

## CIVIL SERVICE COMMISSION MEETING AGENDA

**1:00 PM**

**MAY 9, 2023**

**ASPEN ROOM AND TEAMS**  
(EMAIL [CIVILSERVICE@AURORAGOV.ORG](mailto:CIVILSERVICE@AURORAGOV.ORG)  
FOR LINK)

### **1) 1:00 PM CALL TO ORDER OF REGULAR MEETING**

**A.** Adoption of Agenda

**B.** Approval of Minutes for April 11 and April 25, 2023

### **2) AGENDA ITEMS FOR VOTE-None**

### **3) AGENDA ITEMS FOR DISCUSSION or POSSIBLE VOTE**

**A.** Cadet Preference Points for Police Officers

Division Chief Juul

**B.** Disciplinary Appeal Rules & Regulations Revision

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**

# CIVIL SERVICE COMMISSION AGENDA ITEM REQUEST FORM



To request that an item be on the Civil Service Commission agenda, please complete this form and include required supporting documents. Civil Service Staff will notify you if and when the item will appear on the agenda.

Date Submitted:

Completed requests can be sent to [civilservice@auroragov.org](mailto:civilservice@auroragov.org) or faxed to 303-326-8944

Item Topic:

Submitted by:

Department/Organization:

Contact Phone:

Email Address:

Name, title, and contact info. of individual who will present the item:

Estimated time needed to present the item:

Select the type of agenda item:

Agenda Item (Requires a vote)

Discussion (No vote required)

Rule Change

Report/Request

For CSC Staff Use only  
Approved for meeting on:

Returned to requester for the following reason(s):

Not approved

State how the item title is to appear on the agenda:

Briefly summarize the topic and/or point of view:

List attachments (\*supporting documents) to be distributed with the agenda:

Indicate if there will be need for audio/visual equipment, change of venue, and/or anticipated attendance by special interest groups:

# AURORA CIVIL SERVICE COMMISSION RULES AND REGULATIONS

## TABLE OF CONTENTS:

### SECTION I – GENERAL INTENT AND STRUCTURE OF THE CIVIL SERVICE COMMISSION

(for future meeting, current rules remain in effect)

### SECTION II – ORIGINAL APPOINTMENTS: ENTRY-LEVEL, LATERAL, REINSTATEMENT, WORK FORCE REDUCTION (updated rules approved 4/25/23)

### SECTION III – PROMOTION WITHIN CIVIL SERVICE

**RANKS** (for future meeting, current rules remain in effect)

### SECTION IV – APPEAL OF DISCIPLINARY ACTIONS

(for current consideration)

# RULES & REGULATIONS

## OF THE

### *CIVIL SERVICE COMMISSION*

### AURORA, COLORADO

#### SECTION IV. APPEAL OF DISCIPLINARY ACTIONS: FILING PROCEDURES, RULES OF PROCEDURE FOR APPEAL HEARINGS.

**Section Summary:** These rules and regulations establish a community review, through the Civil Service Commission, of disciplinary decisions of Civil Service members of each department. These rules and regulations are intended to inspire public confidence and ensure transparency while providing due process to Civil Service members through *de novo* hearings in appeals of discipline.

The full process for disciplinary appeals is detailed in the flowchart below:

Current APD/AFR Civil Service members who receive a discipline greater than a written reprimand may appeal that discipline to the Commission within 10 business days from the date of the reprimand.

The appeal shall be in writing and contain a copy of the discipline, a summary of reasons for the appeal, and whether the appellant desires an open or closed hearing.

The Commission shall set a hearing date 15-30 days from the date the appeal is received by the Commission. This date may be continued upon agreement of all parties or good cause shown to the Commission.

Parties shall participate in Discovery as guided by the Commission's Rules and Regulations.

Pre-hearing conferences are held by the Commission's Hearings Counsel. The conferences are intended to create a list of stipulated facts to present to the Commission at the hearing and limit testimony only to those facts in dispute.

The full process for disciplinary appeals is continued in the flowchart below:

Witness lists and exhibits are exchanged 7 days prior to the hearing. Subpoenas may be issued by the Commission for service by the party seeking the subpoena.

De Novo hearings follow trial procedure with opening and closing statements, witness testimony, offering of evidence, and live transcription.

After conclusion of the hearing, the Commission deliberates with their Hearings Counsel. Written findings are issued typically 1-2 weeks following the conclusion of the hearing.

Records of appeals, pleadings and findings of the Commission are published on the Commission's webpage at [auroragov.org](http://auroragov.org).

**1) 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.

**2) FILING PROCEDURES FOR DISCIPLINARY APPEALS.**

a) 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.

- b) 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.
- c) 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.
- d) The petition for appeal shall state whether the appellant desires to have the hearing open or closed to the public, a brief summary of the reasons for this position, and include the requirements outlined in Section IV Rule 6 Pleadings, of these Rules and Regulations.
- e) Upon receipt of an appeal, the Commission shall promptly provide a copy of the appeal to the office of the City Attorney. The City Attorney's Office shall have five (5) business days to provide any response opposing the position of the appellant for the desire to have the hearing be open or closed to the public with a brief summary of the reasons for this position.
- f) In the event the parties agree that the hearing shall be open or closed to the public, the Civil Service Commission shall accept this agreed upon position. In the event the parties disagree whether the hearing shall be open or closed to the public, the Civil Service Commission shall decide following the procedure outlined below in Section IV, Rule 11 Motions.
- g) 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.

### **3) PROCESSING DISCIPLINARY APPEALS.**

- a) 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.
- b) 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.
- c) Failure of the member to cooperate in the resetting may result in a finding that the member has waived his/her right to appeal.
- d) The new date shall be set within 60 days of the granting of the continuance unless good cause is shown to the Commission.
- e) 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 appeals counsel for the Commission.

#### **4) OTHER LEGAL MATTERS.**

- a) 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.
- b) 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.

- c) 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.
- d) 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.
- e) Any dispute over the admissibility of recommendations or conclusions of the IRB shall be resolved by motion prior to the hearing.
- f) 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.
- g) Under no circumstances will settlement discussions between the parties be admitted during Commission disciplinary hearings.



## *Rules of Procedure For Disciplinary Hearings*

**5) 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 IV of the Commission Rules and Regulations as well as other provisions of the Aurora City Charter.

### **6) PLEADINGS.**

- a. The appeal to the Commission shall be initiated by a petition for appeal. In addition to the requirements set forth in Section IV, Rule 2 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.
  
- b. 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 except as otherwise noted in determining whether a hearing will be open or closed to the public.

### **7) HEARING DATES AND CONTINUANCES.**

- a) 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.
- b) The Civil Service Commission shall reserve a minimum of two continuous days each month in a calendar year for a potential hearing. These dates shall be provided to the City Attorney's Office and hearings counsel for the respective labor groups.
- c) Upon receipt of a petition for an appeal of discipline, the next available set of previously reserved days shall become the days for the hearing for that petition. A Notice of Hearing shall then be provided to all parties.
- d) 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.
- e) 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.
- f) 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 the hearing.
- g) 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.

## **8) DISCOVERY.**

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

- b. **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.
- c. **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.

- d. **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.
  
- e. **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.

## **9) SUBPOENAS.**

- a) 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.
- b) 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.
- c) 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.

## **10) WITNESSES AND EXHIBITS.**

- a) No later than seven (7) days before the hearing each party shall provide the opposing party or their representative with a list of each witness they intend to call and a copy of each exhibit they intend to introduce.

- b) 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.
- c) 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.
- d) 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.
- e) Copies of all exhibits, preferably arranged in a notebook, shall be provided to the Commission members at the time of the hearing.
- f) 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.

**11) MOTIONS.**

- a) 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.
- b) 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 so desired. No reply shall be permitted by the moving party, except with the express consent of the Commission or hearing counsel.

- c) 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.
- d) 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.
- e) In the discretion of the Commission, motions may be ruled on prior to commencement of the hearing.
- f) 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.

## **12) PRE-HEARING CONFERENCES.**

- a) 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.
- b) The parties shall be prepared to address the following issues at the pre-hearing conference:
  - 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) Discovery issues
- 3) Exhibits
- 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) 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) 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.

### **13) OPENING AND CLOSING STATEMENTS.**

- a) 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.



- b) 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.

**14) ORDER OF PRESENTATION.**

- a) 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.
- b) 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.

**15) EVIDENCE.**

- a) All witnesses shall take an oath or be sworn by the reporter or by hearing counsel for the Commission.
- b) 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.
- c) 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.

- d) The Commission may also consider any disciplinary matrix adopted by, as applicable, the Police or Fire Department.
- e) 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.

**16) QUESTIONS BY THE COMMISSION.**

- a) Commissioners shall be permitted to ask questions during a hearing of any witness, party, or representative of a party.

**17) TEMPLATE FOR FINDINGS**

- a) The template contained in Appendix A shall be utilized for all disciplinary hearing findings of the Civil Service Commission

**18) PUBLIC PUBLICATION OF PETITION FOR APPEALS, PLEADINGS, AND FINDINGS.**

- a) The Civil Service Commission shall publish all petitions for appeals of discipline received on the webpage within the City of Aurora website dedicated to the Civil Service Commission. The associated pleadings and findings shall also be published

for each petition for appeal on the webpage within the City of Aurora website dedicated to the Civil Service Commission.

- b) The Civil Service Commission shall announce at their public meetings any new receipt of a petition for appeal of discipline as well as any newly published findings.

**19) TRANSCRIPT ON APPEAL.**

- a. 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.
- b. 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.

## **APPENDIX A**

The following template shall be utilized for all disciplinary hearing findings of the Civil Service Commission:

CIVIL SERVICE COMMISSION, CITY OF AURORA, COLORADO

---

### **FINDINGS, CONCLUSIONS AND ORDER**

---

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:

\_\_\_\_\_, A MEMBER OF THE AURORA CIVIL SERVICE, AURORA \_\_\_\_\_ DEPARTMENT,  
Petitioner.

---

[SUMMARY OF APPEAL] This matter involves Officer/Firefighter \_\_\_\_\_'s appeal of discipline imposed by Aurora \_\_\_\_\_ Chief \_\_\_\_\_ based on allegations that Petitioner violated Directive(S) \_\_\_\_\_, \_\_\_\_\_, resulting in Chief \_\_\_\_\_ imposing \_\_\_\_\_ as discipline.

Date and place of hearing:

The Petitioner elected to have the hearing be open/closed.

Commissioner's present:

Parties and their counsel:

#### **1. PROCEDURAL HISTORY**

Date of disciplinary order:

Discipline imposed:

Date of filing appeal petition:

#### **2. DIRECTIVES INVOLVED**

##### **a. First Directive**

- 1) Title of Directive
- 2) Relevant text of Directive:

##### **b. Second Directive**

- 1) Title of Directive:
- 2) Relevant text of Directive:

**3. FINDINGS AND CONCLUSIONS**

a. Whether the City established that Petitioner violated the First Directive

[Insert findings and conclusions based on the evidence presented as to the first Directive]

Accordingly, the violation of the First Directive, Directive \_\_\_\_\_ – \_\_\_\_\_, is SUSTAINED/NOT SUSTAINED.

b. Whether the City established that Petitioner violated the Second Directive

[Insert findings and conclusions based on the evidence presented as to the Second Directive]

Accordingly, the violation of the Second Directive, Directive \_\_\_\_\_ – \_\_\_\_\_, is SUSTAINED/NOT SUSTAINED.

**4. DISCIPLINE**

a. After giving due consideration to the Chief’s need for administrative control over the Department, was the discipline imposed by the Chief appropriate for the sustained violations?

[Insert findings based on evidence presented]

b. If the discipline imposed by the Chief was not appropriate, what lesser discipline should be imposed?

[Insert findings based on evidence presented]

**5. ORDER**

Based on the foregoing findings and conclusions, the Commission hereby [sustains/does not sustain] the violations and [approves the Chief’s discipline/orders that Petitioner’s discipline be modified as follows: \_\_\_\_\_].

ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 202\_.

AURORA CIVIL SERVICE COMMISSION

\_\_\_\_\_  
Chair