately preceding the completion of the probationary period, the Chief shall forward to the Board the Chief's confirmation of the appointment recommendation, which shall then be subject to final Board approval, or the Chief shall withdraw the recommendation.

(5) The Chief may extend the initial probationary period up to a total period of twenty-four months without Board action by notifying the appointee and the Board of the extension. No further extension shall be permitted without approval of the Board.

f. Appointments by Promotion

- i. This Rule applies to appointment by promotion to commissioned positions other than Chief.
- ii. The Chief shall advise the Board from time to time regarding current Department procedures for identifying subordinates whom the Chief may consider for promotional appointment, and shall inform the Board of the identities of subordinates who may currently be so identified.
- iii. The Chief shall inform the Board of the procedures and criteria used by the Chief in identifying subordinates for promotional appointment.
- iv. When staffing and other administrative considerations require, the Chief shall forward to the Board the names of individuals proposed for promotional appointment, including the proposed effective date of the appointments.
- v. At each regular meeting of the Board, the Chief shall inform the Board regarding any promotional appointments which the Chief then intends to present to the Board at either of the next two Board meetings. During the interim between receiving that information and acting on the Chief's recommendation, any Commissioner by arrangement with the Chief may examine the complete personnel record of the prospective appointee. The Board shall act on recommendations of the Chief for promotional appointment at any regular or duly scheduled special meeting following such opportunity for examination of the appointee's record.

vi. Probation

- (1) All promotional appointments shall be probationary for a period of twelve months, and both the initial recommendation by the Chief for appointment and the initial approval of appointment by the Board shall to that extent be conditional. In acting on the Chief's recommendation the Board shall specify the effective date of the promotional appointment, which, upon the recommendation of the Chief, may be retroactive and may effectively shorten the probationary period to reflect time served in acting capacity with training, orientation, and intensive evaluation comparable to standard promotional probation.
- (2) Probation will include training, orientation, and intensive evaluation, for the purposes of assuring successful performance and confirming the qualifications and fitness of the appointee for service in the promoted rank.
- (3) If the Chief decides on a non-disciplinary basis during the course of probation to terminate the promotional appointment of an appointee, the Chief may withdraw the recommendation for promotional appointment of that individual, who shall then revert to the rank held immediately prior to the promotional appointment. The Chief shall then promptly report that decision and the resulting reversion in rank to the Board.

(4) At the regular meeting of the Board immediately preceding the completion of the probationary period, the Chief shall confirm the appointment recommendation, which shall then be subject to final Board approval, or the Chief shall withdraw the appointment recommendation.

(5) The Chief may extend the promotional probationary period up to a total period of eighteen months without Board action by notifying the appointee and the Board of the extension. No further extension shall be permitted without approval of the Board.

vii. Without invoking, initiating, or implying a promotional process or intention, the Chief may make reasonable administrative arrangements for assigning subordinates temporarily to duties normally associated with a promoted rank.

g. Appointments Associated with Inter-Governmental Agreements, Annexation Agreements, or Cooperative Plans by the City of Madison

i. In order to secure the best service in the departments, the Board may use the procedures set out below to the extent applicable when the Mayor of the City of Madison shall report to the Board that:

(1) an inter-governmental agreement, annexation agreement, or cooperative plan provides that one or more sworn officers employed on a full-time basis by another governmental unit shall not have continued employment by that unit as a consequence of that inter-governmental agreement, annexation agreement, or cooperative plan; and

(2) employment of those sworn officers by the City of Madison shall serve the interests of the City and the departments.

ii. Upon such report:

(1) The Board may instruct the pertinent Madison Chief to prepare one or more Special Eligibility Lists for use in initial appointments to positions created by or in connection with the inter-governmental agreement, annexation agreement, or cooperative plan. Such Special Eligibility Lists shall consist of all of those sworn officers:

(a) who had been employed by the other governmental unit as specified in the inter-governmental agreement, annexation agreement, or cooperative plan on a full-time basis for a period of not less than eighteen months immediately prior to the report of the Mayor of the City of Madison described in this Rule 4.g.; and

(b) who had been previously examined, appointed, and sworn in connection with appointment to that employment pursuant to W.S. 62.13(4); and

(c) who have expressed by written application an interest in working for the pertinent department; and

(d) whom the pertinent Madison Chief may designate to appoint as a subordinate from the Special Eligibility List.

(2) The Board shall then review and may confirm such Special Eligibility Lists for use by the Chief in appointing subordinates pursuant to WS 62.13(4)(a).

(3) The appointment of individuals from such Special Eligibility Lists shall be subject to pertinent standard rules and policies for probation through conditional recommendation, except that the Chief may elect a period of conditional recommendation and probation less than otherwise provided by these rules but not less than six months.

5. Conduct of Board Business

- a. The Board shall schedule regular meetings no less often than quarterly.
- b. Annually at the June meeting the Board shall elect from among its members a President and Secretary.
- c. Special meetings of the Board may be called at any time by the President, or by any two members, with legal notice and with actual notice to Commissioners to the extent possible.
- d. The President may cancel any regular meeting not required by pending business by notifying each member of the Board not [more than three days nor]less than 24 hours prior to the time of the meeting.
- e. Three members of the Board shall constitute a quorum in order to transact business, but a lesser number may adjourn to a time certain. All determinations of the Board shall be made by a majority of all members present.
- f. The regular order of business of the Board shall include:
 - i. Roll call or attendance
 - ii. Consideration of the minutes of the preceding meeting
 - iii. Reports of the Chiefs, including current and anticipated recommendations for appointments
 - iv. Unfinished business
 - v. Disciplinary matters, if any
 - vi. Future business and scheduling
- g. The President shall: preside over meetings of the Board; call special meetings of the Board when necessary; preside over hearings conducted by the Board or see that they are properly conducted; receive written charges filed against chief officers or subordinates; and issue subpoenas as may be appropriate in disciplinary proceedings.
- h. The Secretary personally or by delegation shall: preside at meetings and hearings in the absence of the President; conduct all correspondence of the Board; receive appeals from action of the Chief; provide all notices required by law, these rules, or as requested by the Board; make such official publications as may be necessary; attend all meetings and hearings of the Board; prepare and keep records and minutes of Board proceedings; provide for the taking and recording of testimony and other evidence received at hearing;

preserve such evidence in a permanent record, and certify such record to the Circuit Court when required by law; receive service of written notice of appeal to the Circuit Court from order of the Board; keep a minute book, showing all important facts pertaining to each meeting and hearing; sign the minutes of each meeting; and provide a copy of the minutes of each meeting to each member, to the City Clerk, and to the Chiefs.

- i. Delivery to the President, the Secretary, or the Board of any item not required by law to be served upon the Secretary may be accomplished by delivery to the office of the Board's legal counsel .

6. Discharge, Suspension, and Disciplinary Action

- a. For purposes of this Rule, a "Subordinate" shall include any commissioned member of the Police and Fire Departments other than the Chiefs thereof.
- b. A subordinate may be suspended as hereinafter provided as a penalty. A subordinate may also be suspended by the Board with pay pending disposition of charges filed against the subordinate.

c. Charges

- i. A statement of charges or complaint setting forth charges ("complaint") may be filed against a subordinate ("Respondent") by the Chief, or by a member of the Board, or by the Board as a body, or by any aggrieved person ("Complainant"). The complaint shall be in writing, shall be signed by the Complainant, and shall be sworn under oath to be on the knowledge of the Complainant, except as to those matters stated on information and belief, and as to those matters Complainant shall state that the Complainant believes the charges to be true. If a complaint is made in whole or in part upon information and belief, the source of such information and belief shall be stated, including the names and addresses of witnesses having knowledge. Such information, including names and addresses of witnesses, may be embodied in a separate statement and filed with the charges. The complaint shall identify the person complained about, specify the date and place of the alleged offense, and specify the rule, standard, or provision of law violated. The complaint shall be filed with the President of the Board personally or to the President's attention at the office of the Board's legal counsel.
 - ii. From time to time the Board shall publish a standard complaint in blank form, but the Board shall not refuse unreasonably to accept a complaint which conforms to the requirements of law and this Rule solely because the complaint is not submitted on such a form.
- d. Upon the filing of charges and prior to the Initial Hearing, the Board may conduct, or the President may direct, a preliminary investigation as to the jurisdiction of the Board, the standing of the complainant, or such other preliminary issues as the Board may identify. In the course of such an investigation the Board or its agent may require the cooperation of the parties, and may compel such cooperation by subpoena. If in the judgement of the Board following such investigation the charges do not appear to come within the jurisdiction of the Board, the complainant lacks standing, or other formal defects bar the complaint, the charges may be dismissed at the Initial Hearing without evidentiary hearing.
 - e. Promptly after suspending a subordinate as a penalty, the Chief shall report such suspension to the Board.

- f. Following the filing of the complaint in any case, the President shall arrange service of a copy of the complaint upon the person charged. The Board shall set a date for the Initial Hearing not less than 10 days nor more than 30 days following service of the Complaint. The Respondent 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. Both the Respondent and Complainant may compel the attendance of witnesses by subpoenas which shall be issued by the President of the Board on request and be served as are subpoenas under chapter 885, Wis. Stats.
- g. Discovery Discovery may be conducted by the parties to a proceeding under this chapter upon the following terms and conditions.
 - i. No formal or compulsory discovery shall commence prior to the Initial Hearing.
 - ii. Discovery may be allowed by Board order at or following the Initial Hearing and using the procedures established by Wisconsin Statutes Chapter 804 as amended from time to time, consistent with the scheduling and other orders of the Board. Where appropriate to the context, references in that statute to the court before which an action is pending shall be construed as referring to this Board.
 - iii. No Chief or Commissioner Complainant may compel the deposition of the Respondent, nor direct interrogatories or requests for admission to a Respondent.
 - iv. Upon motion of a party and for good cause shown, or upon its own motion, the Board may restrict discovery as justice requires.
 - v. Upon motion of a party, the Board may order that certified 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.
- h. Initial Hearing: The Initial Hearing and all subsequent hearings on the complaint shall be public. No witnesses need appear at the Initial Hearing. The following will take place at the Initial Hearing:
 - i. The Board shall receive the report of any preliminary investigation.
 - ii. The Board shall receive and act on requests of the parties regarding representation by lay advocate.
 - iii. 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.
 - iv. If not filed earlier, Respondent shall file with the Board a written answer to the complaint which either shall be signed and verified by the Respondent in the same manner that a complaint is to be verified, or alternatively may be signed by legal counsel appearing for the Respondent. The Board may compare the Complaint and the Answer and attempt to obtain stipulations as to matters about which the parties agree. Matters which are stipulated need not be proven by the parties at the hearing.
 - v. Complainant shall provide Respondent with a list of witnesses intended in good faith to be called to prove the allegations of the complaint, and with a copy of documentary and physical exhibits intended

in good faith to be introduced, and the Board will schedule similar disclosure by Respondent. Witnesses called merely to rebut the testimony of another witness need not be disclosed in advance. Parties shall be allowed to call witnesses whose names are not included on either list and to introduce exhibits not disclosed only for good cause shown. Non-disclosed exhibits and witnesses discovered and proposed after disclosure shall be provided to the opposing party within a reasonable time frame. Neither party shall be required to call all of their respective disclosed witnesses nor to introduce all of their respective disclosed exhibits, and either party may call any witness and introduce any exhibit disclosed by the other.

vi. Each party shall propose the form, general scope, and schedule for discovery, if any. The Board may allow or order discovery. All discovery shall be completed as provided by the Board's order.

vii. Dates for the continuing evidentiary hearing will be set.

viii. If the Complainant does not appear at the Initial Hearing or at any other scheduled hearing, the Board may dismiss the complaint, either with or without prejudice, that is, with or without the right to re-file the complaint.

i. Exhibits

i. To expedite the hearing and the Board's consideration of the evidence, each party is encouraged to prepare a list of exhibits which that party expects to offer in evidence, identifying each document by a reasonably descriptive short name or title. These lists should be filed with the Board no less than 48 hours prior to the scheduled commencement of evidentiary proceedings. These lists and a copy of each document should be exchanged by the parties not less than 48 hours prior to the scheduled commencement of evidentiary proceedings. A unified joint list of exhibits filed not less than 48 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.

ii. Parties should exchange and file notice of any objections to such proposed exhibits not less than 24 hours prior to the scheduled commencement of evidentiary proceedings. This notice of objection shall state concisely the grounds for objection but need not present argument or legal authority.

iii. Unless excused by the Board, each party shall file with the Board the original and six photocopies of each documentary exhibit offered in evidence. Each party offering a documentary exhibit in evidence or using a documentary exhibit for purposes of questioning a witness other than refreshing recollection shall provide at least one photocopy to each other party to the proceeding.

j. Hearing

i. At the adjourned and continuing evidentiary hearing, both parties may make an opening statement. The Respondent may reserve an opening statement to the beginning of the Respondent's case. The Complainant shall present evidence first.

ii. The Complainant or Complainant's attorney may question each witness. After each of the Complainant's witnesses testifies, the Respondent or Respondent's attorney may cross-examine the witness. After all

the Complainant's witnesses testify, the Respondent may testify and call witnesses to testify. They shall be subject to cross-examination following their testimony.

- iii. 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 President.
 - (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.
- iv. A Chief or Commissioner Complainant shall not be permitted to call the Respondent adversely, but may cross-examine the Respondent when the Respondent becomes a witness voluntarily. An aggrieved person or the Board by majority vote may call the Respondent at hearing.
- v. The Board may deliberate in closed session as required during the course of its hearings to act on motions, objections, or similar administrative matters.
- vi. The Board may invite written briefs or memoranda following the conclusion of testimony in lieu of closing statements or oral argument, formally continuing hearing for the receipt of the briefs or memoranda and for deliberations, and shall then issue a written decision as soon as possible following receipt of final briefs or memoranda.
- vii. 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.

- k. Multiple Complaints: Separate complaints shall be made against each commissioned officer involved in the alleged misconduct resulting from the same event. The complaints may be consolidated for hearing, but if either party requests a separate hearing on one or more of the Complaints, the Board may allow the complaints to be heard separately.
- l. Evidence: Board proceedings are quasi-judicial in nature and are not subject to the statutory rules of evidence. Generally, any witness may testify regarding matters about which the witness has personal knowledge under usual administrative evidentiary procedure. Hearsay is not itself a valid grounds of objection to evidence in Board proceedings. Witnesses may be asked questions intended to show whether or not they should be believed.
- m. After receiving all the evidence and the statements of the parties, the Commissioners may retire into closed session to deliberate, adjourning and continuing as necessary. Within three (3) days of the close of the adjourned and continued sessions, Commissioners shall produce and file with the secretary a written decision and order. If one or more commissioners disagrees with the majority opinion, that disagreement may be expressed in writing in a dissenting comment or decision.
- n. The provisions of this Rule, where applicable, shall also apply to disciplinary actions against Chiefs.
- o. Failure of a Complainant 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.
- p. The Board on its own motion or the motion of a party may modify, extend, waive, or excuse performance of these rules and may promulgate additional rules or procedures as appropriate to a case before it.
- q. Hearing Examiner
 - i. The Board may engage a Hearing Examiner to conduct the Initial Hearing and the continuing evidentiary hearings.
 - ii. The Hearing Examiner shall conduct and preside at proceedings in conformity with these rules and in consultation with Board counsel. References to the Board in this rule shall be construed to refer to a Hearing Examiner as context requires.
 - iii. All evidentiary proceedings conducted by a Hearing Examiners shall be videotaped and a certified transcript shall be prepared.
 - iv. Promptly following completion of the evidentiary proceedings and receipt of briefs, the Hearing Examiner shall forward the complete record to the Board and shall prepare a comprehensive report including an evaluation of witness credibility and demeanor for review by the Board and including the recommendations of the Hearing Examiner regarding disposition of the charges. The report of the Hearing Examiner shall be included in the record of Board proceedings.
 - v. Promptly following receipt of the Hearing Examiner's report the Board shall convene for deliberations. The Board may require further proceeding before the Hearing Examiner or before the Board. Following

the close of any such further proceedings and deliberations the Board shall issue its decision in the matter.

7. Suspension and Amendment of Rules

- a. These rules or any rule or part of any rule may be suspended by the Board for a stated term, purpose, or matter when otherwise permitted by law.
- b. These rules shall not be amended except by majority action of the Board at a meeting of the Board for which the notice included the subject of the amendment.

End of Rules
