

CIVIL SERVICE COMMISSION MEETING AGENDA		
NOON	APRIL 11, 2023	ASPEN ROOM AND TEAMS (EMAIL CIVILSERVICE@AURORAGOV.ORG FOR LINK)
1) 12:00 PM CALL TO ORDER OF REGULAR MEETING		
A. Adoption of Agenda		
B. Approval of Minutes for March 6, March 14, and March 16, 2023		
2) AGENDA ITEMS FOR VOTE-None		
3) AGENDA ITEMS FOR DISCUSSION or POSSIBLE VOTE		
A. Consent Decree Monitor De Novo findings	IntegrAssure	
B. Entry-Level Rule Changes	Commission	
4) REPORTS		
A. COMMISSIONER REPORTS		
B. LEGAL COUNSEL REPORTS		
5) COMMENTS		
A. FIRE DEPARTMENT		
• Chief or Designee		
• Union Designee		
B. POLICE DEPARTMENT		
• Chief or Designee		
• Association Designee		
➤ APA		
➤ FOP		
C. CITY MANAGER DEPARTMENT		
D. PUBLIC COMMENT – Limited to 3 minutes, no discussion *Please note: The Commission cannot consider or respond to any comments that relate in any manner to disciplinary appeals currently pending before the Commission.		
6) ADJOURNMENT		

Assessment of the *de novo* Review
Process of the Civil Service
Commission

March 14, 2023

Table of Contents

<u>INTRODUCTION</u>	<u>1</u>
<u>EXECUTIVE SUMMARY</u>	<u>2</u>
<u>BACKGROUND</u>	<u>3</u>
<u>APD’S DISCIPLINARY PROCESS.....</u>	<u>3</u>
<u>AFR’S DISCIPLINARY PROCESS</u>	<u>4</u>
<u>THE PROCESS FOR APPEAL TO CIVIL SERVICE COMMISSION</u>	<u>6</u>
<u>THE RESULTS OF DE NOVO APPEALS TO THE CIVIL SERVICE COMMISSION</u>	<u>8</u>
<u>AURORA POLICE DEPARTMENT</u>	<u>8</u>
1. SERGEANT MARLENA CANDELARIA (2017)	8
2. OFFICER JOHN GONZALES (2017)	9
3. LIEUTENANT CHARLES DESHAZER (2018)	10
4. OFFICER JOSIAH COE (2018)	11
5. OFFICER LEVI HUFFINE (2020)	11
6. LIEUTENANT REX MCKINNEY (2020)	12
7. OFFICER JASON ROSENBLATT (2021)	14
8. OFFICERS ERICA MARRERO AND KYLE DITTRICH (2021)	15
9. DETECTIVE AGENT BRIAN MCCLURE (2021)	16
10. OFFICER JORDAN ODNEAL (2021)	17
11. OFFICER ROBERT ROSEN (2021)	18
12. SERGEANT EDWARD ACUTI (2022).....	19
13. OFFICER DOUGLAS WILKINSON (2022).....	22
<u>AURORA FIRE RESCUE</u>	<u>24</u>
1. CAPTAIN ROBERT OTT (2017)	24
2. FIREFIGHTER DAVID GIBBS (2018)	25
3. TECHNICIAN JOHN SPERA, CAPTAIN BRETT STEADMAN, AND CAPTAIN THOMAS JOHNSON (2020)	27
<u>APPEALS OF CIVIL SERVICE COMMISSION RULINGS TO DISTRICT COURT</u>	<u>28</u>
<u>FINDINGS AND RECOMMENDATIONS.....</u>	<u>29</u>

FINDING 1 – THE CHARTER PROVIDES A MANDATORY FRAMEWORK FOR APPEALS FROM DISCIPLINARY DECISIONS TO WHICH THE CURRENT DE NOVO REVIEW PROCESS IS COMPLIANT..... 29
DISCUSSION 29
RECOMMENDATION..... 29

FINDING 2- THE DE NOVO REVIEW PROCESS AS MANDATED BY THE CHARTER AND IMPLEMENTED BY THE COMMISSION RULES IS THE FIRST TIME IN THE DISCIPLINARY PROCESS THAT MEMBERS ARE AFFORDED FULL DUE PROCESS 29
DISCUSSION 29
RECOMMENDATION..... 29

FINDING 3: THE CIVIL SERVICE COMMISSION HAS COMMENDABLY INCREASED THE TRANSPARENCY OF THE DE NOVO REVIEW PROCESS. 30
DISCUSSION 30
RECOMMENDATION..... 30

FINDING 4: WHILE UNDER THE CHARTER, A MEMBER OF THE DEPARTMENT MAY REQUEST A CLOSED HEARING, THERE EXIST NO RULES OR GUIDELINES FOR THE RESOLUTION OF THE REQUEST 30
DISCUSSION 30
RECOMMENDATION..... 31

FINDING 5: THE TIMELINE FOR THE RESOLUTION OF APPEALS AS CALLED FOR BY THE CHARTER HAS NEVER BEEN MET ... 31
DISCUSSION 31
RECOMMENDATION..... 31

FINDING 6: THE USE OF PRECEDENT TO DETERMINE WHETHER AN IMPOSED PENALTY IS APPROPRIATE IS PROBLEMATIC 32
DISCUSSION 32
RECOMMENDATION..... 32

FINDING 7: THE COMMISSION RULES DO NOT SET A METHOD BY WHICH A DECISION ON APPEAL SHOULD BE RENDERED, AND THE FACTORS THAT SHOULD BE CONSIDERED IN MAKING THE DECISION 33
DISCUSSION 33
RECOMMENDATION..... 33

CONCLUSION 33

APPENDIX 34

INTRODUCTION

This report has been prepared by IntegrAssure pursuant to its designation by the Civil Service Commission as its expert, engaged to provide technical assistance under the provision of the Consent Decree which calls for the Monitor to provide such assistance to the City to help it in achieving the goals of the Decree. As such, the findings and recommendations in this report are not binding on the City or the Civil Service Commission, but rather should be considered expert advice in assisting the Civil Service Commission fulfill its obligations under the Consent Decree.¹ This report covers only the role of the Civil Service Commission in the disciplinary process for both APD and AFR. Other aspects of the disciplinary process for each agency will be the subject of separate reports.

The Consent Decree (sometimes “the Decree”) mandates that the Civil Service Commission (sometimes “the Commission”) strongly consider changing its current policy relative to the hearing of disciplinary appeals by not allowing a full “de novo” review of disciplinary cases and replacing that process with one which is more appellate in style.² The mandate contains the caveat that any change must conform to the parameters of the Aurora City Charter.³ This Report

¹ The relevant portion of the *Section IX 8 2* of the Consent Decree reads as follows: In undertaking its responsibility to ensure Aurora’s compliance with this decree, the Consent Decree Monitor will serve as a resource and a coach as needed to help Aurora succeed in the commitments the City is making in this decree. The parties expect the Consent Decree Monitor to communicate informally with all parts of the organization in a way that supports the chain of command. Pursuant to this provision and in fulfillment of its obligation under Section VII C 4 to engage an expert to assist the Commission in meeting the requirements of the Decree, the Commission engaged IntegrAssure and its team member, Cassi Chandler, to provide advice relative to its obligations.

² *Section VII C 3 a* of the Consent Decree reads as follows: The Civil Service Commission will update its Rules and Regulations by the Civil Service Commission Rules and Regulations Modification Deadline and this update will include, at a minimum:

a. guidelines that substantially reduce the time disciplinary cases take from filing to resolution, including to strongly consider not allowing a full “de novo” review of disciplinary cases and instead handling them as a more appellate style of review within the parameters set forth by the Aurora Charter;

³ The relevant portion of the Aurora City Charter reads as follows:

8) Disciplinary and appeal procedure.

(e) A member shall have ten (10) business days from the service of the order to file an appeal of the disciplinary order with the Civil Service Commission. The appeal shall be in writing and contain the name and address of the appealing member, a copy of the written command being appealed and a brief summary of the reasons for the

constitutes a major part of the efforts of the City and the Commission to meet its obligation under VII C 3, to strongly consider changing its rules relative to the *de novo* review of disciplinary decisions of both the APD and AFR. The Commission is mandated by the Decree to take any action necessary to effect changes to its rules to change the current “*de novo*” practice by May 15, 2023.⁴

EXECUTIVE SUMMARY

IntegrAssure has reviewed the relevant provisions of the Consent Decree and the City Charter as well as the 16 disciplinary appeal decisions (13 for APD and 3 for AFR) made by the Commission over the last five years. We have also spoken extensively with stakeholders including those representing APD and AFR, the collective bargaining organizations for each Department, the Commission through its chair and Administrator, the City including both the Office of the City Manager and the Office of the City Attorney, as well as the Monitor’s Citizen Advisory Committee. We have also spoken with the Attorney General’s Office relative to our findings and recommendations.

After those conversations and after independently considering the question of whether the *de novo* review process should be changed, it is our recommendation to the Commission and the

appeal. A member may express a desire to have the hearing closed to the public. Upon receipt of an appeal, the Commission shall promptly provide a copy of it to the office of the City Attorney.

(f) The Commission shall conduct a hearing on the appeal not less than fifteen (15) nor more than thirty (30) days after receipt of the appeal. After a hearing date has been set, it may be continued only upon agreement of all the parties or upon good cause shown to the Commission. The notice of the hearing shall indicate whether the hearing will be public.

(g) At the hearing before the Commission, each side may offer evidence and cross examine witnesses. The member may be represented by a representative of their choosing and the City Manager-Department shall be represented by the City Attorney or a designee. The hearing shall be recorded by a reporter or an electronic recording device. The Commission may adopt rules for the conduct of the hearing. The City Manager and Chief of the Department, through the office of the City Attorney as counsel, shall offer evidence and justification of the departmental action. The rules of evidence shall conform, to the extent practicable, with those in civil nonjury cases in the District Courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the Commission may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

⁴ See Consent Decree Section XII, Recruitment, Hiring and Promotion, Civil Service Commission Rules and Regulations Modification Deadline (455 days from the effective date of contract with the Monitor).

City that the current system be retained. Simply put, the suggested change to the process in the Consent Decree would be violative of the City Charter. Moreover, our review has found that the current system is working well assuring what, through the Commission, amounts to community review of disciplinary decisions of each department, while, at the same time providing due process for department members, which, by design, does not fully exist within the current disciplinary process of each department.

We have made additional recommendations in areas relative to the disciplinary process that we believe would enhance and improve the overall process as it currently exists.

BACKGROUND

The Charter provision (see footnote 3) has been in place since at least November 3, 1987.

APD'S DISCIPLINARY PROCESS

In 2006 APD created the Automated Complaint and Commendation System to manage and record all complaints, investigations, and compliments or commendations relating to both sworn and non-sworn members of the department. The department permits submission of complaints through the City's website, via telephone, by mail, or in person, with all complaints entered into the automated system. The complaint can be received by the district or by the Internal Affairs Bureau (IAB). The complaint is reviewed by the receiving party to determine whether the complaint should be reviewed at the District or Bureau level or by IAB itself. If a determination is made that the allegation can be investigated at the District or Bureau level, the case is either retained by the District or Bureau if it originated there or sent by IAB to the appropriate Commanding Officer for investigation. The District or Bureau Commanding Officer will then assign the case to an appropriate supervisor to commence and complete a preliminary investigation. If during the preliminary investigation the investigator believes the allegation should not be handled at the District or Bureau level because of the seriousness or criticality of the investigation, a request for investigation by the IAB will be completed and forwarded through the complaint management system to the subject member's Division Chief.

If IAB determines that an investigation is warranted⁵, IAB will seek authorization from APD's Chief of Police. This is necessary because under the existing rules, only the Chief of Police can order an IAB investigation. Once approval is received, IAB will commence an investigation and, upon its

⁵ For certain critical incidents, including police-involved shootings or uses of force resulting in serious injury or death, an IAB investigation may result regardless of whether misconduct is alleged or indicated against any involved officer.

completion, notify the subject officer, the officer's Division Chief, and the officer's commanding officers that the case is available for review by the officer and their representative for any factual misstatements or requests for additional investigation. Thereafter, the case will be reviewed by the Chief of Police.

The next step in the disciplinary process is that subject sworn member is informed of the Chief's decision during a "pre-disciplinary hearing." During this hearing, the sworn member has the opportunity to provide any additional context or mitigating information that may help inform the Chief's decision. The sworn member may waive the pre-disciplinary hearing, but the Chief of Police can order the sworn member to participate. The pre-disciplinary hearing is an informal hearing in which the sworn member is not represented by counsel, or has the opportunity to confront witnesses.

The sworn member may also request an Independent Review Board to review the proposed discipline, but the decision to convene an Independent Review Board is completely within the discretion of the Chief of Police. After the pre-disciplinary hearing or Independent Review Board (if conducted), the Chief issues a final disciplinary order that is served upon the sworn member. The sworn member must accept any non-disciplinary action (which is not appealable to the Civil Service Commission) and may accept formal discipline. If the sworn member receives formal discipline, the sworn member can choose to exercise the right to appeal the final order to the Civil Service Commission.

AFR'S DISCIPLINARY PROCESS

The Fire Chief is given the primary authority to maintain discipline within the Department. As such, the Fire Chief has the discretion to initiate an internal investigation to review AFR members' conduct, and to designate the investigation to be conducted by any of the following three entities: the Internal Affairs Division, third-party investigators, or the Human Resource Department. However, only the Human Resource Department investigates claims of harassment and equal employment standards.

Formal complaints from citizens are referred to the Internal Affairs Department (IAD), regardless of where the information was first received. Based on the information received, one of two types of investigations may be commenced: an administrative inquiry or an administrative investigation.

An administrative inquiry is conducted in circumstances where the allegations received did not meet the requirements for the making of a formal complaint. Administrative inquiries are appropriate when the accused member's identity is unknown, the allegations are unspecific, the complaint was anonymous, or there are strong indicators that the complainant was untruthful.

When an administrative inquiry is initiated, the investigating officer at IAD contacts and interviews all of the available witnesses and participants. If at any point an AFR member or supervisor learns of information that would allow the allegation to meet the requirements of a formal complaint, the individual may become a complainant and file said formal complaint.

An administrative investigation is appropriate when the allegations meet the requirements of a formal complaint, and an investigation is necessary to determine whether City or Departmental rules were violated. Upon learning of misconduct, a departmental supervisor will self-initiate and conduct a supervisory investigation of the misconduct to determine the facts and circumstances of the incident. The goal of the investigation is to determine whether corrective measures are warranted. As part of the preliminary investigation, the supervisor may interview any person they believe holds necessary information. If the supervisor determines that the misconduct was minor and requires minimal corrective action, they may engage in such corrective action. However, where the supervisory investigation reveals evidence of the commission of a criminal offense, serious misconduct, or negligence in the performance of duty that would necessitate discipline higher than a reprimand (suspension, demotion, or discharge), the supervisor must request an Internal Affairs Investigation.

To request an Internal Affairs Investigation, a supervisor will submit a memo (letter of charges) through Departmental channels to the Fire Chief which provides the allegations, the underlying facts, and the potential discipline which could be imposed. The Fire Chief will review the memo and determine if the allegation would rise to the level of an administrative sanction if sustained. If so, the IAD Commander will conduct an internal investigation into the member's conduct. All other conduct if sustained below the level of an administrative sanction are evaluated by the respective Battalion Chief, which could result in a written reprimand, letter of counseling or a verbal warning.

Individuals who are subjects of an investigation and hold the rank of Captain or below are eligible to have a "designated observer" accompany them during all phases of the investigative process. The observer serves as a neutral party who ensures that the proper procedures are being followed at all times. They do not otherwise participate in the proceedings. Such observers may not be an attorney, directly involved in the investigation, nor the employee's direct supervisor. Additionally, observers are only allowed in proceedings related to formal investigations and sanctionable discipline.

At the conclusion of the investigation, the investigating entity will provide a report summarizing the findings. The investigator will also provide a classification of the investigation identifying the overall outcome.

At the conclusion of the investigatory phase of the process, if the violations are sustained the process enters the pre-discipline phase. The objective of this phase is to determine whether or not the violations are serious enough to necessitate the implementation of formal discipline. However, if the allegations are highly serious and the findings of the investigation relatively concrete, the Fire Chief has the discretion to skip this step and proceed directly to the implementation of formal discipline.

Following the conclusion of the investigation, the subject of the investigation shall be provided with the final investigative report and the findings. The individual may also read any additional documentation that provides information which would be relevant to supervisors in making a discipline determination. The member will then receive a pre-disciplinary hearing with the Fire Chief and appropriate Chief Officers within the Chain of Command. During the hearing, the member will be provided more specific details regarding the charges and investigatory findings, and they will be allowed to make a verbal statement in their defense. Following the hearing, the member has three days to submit a written response to the Fire Chief. At the expiration of the three-day period, the Fire Chief will make a determination regarding discipline.

If the behavior does not require formal discipline, but the conduct still merits correction in some form, there are two options available to the Fire Chief. First, the Chief may recommend that the member receive “Instructional Guidance” in the form of oral counseling. The member is required to attend counseling sessions, followed by which the member’s supervisor notes their attendance. Second, the member may received “Precautionary Counseling” in the form of a “letter of counseling.” The letter is a written document stating that certain performance standards are not being met. The letter notes that, while formal discipline is not currently necessary, if the behavior is not corrected a more serious response may result. The letter informs the member that their failure to remedy the behavior will result in formal disciplinary action. The letter is distributed to the subject of the complaint, and copies are provided to Internal Affairs, the Chain of Command, and the employee’s personnel file. These pre-disciplinary actions may not be appealed to the CSC.

However, if the Fire Chief determines that the conduct of the individual does warrant the implementation of formal discipline, then the Fire Chief shall issue a disciplinary order to the member and he/she has the ability to appeal the order to the Civil Service Commission.

THE PROCESS FOR APPEAL TO CIVIL SERVICE COMMISSION

Upon receiving a written disciplinary order signed by the Chief of Police or Fire, an individual has the opportunity to appeal the disciplinary decision to the Civil Service Commission (CSC). Within 10 days of receiving the order, an appealing individual must file the disciplinary order, their name

and address, and a summary of the reasons for the appeal with the CSC. The individual is represented by counsel.

They must also indicate whether they are requesting a closed hearing.⁶ Once the CSC receives all the relevant documents, a CSC administrator forwards a notice of the appeal to the CSC, the CSC's hearing officer and the City Attorney. The administrator then creates a notice of hearing and sends it to the appealing officer's attorney, the City Attorney, and the CSC hearing officer. An extension of the hearing date may also be sought by the CSC hearing officer with the consent of both parties, as long as there is good cause for the delay and the CSC commissioners agree to grant it.

Discovery is conducted within 20 days of the receipt of the appeal, or 10 days before the appeal hearing. The discovery procedures are patterned after the Colorado Rules of Civil Procedure. Parties are required to initially disclose their names, addresses, and phone numbers, along with any relevant discoverable information. The parties are also required to create a list of the category and location of relevant items within their custody. Either side may also file a petition requesting additional discovery, as necessary. Unless there is a dispute between the parties, the CSC does not participate in the discovery. However, if a party files a motion to compel, the CSC hearing officer resolves the dispute.

A week before the hearing date, the parties participate in a telephonic pre-hearing conference. The conference typically runs between twenty minutes and two hours. In the conference, the parties state how long they need for trial, provide updates on their witness and exhibit lists, provide their stipulated facts, and outline their overall theories of the case. The contested issues are identified and finalized during this pre-hearing process.

A week after the conclusion of the pre-hearing conference, the parties participate in the official hearing. The parties present their arguments, evidence, and witnesses. The City has the "burden of persuasion" and presents its case in chief first. Although the agency may call a broad range of witnesses (including IAB sergeants from APD or IAD Commander from AFR, departmental officers, etc.), APD typically only calls the Chief of Police as a witness. The Chief of Police or Fire can testify to all documents and witnesses he/she reviewed in issuing the disciplinary order. Similarly, although the appealing officer may call witnesses (including experts) to support his/her case, the subject officer is typically the only individual to testify on his/her behalf. During the hearing, the CSC hearing officer has the authority to rule on the validity of presented evidence and on any objections. However, the CSC has the ultimate authority to determine the final

⁶ See Finding 4 below pertaining to the lack of process around the resolution of a request for a closed hearing.

outcome of the hearing. Once the hearing is concluded, the CSC commissioners consider the evidence and decide to affirm the agency’s decision, modify the discipline, or exonerate the officer. The penalty recommended by the Chief cannot be increased by the CSC.

THE RESULTS OF DE NOVO APPEALS TO THE CIVIL SERVICE COMMISSION

In preparing this report, we analyzed cases that were appealed to CSC from January 1, 2017 through December 31, 2022. There were sixteen cases total with thirteen cases from APD and three cases from AFR during that time period. CSC affirmed nine out of thirteen cases from APD in its entirety. CSC reduced hours of suspension on three cases and overturned APD’s decision to terminate in one case. However, CSC did not affirm any of the three appeals from AFR. CSC overturned AFR’s decision on demotion on one case, termination on another, and waived all fines on the last one. Summaries of APD and AFR cases are below.

AURORA POLICE DEPARTMENT

1. SERGEANT MARLENA CANDELARIA (2017)

IAB Case No. 16-31

Facts: On May 14, 2016, APD received a report of a missing person with a history of alcohol abuse. APD contacted Arapahoe House, a detox facility within Aurora. Arapahoe House told APD that they could not provide information over the phone, due to confidentiality concerns, but that officers could visit the home to search for the missing person. When Officers Oliver and Martinez arrived, Arapahoe House staff said that, as a federally funded facility, they were constrained by confidentiality laws and could not provide information the person’s identity or whether or not the person was present. However, the officers were permitted to search the facility themselves. Officer Oliver’s body-camera showed him in an agitated and aggressive state searching the facility, alarming the House staff and clients. The missing person was not located and the officers’ acting supervisor, Sergeant Marlena Candelaria, was contacted and informed. Sergeant Candelaria, believing that disclosure of the individual’s identity was permissible, visited Arapahoe House and verbally sparred with the staff. Sergeant Candelaria forcefully argued that HIPPA did not apply and would not listen to staff members informing her that other confidentiality provisions applied. Sergeant Candelaria became frustrated and left, asking a staff member for his identification information, claiming that he was “in violation” and would be reported. A staff member recorded the incident on her cell phone.

The matter was investigated and on October 10, 2016, the Chief’s Review Board concluded that Sergeant Candelaria violated Directive 14.3.8 – Police-Community Relations. Directive 14.3.8 requires that officers do five things when dealing with members of the public: (1) be courteous;

(2) be tactful when performing their duties; (3) control their tempers; (4) exercise utmost patience and discretion; and (5) strive to avoid engaging in argumentative discussions. The Board concluded that Sergeant Candelaria failed to abide by these five requirements and recommended that she be suspended for twenty hours. On December 7, 2016, Police Chief Nick Metz entered a Disciplinary Order sustaining the violation of Directive 14.3.8 and suspending Sergeant Candelaria for 20 hours. Sergeant Candelaria filed an appeal with the CSC on December 21, 2016.

CSC Hearing and Findings: The appeal was heard on March 20 through 22, 2017, one-hundred and three days after the issuance of the Disciplinary Order. This was a closed hearing. Four Commissioners were present: Chair Timothy Ehgotz, Vice Chair Robert Christoffersen, Commissioner Deb Wallace, and Commissioner Pamela Turner. The Commission found that Sergeant Candelaria’s behavior was as courteous as could reasonably be expected under the circumstances, that she made suitable efforts to avoid the argument, and that she adequately controlled her temper. However, the request for the staff member’s identifying information was lacking tact and could have been perceived as a threat given the circumstances. Additionally, she failed to exercise patience and discretion by refusing to listen to the staff member’s explanations of the relevant confidentiality laws. These two failures amount to a violation of Directive 14.3.8, and therefore the Commission sustained the violation. With regard to the discipline, the Commission found that the 20-hour suspension was too harsh, particularly in light of Officer Oliver having received only a 10-hour suspension for his “worse” behavior and the fact that Sergeant Candelaria had sought guidance for how to mitigate such incidents in the future. The Commission reduced the discipline from a 20-hour suspension to a 10-hour suspension.

2. OFFICER JOHN GONZALES (2017)

IAB Case No. 16-50

Facts: On June 23, 2016, Officer John Gonzales and his partner were dispatched to respond to a potentially suicidal person, but actually responded to the house next door. Officer Gonzales perceived a party to be occurring inside and observed a person emerge from the house into the garage. Officer Gonzales entered the garage and asked the person if he (Gonzales) could enter the home to assess the safety of those inside, falsely claiming that he possessed a warrant. The door to the house opened and people within the home interacted with Officer Gonzales, and he entered the residence without permission. Following an investigation of the incident and pre-disciplinary hearings, Police Chief Nick Metz sustained allegations that Officer Gonzales violated Directive 14.2.9 – Constitutional Requirements, by unconstitutionally entering the home without consent. Chief Metz issued a Disciplinary Order on August 8, 2017, suspending Officer Gonzales for 20 hours without pay. Officer Gonzales filed an appeal with the CSC on August 24, 2017.

CSC Hearing and Findings: The appeal was heard by the CSC on October 23 and 24, 2017, seventy-six days after the issuance of the Disciplinary Order. This was a closed hearing. Four Commissioners were present: Chair Tim Ehgots, Vice-Chair Robert Christofferson, Commissioner Michael Gorin, and Commissioner Deborah Wallace. The Commission found that there were no “exigent circumstances” such that would justify Officer Gonzales’s warrantless entry into the house. Based on his training and expertise, Officer Gonzales should have known this. Therefore, the search was unconstitutional. The Commission found that Officer Gonzales violated Directive 14.2.9 and upheld Chief Metz’s implementation of a twenty-hour suspension. The CSC’s decision was entered on October 30, 2017.

3. LIEUTENANT CHARLES DESHAZER (2018)

Facts: On June 18, 2017, Denver Police Department Officers were involved in a pursuit and an officer involved shooting in Aurora. A large crowd of citizens gathered at the scene and became unruly. After the scene was secured by officers, Lieutenant Charles DeShazer and Sergeant Dunne engaged in conversation. Sergeant Dunne’s body-worn camera captured Lieutenant DeShazer saying an allegedly derogatory phrase: “We have all of the Alabama Porch Monkeys contained.” Sergeant Dunne turned off his body-worn camera. The comment was not overheard by the public. An internal investigation was performed, and a pre-disciplinary meeting was held on August 1, 2017, between Lieutenant DeShazer and Police Chief Nick Metz. Later, following Chief Metz’s receipt of additional information, Chief Metz held a disciplinary meeting with Lieutenant DeShazer in which he sustained allegations of DeShazer’s violation of APD Directive 14.3, Professional Conduct and Responsibility. On August 28, 2017, Chief Metz entered a Disciplinary Order terminating Lieutenant DeShazer’s employment. Lieutenant DeShazer filed an appeal to the CSC on August 31, 2017.

CSC Hearing and Findings: The appeal was heard by the CSC on June 19 and 20, 2018, two-hundred and ninety-five days after the issuance of the Disciplinary Order. This was a closed hearing. Four Commissioners were present: Chair Pamela Turner, Vice-Chair Michael Gorin, Commissioner Robert Christoffersen, and Commissioner Tim Ehgots. During the hearing, Lieutenant DeShazer stipulated that his statement and conduct violated Directive 14.3. Therefore, the Commission sustained the violation. However, the Commission determined the termination of Lieutenant DeShazer’s employment to be excessive. Although he had previously received written reprimands for his conduct, he had not received one in over a decade and his previous conduct had never involved the use of racially derogatory language. In addition, discipline imposed for other incidents involving officers’ use of derogatory or harmful language was less severe (amounting to written reprimands or 160 hour suspensions). However, the Commission still found Lieutenant DeShazer’s comments to be reprehensible and likely to bring the department into direct disrepute, in violation of Directive 14.3. The Commission determined

that the termination of Lieutenant DeShazer’s employment be reversed. As an alternative, DeShazer was demoted to the rank of sergeant and suspended without pay from the date of the Disciplinary Order (August 28, 2017) through the date of the hearing (June 19 and 20, 2018). The CSC entered its decision on June 29, 2018.

4. OFFICER JOSIAH COE (2018)

IAB Case No. 18-26

Facts: On June 16, 2018, Officer Josiah Coe accidentally sent a text message to Sergeant Burns containing an anti-gay derogatory term. The text message was originally intended for a personal friend. Officer Coe immediately followed up with Sergeant Burns, apologizing for the error. Although Sergeant Burns responded in a “joking manner”, using another anti-gay derogatory term himself, Sergeant Burns later shared the text exchange with a group of seventeen other members of the department. Police Chief Nick Metz found both Sergeant Burns and Officer Coe had violated Directive 14.3 – Professional Conduct and Responsibility. Sergeant Burns was suspended for 240 hours without pay, and he did not appeal the discipline. Chief Metz issued a Disciplinary Order on September 17, 2018, suspending Officer Coe for 40 hours for his role in the incident. Officer Coe filed a Petition for Appeal with the Civil Service Commission on September 26, 2018.

Hearing and Findings: The appeal was heard by the CSC on December 3, 2018, seventy-seven days after the issuance of the Disciplinary Order. This was an open hearing. Five Commissioners were present: Chair Pamela Turner, Vice-Chair Michael Gorin, Commissioner Tim Ehgotz, Commissioner Robert Christoffersen, and Commissioner Deborah Wallace. The CSC found that Officer Coe’s behavior, regardless of to whom the message was sent, directly discredited both the department and Officer Coe and therefore constituted a violation of Directive 14.3. Upon comparing the incident to four other comparable incidents and the amount of discipline implemented in those cases, the CSC found that Chief Metz’s original Disciplinary Order suspending Officer Coe for 40 hours without pay was appropriate. The CSC unanimously affirmed the original 40 hour suspension. The CSC entered its decision on December 11, 2018.

5. OFFICER LEVI HUFFINE (2020)

IAB Case No. 19-32

Facts: On August 27, 2019, Officer Levi Huffine responded with other officers to Fletcher Plaza and witnessed Ms. Shataeah Kelly starting a physical altercation with another individual. Over the course of the on-scene engagement, Officer Huffine discharged his taser, which was ineffective, and arrested Ms. Kelly. When Ms. Kelly became especially “combative and verbally

abusive”, damaging the patrol car, Officer Huffine placed her on the ground, hobbled her, and placed her in the patrol car in the “recovery” position to facilitate her breathing.

While transporting Ms. Kelly to the jail, Ms. Kelly remained uncooperative and “belligerent” until she rolled off the seat and onto the rear floorboard. She remained with her head in an inverted position, her head and neck on the floorboard, for 21 minutes. During that time, she repeatedly told Officer Huffine that she needed help, couldn’t breathe, and that she feared for her life. Officer Huffine did nothing to assist and did nothing to check on Ms. Kelly’s wellbeing, even upon arriving at the detention facility. Officer Huffine stated that he heard Ms. Kelly but did not know that she had rolled off the seat, although his statements to a detention officer upon arrival at the jail were contradictory. Officer Huffine’s body-worn camera, which he placed in the backseat to record the transport, captured the events.

The Chief’s Review Board sustained violations of Directive 6.5.8 – Conduct During Transport, and Directive 14.2.1 – Conduct Unbecoming. A week later, On January 23, 2020, Chief Vanessa Wilson conducted a pre-disciplinary hearing with Officer Huffine. She stated that Officer Huffine showed little remorse for his conduct, and that his actions were egregious. Chief Wilson signed a Disciplinary Order on February 6, 2020, terminating Officer Huffine’s employment. Officer Huffine received the order on February 24, and appealed the order to the CSC on March 4, 2020.

CSC Hearing and Findings: The appeal was heard by the CSC on September 29 and 30 and October 1, 2020, two-hundred and thirty-six days after the issuance of the Disciplinary Order. This was an open hearing. Four Commissioners were present: Chair James Weeks, Vice Chair Pamela Turner, Commissioner Barbara Shannon-Banister and Commissioner A.J. McDonald. Upon review, the Commission stated that Officer Huffine violated Directive 6.5.8 - Conduct During Transport, based upon his blatant disregard of Ms. Kelly’s wellbeing, his failure to take even minimal actions to confirm her safety, and his willful decision to not act. The Commission further found that Officer Huffine violated Directive 14.2.1 – Conduct Unbecoming, as his disregard for Ms. Kelly’s safety brought the department into “direct disrepute in the eyes of the public,” as well as his lack of attempts to deescalate the situation prior to Ms. Kelly’s transport. Despite the length of Officer Huffine’s time with the department, the Commission found his actions to be so egregious so as to unanimously uphold the Disciplinary Order terminating Officer Huffine’s employment. The CSC entered its decision on October 6, 2020.

6. LIEUTENANT REX MCKINNEY (2020)

IAB Case No. 19-05

Facts: On January 1, 2019, Lieutenant Rex McKinney held the position of Watch Commander for APD District 1, and as such was the direct supervisor of Sergeant Graham Dunne. That evening, Sergeant Dunne engaged in the pursuit of a driver of a stolen vehicle, in which the fleeing vehicle crashed. The pursuit ended with the suspect in custody. During the pursuit, Lieutenant McKinney was in his vehicle in an RTD parking lot, after which he drove to a strip mall. He made no attempt to contact Sergeant Dunne during that time period. Lieutenant McKinney did not begin traveling to Sergeant Dunne's scene until thirty-one minutes after Sergeant Dunne reported having the suspect in custody, but Lieutenant McKinney was diverted to another emergency before he could arrive.

Sergeant Dunne later provided a false report of the incident, failed to file a use-of-force report, did not report the use of force to Lieutenant McKinney, and had failed to turn on his body-worn camera during the incident. Sergeant Dunne was subsequently terminated. A different officer provided a more detailed report of the events, including excerpts from Sergeant Dunne's report, which Lieutenant McKinney only skimmed. Consequently, he never learned that force had been used, that a ride-along civilian actively participated in the arrest, and that Dunne's report was false.

On July 16, 2019, the Chief's Review Board found that Lieutenant McKinney violated Directive 1.4.11 – Supervisor Responsibility, by failing to adequately apprise himself of the details of the pursuit and the potential necessity of filing a use of force report. The Board recommended a 20 hour suspension. On August 19, 2019, Chief Nick Metz entered a Disciplinary Order suspending Lieutenant McKinney for 40 hours without pay, stating that Lieutenant McKinney should have contacted Dunne to learn of the circumstances and reviewed the adequately reviewed the subsequent reports following. However, the order stated that only twenty hours would be served, with twenty hours "held in abeyance for three years" and would be imposed if there were any sustained violation resulting in discipline above the level of a Written Reprimand. On August 29, 2019, Lieutenant McKinney filed an appeal with the CSC.

CSC Hearing and Findings: The appeal was heard by the CSC on July 29 and 30, 2020, three-hundred and thirty-five days after the issuance of the Disciplinary Order. This was a closed hearing. Four Commissioners were present: Chair James Weeks, Vice Chair Pamela Turner, Commissioner Barbara Shannon-Banister and Commissioner A.J. McDonald. The Commission found that Lieutenant McKinney should have either contacted Sergeant Dunne to apprise himself of the situation, or traveled to Sergeant Dunne's scene much earlier. In addition, he should have properly read the subsequent reports. Three of the four Commissioners voted to sustain the allegation of Lieutenant McKinney's violation of Directive 1.4.11. The Commission further found that the 40-hour suspension was appropriate, as well as the holding of 20 hours in abeyance. However, the Commission voted to terminate the remaining period of abeyance since more than

half of the period had been completed by the time of the hearing, and Lieutenant McKinney was now possessed a “clear understanding of his obligations.” Therefore, the Commission sustained the violation but terminated the period of abeyance for the remaining unserved 20 hours of the 40-hour suspension. The CSC’s decision was entered on August 10, 2020.

7. OFFICER JASON ROSENBLATT (2021)

IAB Case No. 20-25

Facts: On August 24, 2019, Officer Jason Rosenblatt and two other officers were involved in the arrest of Elijah McClain, during which one officer applied a carotid hold to Mr. McClain followed by EMTs later administering a shot of Ketamine to him. He subsequently was transported to a hospital where he fell into a coma and later died. On October 20, 2019, three officers took a photo simulating the carotid hold in front of the Elijah McClain memorial and texted it to Officer Rosenblatt. Although the message did not come from any contacts in his phone, Officer Rosenblatt assumed the message came from a member of APD, and responded to the photo with a message stating, “Ha ha.” Later, another officer reported to supervisors that Rosenblatt had informed them of the picture and its content, leading to an Internal Affairs investigation of Officer Rosenblatt for violating Directive 14.2.1 – Conduct Unbecoming. Officer Rosenblatt’s phone was searched, and although the photo and the “Ha ha” message were deleted, Officer Rosenblatt admitted to having replied as such. The Chief’s Review Board sustained the violation of Directive 14.2.1 and recommended that Officer Rosenblatt’s employment be terminated. On July 2, 2020, Police Chief Vanessa Wilson denied Officer Rosenblatt’s request to have his IAB case reviewed by an Independent Review Board. On July 3, 2020, Chief Wilson issued a Disciplinary Order terminating Officer Rosenblatt’s employment. Officer Rosenblatt filed an appeal to the CSC on July 9, 2020.

CSC Hearing and Findings: The appeal was heard by the CSC on January 21 and 22, 2021, two-hundred and two days after the issuance of the Disciplinary Order. This was a closed hearing. Three Commissioners were present: Chair James Weeks, Commissioner Barbara Shannon-Banister, and Commissioner A.J. McDonald. The Commission found that Officer Rosenblatt’s response to receiving the message was inappropriate and could be interpreted as him laughing at Elijah McClain’s death. Due to the fact that he did not know the identity of the sender, there was a substantial risk that his response would be disclosed to the public, thereby discrediting the police department and the officers, and further harming Elijah McClain’s family. There were alternative steps that Officer Rosenblatt could have taken with minimal effort to mitigate the risk. The Commission sustained the finding of a violation of Directive 14.2.1. Furthermore, due to the severe consequences of Officer Rosenblatt’s action, and the harm dealt to the department

and its officers, the Commission upheld Chief Wilson’s decision to terminate Officer Rosenblatt’s employment. The CSC entered its decision on February 9, 2021.

8. OFFICERS ERICA MARRERO AND KYLE DITTRICH (2021)

IAB Case No. 20-25

Facts: On August 24, 2019, Aurora police officers and EMTs were involved in the arrest and transport of Elijah McClain, the circumstances of which resulted in Mr. McClain’s death. Officers Erica Marrero and Kyle Dittrich, though not involved in the incident involving Mr. McClain, were part of a closely-knit group that included Officer Nathan Woodyard, who was involved in the incident. Two months after Mr. McClain’s death, Officer Woodyard had been placed on administrative leave and was no longer communicating with Officers Marrero and Dittrich. In the morning hours of October 20, 2021, Officers Marrero and Dittrich found themselves, along with Officer Jaron Jones, near Elijah McClain’s memorial. They took a photo of themselves in front of Elijah McClain’s memorial, simulating the carotid hold used on Mr. McClain, in an effort to “cheer up Officer Woodyard.” Officer Dittrich then sent the photo to a group chat containing Officer Woodyard, as well as independently to Officer Jason Rosenblatt.

On June 25, 2020, Officer Justin Parker informed supervisors that Officer Rosenblatt had received the photo. Police Chief Vanessa Wilson ordered an Internal Affairs investigation on an expedited schedule, alleging a violation of Directive 14.2.1. – Conduct Unbecoming. Following the discovery of the photos on Officer Dittrich’s phone and the completion of the investigation, the Chief’s Review Board sustained the violation of Directive 14.2.1 and recommended that Officer Marrero and Officer Dittrich’s employments be terminated. On June 30, 2020, Chief Wilson conducted pre-disciplinary hearings with each officer. On July 2, 2020, Chief Wilson denied Officer Marrero and Officer Dittrich’s requests to have their cases reviewed by an Independent Review Board. Finally, on July 3, 2020, Chief Wilson issued Disciplinary Orders terminating Officer Marrero and Officer Dittrich’s employments. They filed appeals to the CSC on July 8, 2020.

CSC Hearing and Findings: The appeal was heard by the CSC on February 1 and 2, 2021, two-hundred and thirteen days after the issuance of the Disciplinary Order. This was a closed hearing. Three Commissioners were present: Chair James Weeks, Commissioner Barbara Shannon-Banister, and Commissioner A.J. McDonald. The Commission found that the officers knowingly violated Directive 14.2.1, and that their intent to “assist a fellow team member who was struggling” was inconsequential. Sending the message to other individuals would inevitably lead to eventual public awareness, and subsequent discreditation of the department. Additionally, the expedited nature of the investigation (occurring over several days rather than two weeks) did not compromise the procedures or results. The Commission concluded that Officers Marrero and Dittrich’s conduct brought the department, as well as Officers Marrero and Dittrich, into

disrepute among both the public and its members. In addition, it harmed the efficiency of the Department and compromised the officers ability to adequately perform their jobs. As such, the Commission concluded that Officers Marrero and Dittrich violated Directive 14.2.1. Due to the severe nature of the violation, the lack of judgment demonstrated by the officers, and the harm caused to the department due to the dissemination of the photo to the public, the Commission sustained Chief Wilson’s termination of Officer Marrero and Officer Dittrich’s employment. The CSC entered its decision on February 9, 2021.

9. DETECTIVE AGENT BRIAN MCCLURE (2021)

IAB Case No. 20-19

Facts: On September 10, 2016, Aurora dispatch received a 911 call involving an individual who reported he was threatened with a knife and identified Anthony Izzi as the perpetrator. The individual’s wife corroborated the information. The patrol officer was unable to locate the suspect, and the case was assigned to Detective Brian McClure for investigation as a felony menacing. Felony menacing cases must be prosecuted within three years or they are barred by a statute of limitations. Detective McClure did not pursue the investigation and the statute of limitations expired. An Internal Investigation into McClure’s conduct alleged that he violated six departmental directives. Of those six, the Chief’s Review Board and Police Chief Vanessa Wilson sustained violations of five directives: Directive 14.2.15. Unsatisfactory Performance; Directive 8.10.17. Follow up Investigations by Detectives and Investigators; DET SOP 3.2.2 Victim Contacts; DET SOP 3.4.1 Case by Base Review; and Directive 15.15.4 Archiving Digital Evidence. On September 22, 2020, based on the sustained violations, the Chief’s Review Board recommended that Detective McClure receive a 160-hour suspension. Following a pre-disciplinary hearing with Detective McClure, Chief Wilson issued a Disciplinary Order on November 3, 2020, sustaining the five directive violations and suspending him for 160 days without pay. Detective McClure filed an appeal with the CSC on November 12, 2020.

CSC Hearing and Findings: The appeal was heard by the CSC on April 19 and 20, 2021, one-hundred and ninety-five days after the issuance of the Disciplinary Order. This was a closed hearing. Five Commissioners were present: Chair James Weeks, Vice Chair A.J. McDonald, Commissioner Barbara Shannon-Banister, Commissioner Harold Johnson, and Commissioner Brooke Gabrielli. The Commission found that Detective McClure made only minimal efforts to pursue the investigation of the incident, failed to reach out to appropriate witnesses and parties, did not meet investigation deadlines, and did not document the limited investigative work he actually performed. Overall, he failed to adequately investigate this case, and many others. The Commission sustained the five violations.

However, the Commission observed that the Detective Unit was suffering from a large number of overdue cases, and all Detectives in the unit were affected. Although other detectives received assistance with their caseloads, Detective McClure received little aid from his supervisors. Additionally, other detectives were similarly investigated and disciplined, but the amount of discipline recommended or implemented for the others was far lower (20-hour suspensions). The Commission noted that similarly situated individuals should receive comparable levels of discipline. Furthermore, the Commission noted that Detective McClure had never before received any type or amount of formal discipline. Based on these considerations, the Commission concluded, by a vote of four to one, to reduce the original 160-hour suspension to a 100-hour suspension. The CSC entered its decision on April 30, 2021.

10. OFFICER JORDAN ODNEAL (2021)

IAB Case No. 20-23

Facts: On May 22, 2020, Officer Odneal was on suspension due to a previous disciplinary matter. Despite being informed that he could not work or receive overtime while on suspension, Officer Odneal responded to an ERT and submitted an overtime request. On June 2, 2020, Officer Odneal was informed that he would be required to complete a series of training videos to remain POST compliant, but that he also could not receive overtime for doing so. Shortly after, on June 4, 2020, Officer Odneal discovered his overtime request for the ERT call had been deleted, and his supervisor, Sergeant Leonard, informed him again that he could not work or receive payment on his suspension days. Shortly after, on June 7, Officer Odneal submitted two improper requests for overtime for “Police One Academy training approved by Sergeant Leonard.” Sergeant Leonard had not approved the overtime and testified that he believed the requests were retaliation for the deletion of the original overtime request.

Based on IAB Case No. 20-23, a pre-disciplinary hearing, and other evidence, Police Chief Vanessa Wilson sustained allegations that Officer Odneal violated Directives 8.14 Overtime Compensation; 8.14.4 Requests for Overtime; and 14.2.2 Making a False or Untruthful Declaration. Chief Wilson issued a Disciplinary Order terminating Officer Odneal’s employment on December 16, 2020. Officer Odneal filed an appeal with the CSC on December 30, 2020.

CSC Hearing and Findings: The appeal was heard by the CSC on May 19, 2021, one-hundred and fifty-four days after the issuance of the Disciplinary Order. This was a closed hearing. Three Commissioners were present: Vice Chair A.J. McDonald, Commissioner Barbara Shannon-Banister, and Commissioner Brooke Gabrielli. The Commission found that Officer Odneal violated Directives 8.14 and 8.14.4 by submitting requests for overtime without obtaining the permission of his supervisor, Sergeant Leonard. The Commission further found that minor typographical errors in Sergeant Leonard’s communications would not have been enough to convince Officer

Odneal, an experienced officer, that overtime had been authorized. Furthermore, if Officer Odneal was confused, he had the responsibility to clarify the situation with his superior. The Commission therefore found that Officer Odneal violated Directive 14.2.2 by knowingly providing an untrue statement regarding having acquired his supervisor's approval for overtime. The Commission further determined that, due to Officer Odneal's extensive disciplinary history, his lack of remorse, his seemingly manipulative behavior during hearings, and the intolerance of the department for untruthfulness, the Disciplinary Order should be upheld. The Commission unanimously upheld the termination of Officer Odneal's employment. The CSC entered its decision on May 28, 2021.

11. OFFICER ROBERT ROSEN (2021)

IAB Case No. 20-32

Facts: On August 10, 2020, Officer Jonathan Kwon responded to a trespass call at a King Soopers store involved a suspect, Joseph Kisiel, who was known to experience mental health issues. Mr. Kisiel ignored Officer Kwon's instructions and ran away from him into the store while demonstrating "aggressive" behavior. After causing a disturbance and knocking over a display stand, Officer Kwon placed him on the ground while Mr. Kisiel continued to struggle. Every time Officer Kwon attempted to gain control of Mr. Kisiel's arms, Mr. Kisiel pulled away and continued to struggle. Officer Kwon radioed his location and requested assistance. Officer Robert Rosen, who was in route, believed Officer Kwon to be in trouble. When Officer Rosen arrived on scene and reached Officer Kwon and Mr. Kisiel, he activated his body-worn camera. Officer Kwon requested assistance in gaining control of Mr. Kisiel's arms. After making a brief attempt to pull Mr. Kisiel's arms out from underneath him, Officer Rosen punched Mr. Kisiel four times in the ribs. When this did not allow the officers to gain control, Officer Rosen warned Mr. Kisiel that he would be tased if he did not comply. After Mr. Kisiel continued to refuse, Officer Rosen activated the taser and "drive stunned" Kisiel in his right thigh, allowing Officer Kwon to gain control of Kisiel's right hand. When Mr. Kisiel still refused to give his left arm to the officers, Officer Rosen again threatened the use of the taser. Despite Mr. Kisiel then removing his arm from under his body, Officer Rosen did not notice and discharged his taser five times over a total period of 27 seconds. Afterwards, Officer Kwon was able to gain full control of both of Mr. Kisiel's arms and handcuff him. Mr. Kisiel was led outside and evaluated by medical personnel, at which point Officer Rosen became aware of Mr. Kisiel's mental health challenges.

Due to Officer Rosen's discharge of his taser, the Force Review Board analyzed Officer Rosen's actions during the incident. The Force Review Board concluded that Officer Rosen's use of "combative strikes" was unnecessary, that his five-time discharge of the taser was excessive, and that the officers should have slowed down and made a concrete plan for resolving the incident.

before resorting to force. The matter was then referred to Internal Affairs for investigation. The results were provided to the Chief's Review Board, who concluded that Officer Rosen violated four departmental directives: 5.8.10 Taser; 5.3 Use of Physical Force; 14.2.15 Unsatisfactory Performance; and 16.4.3 Body-Worn Camera Operation. The Board recommended a 60-hour suspension without pay. Following a pre-disciplinary hearing, Police Chief Vanessa Wilson issued a Disciplinary Order on February 11, 2021, sustaining the violations and terminating Officer Rosen's employment. Officer Rosen filed an appeal with the CSC on February 25, 2021.

CSC Hearing and Findings: The appeal was heard by the CSC on July 21 and 22, 2021, one-hundred and sixty days after the issuance of the Disciplinary Order. This was a closed hearing. Five Commissioners were present: Chair James Weeks, Vice Chair A.J. McDonald, Commissioner Barbara Shannon-Banister, Commissioner Brooke Gabrielli, and Commissioner Harold Johnson. The Commission sustained the violations of all four directives, plus an additional directive: 14.1.1 Lawful Orders. The Commission found that Officer Rosen exceeded both the number of times an officer may activate a taser, as well as the duration for which it can be activated, thereby violating Directive 5.8.10 Taser. By using his fists to strike Mr. Kisiel, and by repeatedly tasing an individual who was "passively resisting", Officer Rosen did not use "reasonable and appropriate force" and thereby violated Directive 5.3 Use of Physical Force. By failing to adhere to the proper standards for interacting with members of the public, Officer Rosen violated Directive 14.2.15 Unsatisfactory Performance. By failing to activate his body-worn camera until he reached the store aisle in which the incident was occurring, Officer Rosen violated Directive 16.4.3 Body-Worn Camera Operation. In addition, the Commission found that Officer Rosen violated Directive 14.1.1 Lawful Orders. In 2019, Officer Rosen took a leave of absence. Upon his return to duty, he entered into an agreement that required him to "perform in a satisfactory manner as a police officer." Officer Rosen's actions constituted an unsatisfactory performance, and therefore Officer Rosen violated Directive 14.1.1.

Due to the seriousness of Officer Rosen's actions, the excessive nature of the force used against a vulnerable member of the Aurora community, Officer Rosen's past disciplinary violations, and his inability to manage stress and respond appropriately to challenging situations, the Commission sustained Chief Wilson's termination of Officer Rosen's employment. The CSC entered its decision on August 5, 2021.

12. SERGEANT EDWARD ACUTI (2022)

IAB Case No. 21-13

Facts: Disciplinary proceedings against Sergeant Edward Acuti revolved around the occurrence of six incidents that took place during May and June of 2021, as well as a meeting that Officer Acuti attended with the Gang Intervention Unit (GIU), during which Chief Vanessa Wilson

maintained that Officer Acuti violated five Departmental Directives: Directive 5.3 Use of Physical Force; Directive 14.2.21 Police-Community Relations, Directive 14.2.1 Conduct Unbecoming, Directive 14.2.15 Unsatisfactory Performance, and Directive 14.2.14 Conduct Toward Superior and Subordinate Officers and Associates. At the time, Officer Acuti was the Sergeant in charge of the GIU.

Incident 1: Officer Acuti responded to a scene in which other members of the GIU had stopped a vehicle with two occupants: a male and female juvenile couple. The female juvenile, Ms. Davis, had been seated on the curb in handcuffs when Officer Acuti arrived. When Officer Acuti and his associates attempted to remove the male from the vehicle he fled and a chase ensued, in which the juvenile dropped a firearm. The male juvenile was not caught. When Acuti returned, Ms. Davis was extremely distressed. Officer Acuti engaged in a highly volatile verbal altercation with Ms. Davis, including the use of vulgar profanity. When Ms. Davis responded and stood up from the curb, Officer Acuti and fellow Officer Gruszeckza used a leg push maneuver to reseat her. When Ms. Davis continued yelling, Officer Acuti pinched her trapezoid muscles from behind and pushed down on her shoulders to restrain her in the seated position. When Ms. Davis continued yelling for “help,” Officer Acuti continued to verbally berate and intimidate her, continuing to use vulgar profanity. The Force Review Board reviewed the incident and found that the leg maneuver was policy compliant, but the trapezoid pressure point was non-compliant due to the fact that Ms. Davis was restrained and much smaller than the other officers.

Incidents 2: Officer Acuti responded to several vehicles which had been stopped by other members of the GIU. When the occupants of the vehicles expressed fear or concern about the stop, refused to comply with Officer Acuti’s directions, or otherwise displayed a lack of cooperation, Officer Acuti verbally berated the individuals. Officer Acuti frequently insulted and demeaned the individuals using excessive profanity. Officer Acuti frequently utilized intimidating statements relating to retaliatory actions that he could employ, as well as the charges which could be pressed against the individuals. On occasion, Officer Acuti would also threaten the use of physical force. Officer Acuti frequently relied on harsh verbal language, as well as his position and arrest authority, to attempt to compel compliance.

Furthermore, during Incident 2, Officer Acuti interacted with three individuals, all of whom were Black. During the course of his interactions, Officer Acuti referenced prior incidents between police and citizens resulting in the deaths of Black individuals. Specifically, Officer Acuti stated that the individuals were “sitting here breathing” and that they should “just keep breathing,” in apparent reference to the George Floyd incident.

Gang Intervention Unit Meeting: Upon being reported to his superior for his “outbursts with community members,” it was recommended that Officer Acuti meet with his team members to

discuss his behavior and apologize. At the meeting, Officer Acuti was openly hostile and threatened to have the associate who reported him removed from the GIU.

APD Findings: Regarding Incident 1, Chief Wilson found that Officer Acuti violated Directive 5.3 Use of Physical Force, Directive 14.2.21 Police – Community Relations, Directive 14.2.1 Conduct Unbecoming, and Directive 14.2.15 Unsatisfactory Performance. Regarding Incidents 2-6, Officer Acuti admitted during the initial investigation that his behavior violated Directive 14.2.21. Chief Wilson found that Officer Acuti violated Directive 14.2.21 Police-Community Relations, Directive 14.2.1 – Conduct Unbecoming, and Directive 14.2.15 Unsatisfactory Performance. Regarding Officer Acuti’s behavior at the GIU Meeting, he was found in violation of Directive 14.2.14 – Conduct Towards Superior and Subordinate Officers and Associates.

On February 28, 2022, Chief Wilson issued a Disciplinary Order requiring Officer Acuti to undergo forty hours of de-escalation training, and demoting him from the rank of Sergeant to the rank of Officer. Officer Acuti appealed the disciplinary decision to the CSC on March 9, 2022.

CSC Hearing and Findings: The appeal was heard by the CSC on May 24 and 25, 2022, eighty-six days after the issuance of the Disciplinary Order. This was a closed hearing. Four Commissioners were present: Chair Harold Johnson, Vice-Chair Desmond McNeal, Commissioner Barbara Cleland, and Commissioner Matthew Snider.

Regarding the first incident, the Commission found that the application of the pressure point tactic to the female juvenile’s muscles and shoulders constituted an unnecessary use of force, due to the fact that she was restrained, seated, and supervised by larger and more powerful officers. Additionally, the Commission found that Officer Acuti did not use de-escalation techniques before resorting to the use of physical force, as is mandated by Directive 5.3. Furthermore, the Commission found that Officer Acuti violated Directive 14.2.21, 14.2.1, and 14.2.15 due to his not acting courteously or tactfully, failing to control his temper, showing no discretion in his conversations with Ms. Davis, engaging in behavior that reflected poorly on the Department, and failing to take appropriate action. As such, the Commission sustained Chief Wilson’s finding of violations of Directives 5.3, 14.2.21, 14.2.1, and 14.2.15.

Regarding the second through sixth incidents, the Commission accepted Officer Acuti’s admission of violating Directive 14.2.21, due to his discourteous behavior towards the public. The Commission also subsequently found that Officer Acuti violated Directives 14.2.1 and 14.2.15 due to his unsatisfactory behavior and unprofessionalism, and the negative impact said behavior had on the efficiency of the GIU. As such, Chief Wilson’s finding that Officer Acuti violated Directives 14.2.21, 14.2.1, and 14.2.15 was sustained.

Finally, the Commission found that Officer Acuti's treatment of his subordinates during the GIU Meeting was discourteous and uncivil, and therefore violated Directive 14.2.14. As such, Chief Wilson's finding of this violation was sustained.

Reviewing the totality of the evidence, the footage of the incidents from Officer Acuti's Body Worn Camera, the fact that Officer Acuti had previously been reprimanded for similar behavior, and the Chief's Review Board's conclusion that Officer Acuti be demoted, the Commission concluded that Officer Acuti's behavior was unacceptable for a person holding the rank of Sergeant. As such, the Commission affirmed Chief Wilson's Disciplinary Order, which mandated the demotion of Officer Acuti from Sergeant to Officer, and required him to complete forty hours of de-escalation training. The CSC entered its decision on June 6, 2022.

13. OFFICER DOUGLAS WILKINSON (2022)

Facts: In late 2021, the City of Aurora and the Colorado Attorney General entered into a Stipulated Consent Decree and Judgment, a portion of which was dedicated to improving the Civil Service hiring process to ensure that the public safety workforce represents the diversity of the people and communities within the City. The final version of the Consent Decree was released to the public on November 16, 2021. On that same day, Officer Douglas Wilkinson - the president of the Aurora Police Association (APA) - released an email to all APA members who had provided him with their email addresses, providing his personal thoughts on the Consent Decree's implementation. At the time, the APA represented between 260 and 270 Aurora police officers. In his email, Officer Wilkinson derisively commented on the percentage of individuals the department would need to hire in order to represent the City's diversity: "We could make sure to hire 10% illegal aliens, 50% weed smokers, 10% crackheads, and a few child molesters and murderers to round it out." Furthermore, Officer Wilkinson's comments insinuated that hiring diverse candidates was antithetical to the department's commitment to hiring intelligent, ethical, and courageous candidates. Finally, Officer Wilkinson's email seemingly implied that diverse candidates were hired based primarily on their minority status, as opposed to merit. The email was leaked to the public and, on November 22, 2021, Officer Wilkinson sent a follow-up email defending his initial email.

In response to Officer Wilkinson's email, two Aurora police officers filed EEO Complaints with the City, alleging race, color, and gender discrimination. A third written complaint was later filed by another officer, asserting similar concerns. Aurora Human Resources retained an independent investigator, Ms. Langhoff, to conduct the investigation. Ms. Langhoff concluded that Officer Wilkinson's email "denigrated the officers and showed hostility toward them and other members of their protected class", that the hostility was premised solely on the officers' minority statuses, and that the hostility harmed the officers and created an uncomfortable work environment

leading the officers to consider quitting their positions. Relying on this evidence, Police Chief Vanessa Wilson sent a memo to Officer Wilkinson, informing him that the evidence was adequate to support sustained violations of two directives: the City’s Employee Manual Section 1.2 Anti-Harassment Policy and APD Directive 10.9 Discrimination, Harassment & Sexual Harassment. On January 31, 2022, Chief Wilson held a pre-disciplinary hearing with Officer Wilkinson, and a final disciplinary hearing on February 3, 2022. On February 3, Chief Wilson also entered a Disciplinary Order sustaining the violations of City of Aurora Employee Manual Policy 1.2 and APD Directive 10.9. As a result of these violations, Chief Wilson terminated Officer Wilkinson’s employment. Officer Wilkinson filed an appeal with the CSC on February 15, 2022.

CSC Hearing and Findings: The appeal was heard by the CSC on June 28 and 29, 2022, one-hundred and twenty-five days after the issuance of the Disciplinary Order. This was a closed hearing. Five Commissioners were present: Chair Harold Johnson, Commissioner Barbara Shannon-Bannister, Commissioner Barbara Cleland, Commissioner Desmond McNeal, and Commissioner Matthew Snider. The Commission found Officer Wilkinson’s representations regarding his intent in sending the email to be disingenuous. The Commission found his remarks to have been openly hostile towards minority and female officers within the Department, as well as towards the Aurora community as a whole. Overall, the Commission found that the “adverse impact of Petitioner Wilkinson’s email, was hostile and offensive, stereotyping minorities and women, and creating an intimidating, hostile and offensive work environment and adversely impacting employment opportunities.”

In addition, contrary to the assertions of Officer Wilkinson, the Commission found that the email did not constitute protected free speech under the First Amendment and, as such, Officer Wilkinson could be lawfully disciplined for sending it. The test for whether or not speech is protected by the First Amendment has five important factors: (1) whether the speech was made pursuant to the individual’s official duties; (2) whether the subject of the speech was a matter of public concern; (3) whether the employer’s interest in regulating the speech outweighs the free speech interests of the individual; (4) whether the speech was a motivating factor in the decision to discipline the individual; and (5) whether the same outcome would have been reached had the speech not occurred. The Commission found that Officer Wilkinson satisfactorily addressed the first, second, fourth, and fifth factors of the test. He did not compose the email as part of his duties as an Aurora police officer (Factor 1), the topic of the Consent Decree was a matter of public concern (Factor 2), the email itself was a key factor in Chief Wilson’s decision to terminate his employment (Factor 4), and the termination would not have occurred in the absence of the email (Factor 5). However, the Commission found that the email “significantly and substantially interfered with the APD’s operations and the relationships and environment essential to allow it to provide police services.” Furthermore, it impacted the order and organization of the department and created discord among officers that are required to work cooperatively under

difficult circumstances. The Commission determined that the Department's strong interest in providing efficient police services and protections to Aurora citizens outweighed Officer Wilkinson's interest in speaking about the Consent Decree. Therefore, the Commission found that Officer Wilkinson's email was not entitled to First Amendment protection.

On the basis of these findings, the Commission sustained the violations of the City's Employee Manual Section 1.2 Anti-Harassment Policy and APD Directive 10.9 Discrimination, Harassment & Sexual Harassment. Based on Officer Wilkinson's extensive disciplinary history, the egregiousness of his behavior regarding the writing and sending of the email message, his lack of remorse and accountability for his actions, and the probability of his further interfering in the operations of the Department, the Commission sustained Chief Wilson's termination of his employment. The Commission entered its decision on July 12, 2022.

AURORA FIRE RESCUE

1. CAPTAIN ROBERT OTT (2017)

Facts: Captain Robert Ott with Aurora Fire Rescue was assigned as the Officer on Engine 4, Station 4 at the time of these proceedings. On April 9, 2017, Captain Ott was scheduled to attend training at the Training Academy, which was expected to extend into the late afternoon. In the interim, Technician Guerra was assigned as acting Lieutenant. Captain Ott was released from training early and he returned to the Station before noon. At approximately 1:30 p.m. Engine 4 was dispatched, but Captain Ott did not get on Engine 4. Instead, he allowed Guerra to maintain his status as acting Lieutenant and to respond to the call instead. This failure to attend the call was the subject of an investigation, carried out by a Human Resources investigator with minimal experience and little familiarity with AFR policies. Based on the investigation, pre-disciplinary hearings, and other matters, Chief Hills issued an Administrative Sanction on June 9, 2017, finding that Captain Ott violated AFR policies by (1) failing to notify staff upon his return from training and (2) failing to get on the Engine 4 rig at the time of the call. Specifically, Chief Hills sustained violations of Standards of Conduct 1, 2, 3, 5, 6, and 8; General Orders 2 and 11; and Policies, Procedures, and Guidelines Section 10.2.10.8 Addendum A – Just Cause subsections 1, 2, 6, 7, 8, 10, 17, and 22. The Administrative Sanction demoted Ott from the rank of Captain to Lieutenant. Lieutenant Ott filed an appeal with the CSC on September 27, 2017.

CSC Hearing and Findings: The appeal was heard by The CSC on November 13 through 15, 2017, one-hundred and fifty-seven days after the issuance of the Administrative Sanction. This was a closed hearing. Five Commissioners were present: Chair Tim Ehgotz, Vice-Chair Robert Christoffersen, Commissioner Michael Gorin, Commissioner Pamela Turner, and Commissioner Deborah Wallace. The Commission found that Ott did not violate a department policy by not

notifying staffing of his early return from training, as no policy existed that would compel Ott to do so. There was also no expectation that he do so. However, the Commission unanimously concluded that Ott violated departmental policies and practices by failing to get on the rig in response to the incoming call. Regardless of his motivations for remaining behind, as the Captain of Station 4, it was his duty to get on the rig and accompany it to the scene in the event his expertise or leadership was necessary. Due to Lieutenant Ott's failing to observe "standard operating procedures and protocols," his failure to perform all of the duties required of him as a Captain, and his lack of good judgment, the Commission voted to sustain violations of AFR Standards of Conduct 2, 3, and 5. However, due to his limited disciplinary history and other circumstances, the Commission determined that Ott's demotion was too harsh a penalty. The Commission reversed Ott's demotion, ordering his reinstatement as Captain by December 1, 2017. In lieu of demotion, the Commission imposed a \$5,000 fine, approximately \$3,200 of which was considered a forfeiture of back pay resulting from the difference in pay between the Lieutenant position (held by Ott from June 9 to December 1) and the Captain position (which Ott would have held, if not for his demotion). The remaining \$1,800 was to be paid directly by Captain Ott. The Commission also recommended that Captain Ott receive ongoing mentorship for a period of six months following his reinstatement. The Commission entered its decision on November 28, 2017.

2. FIREFIGHTER DAVID GIBBS (2018)

Facts: In October 2015, while Firefighter David Gibbs was actively employed by Aurora Fire Rescue, he developed a friendship with Ms. Amber Falco, an emergency medical technician with Falck USA who, at the time, was actively applying for a position as a firefighter with AFR. Mr. Gibbs texted her an inappropriate picture of himself and, following an internal investigation, had his employment terminated. He was later reinstated with his discipline reduced to a six-month suspension. After completing his six month suspension, Mr. Gibbs was required to undergo a fit for duty evaluation in order to re-enter the AFR Department. Mr. Gibbs was found to be fit for duty, with the caveat that he satisfy certain "considerations" to maintain his position. These "considerations" were used by the City to create a performance plan which Mr. Gibbs was required to follow.

In February 2017, after Mr. Gibbs was reinstated, he visited the home of a female firefighter, Ms. Erin Sherill. On March 15, 2017, Ms. Sherill emailed Mr. Gibbs supervisor complaining of the incident, stating that the visit was unannounced and made her feel unsafe. An internal investigation was initiated and Mr. Gibbs was placed on administrative leave, with instructions not to contact city employees or go into or onto any city facilities or properties.

The City further found that, from March to May 2017, Mr. Gibbs failed on six different occasions to meet the requirements stipulated in his performance plan. Such infractions included failing to attend several required classes, failure to notify superiors of his nonattendance, failure to provide progress reports to his supervisor, and failure to provide evidence of his attending twelve mandatory counseling sessions.

Based on the above infractions, Fire Chief Fernando Gray determined that Mr. Gibbs violated certain rules, regulations, and standards of the AFR Department by failing to comply with the performance plan and his inappropriate visit to Ms. Sherill's home. On July 7, 2017, Chief Gray issued an Administrative Sanction terminating Mr. Gibbs employment. Mr. Gibbs filed an appeal with the CSC on July 21, 2017.

CSC Hearing and Findings: The appeal was heard by the CSC on March 19 through 23, 2018, two-hundred and fifty-five days after the issuance of the Administrative Sanction. This was a closed hearing. Five Commissioners were present: Chair Pamela Turner, Vice-Chair Michael Gorin, Commissioner Robert Christoffersen, Commissioner Tim Egotz, and Commissioner Deborah Wallace. The Commission found that Mr. Gibbs did not fail to meet any requirements of his performance plan, as alleged. Although he failed to attend certain mandatory classes, he took proper steps to reschedule. Furthermore, he was precluded from attending based on the circumstances of his administrative leave. He was also precluded from contacting City employees and officials, thereby excusing his failure to update his superiors. In addition, there was ample evidence that Mr. Gibbs completed the required counseling sessions, and his failure to report the evidence by the stipulated deadline was excusable based upon the nature of his administrative leave and other extenuating circumstances. In a four to one vote, the Commission found that Mr. Gibbs did not violate the performance plan.

The Commission further concluded that Mr. Gibbs' visit to Ms. Sherill's home was not a violation of any of the Department's policies or standards. The evidence demonstrated that Mr. Gibbs and Ms. Sherill possessed a close off-duty friendship, that Mr. Gibbs regularly visited Ms. Sherill's home, and that he had done so unannounced. The amount of time that passed between the incident and Ms. Sherill's reporting of it, the uncharacteristic nature of the allegation, and the lack of testimony from Ms. Sherill weighed against a finding of impropriety. The Commission concluded that Mr. Gibbs' visit to Ms. Sherill's home did not violate any AFR policies, procedures, or standards.

Based on these conclusions, the Commission did not sustain the Administrative Sanction and the alleged violations, and reversed the termination of Mr. Gibbs' employment. Mr. Gibbs was reinstated to his previous position with AFR. The Commission entered its decision on April 2, 2018.

3. TECHNICIAN JOHN SPERA, CAPTAIN BRETT STEADMAN, AND CAPTAIN THOMAS JOHNSON (2020)

Facts: On February 5, 2019, Firefighter John Spera injured his right knee and, as a result, was placed under worker's comp, prescribed narcotic pain killers, and was prevented from reporting for duty in his usual capacity. Spera's physical activities were limited to 1-2 hours per day of standing and walking, and he was required to refrain from strenuous activities including climbing. While off-duty, Spera and Captain Thomas Johnson operated a business called Fit to Fight Fire (FTFF) which specialized in providing firefighting training courses. Spera and Johnson had planned to attend the Firemanship Conference in Portland, Oregon and to teach a training course provided by FTFF. However, due to Spera's injury, Captain Brett Steadman was asked to substitute for Spera. Spera would also attend, but participate only in a limited capacity as allowed by his restrictions. All three traveled to the conference. While at the conference, the three individuals wore FTFF emblems on their helmets while simultaneously wearing AFR bunker gear. In addition, photographs taken at the conference showed Spera standing on a fire escape which would have required him to climb multiple flights of stairs. These actions inspired Fire Chief Gray to order an investigation by an outside investigator from True to Course, LLC. The investigator concluded that the three individuals collectively committed 28 violations of AFR directives and policies. 10 violations were attributed to Firefighter Spera, 5 were attributed to Captain Steadman, and 13 were attributed to Captain Johnson. Chief Gray sustained the findings of all 28 violations and issued Administrative Sanctions against all three individuals on December 4 and 5, 2019. The Sanctions imposed the following disciplinary fines: Firefighter Spera was fined \$8,630.80; Captain Steadman was fined \$4,697.80; and Captain Johnson was fined \$6,576.92. Large portions of the fines were to be held in abeyance, on the condition that the individuals not commit any further violations for a one-year period. All three individuals filed appeals with the CSC on December 18, 2019.

CSC Hearing and Findings: The consolidated appeals were heard by the CSC on November 2 through 4, 2020, three-hundred and nineteen days after the issuance of the Administrative Sanctions. This was a closed hearing. Four Commissioners were present: Chair James Weeks, Vice Chair Pamela Turner, Commissioner Barbara Shannon-Banister, and Commissioner A.J. McDonald. The Commission reviewed the findings and violations for each of the three individuals.

Firefighter Spera: The Commission voted to sustain three of the ten violations levied against Firefighter Spera. The Commission determined that Spera violated Section 1.5 Professionalism and Conflicts of Interest – City Resources; Section 1.5 Professionalism and Conflicts of Interest – Endorsement of Products; and City of Aurora Official Badge or Credentials Use Policy, Section 2.8. All three violations related to his wearing FTFF emblems alongside his AFR bunker gear, for

providing the insignia to other officers to do likewise, and the implicit endorsement of FTFF stemming from these actions. However, the Commission determined that all three violations were *de minimis*. All violations related to Spera's injury and his physical activity were not sustained by the Commission.

Captain Steadman: The Commission voted to sustain zero of the five violations levied against Captain Steadman. The Commission found that there was nothing improper about Captain Steadman's agreeing to teach the FTFF course at the conference. Such an engagement created no conflicts of interest, nor impaired his ability to effectively supervise Spera. Similarly, Captain Steadman did not fail in any of his duties or responsibilities as a supervisor.

Captain Johnson: The Commission voted to sustain four of the thirteen violations levied against Captain Johnson. The Commission sustained Captain Johnson for two counts of violating Section 1.5 Professionalism and Conflicts of Interest – City Resources; one count of violating Section 1.5 Professionalism and Conflicts of Interest – Endorsement of Products; and one count of violating the City of Aurora Official Badge or Credentials Use Policy, Section 2.8. These violations were the same as those sustained for Firefighter Spera. The reasoning for sustaining the violations against Captain Johnson was, again, the same as the reasoning provided for sustaining the violations against Spera. Again, the Commission found that the violations were *de minimis*.

Based on those findings, the Commission concluded that no formal discipline was warranted for any of the individuals. The Commission ordered that all fines be waived. The Commission entered its decision on November 19, 2020.

APPEALS OF CIVIL SERVICE COMMISSION RULINGS TO DISTRICT COURT

Three cases from above were appealed to the District Court. The combined cases for members Marrero and Dittrich were appealed as one case to the District Court and Huffine and DeShazer also appealed their cases to the District Court. While the City has the right to appeal, the City did not exercise that right during this time period. In each of the three appeals the decision of the Civil Service Commission was upheld by the District Court.

FINDINGS AND RECOMMENDATIONS

FINDING 1 – THE CHARTER PROVIDES A MANDATORY FRAMEWORK FOR APPEALS FROM DISCIPLINARY DECISIONS TO WHICH THE CURRENT DE NOVO REVIEW PROCESS IS COMPLIANT

DISCUSSION

As discussed more fully above, the *de novo* review is explicitly contemplated by the Charter and has been in place for many years. The rules of the Commission embody the Charter requirement. Any change to process would require a Charter revision.

RECOMMENDATION

The current *de novo* review process should remain in place.

FINDING 2- THE DE NOVO REVIEW PROCESS AS MANDATED BY THE CHARTER AND IMPLEMENTED BY THE COMMISSION RULES IS THE FIRST TIME IN THE DISCIPLINARY PROCESS THAT MEMBERS ARE AFFORDED FULL DUE PROCESS

DISCUSSION

The current pre-appeal departmental disciplinary process within both the APD and AFR does not provide for full due process. There is no representation by legal counsel, no right to confront and cross-examine witnesses, no right to review the finding of the Department, through its Chief, that misconduct occurred, or that the penalty imposed is appropriate. The current system as mandated by the Charter and implemented by the Commission provides due process in each of these areas before neutral finders of fact (the Commission) drawn from the Aurora community.

RECOMMENDATION

The current *de novo* review process should remain in place.

FINDING 3: THE CIVIL SERVICE COMMISSION HAS COMMENDABLY INCREASED THE TRANSPARENCY OF THE DE NOVO REVIEW PROCESS.**DISCUSSION**

Transparency into the Civil Service Commission processes was a focus of the investigation by the AG. Since the implementation of the Consent Decree, the Commission has taken steps to increase transparency of the process by advanced posting of the date that a given appeal will be heard and by posting the results of the appeal.

These are certainly steps in the right direction.

RECOMMENDATION

The Commission should continue to explore additional ways of increasing transparency of the process. Specifically, the Commission should explore the continuation of hybrid meetings which would allow for virtual attendance at regularly scheduled meetings. In order to increase community awareness of Commission proceedings and events, the Commission should post on its website and announce at its regularly scheduled public meetings any upcoming disciplinary hearings and decisions on appeals which have occurred. Additionally, the Commission should explore the live streaming and recording for later viewing of *de novo* review hearings. Lastly, the Commission should explore providing an explanation of the appeal process on its web site, so the community can clearly understand the role of the Commission and its authority under the Charter.

FINDING 4: WHILE UNDER THE CHARTER, A MEMBER OF THE DEPARTMENT MAY REQUEST A CLOSED HEARING, THERE EXIST NO RULES OR GUIDELINES FOR THE RESOLUTION OF THE REQUEST**DISCUSSION**

There are no rules that provide the Commission with guidance as to when to honor a request from a member that the *de novo* review be closed to the public. Public policy, and the underlying precepts of the Consent Decree should weigh in favor of transparency and open hearings. There may, however, be limited instances where the overall public interest would not be served by having an open hearing. There were only two hearings out of the sixteen hearings examined in this report that were open to the community.

RECOMMENDATION

The Commission should strongly consider adopting rules that provide guidance as to the factors to consider when weighing a request from a member for a closed hearing. The rules should provide for a presumption of an open hearing which could be overcome by factors that are presented by the member, in writing, to the Commission. The question should be decided by a majority of Commissioners utilizing a rubric established in coordination with the APD, AFR, the City. This change would provide for increased transparency of the Commission's work to the community.

FINDING 5: THE TIMELINE FOR THE RESOLUTION OF APPEALS AS CALLED FOR BY THE CHARTER HAS NEVER BEEN MET

DISCUSSION

The timeline established by the Charter mandates that the hearing be conducted no less than 15 days nor more than 30 days from the date the appeal is received by the Commission, which must be within 10 days of the Chief's decision. While the Commission has taken steps to improve the time from the formal appeal of an imposed penalty to the resolution of the matter by the Civil Service Commission, the timeline for the resolution of appeals as established in the Charter and the rules of the Commission has never been met. Swift resolution of appeals is in the public interest and, therefore, all steps that can be taken to have appeals concluded within the set timeframe should be investigated and provided for in the rules.

RECOMMENDATION

The Commission should strongly consider the elimination of the extension of time by mutual consent while maintaining allowing continuations for good cause shown. The practice established in 2022 of designating hearing dates each month in the beginning of the year to provide those attorneys who practice in this area with advanced notice of available hearing dates, should continue. The current practice of the Commission have tightened up the process, but some matters still linger. Every effort to provide for swift hearings should be made and good cause extension should only be granted in extenuating circumstances and those circumstance should be prescribed in the revised Rules and Regulations.

FINDING 6: THE USE OF PRECEDENT TO DETERMINE WHETHER AN IMPOSED PENALTY IS APPROPRIATE IS PROBLEMATIC**DISCUSSION**

While Commission rules recognize the potential utilization of precedent to establish the inappropriateness of a particular penalty, the rules are not specific with respect to the method by which any disparities should be judged. Specifically, the rules of the Commission provide that it “may consider discipline imposed upon other civil service personnel on matters of a similar nature if it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. All comparisons shall indicate the Chief that imposed the discipline. Deference shall be given to discipline imposed by the same Chief of Police or Fire Chief who imposed the discipline which is on appeal.” The utilization of precedent as the barometer for whether an imposed penalty is appropriate or not, is a method which can perpetuate mistakes of the past where prior penalties may have been either too harsh or too lenient. Moreover, because of the differing views of various Chiefs who are imposing discipline, there is the possibility of wildly inconsistent outcomes which provide no guidance to members as to what an appropriate penalty might be or consistency among administrations in penalties imposed.

RECOMMENDATION

The current Rules and Regulations for the Commission provide for the Commission to consider any disciplinary matrix adopted by APD or AFR. Each department having a disciplinary matrix with presumptive ranges of penalties for each type of infraction of policy could provide the Commission with a more objective and consistent baseline to evaluate and assess the appropriateness of the penalty rather than the current system of comparison to wildly differing precedents.

If such disciplinary matrices are adopted by APD and AFR, Section XII, Rule 10 of the current Rules and Regulations would need to be revised to provide more fulsome context around how the matrices should be utilized by the Commission. In the meantime, the Commission should explore the adoption of rules that would address the issues raised in this finding.

FINDING 7: THE COMMISSION RULES DO NOT SET A METHOD BY WHICH A DECISION ON APPEAL SHOULD BE RENDERED, AND THE FACTORS THAT SHOULD BE CONSIDERED IN MAKING THE DECISION

DISCUSSION

The Commission rules do not set the method by which a decision on appeal should be rendered and what should be considered by the Commission in rendering the decision. While the current practice is for the commission to deliver a written opinion spelling out the reasons for the decision of the Commission, and currently does so extremely well, there is no requirement in the rules for such. This allows for the format to differ depending on the composition of the Commission.

RECOMMENDATION

The Commission should adopt a rule which requires the issuance of a formal opinion in substantially the form which is utilized today, with findings of fact, its conclusions as to whether the burden of proof has been met, and the ultimate decision of the Commission relative to the imposed discipline. This will allow for consistency in disciplinary opinions, regardless of the membership of the Commission. The Commission should also document the vote of each Commissioner thereby providing for increased transparency and accountability to the community.

CONCLUSION

We have, on behalf of the City and the Civil Service Commission, as required by the Consent Decree, strongly considered the question of whether the *de novo* review process should be replaced. We have found, for the reasons stated, it should not.

We have, however, made recommendations, which are not violative of the Charter, that would serve to improve not only the *de novo* process, but the overall pre-appeal departmental disciplinary process as it currently exists with APD and AFR.

In making our recommendations, we have been guided by two major principles. First, that the system provide both due process for, and accountability of, those who have been found to have digressed from the policies of the department and who feel that they have been treated unfairly. Second, that the system be transparent to the public to the greatest extent possible. We believe that our recommendations promote those ends.

APPENDIX

Relevant Rules of the Civil Service Commission

SECTION XI. APPEAL OF DISCIPLINARY ACTIONS, FILING PROCEDURES FOR APPEALS, PROCESSING DISCIPLINARY APPEALS, AND OTHER LEGAL MATTERS.

61. DISCIPLINARY ACTIONS SUBJECT TO APPEAL. Civil Service members of the departments may appeal any disciplinary action, except written and oral reprimands, to the Commission. Written and oral reprimands are not subject to the Commission appeal and hearing procedure.

62. FILING PROCEDURES FOR DISCIPLINARY APPEALS. Any member of the Civil Service against whom a covered disciplinary order has been issued, and who desires to appeal, shall have ten (10) business days, as defined in Article III, Section 3-16(8)(e) of the City Charter, from the date of service of the disciplinary order in which to file an appeal of the order with the Commission. The petition for appeal shall be in writing; contain the name and address of the appellant; a copy of the written command order being appealed; and a brief summary of the reasons for the appeal. The petition for appeal shall state whether the appellant desires to have the hearing closed to the public and include the requirements outlined in Section XIII, Paragraph 88, Rule 1, Pleadings, of these Rules and Regulations. Upon receipt of an appeal, the Commission shall promptly provide a copy of the appeal to the office of the City Attorney.

63. PROCESSING DISCIPLINARY APPEALS. Upon receipt of an appeal of a disciplinary action, the Commission shall set a date for a hearing on the appeal, to be held no less than fifteen (15) calendar days nor more than thirty (30) calendar days from the date the appeal is received by the Commission. After a hearing date has been set, it may be continued only upon agreement of all the parties or upon good cause shown to the Commission. Commission staff will notify the parties of the new hearing date within ten (10) working days of the

Commission approving the continuance. Failure of the member to cooperate in the resetting may result in a finding that the member has waived his/her right to appeal. The new date shall be set within 60 days of the granting of the continuance unless good cause is shown to the Commission.

1. A member of the Civil Service system who has filed an appeal may be represented by someone of his/her choosing. The representative's name and mailing address shall be provided, in writing, to the Commission prior to scheduling a hearing date.
2. Commission hearings may be conducted by less than all of its members, but in no event will a hearing be conducted by less than a majority of its members.

3. The hearings shall be recorded by a court reporter or an electronic recording device. When the Commission deems it advisable, the hearings may be chaired by the attorney for the Commission.
4. The Notice of Hearing will be provided by mail, or by hand delivery, to the City Manager, appropriate department Chief, Assistant City Attorney representing the department, the member of the Civil Service system filing the appeal and the member's representative, if any. The Commission will comply with the Open Meetings Act, C.R.S. 24-6-402 in determining whether a hearing shall be open or closed to the public.
5. When an appeal is filed by a Civil Service member, copies of the following documents shall be transmitted by the Chief of the department to the Commission within five (5) business days from receipt of the Notice of Hearing:
 1. 1) Specification of charges.
 2. 2) Written report of evidence supporting charges.
 3. 3) Member's disciplinary record summary, if any.
 4. 4) Member's transcribed statement made during the pre-disciplinary hearing in response to the charges, and the written report, if any.
 5. 5) Member's written statement to the Chief submitted after the pre-disciplinary hearing, if any.

64. OTHER LEGAL MATTERS. When an appeal concerning a disciplinary action is filed with the Commission, or when there is a subsequent judicial appeal from a decision of the Commission, the Commission may retain an attorney to render impartial advice and/or advocate the Commission's position before the reviewing court. When the Commission renders its decision concerning the disciplinary action originally imposed by the City on a civil service member, and there is an appeal filed by the civil service member, the Commission may request that the City Attorney represent the Commission before the reviewing court, unless the City has filed or intends to file an appeal based upon the Commission's modification of the disciplinary action. In situations where either the City is appealing a decision of the Commission or where both parties are appealing the decision, the Commission shall retain its own attorney. Nothing stated herein shall infringe upon the Commission's right to exercise at any time its discretion to retain legal counsel concerning any matter.

The Civil Service Commission recognizes the Independent Review Board (IRB) as a process that encourages open and frank discussions between the parties, their representatives, and within the IRB board itself. To facilitate the use of the IRB without limiting the Commission's consideration of disciplinary appeals as authorized by Charter, recommendations or conclusions of the IRB shall not be presented or disclosed during a disciplinary appeal hearing before the Commission, as long as it is clear that the existence of the IRB does not interfere with an Officer's

access to appeal a discipline to the Commission and that the ability of the Civil Service Commission to conduct a fair and impartial hearing is preserved. Any dispute over the admissibility of recommendations or conclusions of the IRB shall be resolved by motion prior to the hearing. Consistent with a *de novo* presentation of evidence to the Civil Service Commission during disciplinary appeal hearings, a witness who testifies before the IRB can testify in a Commission disciplinary hearing without impeachment from their testimony to the IRB.

Under no circumstances will settlement discussions between the parties be admitted during Commission disciplinary hearings.

SECTION XII. RULES OF PROCEDURE FOR DISCIPLINARY APPEAL HEARINGS.

65. GENERAL. Rules of procedure governing the conduct of Disciplinary Appeal Hearings follow. These Rules are intended to be supplemental to and not in derogation of the provisions set forth in Section XII, Appeal of Disciplinary Actions, Filing Procedures for Appeals, and Processing Disciplinary Appeals, of the Commission Rules and Regulations as well as other provisions of the Aurora City Charter.

66. RULE 1 - PLEADINGS.

1. The appeal to the Commission shall be initiated by a petition for appeal. In addition to the requirements set forth in Section XI, paragraph 62 of these Rules and Regulations, the Petition shall conclude with a concise paragraph describing with specificity, each reason the Petitioner asserts the disciplinary action was incorrect.
2. Any issue not specifically raised in the Petition will not be heard by the Commission. The Petition may be amended to include additional issues identified as a result of discovery and preparation for the hearing, but such amendments must be made in a timely manner. Copies of the Petition, as well as any amendments must be provided to the City. No written response to the Petition or any amendments is required by the City.

67. RULE 2 - HEARING DATES AND CONTINUANCES. The City Charter requires the Commission to conduct a hearing on the appeal not less than fifteen (15) nor more than thirty (30) days after receipt of a petition for appeal. The Charter further provides that after a hearing date has been set, it may be continued only upon agreement of all parties or upon good cause shown to the Commission. Continuances are discouraged. Where possible, the Commission shall attempt to set all hearing dates in consultation with the parties or their representatives. However, it may be necessary for the Commission to reschedule a hearing. If the date for a hearing was cleared in advance with the parties or their representatives, no continuance will be granted except upon a

showing of good cause, which could not reasonably have been foreseen at the time the hearing date was initially set.

68. RULE 3 - DISCOVERY.

a. Initial disclosures. Each party shall, without awaiting a discovery request, provide to the other party:

1. 1) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the issues set forth in the Petition or the underlying event that resulted in disciplinary action; and
2. 2) A listing, together with a copy of, or a description by category and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the issues set forth in the Petition or that relate to the underlying event that resulted in disciplinary action.

Such initial disclosures shall be provided by the earlier of (a) twenty (20) days of the date the Commission receives the petition for appeal, or (b) ten (10) days before the date of the appeal hearing.

2. Supplemental discovery. In addition to the initial disclosures, either party may file a request for production of documents. Written responses must be provided to such requests by the earlier of (a) twenty-five (25) days of the date of such request for production of documents, or (b) ten (10) days before the date of the appeal hearing, unless some other date is mutually agreed to by both parties.
3. Claims of Privilege or Protection of Trial Preparation Materials. If a party, in connection with its initial disclosure or in response to a supplemental discovery request, withholds information required to be disclosed by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.
4. Duty to Supplement Disclosures or Responses. A party is under a duty to supplement its disclosures and responses when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other party during the disclosure or discovery process.
5. Signing of Disclosures and Responses. Every disclosure, supplemental discovery request or discovery response, including objections thereto, made pursuant to the provisions of

this Rule shall be signed by at least one attorney of record in the attorney's individual name. A party not represented by an attorney shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made and that the request, response or objection is made in good faith and not interposed for any improper purpose such as to harass the other party, or delay the proceeding or needlessly increase the cost of the hearing.

f. Filing of Disclosures, Supplemental Discovery Requests and Responses. Initial disclosures by the parties, supplemental discovery requests and discovery responses need not be filed with the Commission unless a dispute arises which requires the Commission's involvement to resolve.

g. Discovery Disputes. The parties are encouraged to conduct discovery informally and freely exchange materials without involving the Commission. If it becomes necessary for a party to file a formal motion to compel discovery with the Commission, such request shall include a certification by the party or their representative that all reasonable efforts have been made to resolve the discovery issue informally between the parties.

69. RULE 4 - SUBPOENAS. Upon request of either party or their representative, the Chair or Vice Chair or the Commission shall issue subpoenas to desired witnesses requiring their attendance at the hearing. It shall be the responsibility of the party seeking the subpoena, to have it served on the witness, in the manner provided by the Colorado Rules of Civil Procedure. If a witness has been properly subpoenaed and fails to appear for the hearing, the Commission may apply to a court of competent jurisdiction for issuance of a subpoena, enforceable through the contempt powers of the Court.

70. RULE 5 - WITNESSES AND EXHIBITS. No later than seven (7) days before the hearing each party shall provide the opposing party or their representative a list of each witness they intend to call and a copy of each exhibit they intend to introduce. Any witness not disclosed to the opposing party shall not be permitted to testify at the hearing, except upon a showing of good cause for such failure. Any exhibit not disclosed to the opposing party shall not be admitted at the hearing, except upon a showing of good cause for such failure. All exhibits shall be marked in advance of the hearing. The City shall mark their exhibits using numbers and the Petitioner shall mark their exhibits using letters. Copies of all exhibits, preferably arranged in a notebook, shall be provided to the Commission members at the time of the hearing. Parties are encouraged to stipulate to the admissibility of as many exhibits as possible in advance of the hearing and through their cooperative efforts to avoid duplication of exhibits.

71. RULE 6 - MOTIONS. In general, written motions are discouraged, but permitted. One copy of the motion and any attachments must be filed with the Commission. In addition an electronic copy of the motion and attachments must be provided to the Commission and the opposing party. All written motions must be filed no less than ten (10) days before the hearing, unless good cause is shown for the failure to do so. The opposing party shall have five (5) days to file a written response to the motion, if it desires to do so. In addition to the printed copy of the response filed with the Commission, an electronic copy of the response must be provided to the Commission and the opposing party. No reply shall be permitted by the moving party, except with the express consent of the Commission or hearing counsel. In their discretion the Commission or hearing counsel may request oral argument or an evidentiary presentation on the motion or they may resolve the motion based solely on the written submissions by the parties. In the discretion of the Commission, motions may be ruled on prior to commencement of the hearing. The Commission may, in its discretion, delegate resolution of pre-hearing motion to hearing counsel. Any decision or ruling by hearing counsel may be revised by the Commission prior to the hearing.

72. RULE 7 - PRE-HEARING CONFERENCES. The parties or their representatives shall be required to attend, either by phone or in person, a pre- hearing conference to be conducted by hearing counsel for the Commission. The Commission may or may not be present at such pre-hearing conference. The parties shall be prepared to address the following issues at the pre-hearing conference:

1. 1) Procedural issues, including but not limited to timing and availability of witnesses, whether the hearing will be open or closed, and anticipated length of hearing.
2. 2) Discovery issues
3. 3) Exhibits
4. 4) Issues to be presented at the hearing. Parties shall be prepared to identify and confirm, with specificity, the actual issues to be presented to the Commission at the hearing. All issues that a party no longer intends to pursue shall be identified and eliminated from the proceedings.
5. 5) Stipulation as to undisputed facts. Upon request of hearing counsel, prior to the pre-hearing conference the parties shall exchange lists of disputed and undisputed facts that they believe are relevant to their case or defense. A party shall stipulate to any fact that they do not have a good faith, articulable basis for disputing
6. 6) Motions. Hearing counsel may resolve all motions at or as a result of the pre-hearing conference.

- 7) Other pre-hearing matters requested by the parties or raised by hearing counsel. Such pre-hearing conferences may be conducted at any time prior to the hearing.

73. RULE 8 - OPENING AND CLOSING STATEMENTS. Opening statements are to be limited to ten (10) minutes per party, unless a greater amount of time has been granted to the party in advance by the Commission. Closing statements will generally be permitted to be made orally, but should be kept as concise as possible. In its discretion, the Commission may request that closing arguments be submitted in writing.

74. RULE 9 - ORDER OF PRESENTATION. The City has the burden of persuasion and shall present its case in chief first. This shall be followed by the case in chief of the Petitioner. In the discretion of the Commission either party may be permitted to provide rebuttal evidence. The Commission may inquire into the purpose of rebuttal evidence prior to its presentation.

75. RULE 10 - EVIDENCE. All witnesses shall take an oath or be sworn by the reporter or by hearing counsel for the Commission. In general, the Colorado Rules of Evidence shall govern the admissibility of evidence presented to the Commission. However, the Commission may receive and consider evidence not admissible under such Rules if it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, and if the Commission concludes such evidence is necessary to enable the Commission to ascertain the facts affecting the substantial rights of the parties. The Commission may consider discipline imposed upon other civil service personnel on matters of a similar nature if it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. All comparisons shall indicate the Chief that imposed the discipline. Deference shall be given to discipline imposed by the same Chief of Police or Fire Chief who imposed the discipline which is on appeal. The Commission may also consider any disciplinary matrix adopted by, as applicable, the Police or Fire Department. Hearing counsel for the Commission shall initially rule on all evidentiary matters during the hearing or, for the purposes of judicial economy, prior to the hearing. If any Commissioner disagrees with the ruling of hearing counsel to the Commission, then the issue will be resolved by a vote of a majority of the Commissioners presiding over the hearing. All votes taken shall be on the record. In the event of a tie vote, the evidence or material will be admitted. A record may be made setting forth the reasoning behind a dissenting vote.

76. RULE 11 - QUESTIONS BY THE COMMISSION. Commissioners shall be permitted to ask questions during a hearing of any witness, party, or representative of a party.

77. RULE 12 - TRANSCRIPT ON APPEAL.

1. In accordance with the Colorado Rules of Civil Procedure, if a party chooses to appeal the Commission's decision, such appeal shall be filed in the District Court. If an appeal is filed, the Commission is required by the court to file the record of such disciplinary hearing. The

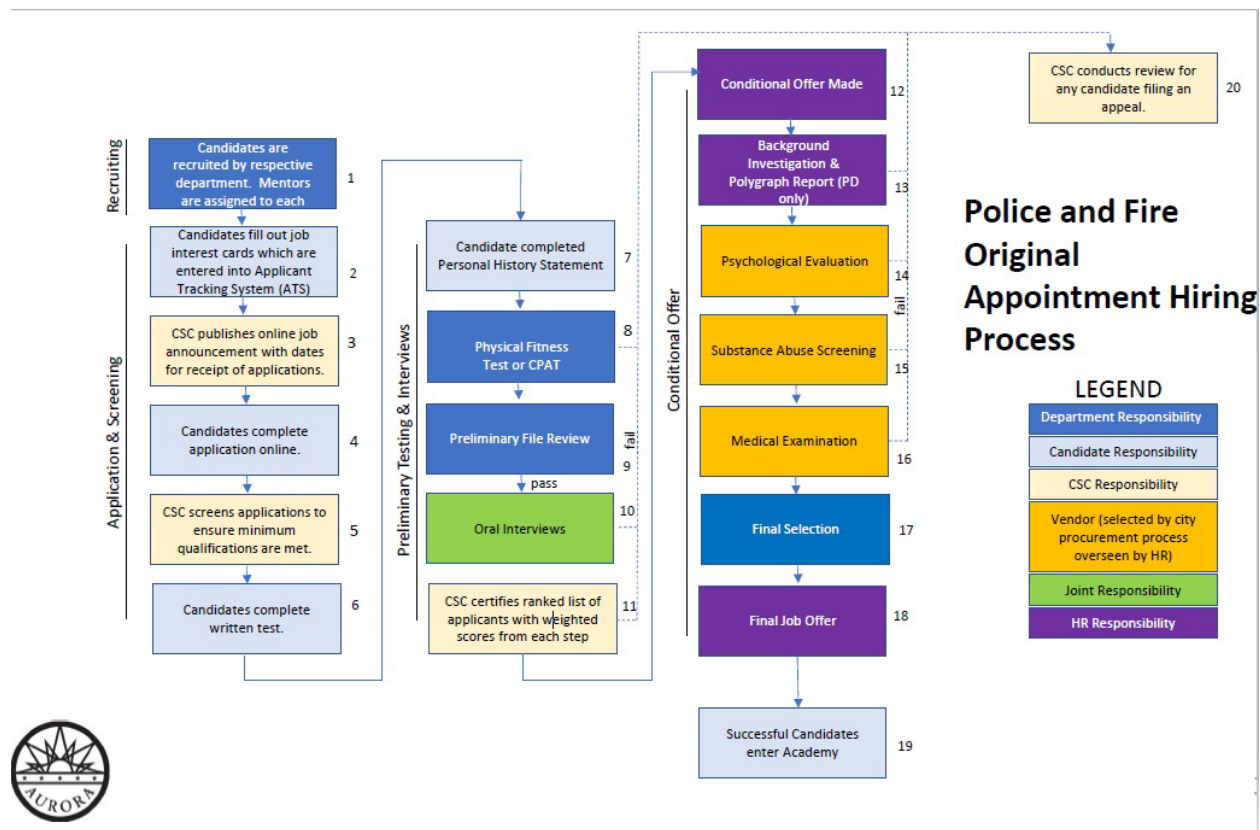
cost of preparing the record, including the transcript fee, shall be advanced by the appellant, unless the Court otherwise orders.

2. Upon receipt by the Commission of written notice that an appeal has been filed in District Court, the Commission shall transmit to the appellant an estimate of the cost of preparing the record. The appellant shall advance to the Commission the estimated cost of preparing the record, including the transcript fee. Upon receipt of such payment, the Commission shall prepare the record, including the transcript, and submit it to the District Court, as provided by the Colorado Rules of Civil Procedure. Failure of the appellant to tender the requisite fee in a timely manner may be brought to the attention of the Commission, who may then recommend appropriate action including requesting dismissal of the appeal for failing to tender the requisite fee in a timely manner.

Section 2 Of Civil Service Commission Rules and Regulations Process For Original Appointments

Original Appointment Section Overview: Applicants for original appointment (in reference to both Entry-Level and Lateral appointments) to Civil Service positions of the Fire or Police department shall be subject to qualification and examination procedures stated in the following paragraphs. All applicants who possess the minimum qualifications established by the Commission will be allowed to participate in the following examination process. This process seeks to provide the Aurora Fire Rescue, Aurora Police Department, and all Aurora citizens with the most qualified applicants irrespective of the applicant's race, creed, color, gender, age, national origin, sexual orientation, religion, or political opinions or affiliations.

The full process is detailed in the flowchart below.



* Only the areas marked as "CSC Responsibility" will be outlined in the following sections.

Application and Screening Section

1. Box #3 from flowchart: The Civil Service Commission publishes online job announcement with dates for receipt of applications.

Section 2 Of Civil Service Commission Rules and Regulations Process For Original Appointments

- a. The respective departments will draft narratives and a job description to be included in the job announcement. The job announcement will also include information about each step of the testing process as determined by Human Resources and the respective department.
 - b. Human Resources will review the job announcement to ensure consistency in guidelines, formatting, categories of information, and advertisement across multiple platforms.
 - c. Any application deadline shall be provided by Human Resources and the respective department to the Civil Service Commission.
2. Box #5 from flowchart: Civil Service Commission screens applications to ensure minimum qualifications are met.
- a. The Civil Service Commission shall determine the minimum qualifications for original appointment to include:
 - i. Entry-Level Police applicants shall be 21 years old by the projected end date of the Academy for which they are applying. Entry-level Fire applicants shall be 18 years old by the projected start date of the Academy for which they are applying. Proof of age will be either a copy of a state, or municipality-issued original Birth Certificate, Passport of the United States of America, or evidence of Naturalization.
 - ii. Be a citizen of the United States of America or a person who is lawfully admitted for permanent residence in accordance with the Immigration and Nationality Act. Proof of citizenship will be either a copy of a state or municipality-issued original Birth Certificate, Passport of the United States of America, or evidence of Naturalization.
 - iii. Have completed a minimum education of high school completion, or GED equivalency. Proof will be a copy of the High School Diploma, copy of the GED Certificate, or successful completion letter from an accredited school's Principal or District Superintendent, or other documentation approved by the Commission. Candidates who have completed any credit hours from an accredited college/university must also include a copy of college transcripts from all post-secondary schools attended along with any of the accepted documentation above when requested by the Commission. NOTE: If home-schooled, documentation must meet the standards of the state of matriculation. If the home-schooled candidate has been accepted in any accredited post-secondary institution, it will be determined that they have met all of the above education requirements.
 - iv. Must have a valid driver's license.

Section 2 Of Civil Service Commission Rules and Regulations Process For Original Appointments

- v. Be able to perform minimum essential job functions of the recruit position.
 - b. The Civil Service Commission shall determine automatic grounds for disqualification to include:
 - i. Conviction of, or deferred judgment for, a crime which is a felony under state or federal law; or military conviction by a court-martial that is comparable to a felony conviction.
 - ii. Conviction of any crime or ordinance violation, which would bar the applicant from possessing a firearm or ammunition under Federal or Colorado law. (For Police Officer Applicants only.)
 - iii. Conviction of, deferred judgement for, or combination of any misdemeanor causing disqualification under POST standard 24-31-305. (For Police Officer Applicants only.)
 - iv. Illegal distribution of any controlled substances or drugs, including steroids, in the last (3) years. Frequency of behavior, quantity of drugs involved, and type are considered at time of background.
 - c. The Commission shall notify any applicant whose application has been disqualified during the application screening process via the ATS and shall identify the Commission Rule(s) for such disqualification.
 - d. Applicants who have been disqualified due to factual errors in their applications may appeal their disqualification to the Civil Service Commission under the established appeal procedures.
3. Entrance Examination (Box #6 from flowchart): Candidates complete written test.
- a. The Civil Service Commission will collaborate with the departments and Human Resources to choose the written examination, the testing vendor, and the minimum passing score and deadlines for the examination period.
 - b. The Civil Service Commission will receive the testing results and notify Human Resources of all applicants with passing scores.
 - c. The Commission shall notify any applicant whose application has been disqualified during the entrance examination via the ATS.
 - d. Applicants who have been disqualified may appeal their disqualification to the Civil Service Commission under the established appeal procedures.

Section 2 Of Civil Service Commission Rules and Regulations
Process For Original Appointments
Preliminary Testing and Interview Section

1. (Box #9 from flowchart): The respective department will conduct a preliminary file review to identify any disqualifying information.
 - a. Human Resources shall notify any applicant whose application has been disqualified during the preliminary file review process via the ATS.
 - b. Applicants who have been disqualified may appeal their disqualification to the Civil Service Commission under the established appeal procedures.

2. Oral Interviews (Box #10 from flowchart): Department led interview panels administered by Human Resources.
 - a. At the discretion of the Civil Service Commission, Commissioners may elect to either score applicants as board members, serve as a non-scoring monitor on each interview panel, or decline participation.
 - b. Human Resources shall notify any applicant whose application has been disqualified during the oral interview process via the ATS.
 - c. Applicants who have been disqualified may appeal their disqualification to the Civil Service Commission under the established appeal procedures.

3. (Box #11 from flowchart): Civil Service Commission certifies ranked list of qualified entry-level applicants for original appointment.
 - a. Each entry-level applicant who successfully completes each step of the testing process to this point shall be given a position in rank order by final score on a certified eligibility list.
 - b. The applicant's position on the certified eligibility list shall be determined by a combination of examination scores with relative scoring weights of each exam score for the final score determined by the respective department, with assistance from Human Resources.
 - c. Preference points as determined by the Civil Service Commission may be applied at this step. Any preference points shall be applied in accordance with the policy outlining these points and qualifications established by the Civil Service Commission.
 - d. In the event a tie final score results, rank order priority shall be based on the date and time the application was received with the earlier taking precedence.

Section 2 Of Civil Service Commission Rules and Regulations Process For Original Appointments

- e. The certified eligibility list shall be reviewed and signed by the Civil Service Commission. The list shall be published to the respective department and Human Resources. (Note: Final job offers shall be provided to applicants remaining on the certified eligibility list in rank order.)
- f. Civil Service will notify applicants of their ranking on the eligibility list. Human Resources will then provide any future status updates to applicants throughout the remainder of the testing process.
- g. Applicants on the certified eligibility list may request a deferment from the Civil Service Commission to a future Academy. Applicants shall provide the request in writing along with appropriate backup documentation.
- h. If approved, the deferred applicant may be re-certified for the next scheduled academy (following the deferral period) in a position corresponding to the original ranking on the certified eligibility list.

Conditional Job Offer, Background Investigation, and Final Job Offer

1. Box #13 through #16 from flowchart: Backgrounds and post offer examinations steps are determined and conducted by Human Resources.
 - a. Human Resources shall notify any applicant whose application has been disqualified during the background investigation process via the ATS.
 - b. Applicants who have been disqualified may appeal their disqualification to the Civil Service Commission under the established appeal procedures.
2. Box #17 from flowchart: The respective department, with assistance from Human Resources, shall determine the final selection process.
 - a. Human Resources shall notify any applicant whose application has been disqualified during the final selection process via the ATS.
 - b. Applicants who have been disqualified may appeal their disqualification to the Civil Service Commission under the established appeal procedures.

Section 2 Of Civil Service Commission Rules and Regulations Process For Original Appointments

3. Box #20 from flowchart: Civil Service Commission conducts review for any applicant filing an appeal.
 - a. Any applicant disqualified from the entry-level application process may file an appeal with the Civil Service Commission.
 - b. Applicants shall provide the appeal in writing along with appropriate backup documentation.
 - c. The appeal must be received by the Commission within seven (7) business days from the date of the notice of disqualification to the applicant.
 - d. A copy of the appeal shall be provided to Human Resources. Human Resources shall provide a summary of the testing results of the applicant and any additional information for the Commission to consider within (10) ten business days from the date the appeal is received by the Commission.
 - e. Commissioners having any conflict-of-interest concerns shall recuse themselves from the appeal process for that applicant. This shall include any Commissioner who participated in any part of that candidate's testing process.
 - f. The appeal shall be reviewed by a quorum of remaining Commissioners within five (5) business days of receipt of the summary of testing results and any additional information provided by Human Resources.
 - g. The Commission may seek guidance on an appeal from the City Attorney's Office representative assigned to the Civil Service Commission.
 - h. A majority of Commissioners shall decide one of the following options to resolve the appeal;
 - i. Additional or clarifying information is needed from either the applicant or Human Resources with deadlines for such information to be decided by the Commission based on the complexity of the information requested.
 - ii. To reinstate the applicant into the application process at the point of disqualification.
 - iii. To uphold the disqualification of the applicant from the testing process.
 - i. A summary of the Commission's decision on the appeal shall be provided in writing to the applicant and Human Resources. The appeal decision of the Commission shall be final.

Section 2 Of Civil Service Commission Rules and Regulations Process For Original Appointments

4. Reporting Requirements

- a. Human Resources will be responsible for consistently examining the minimum qualifications and disqualification rate at each testing step to determine if any have a disparate impact on minority candidates and report to the respective departments and Civil Service Commission.
- b. Human Resources shall be deemed to be the custodian of all applicant testing records including all applications, personal history statements, interview materials, background investigations, external vendor reports, and medical records.

5. Lateral Entry

- a. In accordance with the City Charter, Article III, Section 3-16, paragraph (10), the Civil Service Commission establishes the following conditions and regulations which shall apply to Lateral-entry appointment. The Civil Service Commission strongly encourages each Department to adhere to this following stipulation from Ordinance Number 89-88, "WHEREAS, lateral entry will also assist the Police and Fire Departments in implementing their affirmative action programs."
- b. At the time of application, unless otherwise noted, applicants for lateral-entry appointment to Civil Service fire and police positions shall;
 - i. Lateral Police applicants shall be 21 years old by the projected end date of the Academy for which they are applying. Lateral Fire applicants shall be 18 years old by the projected start date of the Academy for which they are applying. Proof of age will be either a copy of a state, or municipality-issued original Birth Certificate, Passport of the United States of America, or evidence of Naturalization.
 - ii. Be a citizen of the United States of America or a person who is lawfully admitted for permanent residence in accordance with the Immigration and Nationality Act. Proof of citizenship will be either a copy of a state or municipality-issued original Birth Certificate, Passport of the United States of America, or evidence of Naturalization.
 - iii. Have completed a minimum education of high school completion, or GED equivalency. Proof will be a copy of the High School Diploma, copy of the GED Certificate, or successful completion letter from an accredited school's Principal or District Superintendent, or other documentation approved by the Commission.
 - iv. For Police Applicants only: Have three (3) years previous related experience in good standing within the four (4) year period immediately preceding the

Section 2 Of Civil Service Commission Rules and Regulations

Process For Original Appointments

application. ~~Related experience shall consist of full time paid employment as a Police Officer in a full service Police department.~~ (The previous sentence is suspended until 07/25/2025) For Fire Applicants only: Have three (3) years paid related experience in good standing within the four (4) year period at the time of application.

- v. Be able to perform the essential functions of the position.

- c. Per City Charter, the Civil Service Commission shall establish an unranked pool of qualified individuals who meet the minimum qualifications. To establish this unranked pool of qualified individuals, the Civil Service Commission shall accept applications for Lateral-entry employment.

- d. All applicants who meet the minimum qualifications established by the Civil Service Commission shall form the unranked pool of qualified individuals.

- e. This will then end the Civil Service Commission's involvement in the Lateral program and begin the involvement by the Chiefs of the respective Departments.

- f. Qualified individuals in the unranked pool shall then be subject to appropriate testing by the Chiefs of the respective Departments, with assistance from Human Resources, which may include, but not necessarily consist of a medical, background, polygraph and psychological examinations. The Chiefs of the respective Departments may, at their sole discretion, select qualified individuals from the remaining unranked pool of individuals.

- g. No person can remain on the lateral entry appointment list for more than two (2) years without reapplication.

- h. The Commission shall notify any applicant whose application has been disqualified for failing to meet the minimum qualifications via the ATS.

- i. The Chiefs of the respective Departments, with assistance from Human Resources, shall notify any applicant whose application has been disqualified as a result of testing and/or the review process.

- j. Human Resources shall be deemed to be the custodian of all lateral applicant testing records including all applications, personal history statements, interview materials, background investigations, external vendor reports, and medical records.